

Michigan provides compassionate release to eligible incarcerated individuals with serious or terminal medical conditions through (1) **Medical Parole**<sup>1</sup> and (2) **Executive Clemency: Commutation Based on a Medical Condition**.<sup>2</sup>

## **MEDICAL PAROLE**

### **I. ELIGIBILITY**

**Medical Condition** – An incarcerated individual is eligible for Medical Parole if “medically frail,”<sup>3</sup> defined as having a condition that meets one or more of the following criteria:

- A permanent physical disability or serious and complex medical condition resulting in the inability to walk, stand, or sit without personal assistance;<sup>4</sup> or
- A terminal medical or neurological condition resulting in a life expectancy of under 18 months;<sup>5</sup> or
- A permanent disabling mental disorder, including dementia, Alzheimer’s, or a similar degenerative brain disorder that results in the need for nursing home level of care, and a significantly impaired ability to perform two or more activities of daily living.<sup>6</sup>

**Other Eligibility Criteria** – In addition to the medical condition requirement, an incarcerated individual (1) must be a minimal threat to society because of the individual’s medical condition and (2) have “recent conduct” indicating the individual is unlikely to engage in “assaultive conduct.”<sup>7</sup>

**Exclusions** – An individual is not eligible for Medical Parole if convicted of (1) any crime punishable by life imprisonment without parole or (2) first-degree criminal sexual conduct.<sup>8</sup>

### **II. APPLICATION OR REFERRAL**

There is no Medical Parole application that an incarcerated individual can submit to start the process. The Department of Corrections (Department) Bureau of Health Care Services (Bureau) initiates all requests for Medical Parole.<sup>9</sup>

### **III. DOCUMENTATION AND ASSESSMENT**

If the Bureau believes that an individual meets the definition of “medically frail,” it must then use a non-Department specialist “in the appropriate field of medicine” to evaluate the individual’s condition and report the findings to the Bureau.<sup>10</sup> There is no additional information in the Medical Parole law regarding needed documentation

from the individual or Department for the assessment process.

#### **IV. DECISION-MAKING PROCESS**

**Decision-Maker** – The Michigan Parole Board (Board) makes all final decisions granting or denying Medical Parole.<sup>11</sup>

**Decision Factors** – The Board, in consultation with the Bureau, decides whether the incarcerated individual meets the definition of “medically frail.”<sup>12</sup> In addition to deciding the individual is medically frail, the Board must have “reasonable assurance” based on all information that the individual “will not become a menace to society or the public safety.”<sup>13</sup> The Board must also have satisfactory evidence that arrangements have been made for the individual’s care.<sup>14</sup> It has not published any additional guidelines or information on its decision process for Medical Parole. However, other guidelines and factors specified by laws or administrative rules pertaining to parole generally apply.<sup>15</sup> These factors include, but are not limited to, characteristics of the individual’s offense, institutional program performance, institutional conduct, prior criminal record, results of risk screening, pending felony charges, and failure to present a sufficient parole plan.<sup>16</sup>

**Notice** – When the Board determines an incarcerated individual is medically frail and should be considered for Medical Parole, it must provide notice and relevant medical records to the prosecuting attorney in the county in which the individual was convicted.<sup>17</sup>

The Board must also notify any known victim (or, in the case of homicide, the victim’s immediate family) it is considering the individual for Medical Parole.<sup>18</sup> Additionally, victims may request they receive notice about their right to address or submit a written statement for consideration by the Board.<sup>19</sup>

**Objection by Prosecutor or Victim** – Within 30 days of receiving notice, the prosecutor or the victim (or victim’s family) may object to the Board’s decision to consider Medical Parole by filing a motion in the circuit court in the county in which the individual was convicted. If requested by the victim (or family), the prosecuting attorney must meet with the victim (or family) before deciding whether to object.<sup>20</sup>

The prosecuting attorney must inform the Board if such a motion is filed and may request an independent medical examination of the individual.<sup>21</sup> The individual’s sentencing judge or the judge’s successor in office must hear the motion.<sup>22</sup> At the hearing, the prosecutor and Board may provide evidence for the judge to use in determining the individual is medically frail, including results from an independent medical examination.<sup>23</sup> The judge’s decision on whether the individual is medically frail<sup>24</sup> is binding on the Board, but may be appealed further by the Department, the prosecutor, or the victim (or family) by request to the court of appeals.<sup>25</sup>

**Hearing** – There is nothing specific to the Medical Parole process that indicates the

Board must hold hearings or conduct interviews. For parole generally, the Board conducts an interview except in cases of high or low parole probability.<sup>26</sup> High and low probability is determined based on the individual's parole guideline score.<sup>27</sup> As part of this interview process, the Board considers any statement or information provided by the victim.<sup>28</sup> The incarcerated individual is given notice of the interview at least one month in advance and may have a representative present; the representative cannot be an attorney for purposes of offering legal advice. An individual or their representative may present evidence at the interview in support of parole.<sup>29</sup>

**Evaluation** – Ahead of consideration for parole, the Board may request an individual's institution prepare a Parole Eligibility Review Report (PER).<sup>30</sup> The PER includes, at minimum, the following information:

- Offenses for which the individual is currently incarcerated.
- Prior criminal record.
- Institutional program performance.
- Institutional conduct.
- The individual's membership in a group identified as a security threat.
- Physical and mental health information.
- Results from risk assessments.
- Cooperation in reporting financial assets.
- Whether the individual attempted to obtain required identification.
- Parole plans.<sup>31</sup>

Information in the PER is also used in calculating the individual's parole guideline score.<sup>32</sup>

**Placement** – The Board must have “satisfactory evidence” arrangements have been made for the incarcerated individual's care.<sup>33</sup> Individuals are not released on Medical Parole unless they agree to placement approved by the Board.<sup>34</sup> If an individual is unable to consent due to a physical or mental health condition, an individual legally entitled to act on their behalf may consent to the placement.<sup>35</sup>

- Placement can be in a medical facility or in a private residence. If release is to a private residence, the individual is subject to electronic monitoring. However, the Board need not require electronic monitoring if it decides it is not necessary to protect public safety.<sup>36</sup> Requirements for suitable placement for parole generally apply and are considered during a pre-parole investigation.<sup>37</sup> Release to a medical facility requires the facility's agreement to accept the individual.<sup>38</sup>
- Individuals released to medical facilities have the same patient rights and responsibilities as any other patient in the facility and the Department does not have authority over the individual's treatment plan.<sup>39</sup> The statute defines

“medical facility” as a hospital, hospice, nursing home, or other housing accommodation “providing medical treatment suitable to the conditions rendering the parolee medically frail.”<sup>40</sup>

**Conditions** – Before an incarcerated individual can be released on Medical Parole, they must agree to (1) their approved placement by the Board, (2) the release of their medical records to the appropriate prosecutor and sentencing (or successor) judge, and (3) an independent medical exam if requested by the prosecutor, with “reasonable” costs paid for by the Department.<sup>41</sup>

**Decision** – If neither the prosecuting attorney nor victim file a motion (as described above) and the individual meets all eligibility criteria, the Board may grant Medical Parole.<sup>42</sup> If a motion is filed, the Board may grant Medical Parole if the sentencing court finds that the individual is medically frail and no additional appeals are pending.<sup>43</sup> If the Board decides not to grant parole, the individual will be provided with a written explanation and “specific recommendations for corrective action the prisoner may take to facilitate release.”<sup>44</sup> All decisions by the Board require a majority vote.<sup>45</sup>

## **V. POST-DECISION**

**Conditions** – Individuals released because they are medically frail must adhere to all conditions the Board sets for the length of the Medical Parole term.<sup>46</sup> The Medical Parole statute defines that term as “not less than the time necessary to reach the [individual’s] earliest release date.”<sup>47</sup> Individuals released on Medical Parole must agree to follow requirements set for parole generally, including but not limited to: payment of restitution if ordered, payment of parole supervision fees, registration as a sex offender if required, provision of written consent to submit to a search of person and property by a parole officer, and payment of other fees as required.<sup>48</sup>

**Revocation and Violations** – Individuals who violate their Medical Parole conditions or are determined to no longer meet the definition of medically frail may be (1) transferred to a “more appropriate” setting to address their medical needs<sup>49</sup> or (2) subject to the Department and Board parole violation or revocation processes.<sup>50</sup>

## **VI. STATISTICS AND REPORTING**

As of March 2025, there were no publicly available statistics on how many individuals, if any, have been released under the law. The Department is required to submit reports on parole approvals and denials to the state legislature.<sup>51</sup> However, Medical Parole cases are not explicitly mentioned in any publicly available reports by the Department.

A report by the Michigan House Fiscal Agency on Senate Bill 599 (2024) notes committee testimony showed one person has been medically paroled since the law

went into effect in 2019.<sup>52</sup> The same report notes the Department of Corrections estimates that between five and ten people would be released on Medical Parole each year under the statute version effective in April 2025.<sup>53</sup>

## **EXECUTIVE CLEMENCY: COMMUTATION BASED ON MEDICAL CONDITION**

The Michigan Constitution gives the Governor Executive Clemency authority, which includes the power to commute an incarcerated individual's sentence.<sup>54</sup> A Commutation is "the reduction of an individual's sentence to a specified term."<sup>55</sup> The Michigan Parole Board (Board) has the authority to create rules governing the Executive Clemency process.<sup>56</sup>

### **I. ELIGIBILITY**

Requests for Commutation may be based on an individual's medical condition.<sup>57</sup> Neither the Governor's office nor the Board provides definitions or examples of medical conditions that may qualify for a medical-based Commutation. The Governor alone may request an expedited Commutation process based on an individual's medical condition.<sup>58</sup> Incarcerated individuals ineligible for Medical Parole because of their specific conviction are eligible to apply for a Commutation.<sup>59</sup>

### **II. APPLICATION OR REFERRAL**

Incarcerated individuals or another person on their behalf may file an application for a Commutation with the Board.<sup>60</sup> The Board may also initiate the Commutation process.<sup>61</sup> The application must contain information on:

- Date of conviction and sentence.
- Personal history, including age, citizenship, marital status, and number of dependents.
- Criminal record.
- Circumstances of the crime.
- Reasons for seeking clemency.<sup>62</sup>

The current *Application for Pardon or Commutation of Sentence* is available on the Board's website.<sup>63</sup> The Board may also choose to initiate the Commutation process.<sup>64</sup>

### **III. DOCUMENTATION AND ASSESSMENT**

There are no specific questions on the application related to health issues or medical conditions; however, the filing directions state that individuals requesting clemency due to "a serious health issue" [emphasis in original] should detail their diagnosis, prognosis, and ways the condition affects daily activity<sup>65</sup> and provide any relevant

documentation that verifies or adds to that information.<sup>66</sup> The Michigan State Appellate Defender Office's *Defender Guide to Michigan's Commutation Process (Guide)*, recommends including any medical or physical conditions that would prevent an individual from re-offending, but advises applicants should also include other reasons why they should be granted clemency, such as remorse, personal growth, accomplishments, and outside support.<sup>67</sup> Additionally, the *Guide* notes supporting documentation for an application can include a cover letter, letters of support, documents from the trial court record if cited, and documents showing progress while incarcerated.<sup>68</sup>

#### **IV. DECISION-MAKING PROCESS**

**Decision-Maker** – The Governor makes all final decisions regarding Executive Clemency; however, the Board first evaluates and makes recommendations to the Governor regarding each application.<sup>69</sup>

There are two timelines for the decision-making process, one applies to all clemency actions generally and the other applies to clemency actions where the Governor has requested an expedited process based on an individual's medical condition.<sup>70</sup>

**Initial Review** – The Board's Pardons and Commutations Coordinator first receives applications and screens them to make sure the application is correct and complete and then sends applications to the Board for an initial review.<sup>71</sup> If the application is not correct, it will be returned with identified errors.<sup>72</sup> The initial review of an application is to determine if the application has merit. The Board must conduct its initial review within 60 days of receiving an application generally<sup>73</sup> and within 10 days of receiving an application under the expedited process.<sup>74</sup> The Board notes medical status and other key details from the application during the review.<sup>75</sup> The Board then delivers its determination of merit to the Governor.

- If the Board determines an application does not have merit, the application and documentation is forwarded to the Governor along with a letter recommending denial.<sup>76</sup> The Governor is not bound to the Board's recommendation, but it is unlikely the Governor will grant a Commutation if the Board does not recommend it.<sup>77</sup>
- If the Board determines an application has merit, the Board proceeds to the next stage of review.<sup>78</sup>

All decisions and recommendations by the Board require a majority vote.<sup>79</sup>

**Notice** – Within 10 days of deciding an application has merit, the Board must send out written notice of the case, with copies of the application, affidavits, and a case summary, to the sentencing (or successor) judge and prosecuting attorney of the county in which the individual was convicted.<sup>80</sup> For medical cases under the expedited

process, notice must be sent within five days of deciding merit.<sup>81</sup>

The judge and attorney have 30 days to respond with information or objections in writing.<sup>82</sup> There is no expedited timeline for the response period<sup>83</sup>; however, for terminally ill prisoners, this response period may be waived by the judge and prosecuting attorney at the Board's request.<sup>84</sup> If the judge and prosecuting attorney do not respond after 30 days, the Board shall proceed to a public hearing.<sup>85</sup>

If the Board decides to proceed to a public hearing, it must provide an additional 30-day notice of the scheduled public hearing to the same judge and prosecutor, the Governor, the Attorney General, all registered victims, and the incarcerated individual or person who filed the application on their behalf.<sup>86</sup> Victims may submit comments to the Board during this time.<sup>87</sup> The Board will also publish notice of the public hearing on the Department's website<sup>88</sup> and in the press.<sup>89</sup> There is no expedited process for the notice period<sup>90</sup>; however, for terminally ill prisoners, this 30-day notice period may be waived by the judge, prosecuting attorney, and victims at the Board's request.<sup>91</sup>

The Board must conduct any investigations and decide whether to have a public hearing within 270 days of deciding if an application has merit.<sup>92</sup> In the expedited process for medical cases, the decision to have a public hearing must be within 90 days.<sup>93</sup>

**Placement Investigation** – During the 30-day notice period before a public hearing, the Board will also commence a “parole placement investigation” and provide the Attorney General with relevant materials for review in preparation for the public hearing.<sup>94</sup>

**Evaluation** – The Board may request a Parole Eligibility Review Report (PER) for the individual.<sup>95</sup> The PER includes, at minimum, the following information: all major misconduct charges resulting in a guilty finding and the punishment served, the individual's work and educational record while incarcerated, results of physical, mental, and psychiatric exams, whether the individual completed required financial asset disclosures, whether the individual attempted to obtain required identification documents, a statement of disciplinary time, and results from risk assessments.<sup>96</sup>

For applications based on physical or mental incapacity, the Board will direct the Department of Corrections Bureau of Health Care Services (Bureau) to evaluate the incarcerated individual's condition and report on that condition. If the Bureau determines the individual is physically or mentally incapacitated, the Bureau will appoint a non-Department “specialist in the appropriate field of medicine” to evaluate and report on the individual's condition.<sup>97</sup> The reports are provided to the Governor for review but are not made public to anyone else.<sup>98</sup>

The Board may also schedule an interview with the individual, either in-person or virtually. Individuals are allowed to have a non-attorney representative present for

the interview.<sup>99</sup>

**Public Hearing** – The hearing must be conducted within 90 days after deciding to proceed with the case and there is no expedited timeline for the hearing.<sup>100</sup> A member of the Board conducts the hearing, and the public is represented by the Attorney General or their staff member.<sup>101</sup> The individual may be represented by counsel.<sup>102</sup> The Board must construe technical rules of evidence liberally.<sup>103</sup>

At the hearing, the Attorney General, the Parole Board Chair, and any other members of the Board in attendance may question the incarcerated individual on all relevant issues.<sup>104</sup> Members of the public and any victims (or victims' representatives) may testify in support of or opposition to the individual's application but must be sworn as a witness. Victims may also submit written testimony.<sup>105</sup> The individual is allowed to testify and present oral documentary evidence as well.<sup>106</sup> The hearing is recorded with a transcript and a copy is submitted to the Attorney General.<sup>107</sup>

**Executive Meeting** – The case then returns to the Board for a final executive meeting where members will vote on a recommendation to the Governor, considering all information received during the process and public hearing. If a case receives a majority vote for recommendation for clemency, the Board delivers its recommendation and all relevant materials to the Office of the Governor.<sup>108</sup>

**Governor's Decision** – The Governor's office reviews the application materials and the Board's recommendation to determine whether a Commutation is warranted.<sup>109</sup> There is no statutorily required timeline for the Governor's decision. Once the Governor has made a final determination, the Board is responsible for notifying the incarcerated individual of the decision.<sup>110</sup>

## **V. POST-DECISION**

**Parole Board Determination of Parole** – If the Governor grants a Commutation request and commutes the individual's sentence to a term of years already served, the Board assumes jurisdiction over the case and votes on parole. A majority of the 10 members on the Board must vote in favor of parole.<sup>111</sup> Such a parole release occurs only after a required 28-day notice period, during which the Board will notify the sentencing judge, prosecutor, and any registered victims. In the case of a terminally ill individual, the Board may seek the consent of the judge, prosecutor, and registered victims to waive this 28-day notice of parole release.<sup>112</sup> If the Board grants parole on a Commutation case, the parole term is for four years.<sup>113</sup>

**Conditions** – A Commutation is subject to any conditions and limitations the Governor directs.<sup>114</sup>

**Appeals** – If denied, an incarcerated individual may resubmit an application two years after the date on which the Board received the previously denied application. Unless

there has been a substantial change in circumstances, the Board will return an application resubmitted before that time without taking any action.<sup>115</sup>

## **VI. REPORTING AND STATISTICS**

The Michigan Constitution states that the Governor must inform the Michigan Legislature annually of each Commutation granted and the reasons for granting it.<sup>116</sup> However, that data is not publicly available.

## **MICHIGAN COMPASSIONATE RELEASE**

### **PRIMARY LEGAL SOURCES**

#### **MEDICAL PAROLE**

##### **Statutes**

Michigan Compiled Laws, § 791.234 (2024), available through the Michigan Legislature, <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-791-234>.

Michigan Compiled Laws, § 791.235(10)-(16) (2024) (amended version effective Apr. 2, 2025), available through the Michigan Legislature, <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-791-235-AMENDED&QueryID=166993097>.

##### **Administrative Rules**

Michigan Administrative Code r. 791.7715, 7716 (2024), available through the Michigan Department of Licensing and Regulatory Affairs, [https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=1556\\_2015-052CO\\_AdminCode.pdf&ReturnHTML=True](https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=1556_2015-052CO_AdminCode.pdf&ReturnHTML=True).

##### **Agency Policy and Publications**

Michigan Department of Corrections, Policy Directive No. 06.05.100, *Parole Guidelines* (Oct. 31, 2022), <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document).

Michigan Department of Corrections, Policy Directive No. 06.05.103, *Parole Eligibility/Lifer Review Reports* (Nov. 21, 2016), <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document).

Michigan Department of Corrections, Policy Directive No. 06.05.104, *Parole Process* (Aug. 14, 2023), <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document).

## **EXECUTIVE CLEMENCY: COMMUTATION BASED ON A MEDICAL CONDITION**

### **State Constitution**

Michigan Constitution, Article V, § 14, available through the Michigan Legislature, [https://www.legislature.mi.gov/\(S\(x4nv4skv2n5r1i3trqfwjqnh\)\)/documents/mcl/pdf/mcl-chap1.pdf](https://www.legislature.mi.gov/(S(x4nv4skv2n5r1i3trqfwjqnh))/documents/mcl/pdf/mcl-chap1.pdf).

### **Statutes**

Michigan Compiled Laws, § 791.244 (2024), available through the Michigan Legislature, <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-791-244>.

Michigan Compiled Laws, § 791.244a (2024), available through the Michigan Legislature, <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-791-244a>.

### **Administrative Rules**

Mich. Admin. Code r. 791.7760 (2024), available through the Michigan Department of Licensing and Regulatory Affairs, [https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=1556\\_2015-052CO\\_AdminCode.pdf&ReturnHTML=True](https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=1556_2015-052CO_AdminCode.pdf&ReturnHTML=True).

### **Agency Policy and Publications**

Michigan Department of Corrections, Policy Directive No. 06.05.103, *Parole Eligibility/Lifer Review Reports* (Nov. 21, 2016), <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document).

Michigan Department of Corrections, *Parole Board Information: Executive Clemency Process Summary* (June 17, 2024), <https://www.michigan.gov/corrections/our-operations/foa/parole-board-information>.

## NOTES

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\* *Id.* means see prior note. *Supra* means refer to specified note for full citation.

<sup>1</sup> Mich. Comp. Laws § 791.235(10)-(16), (20) (2024) (amended version effective Apr. 2, 2025).

<sup>2</sup> Mich. Const. art. V, § 14 (2024); Mich. Comp. Laws §§ 791.244, 791.244a (2024); *Parole Board Information: Executive Clemency Process Summary*, Michigan Department of Corrections (June 17, 2024) [hereinafter *Executive Clemency Process*], <https://www.michigan.gov/corrections/our-operations/foa/parole-board-information>.

Michigan also has two other provisions related to release based on medical conditions: extension of limits of confinement and compassionate release under county supervision. The limitations on the use of these policies places them outside the scope of this memo (Mich. Comp. Laws §§ 771.3h (2024) (compassionate release), 791.265a (2024) (extension of limits of confinement); Mich. Admin. Code r. 791.4415 (2024) (extension of limits of confinement)).

<sup>3</sup> Mich. Comp. Laws § 791.235(10).

<sup>4</sup> *Id.* § 791.235(20)(d)(i).

<sup>5</sup> *Id.* § 791.235(20)(d)(ii).

<sup>6</sup> *Id.* § 791.235(20)(d)(iii).

“Activities of daily living” are defined as basic personal care and everyday activities including, but not limited to, eating, toileting, grooming, dressing, bathing, and transferring from one physical position to another. Transferring positions includes, but is not limited to, moving from a reclined position to sitting or standing (Mich. Comp. Laws § 791.235(20)(a), referencing 42 C.F.R. § 441.505).

<sup>7</sup> Mich. Comp. Laws § 791.235(20)(d).

<sup>8</sup> Mich. Comp. Laws § 791.235(10), referencing Mich. Comp. Laws § 750.520b.

Additionally, Michigan law states individuals sentenced to life for convictions related to the adulteration, changing, or misbranding of drugs or medicine and convictions related to explosives are not eligible for parole generally (Mich. Comp. Laws § 791.234(6) (2024), referencing Mich. Comp. Laws §§ 333.17764, 750.16, 750.18, 750.200-212a (2024)).

<sup>9</sup> Mich. Comp. Laws § 791.235(10).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* § 791.234(11).

<sup>12</sup> *Id.* § 791.235(10).

<sup>13</sup> *Id.* § 791.233(1)(a) (2024).

<sup>14</sup> *Id.* § 791.233(1)(e).

<sup>15</sup> Email from Leigh Kyle Kaminski, North Carolina Department of Corrections Legislative Liaison, to FMM (Feb. 10, 2025) (on file with FMM, Office of the General Counsel) (stating policies for parole generally apply to Medical Parole unless specifically excluded by statute).

<sup>16</sup> Mich. Comp. Laws § 791.233e(2)-(3), (7) (2024); Mich. Admin. Code r. 791.7715(2)-(3), 791.7716(3) (2024).

These factors are described in more detail in the Department of Corrections Policy Directives (Michigan Department of Corrections, Policy Directive No. 06.05.100, *Parole Guidelines* (Oct. 31, 2022) [hereinafter *Parole Guidelines*], <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document); Michigan Department of Corrections, Policy Directive No. 06.05.104, *Parole Process* (Aug. 14, 2023) [hereinafter *Parole Process*], <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document)).

<sup>17</sup> Mich. Comp. Laws §§ 791.234(18), 791.235(10).

<sup>18</sup> Mich. Comp. Laws § 791.234(18).

Note that there is no indication in the statute that the incarcerated individual's medical records are provided to the victim or victim's family.

<sup>19</sup> *Id.* §§ 780.769(1)(e), 780.771 (2024).

<sup>20</sup> Mich. Comp. Laws § 791.234(19).

<sup>21</sup> Mich. Comp. Laws § 791.234(19).

An independent medical exam requested by the prosecutor must take place at a Department facility if possible and the Department must pay for reasonable costs of the exam (Mich. Comp. Laws § 791.235(11)(a)(iii)).

<sup>22</sup> Mich. Comp. Laws § 791.234(19).

<sup>23</sup> *Id.* § 791.234(20)(a).

<sup>24</sup> *Id.* § 791.234(20)(b).

<sup>25</sup> *Id.* § 791.234(21).

<sup>26</sup> *Id.* § 791.235(1)-(2).

<sup>27</sup> *Parole Guidelines, supra* note 16, § C (providing information on how parole guideline scores are calculated).

<sup>28</sup> Mich. Comp. Laws § 791.235(1).

<sup>29</sup> *Id.* § 791.235(4), (6).

<sup>30</sup> *Id.* § 791.235(7).

<sup>31</sup> See Mich. Comp. Laws § 791.235(7); Michigan Department of Corrections, Policy Directive No. 06.05.103 § O, *Parole Eligibility/Lifer Review Reports* (Nov. 21, 2016) [hereinafter *Parole Eligibility/Lifer Review Reports*], <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document).

<sup>32</sup> *Parole Guidelines, supra* note 16, § C.

<sup>33</sup> Mich. Comp. Laws § 791.233(1)(e).

<sup>34</sup> *Id.* § 791.235(11)(a)(i).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* § 791.235(11)(d).

<sup>37</sup> *Parole Process, supra* note 16, § DD.

The factors considered during the pre-parole investigation are ties to the community, willingness of other home residents to work with the Department, financial support from the head of household, alcohol or drug use by other occupants, presence of weapons in the home, and whether the physical and mental health care needs of the individual can be met.

<sup>38</sup> Mich. Comp. Laws § 791.235(11)(f).

<sup>39</sup> *Id.* § 791.235(12), (15).

<sup>40</sup> *Id.* § 791.235(20)(c).

<sup>41</sup> *Id.* § 791.235(11)(a)(i)-(iii).

<sup>42</sup> *Id.* § 791.235(10).

<sup>43</sup> *Id.* § 791.235(10).

<sup>44</sup> *Id.* § 791.235(18).

<sup>45</sup> *Id.* § 791.246 (2024).

<sup>46</sup> *Id.* § 791.235(11)(b).

<sup>47</sup> *Id.* § 791.235(11)(c).

<sup>48</sup> Mich. Comp. Laws §§ 780.766(11), 780.905(14), 791.236, 791.236a (2024); Mich. Admin. Code r. 791.7730 (2024); Michigan Department of Corrections, Policy Directive No. 04.02.107, *Collection of Victim Restitution/Court-Ordered Payments* (Oct. 1, 2020), <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document); Michigan Department of Corrections, Policy Directive No. 06.02.110, *Supervision Fees* (Aug. 21, 2023), <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document).

Additionally, the provisions of the state William Van Regenmorter Crime Victim’s Rights Act also apply as they are relevant (Mich. Comp. Laws §§ 780.751-780.834 (2024)).

<sup>49</sup> Mich. Comp. Laws § 791.235(11)(e).

<sup>50</sup> Mich. Comp. Laws §§ 791.238-240a (2024) (parole violation processes and policies generally).

See also Michigan Department of Corrections, Policy Directive No. 06.06.100, *Parole Violation Process* (Aug. 21, 2023), <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document) (providing information on Department parole violation processes).

<sup>51</sup> Mich. Comp. Laws §§ 791.231b, 791.233e(12).

<sup>52</sup> Michigan House Fiscal Agency, *Legislative Analysis: Medical Paroles for Medically Frail Prisoners Senate Bill 599* (2024), <https://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-0599-C8DA015D.pdf>.

<sup>53</sup> *Id.*

<sup>54</sup> Mich. Const. art. V, § 14.

<sup>55</sup> *Executive Clemency Process*, *supra* note 2, at para. 2.

<sup>56</sup> Mich. Comp. Laws § 791.206(1)(c) (2024).

<sup>57</sup> *Id.* § 791.244(2).

<sup>58</sup> *Id.* § 791.244a(1).

<sup>59</sup> See Mich. Const. art. V, § 14 (empowering the Governor to grant commutations for all offenses except impeachment).

The Governor’s expansive Executive Clemency power may be used to commute sentences for offenses that are ineligible for Medical Parole.

<sup>60</sup> *Executive Clemency Process*, *supra* note 2, at para. 6.

See also Mich. Comp. Laws § 791.243 (2024) (stating applications must be filed with the Board).

<sup>61</sup> *Executive Clemency Process*, *supra* note 2, at para. 6.

See also Mich. Comp. Laws § 791.244(2) (discussing requirements the Board must take “upon its own initiation of, or upon receipt of an application for, a reprieve, commutation, or pardon”).

<sup>62</sup> Mich. Admin. Code r. 791.7760(1) (2024).

<sup>63</sup> Michigan Department of Corrections, Office of the Parole Board, *Application for Pardon or Commutation of Sentence (Current Michigan Prisoners Only)* (CFJ-515) (May 2023) [hereinafter *Application*], <https://www.michigan.gov/corrections/our-operations/foa/parole-board-information> (link to application located at the bottom of “Parole Board Information” page, click link that reads “Instructions and Application for Pardon or Commutation of Sentence”).

Note the *Application* does not contain designated spaces for all the information required by state administrative rules; there are no specific sections for marital status, number of dependents, or criminal record as required for those currently incarcerated (see Mich. Admin. Code r. 791.7760(1)).

<sup>64</sup> Mich. Comp. Laws § 791.244(2).

<sup>65</sup> *Application*, *supra* note 63, at 2, para. 5.

<sup>66</sup> *Id.* at para. 7.

<sup>67</sup> Frank C. Rodriguez et al., Michigan State Appellate Defender Office, *Defender Guide to Michigan's Commutation Process 20, (2024)* [hereinafter *Defender Guide*] (on file with FMM, Office of the General Counsel).

This guide is available through the State Appellate Defender Office at their website <https://www.sado.org/> for a \$10 fee, including copies specifically for incarcerated individuals in Michigan. It includes a detailed step-by-step guide to applying for a Commutation with examples of forms and communication with the Board, and suggestions on how best to answer questions in the application, interviews, and hearing.

<sup>68</sup> *Id.* at 22.

<sup>69</sup> Mich. Const. art. V, § 14; Mich. Comp. Laws § 791.244(2).

<sup>70</sup> Mich. Comp. Laws § 791.244a(1).

<sup>71</sup> *Defender Guide*, *supra* note 67, at 25.

<sup>72</sup> *Id.*

<sup>73</sup> Mich. Comp. Laws § 791.244(2)(a).

<sup>74</sup> *Id.* § 791.244a(1)(a).

<sup>75</sup> *Defender Guide*, *supra* note 67, at 25.

<sup>76</sup> Mich. Comp. Laws §§ 791.244(2)(b), 791.244a(1)(b); *Executive Clemency Process*, *supra* note 2, at para. 7.

<sup>77</sup> *Defender Guide*, *supra* note 67, at 51.

<sup>78</sup> Mich. Comp. Laws §§ 791.244(2)(c), 791.244a(1)(c); *Executive Clemency Process*, *supra* note 2, at para. 7.

<sup>79</sup> Mich. Comp. Laws § 791.246 (2024); *Executive Clemency Process*, *supra* note 2, at para. 7.

<sup>80</sup> Mich. Comp. Laws § 791.244(2)(c); *Executive Clemency Process Summary*, *supra* note 2, at para. 8.

<sup>81</sup> Mich. Comp. Laws § 791.244a(1)(c).

<sup>82</sup> Mich. Comp. Laws §§ 791.244(2)(c), 791.244a(1)(c); *Executive Clemency Process*, *supra* note 2, at para. 8.

<sup>83</sup> Mich. Comp. Laws § 791.244a(1)(c).

<sup>84</sup> *Executive Clemency Process*, *supra* note 2, at para. 11.

<sup>85</sup> Mich. Comp. Laws §§ 791.244(2)(c), 791.244a(1)(c).

<sup>86</sup> Mich. Comp. Laws §§ 791.244(2)(g), 791.244a(1)(g); *Executive Clemency Process*, *supra* note 2, at para. 8.

<sup>87</sup> *Executive Clemency Process*, *supra* note 2, at para. 8.

<sup>88</sup> *Id.*

<sup>89</sup> Mich. Admin. Code r. 791.7760(3).

<sup>90</sup> Mich. Comp. Laws § 791.244a(1)(g).

<sup>91</sup> *Executive Clemency Process*, *supra* note 2, at para. 11.

<sup>92</sup> Mich. Comp. Laws § 791.244(2)(e).

<sup>93</sup> *Id.* § 791.244a(1)(e).

<sup>94</sup> *Executive Clemency Process*, *supra* note 2, at para. 8.

<sup>95</sup> *Defender Guide*, *supra* note 67, at 28-30.

<sup>96</sup> Mich. Comp. Laws § 791.235(7); *Defender Guide*, *supra* note 67, at 28-30.

See also Michigan Department of Corrections, Policy Directive No. 06.05.103 § O, *Parole Eligibility/Lifer Review Reports* (Nov. 21, 2016), <https://www.michigan.gov/corrections/public-information/statistics-and-reports/policy-directives> (enter Directive number into the search bar and search to view specific document) (providing information on PER reports and their contents).

For more detailed information on factors the Board may consider see the entirety of the parole statutes and administrative rules and the relevant policy directives (Mich. Comp. Laws §§ 791.234-235; Mich. Admin. Code r. 791.7715, 7716 (2024); *Parole Guidelines*, *supra* note 16; *Parole Process*, *supra* note 16).

<sup>97</sup> Mich. Comp. Laws §§ 791.244(2)(d), 791.244a(1)(d).

<sup>98</sup> Mich. Comp. Laws §§ 791.244(2)(d), 791.244a(1)(d).

<sup>99</sup> *Defender Guide*, *supra* note 67, at 30.

<sup>100</sup> Mich. Comp. Laws §§ 791.244(2)(f), 791.244a(1)(f).

Note the Board is required to have a public hearing before a grant of parole only as a means of restricting the authority of the Board, not as a right of the individual (*Middleton v. Parole Board*, 528 N.W.2d 791, 793 (Mich. Ct. App. 1995)). Hearings are not required for every application considered; they are required only in cases where the Board recommends clemency (*Berry v. Dep't Corr.*, 324 N.W.2d 65, 67-68 (Mich. Ct. App. 1982)).

<sup>101</sup> Mich. Comp. Laws §§ 791.244(2)(f), 791.244a(1)(f); Mich. Admin. Code r. 791.7760(4).

<sup>102</sup> Mich. Admin. Code r. 791.7760(5).

<sup>103</sup> Mich. Admin. Code r. 791.7760(4).

<sup>104</sup> *Executive Clemency Process*, *supra* note 2, at para. 9.

<sup>105</sup> Mich. Comp. Laws §§ 791.244(2)(h), 791.244a(1)(h); Mich. Admin Code r. 791.7760(6); *Executive Clemency Process*, *supra* note 2, at para. 9.

<sup>106</sup> Mich. Admin. Code r. 791.7760(5).

<sup>107</sup> *Executive Clemency Process*, *supra* note 2, at para. 9.

<sup>108</sup> Mich. Comp. Laws §§ 791.244(2)(i)-(j), 791.244a(1)(i)-(j); *Executive Clemency Process*, *supra* note 2, at para. 9.

<sup>109</sup> *Executive Clemency Process*, *supra* note 2, at para. 10.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at para. 11.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Mich. Const. art. V, § 14.

<sup>115</sup> Mich. Admin. Code r. 791.7760(2); *Executive Clemency Process*, *supra* note 2, at para. 6.

<sup>116</sup> Mich. Const. art. V, § 14.