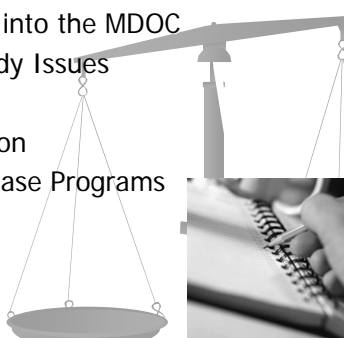


The MDOC in a Nutshell

<p>Stuart G. Friedman Attorney at Law 843 Penniman Avenue Plymouth, MI 48170 (734) 662-4070 stu@crimapp.com</p>	<p>Kathleen Schaefer Parole & Probation Consulting 2632 Buhl Building Detroit, MI 48226 (313) 882-6178 schaeferk@comcast.net</p>
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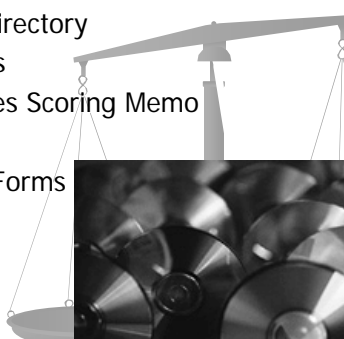
Overview

- Prisoner Intake into the MDOC
- Common Custody Issues
- Parole Process
- Parole Revocation
- Alternative Release Programs



Our Cyber Handout

- MDOC Phone Directory
- Policy Directives
- Parole Guidelines Scoring Memo
- Selected Cases
- Sample MDOC Forms

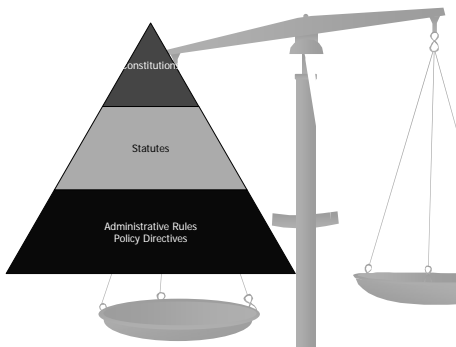


Further Information

- Prison Legal Services of Michigan
 - CD-ROM Disc
- MDOC
 - <http://www.michigan.gov/corrections>
- American Friends Service Committee
- CAPPs ("the other CAPPs")
 - <http://www.capps-mi.org/>

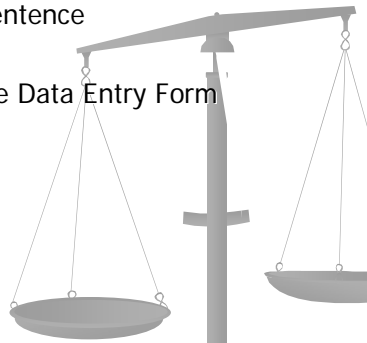


Law Governing MDOC



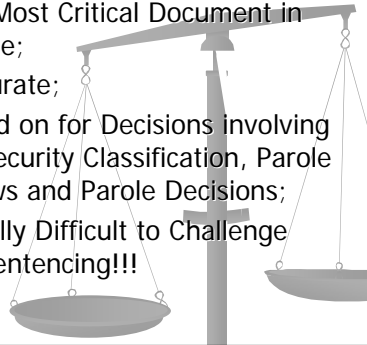
Intake

- Judgment of Sentence
- PSI
- Parole Guideline Data Entry Form
- Jail Record



The PSI

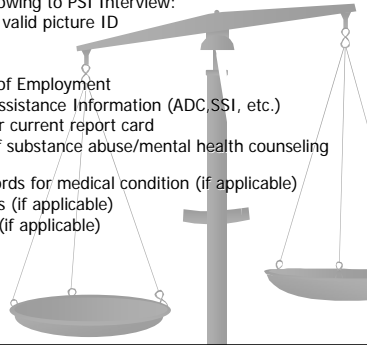
- The PSI is the Most Critical Document in the Inmate's File;
- It Must be Accurate;
- The PSI is relied on for Decisions involving Program and Security Classification, Parole Board Interviews and Parole Decisions;
- It is Exceptionally Difficult to Challenge the PSI After Sentencing!!!



PSI Tips

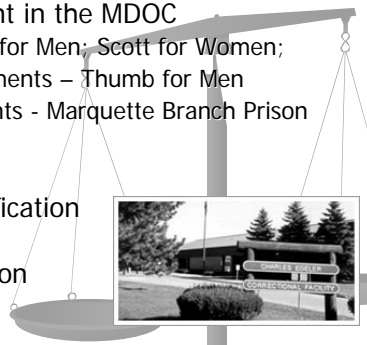
Clients should bring the following to PSI Interview:

- Driver's License or other valid picture ID
- Birth Certificate
- Social Security Card
- Pay Stub or other Proof of Employment
- Proof of Monthly State Assistance Information (ADC, SSI, etc.)
- Diploma or G.E.D. and/or current report card
- Letters verifying dates of substance abuse/mental health counseling (if applicable)
- Letters, prescription records for medical condition (if applicable)
- AA/NA attendance sheets (if applicable)
- Proof of Military Service (if applicable)



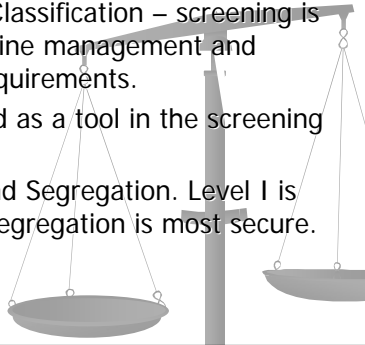
Quarantine

- Initial Placement in the MDOC
 - Charles Egeler for Men; Scott for Women;
 - HYTA Commitments – Thumb for Men
 - UP Commitments - Marquette Branch Prison (Men Only);
- Risk Screening
- Program Classification
- Physical and Mental Evaluation



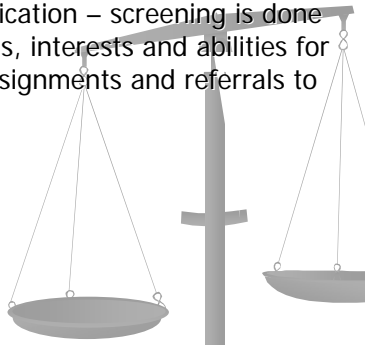
Security Level Classification

- Security Level Classification – screening is done to determine management and confinement requirements.
- The PSI is used as a tool in the screening process.
- Levels I – VI and Segregation. Level I is least secure. Segregation is most secure.



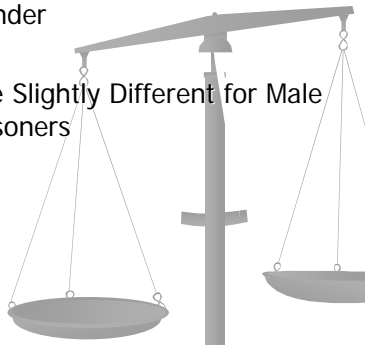
Program Classification

- Program Classification – screening is done to identify needs, interests and abilities for work, school assignments and referrals to programs.



Risk Screening

- Assaultive Offender
- Property Risk
- Risk Factors are Slightly Different for Male and Female Prisoners



History of Violent Crimes

- Not Eligible for Special Security Assignments;
- Serving for or Having a History of Violent Crimes Within the Last 5 years



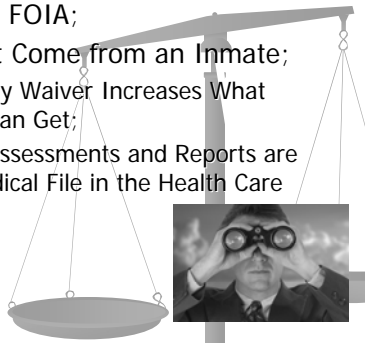
Files Created on Offender

- Central Office;
- Facility/Counselor File;
- Parole Office/Field File;
- Medical/Psychological



Obtaining an Inmate's File

- Available Under FOIA;
- Request Cannot Come from an Inmate;
 - Inmate's Privacy Waiver Increases What Material You Can Get;
 - Psychological Assessments and Reports are kept in the Medical File in the Health Care Unit



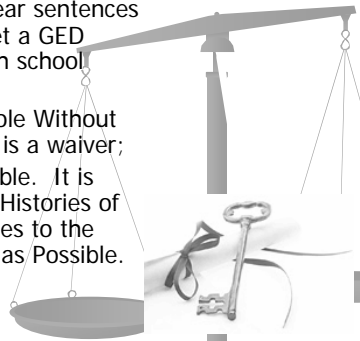
Get an Inmate's File Three Times

- 90 Days After Entry into System;
- 1 Year Before Parole;
- After a Flop (Be Sure to Expressly Request Board Notes)



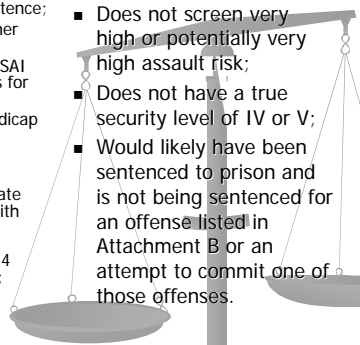
GED

- Inmates with 2 year sentences or higher must get a GED (assuming no high school diploma);
- Cannot Get a Parole Without GED unless there is a waiver;
- Waivers are Possible. It is Important to Get Histories of Learning Disabilities to the MDOC as Quickly as Possible.



SAI ("Boot Camp") Eligibility

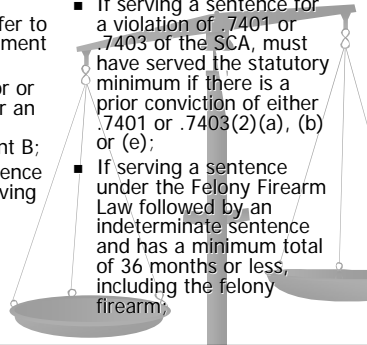
- No prior state prison sentence;
- No pending felony detainer and not felony suspect;
- Not previously placed in SAI unless the discharge was for medical reasons
- Physically or Mental Handicap able to participate
- No prior federal prison sentence;
- Is serving an indeterminate sentence or sentences with minimum sentence of 36 months or less, except 750.110/110a is with a 24 month minimum or less;
- Does not screen very high or potentially very high assault risk;
- Does not have a true security level of IV or V;
- Would likely have been sentenced to prison and is not being sentenced for an offense listed in Attachment B or an attempt to commit one of those offenses.



SAI Excluded Offenses

(PD-DWA 05.01.142)

- Not serving for an ineligible offense (refer to PD 05.01.142 Attachment A);
- Does not have a prior or current conviction for an offense listed in PD 05.01.142 Attachment B;
- Is not serving a sentence for any offense involving a death, including Negligent Homicide;
- If serving a sentence for a violation of .7401 or .7403 of the SCA, must have served the statutory minimum if there is a prior conviction of either .7401 or .7403(2)(a), (b) or (e);
- If serving a sentence under the Felony Firearm Law followed by an indeterminate sentence and has a minimum total of 36 months or less, including the felony firearm;



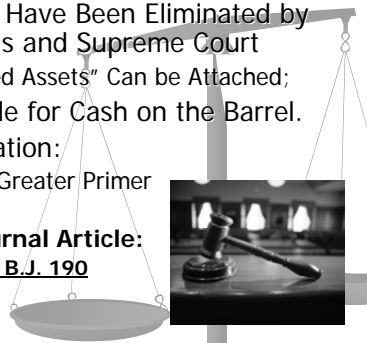
Prisoner Reimbursement Act

- Prison Can Seek Reimbursement for Cost of Incarceration;
- Prison is Looking for Inmate Assets to Seize and Sue to Keep
 - Inmate completes an Offender Financial Status Report Form at Intake (CFJ-140);
 - PSI



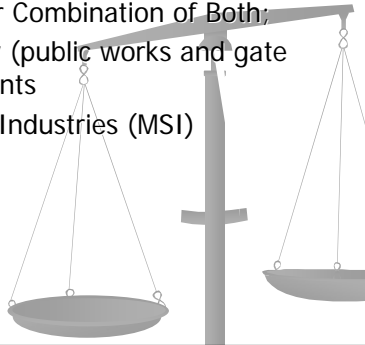
Defending Prisoner Reimbursement Act Suits

- Many Defenses Have Been Eliminated by Court of Appeals and Supreme Court
 - Many "Protected Assets" Can be Attached;
- MDOC Will Settle for Cash on the Barrel.
- Further Information:
 - If PLSM Has a Greater Primer for About \$10.
 - **Mich. Bar Journal Article:** Levy, 77 Mich. B.J. 190



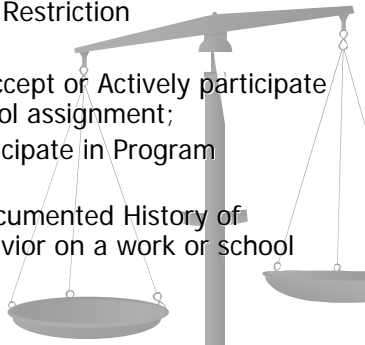
Inmate Employment

- School, Work or Combination of Both;
- Special Security (public works and gate pass) Assignments
- Michigan State Industries (MSI)
- Stipends



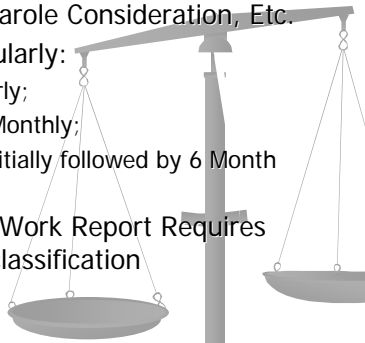
“Unemployable” Inmates

- A Valid Medical Restriction
- Segregation
- If Refuses to Accept or Actively participate in work or school assignment;
- Refuses to Participate in Program Classification;
- If there is a Documented History of Disruptive Behavior on a work or school assignment.



Work and Program Performance Evaluations

- Important for Parole Consideration, Etc.
- Performed Regularly:
 - School, Quarterly;
 - Food Service, Monthly;
 - Other Work, Initially followed by 6 Month Evaluations
- Below Average Work Report Requires Referral for Reclassification



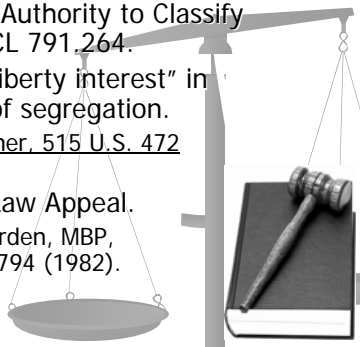
Segregation

- Types of Segregation
 - Temporary Segregation – sometimes used if pending a hearing for a major misconduct violation;
 - Protective or Administrative Segregation;
 - Punitive Segregation (Detention)



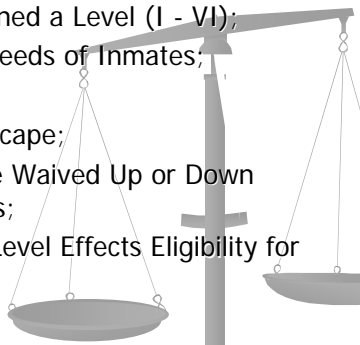
Segregation and the Law

- MDOC Granted Authority to Classify Individuals. MCL 791.264.
- Generally, no “liberty interest” in remaining out of segregation.
 - Sandin v. Conner, 515 U.S. 472 (1995).
- Possible State Law Appeal.
 - Meadows v Warden, MBP, 117 Mich.App. 794 (1982).



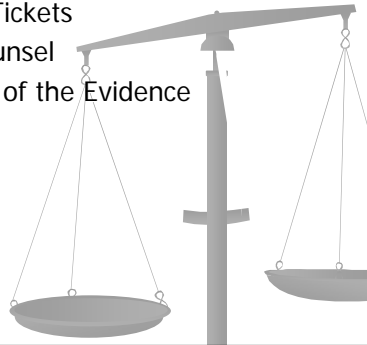
Security Classification

- Inmate is Assigned a Level (I - VI);
- Interests and Needs of Inmates;
- Management;
- Control from Escape;
- Inmates Can be Waived Up or Down Based on Needs;
- Inmate's True Level Effects Eligibility for Many Programs



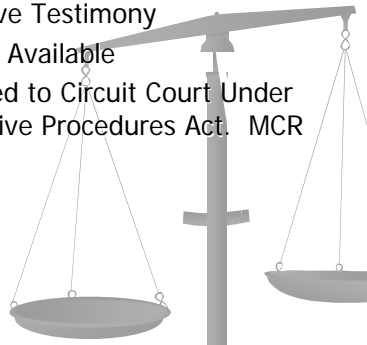
Prison Misconduct Tickets

- Major v Minor Tickets
- No Right to Counsel
- Preponderance of the Evidence



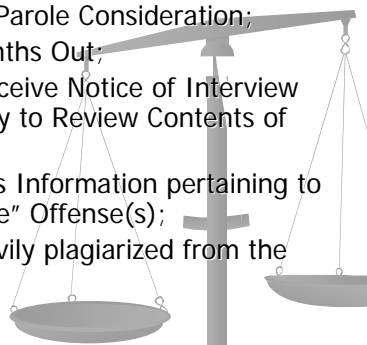
Prison Misconduct Hearings

- Debate Over Live Testimony
- Internal Appeal Available
- Can Be Appealed to Circuit Court Under the Administrative Procedures Act. MCR 7.105.



The Parole Eligibility (“PER”)

- Initial Step for Parole Consideration;
- Prepared 8 Months Out;
- Supposed to receive Notice of Interview and Opportunity to Review Contents of Counselor File;
- Report Contains Information pertaining to Inmate’s “Active” Offense(s);
- The PER is heavily plagiarized from the PSI!



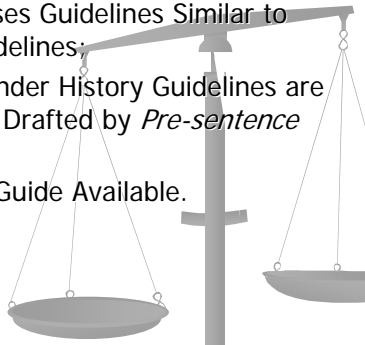
Notice of Intent

- Three Months Prior to First Release Date;
- Notice Covers Issues Which the Parole Board Intends to Consider;
- Notice if Often Very Vague



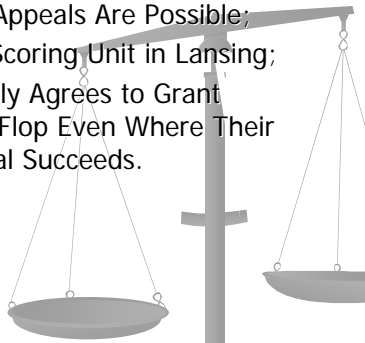
Parole Guidelines

- Parole Board Uses Guidelines Similar to Sentencing Guidelines;
- Crime and Offender History Guidelines are Usually Initially Drafted by *Pre-sentence* Investigator;
- MDOC Scoring Guide Available.



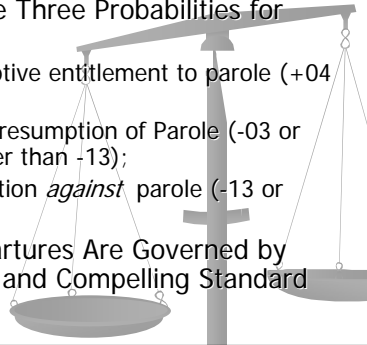
Guideline Appeals

- Administrative Appeals Are Possible;
- Appeals Go to Scoring Unit in Lansing;
- The Board Rarely Agrees to Grant Rehearing of a Flop Even Where Their Guideline Appeal Succeeds.



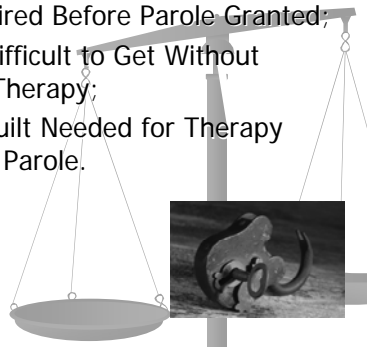
Probabilities of Parole

- Guidelines Have Three Probabilities for Parole:
 - High. Presumptive entitlement to parole (+04 or higher);
 - Average. No presumption of Parole (-03 or less, but greater than -13);
 - Low. Presumption *against* parole (-13 or less)
- In Theory Departures Are Governed by the Substantial and Compelling Standard



Sex Offender Paroles

- Interview Required Before Parole Granted;
- Exceptionally Difficult to Get Without Completion of Therapy;
- Admission of Guilt Needed for Therapy and Usually for Parole.



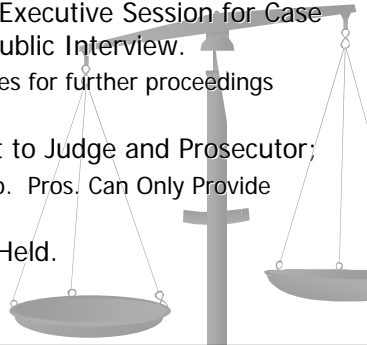
Lifer Paroles

- Initial Interview 15 years;
- Subsequent Interviews Discretionary With the Board;
- File Review Every Five Years.



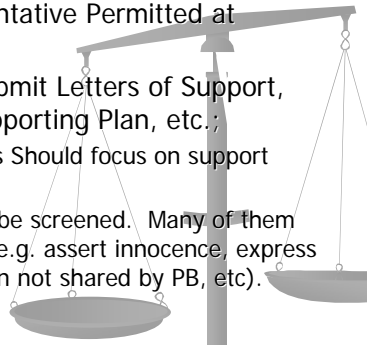
Lifer Paroles Continued

- Board Votes in Executive Session for Case to Proceed to Public Interview.
 - 6 out of 10 votes for further proceedings required;
- Case Then Sent to Judge and Prosecutor;
 - Judge Has Veto. Pros. Can Only Provide Input;
- Public Hearing Held.



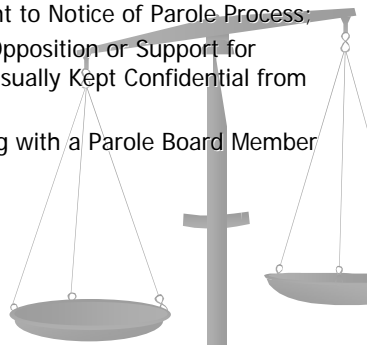
Inmate Input Into Parole Process

- Parole Representative Permitted at Interview;
- Inmate Can Submit Letters of Support, Documents Supporting Plan, etc. ;
 - Support Letters Should focus on support provided;
 - Letters should be screened. Many of them actually hurt, (e.g. assert innocence, express political position not shared by PB, etc).



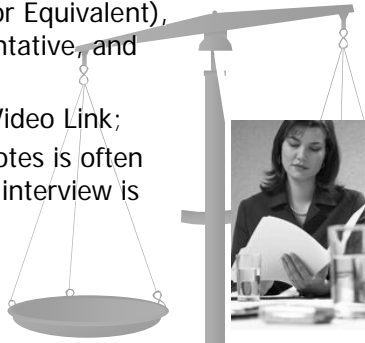
Victim Input Into the Parole Process

- Victims Have Right to Notice of Parole Process;
- Right to Submit Opposition or Support for Parole. (This is Usually Kept Confidential from Prisoner);
- Right to a Meeting with a Parole Board Member in Lansing.



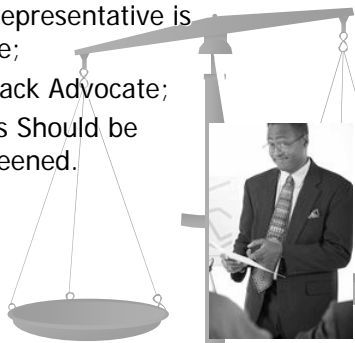
The Parole Interview

- Inmate, RUM (or Equivalent), Parole Representative, and Board Member;
- Often Held by Video Link;
- One of Three votes is often cast before the interview is held.



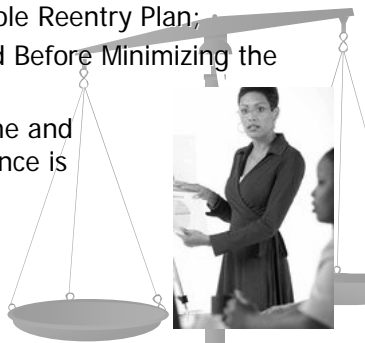
Role of Representative

- Board View is Representative is Not an Advocate;
- Reality – Laid Back Advocate;
- Family Members Should be Briefed and Screened.



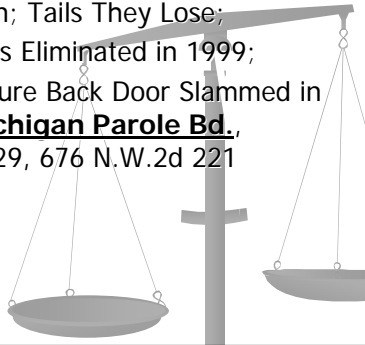
Advocacy Tips

- Non-MDOC Parole Reentry Plan;
- Think Real Hard Before Minimizing the Offense;
- Inmate's hygiene and overall appearance is important.



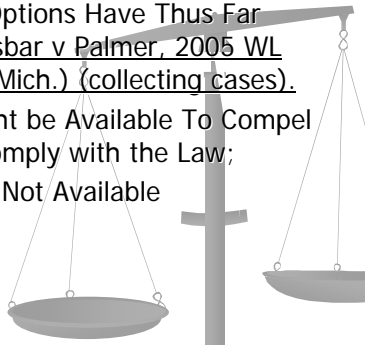
Appeals

- Heads They Win; Tails They Lose;
- Prisoner Appeals Eliminated in 1999;
- Revised Judicature Back Door Slammed in **Morales v. Michigan Parole Bd.**, 260 Mich.App. 29, 676 N.W.2d 221 (2003).



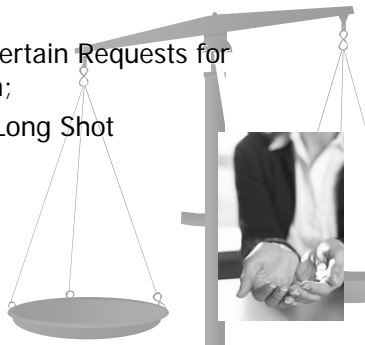
Alternate Litigation Approaches

- Federal Court Options Have Thus Far Failed. See Kosbar v Palmer, 2005 WL 2045819 (W.D.Mich.) (collecting cases).
- Mandamus Might be Available To Compel the Board to Comply with the Law;
- Habeas Corpus Not Available



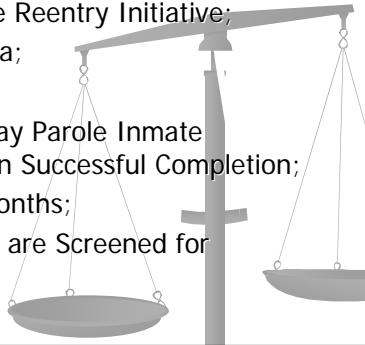
What's Left?

- Beg!
- Board Does Entertain Requests for Reconsideration;
- Rehearing is a Long Shot



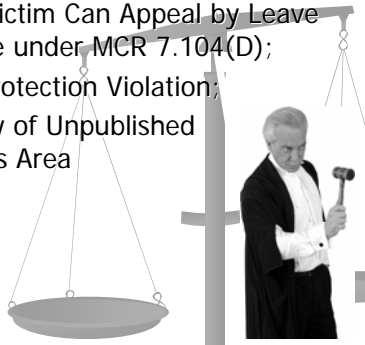
Parole Reentry Initiative

- Intensive Parole Reentry Initiative;
- Eligibility Criteria;
- Placement;
- Parole Board May Parole Inmate Contingent upon Successful Completion;
- Program is 4 months;
- Parole Violators are Screened for Eligibility.



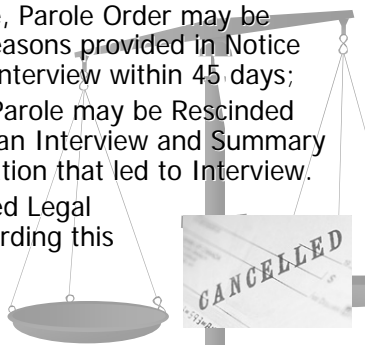
Prosecution Parole Appeals

- Prosecutor or Victim Can Appeal by Leave **Grant** of Parole under MCR 7.104(D);
- Not an Equal Protection Violation;
- Significant Body of Unpublished Case Law in this Area



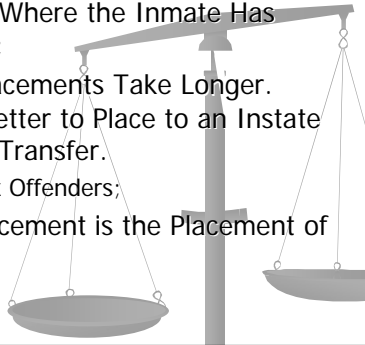
Parole Rescission

- Prior to Release, Parole Order may be Suspended; Reasons provided in Notice of Action with Interview within 45 days;
- After Release, Parole may be Rescinded but Must Have an Interview and Summary of New Information that led to Interview.
- Many Unresolved Legal Questions Regarding this Proceeding.



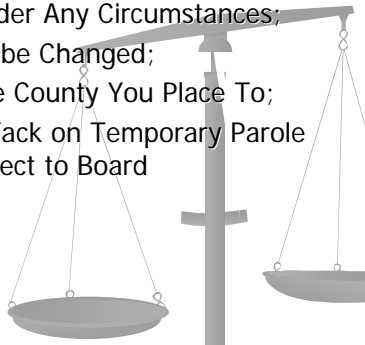
Parole Placements Tips

- Best to a Place Where the Inmate Has Significant Ties;
- Out of State Placements Take Longer. Normally it is Better to Place to an Instate Placement and Transfer.
 - Exception: Sex Offenders;
- Commercial Placement is the Placement of Last Resort.



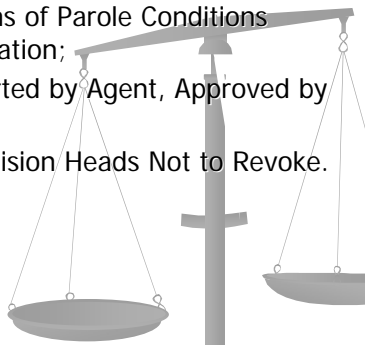
Conditions/Supervision

- Take Parole Under Any Circumstances;
- Conditions Can be Changed;
- Think About the County You Place To;
- An Agent Can Tack on Temporary Parole Conditions Subject to Board Approval/Veto;



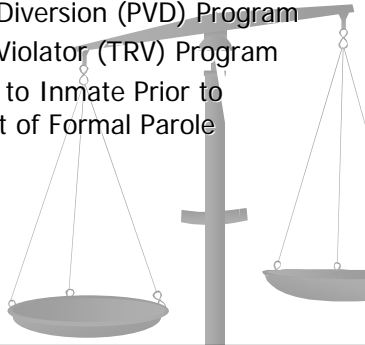
Parole Revocation

- Not All Violations of Parole Conditions Result in Revocation;
- Revocation Started by Agent, Approved by Supervisor;
- Pressure on Division Heads Not to Revoke.



Alternatives to Prison Return

- Parole Violator Diversion (PVD) Program
- Technical Rule Violator (TRV) Program
- Usually Offered to Inmate Prior to Commencement of Formal Parole Revocation.



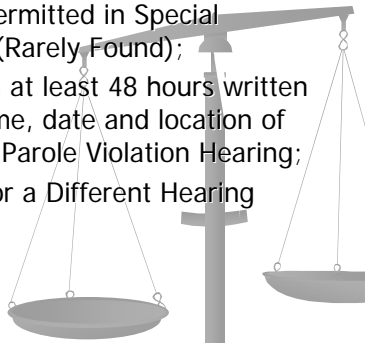
Revocation Arraignment

- PV Charges are presented;
- Parolee may request a Preliminary Violation Hearing.



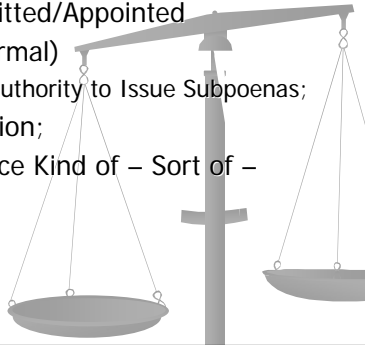
Preliminary Parole Violation Hearing

- Counsel Only Permitted in Special Circumstances (Rarely Found);
- Parolee is given at least 48 hours written notice of the time, date and location of the Preliminary Parole Violation Hearing;
- When To Ask for a Different Hearing Examiner.



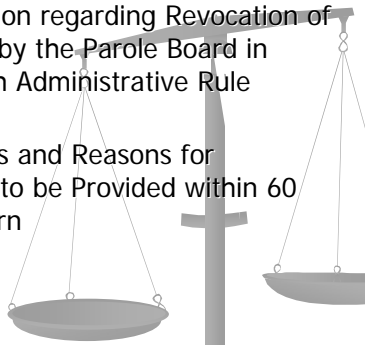
Revocation Final Hearing

- Attorneys Permitted/Appointed
- Discovery (Informal)
 - Board Denies Authority to Issue Subpoenas;
- Cross-Examination;
- Rules of Evidence Kind of – Sort of – Apply.



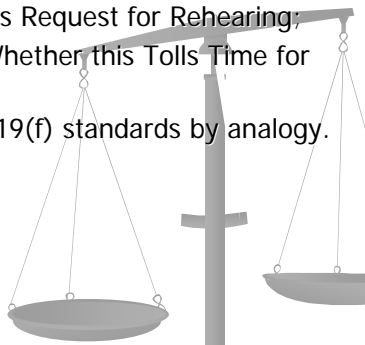
Revocation – Lansing Review

- The Final Decision regarding Revocation of Parole is made by the Parole Board in accordance with Administrative Rule 791.7765
- Written Findings and Reasons for Revocation are to be Provided within 60 days after Return



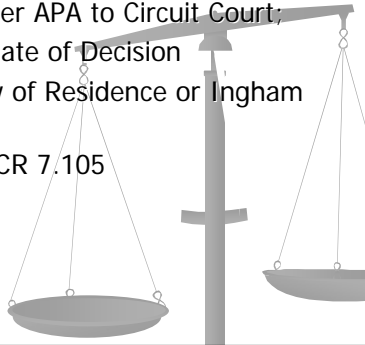
Revocation – Rehearing

- Board Entertains Request for Rehearing;
- Open Debate Whether this Tolls Time for Circuit Appeal.
- Utilize MCR 2.119(f) standards by analogy.



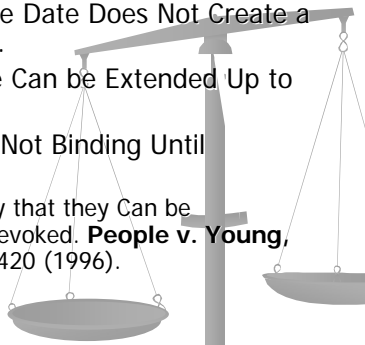
Revocation Appeals

- Appealable Under APA to Circuit Court;
- 60 Days from Date of Decision
- Inmates County of Residence or Ingham County
- Governed by MCR 7.105



Parole Discharge

- Parole Discharge Date Does Not Create a Liberty Interest.
- Terms of Parole Can be Extended Up to the Last Day
- Discharges Are Not Binding Until Delivered.
 - Small Possibility that they Can be Retroactively Revoked. **People v. Young**, 220 Mich.App. 420 (1996).



Questions?

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