

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

DEPARTMENT OF CORRECTIONS

GENERAL RULES

(By authority conferred on the executive director of the Michigan administrative hearing system by section 6 of 1953 PA 232, MCL 791.206, and Executive Order Nos. 2005-1 and 2011-4, MCL 445.2021, and MCL 445.2030)

PART 1. GENERAL PROVISIONS

R 791.1101 Definitions.

Rule 101. As used in these rules:

- (a) "Department" means the department of corrections.
- (b) "Director" means the director of the department.
- (c) "Facility" means a corrections center, technical rule violation center, special alternative incarceration program facility, an institution, or a part thereof that is maintained by the department.
- (d) "Institution" means a facility that is under the administrative control of the deputy director of correctional facilities administration
- (e) "Offender" means a prisoner, parolee, or probationer who is committed to the jurisdiction of the department.
- (f) "Ombudsman" or "corrections ombudsman" means the office of the legislative corrections ombudsman created by 1975 PA 46, MCL 4.351 et seq.
- (g) "Resident" means a prisoner who is committed to the jurisdiction of the department.

History: 1979 AC; 1989 AACS; 1993 AACS; 2002 AACS.

R 791.1115 Declaratory rulings.

Rule 115. (1) Pursuant to section 63 of Act No. 306 of the Public Acts of 1969, as amended, being S24.263 of the Michigan Compiled Laws, an interested person may request a declaratory ruling from the department as to the applicability of a statute, rule, or order of the department to an actual state of facts.

(2) The request for declaratory ruling shall be submitted, in writing, to the Director, Department of Corrections, P.O. Box 30003, Lansing, Michigan 48909, and shall contain the following information:

- (a) A complete account of facts which actually exist for which the declaratory ruling is sought.
- (b) Specific reference to the statute, rule, or order in question.

(3) The director or his or her designee may, but is not required to, issue a declaratory ruling when properly requested. Lack of response within 30 days of receipt of the request shall be deemed a denial of the request for a declaratory ruling.

History: 1979 AC; 1989 AACS.

PART 2. ORGANIZATION AND OPERATION OF DEPARTMENT

R 791.2205 Warden; head of the office of residential and electronic programs; appointment; duties.

Rule 205. (1) For each institution, the director shall appoint a warden to be responsible for the institution. The warden shall do all of the following:

(a) Control and govern the institution and be responsible for discipline at the institution.

(b) Organize and enforce procedures for security.

(c) Establish procedures to ensure the regular inspection of all buildings, grounds, security equipment, fire fighting equipment, and maintenance equipment.

(d) Supervise the business concerns and moneys of the institution.

(e) Respond to prisoner grievances.

(f) Designate a program classification committee to determine appropriate programs for prisoners.

(g) Ensure that department standards of safety, security, and humane treatment are met.

(h) Develop procedures to implement, and ensure compliance with, department policy.

(i) Carry out such other duties and responsibilities as may be assigned.

(2) The head of the office of residential and electronic programs shall act as warden of all community corrections centers and community residential homes and shall have all powers and authority given to wardens of institutions.

History: 1979 AC; 1989 AACS; 1993 AACS.

R 791.2210 Search and seizure.

Rule 210. (1) The department shall conduct periodic and spontaneous searches of housing units and other areas within all institutions and facilities.

(2) Searches shall be conducted for the following purposes:

(a) To maintain security.

(b) To preserve order and discipline.

(c) To ensure the safety of the facility.

(3) Contraband, stolen property, or other material possessed in violation of department rules shall be seized.

(4) Searches of prisoners shall be conducted in accordance with established department policy.

(5) The department may conduct a search for contraband of a person who enters a correctional facility as a visitor, volunteer, employee, contractor, or in any other capacity, as set forth in section 4 of Act No.17 of the Public Acts of 1909, as amended, being S800.284 of the Michigan Compiled Laws, and in sections 25a and 25b of Act No. 175 of the Public Acts of 1927, as amended, being SS764.25a and 764.25b of the Michigan Compiled Laws.

(6) A search shall not be conducted for the purpose of harassing or humiliating a prisoner, visitor, or employee.

History: 1979 AC; 1989 AACS.

R 791.2220 Business hours of facilities; tours; visits.

Rule 220. (1) The normal business hours of department facilities shall be from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

(2) Persons desiring to conduct business in a particular facility during nonbusiness hours shall request permission from the head of the facility.

(3) Professionals and college students in the areas of criminal justice and corrections may request permission to tour a particular facility from the head of that facility.

(4) Persons who wish to visit a departmental facility, but who do not meet the criteria of subrule (2) or (3) of this rule, shall request permission from the director.

(5) The department shall establish reasonable policies regarding news media visits to department facilities.

(6) Visits during disturbances may be permitted only with prior approval from the warden.

(7) All visitors inside the security perimeter of any facility classified above level I shall be escorted by facility staff.

(8) Visits with prisoners are governed by the provisions of R 791.6607, R 791.6609, R 791.6611, and R 791.6614.

(9) Notwithstanding the provisions of subrule (2), (6), or (7) of this rule, staff of the office of the legislative corrections ombudsman shall have access to all facilities under the control of the department as set forth in Act No. 46 of the Public Acts of 1975, as amended, being S4.351 et seq. of the Michigan Compiled Laws.

History: 1979 AC; 1993 AACS.

PART 3. PRISONER HEARING PROCEDURES

R 791.3301 Rescinded.

History: 1979 AC; 1987 AACS; 2002 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 791.3305 Rescinded.

History: 1979 AC; 2015 MR 1, Eff. Jan. 15, 2015.

R 791.3310 Rescinded.

History: 1979 AC; 1989 AACS; 2002 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 791.3315 Rescinded.

History: 1979 AC; 1987 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 791.3320 Appeals; notice; sanctions stayed; basis of review; permissible dispositions on appeal; finality.

Rule 320. (1) A prisoner may appeal a determination made at a hearing conducted pursuant to R 791.3310 for minor misconduct as set forth in department policies and procedures. Oral notice of intent to appeal shall be given by the prisoner at the conclusion of the hearing and shall be followed by a written basis for the appeal within 24 hours after receipt of the written decision. Sanctions ordered by the hearing officer may be held in abeyance until the appeal is resolved.

(2) Within 30 calendar days after receipt of the determination, the prisoner or warden may appeal, to the hearings administrator, the determination made at a hearing conducted pursuant to R 791.3315. The hearings administrator may order a rehearing on his or her own motion at any time.

(3) A prisoner may appeal a determination made in any other administrative hearing by filing a grievance.

(4) Appeals shall be reviewed on the basis of the written summary or record of the hearing, any documentary evidence presented at the hearing, and the written reason for appeal. The reviewing official may affirm or reverse a finding of guilt or may vacate the finding and remand for a new hearing.

History: 1979 AC; 1987 AACS; 2002 AACS.

PART 4. PRISONER CLASSIFICATION AND TRANSFER

R 791.4401 Security classification; criteria; security classification committee; levels of custody; additional criteria for certain classifications; grievance.

Rule 401. (1) A prisoner's security classification is a determination, based on the experience of correctional administrators, as to the level of confinement required for public safety and the safety and security of the facility. It is not a punitive or disciplinary sanction. All of the following factors may be considered in determining classification:

(a) The prisoner's need for protection.

- (b) The safety of others.
- (c) The protection of the general public.
- (d) Prevention of escape.
- (e) Maintenance of control and order.
- (f) Medical and mental health care needs of the prisoner.

(2) After examination of all relevant information, a prisoner shall be assigned to 1 of the following, that is the least restrictive level of custody consistent with the requirements of subrule (1) of this rule:

- (a) Segregation.
- (b) Level VI.
- (c) Level V.
- (d) Level IV.
- (e) Level III.
- (f) Level II.
- (g) Level I.
- (h) Community status.

(3) Security classifications to all levels, except level VI and community status, shall be determined at each institution by a committee which is appointed by the warden and which is under the direction of the deputy director for correctional facilities. The deputy director of correctional facilities administration shall determine all placements at level VI.

Placement on community status requires the concurrence of the administrator of the office of field programs and is subject to R 791.4410 and R 791.4425.

- (4) A prisoner who objects to a reclassification decision may file a grievance.

History: 1979 AC; 1987 AACS; 1989 AACS; 1993 AACS; 2002 AACS.

R 791.4410 Community status; classification and placement.

Rule 410. (1) The administrator of the office of field programs may classify a prisoner to community status under R 791.4401 only if the prisoner meets all of the following criteria:

- (a) Has a classification of security level I that is not due to a waiver.
- (b) Is not currently serving a sentence of imprisonment for prison escape.
- (c) Is not currently serving a sentence of imprisonment for a crime specified by the provisions of MCL 769.2a.
- (d) Has not been convicted of an offense specified in the Sex Offenders Registration Act, 1994 PA 295, MCL 28.721, even if convicted before the effective date of that act.
- (e) If returned for violating a condition of parole, is within 8 months of the next parole action date.
- (f) Is not designated as a very high assaultive risk.
- (g) Does not have health care needs that would be significantly more expensive if provided in the community, as determined by the bureau of health care services, and has a physical and psychological condition consistent with the demands of the program.

(h) Has had satisfactory adjustment under department supervision, including while incarcerated, that indicates a willingness to conform to the rules of the program.

(i) Has no pending felony charges and is not subject to a felony detainer or to deportation proceedings.

(j) Agrees to drug testing as a prerequisite for placement on community status as required by the department.

(k) Has not been given a special designation by the department that permanently excludes placement on community status. These special designations are as follows:

(i) Unwarranted risk to the public, which is defined as any of the following:

(A) Predatory, compulsive, or assaultive sexual behavior in the background of the prisoner.

(B) A history of 2 or more incidents involving assaultive or violent behavior.

(C) A current conviction for a felony, the description of which indicates there was an act by any participant in the crime that resulted in the death of a victim.

(ii) Involved in organized crime, which is defined as participation in a continuing illegal business in which the prisoner acted in concert with others, occupied a position of management, or was an executor of violence.

(iii) Professional criminal, which is defined as involvement in an ongoing criminal activity as a major source of livelihood or having substantial resources or income where legitimate activity or employment is not capable of producing such resources or income.

(iv) Drug trafficker, which is defined as any of the following:

(A) A person with a current conviction, including probation, for an offense or conspiracy or attempt to commit an offense in violation of MCL 333.7101 et seq., the description of which indicates that any of the following were related to the offense through time, place, or circumstances:

(1) Seven grams or more of any substance that contains heroin or cocaine, or both.

(2) One pound or more of marijuana or hashish, or both.

(3) One hundred units, including pills, capsules or hits, or the equivalent of any other controlled substance.

(B) A person who local law enforcement officials confirm, on the basis of reliable evidence, is considered by them to be a significant trafficker in controlled substances in the community.

(C) A person with a current conviction, including probation, for delivery or possession, or conspiracy or attempt to deliver or possess, controlled substances beyond personal use and limited sale to support the prisoner's own addiction.

(l) Is not serving for any of the following violent or assaultive crimes, including attempt conspiracy or solicitation to commit the crime, or for a violation of MCL 750.227b with an underlying conviction for one of the following crimes:

(i) MCL 257.625(4) or (5) Person under the influence of intoxicating liquor or controlled substance; driving on highways or other areas; violations; causing death or injury to others.

(ii) MCL 333.5210 Knowledge of AIDS or HIV infection; sexual penetration.

(iii) MCL 750.72 Burning dwelling house.

- (iv) MCL 750.81 Assault and battery; domestic assault.
- (v) MCL 750.81a Assault and infliction of serious injury.
- (vi) MCL 750.81c Threats, assaults, and batteries against family independence agency employees.
- (vii) MCL 750.82 Felonious assault.
- (viii) MCL 750.83 Assault with intent to commit murder.
- (ix) MCL 750.84 Assault with intent to do great bodily harm less than murder.
- (x) MCL 750.86 Assault with intent to maim.
- (xi) MCL 750.87 Assault with intent to commit felony not otherwise punished.
- (xii) MCL 750.88 Assault with intent to rob and steal; unarmed.
- (xiii) MCL 750.89 Assault with intent to rob and steal; armed.
- (xiv) MCL 750.91 Attempt to murder.
- (xv) MCL 750.110a Home invasion in the first degree.
- (xvi) MCL 750.136b Child abuse.
- (xvii) MCL 750.136a Torturing of children; penalty.
- (xviii) MCL 750.157b Solicitation of murder.
- (xix) MCL 750.197c Jail or place of confinement; assault of employee or custodian, or break and escape.
- (xx) MCL 750.204 Sending explosives with intent to injure persons.
- (xxi) MCL 750.205 Placing explosives with intent to destroy; no resulting damage.
- (xxii) MCL 750.206 Placing explosives with intent to destroy; causing damage to property.
- (xxiii) MCL 750.207 Placing explosives with intent to destroy; causing injury to any person.
- (xxiv) MCL 750.208 Placing explosives; aiding and abetting with intent to destroy.
- (xxv) MCL 750.209 Placing offensive or injurious substance or compound by real or personal property with intent to cause physical injury.
- (xxvi) MCL 750.209a Possession of explosive substance or device in public with intent to terrorize, frighten, intimidate, etc.
- (xxvii) MCL 750.210 Possession of bombs with intent to use unlawfully.
- (xxviii) MCL 750.211 Explosives; manufacture with intent to use unlawfully.
- (xxix) MCL 750.211a Device designed to explode upon impact, upon application of heat, or device highly incendiary; possession with intent to use unlawfully; evidence.
- (xxx) MCL 750.213 Malicious threats to extort money.
- (xxxi) MCL 750.234a Intentional discharge of firearm from motor vehicle, snowmobile or off-road vehicle.
- (xxxii) MCL 750.234b Intentional discharge of firearm at dwelling or occupied structure.
- (xxxiii) MCL 750.234c Intentional discharge of firearm at emergency or law enforcement vehicle.
- (xxxiv) MCL 750.316 First degree murder.
- (xxxv) MCL 750.317 Second degree murder.

- (xxxvi) MCL 750.321 Manslaughter.
- (xxxvii) MCL 750.324 Negligent homicide.
- (xxxviii) MCL 750.325 Negligent homicide; manslaughter where due to operation of motor vehicle.
- (xxxix) MCL 750.327 Death due to explosives.
- (xl) MCL 750.328 Death due to explosives; placed with intent to destroy building or object.
- (xli) MCL 750.329 Death; firearm pointed intentionally but without malice.
- (xlii) MCL 750.349 Kidnapping.
- (xlili) MCL 750.349a Prisoner taking another as a hostage.
- (xliv) MCL 750.350 Kidnapping; child under 14.
- (xlv) MCL 750.377b Malicious destruction of property; property of police or fire department.
- (xlvi) MCL 750.397 Mayhem.
- (xlvii) MCL 750.411h Stalking.
- (xlviii) MCL 750.411i Aggravated stalking.
- (il) MCL 750.479 Resisting or obstructing officer in discharge of duty where there is physical harm or threat of physical harm.
 - (l) MCL 750.479a Failure to obey police or conservation officers' directions to stop vehicle, assault, where there is physical harm or threat of physical harm.
 - (li) MCL 750.506a Assaults while lawfully imprisoned or detained.
 - (lii) MCL 750.517 Entering train for robbing by means of intimidation.
 - (liii) MCL 750.529 Armed robbery; aggravated assault.
 - (liv) MCL 529a Carjacking
 - (lv) MCL 750.530 Unarmed robbery.
 - (lvi) MCL 750.531 Bank, safe, and vault robbery where there is physical harm or the threat of harm to others.
 - (lvii) MCL 752.191 Felonious driving.
 - (lviii) MCL 752.541 Riot.
 - (lix) MCL 752.542 Incitement to riot.
 - (lx) MCL 752.542a Rioting; state correctional facilities.
 - (lxi) MCL 750.543a et seq. Michigan anti-terrorism act.
 - (lxii) MCL 752.861 Careless, reckless, or negligent use of firearms.
 - (lxiii) Any other crime created by a state law enacted after the effective date of this rule that is determined by the director to be violent or assaultive.
- (2) Prisoners who are classified to community status under R 791.4401 may be placed in the community under the following time schedule:
 - (a) If serving a sentence for an offense subject to disciplinary time, only after serving the minimum sentence imposed by the court for that offense.
 - (b) If serving for an offense not subject to disciplinary time, not earlier than 1 year before the earliest release date, subject to either of the following:
 - (i) If sentenced as an habitual offender for a crime not identified in subrule (1)(l) of this rule or serving only a sentence under MCL 750.227b with an underlying conviction for a crime not identified in subrule (1)(l) of this rule, not earlier than 8 months before the earliest release date.

(ii) If convicted of a felony committed while under the jurisdiction of the department, not earlier than 2 years after the date of sentence for that offense.

(3) For purposes of this rule, the earliest release date is defined as follows:

(a) For those prisoners who are eligible for good time or disciplinary credits, including those sentenced as habitual offenders for a crime not identified in subrule (1)(l) of this rule for whom the parole board has received permission to parole on the minimum sentence minus applicable credits, the date is the minimum sentence minus all regular credit and special credit.

(b) For those prisoners who are sentenced as habitual offenders for a crime not identified in subrule (1)(l) of this rule for whom the parole board has not received permission to parole on the minimum sentence minus applicable credits, the date is the minimum sentence imposed by the court, without reduction by disciplinary credits or good time.

(c) For prisoners who are serving a life sentence, the date shall be the parole date, as set by the parole board.

(4) If more than 1 of the criteria in this rule apply, the more restrictive criterion is controlling.

(5) A prisoner who has been given a special designation under subrule (1)(k) of this rule may request a formal hearing, conducted under R 791.3315 by the department's hearings division, to determine if that designation is proper. The hearing shall be held within 90 days after receipt of a request for a hearing by the office of field programs.

(6) A prisoner may be reclassified from community status under R 791.4401.

(7) Nothing in this rule creates an enforceable right of a prisoner to be classified to or remain on community status.

History: 1979 AC; 1987 AACS; 1993 AACS; 2003 AACS.

R 791.4415 Extensions of limits of prisoner's confinement purposes; criteria; time limits; costs.

Rule 415. (1) A prisoner who is housed in an institution may be allowed outside the confines of that institution to obtain medical services that are not otherwise available, with the approval of the warden or designee.

(2) A prisoner who is housed in an institution also may be allowed outside the confines of that institution for the following reasons and only with the prior approval of the warden or designee:

(a) To visit an immediate family member, as defined in department policy, who is critically ill.

(b) To attend the family visitation or private funeral of an immediate family member, as defined in department policy.

(3) Only prisoners who have a true security level of I, II, or III are eligible for funeral and sick bed visits. A prisoner serving a life sentence is eligible only if a commutation has been granted by the governor or a parole release date has been established by the parole board and if the prisoner has served not less than 15 calendar years with good institutional adjustment.

(4) A prisoner shall not be approved for funeral and sick bed visits that exceed a cumulative total of 30 days during the prisoner's current incarceration. Each

funeral or sick bed visit shall be considered to be 1 day, regardless of the actual length of time. A funeral or sick bed visit, including travel, shall not be approved for more than 12 hours in duration, except that the deputy director for correctional facilities may approve a visit up to 24 hours in duration for a prisoner required to travel more than 500 miles round trip. Funeral and sick bed visits outside the state of Michigan shall not be approved.

(5) A prisoner approved for a funeral or sick bed visit shall remain in the custody of correctional officers at all times to, from, and during the visit.

Costs incurred for the visit, including all custodial costs, shall be borne by the prisoner or the prisoner's family.

History: 1979 AC; 1993 AACS; 2002 AACS.

R 791.4420 Community status; work release; conditions.

Rule 420. (1) A prisoner is eligible for consideration for work release for paid employment in the community when all of the following conditions have been met:

(a) The prisoner is classified to security level I and housed in a camp.

(b) The prisoner has demonstrated good institutional and community adjustment and a willingness to honor the trust implicit in the program, which means that both of the following provisions have been satisfied:

(i) There has been a willingness to accept supervision as demonstrated by the absence of repeated major misconduct violations or by lack of a violation of parole while serving the current sentence.

(ii) The prisoner has not escaped or attempted escape in the past, including escape from community status.

(c) The prisoner's physical and psychological condition is consistent with the demands of the program.

(d) The prisoner is not currently serving a sentence for, and does not have a history of, a sexual crime or any offense that involved a sexual crime.

(e) The prisoner is not serving a sentence of life imprisonment.

(f) The prisoner is not designated as a high or very high assaultive risk and is not a potentially high or very high assaultive risk.

(g) The prisoner has not been found guilty of a bondable major misconduct within 90 days, or of a nonbondable major misconduct within 2 years, of the date of application for the program. Bondable and nonbondable major misconducts shall be defined by the director pursuant to the provisions of R 791.5501(1).

(h) The prisoner has not been found guilty of a major misconduct that occurred while on a public works or work pass assignment, unless placement is approved by the deputy director for correctional facilities or his or her designee.

(i) The prisoner has not been convicted of a felony or misdemeanor that occurred while on a work pass or public works assignment.

(j) The prisoner has successfully completed a minimum of 30 days in a public works assignment immediately preceding the date of application for the program and, except in hardship cases as determined by the warden, shall have completed reception center recommendations for adult basic education.

(k) The prisoner does not have a pending felony charge or felony or immigration detainer.

(l) The prisoner has not been denied placement in community status pursuant to the provisions of R 791.4410 during the sentence that the prisoner is currently serving.

(m) The prisoner is within 180 days of the earliest release date, as defined in R 791.4410, if previously convicted of, or currently serving for, an assaultive crime or attempt or conspiracy to commit an assaultive crime as identified in R 791.4410 or for an offense connected with an assaultive offense if described as such in the presentence investigation report. If the prisoner is currently serving a sentence for such an assaultive offense and was previously convicted of an assaultive offense, the prisoner is not eligible for work release.

(n) If serving for a nonassaultive crime, the prisoner shall be within 3 years of the earliest release date.

(o) If serving only a sentence pursuant to the provisions of section 227b of Act No. 328 of the Public Acts of 1931, as amended, being S750.227b of the Michigan Compiled Laws, the prisoner shall be within 6 months of the completion of the sentence.

(p) The prisoner shall not be sentenced as a habitual offender pursuant to the provisions of section 10, 11, or 12 of Act No. 175 of the Public Acts of 1927, as amended, being SS769.10, 769.11, or 769.12 of the Michigan Compiled Laws.

(q) There is no documented objection from a public official to placement in a community setting and no unusual notoriety surrounding the current offense.

(2) A prisoner's placement in the program may be delayed or denied by the warden after a review of the prisoner's overall institutional adjustment and criminal history. A prisoner whose placement in the program is denied or delayed pursuant to the provisions of this subrule shall be given the reason for the denial or delay and the date when she or he may reapply for reconsideration in the program.

(3) The warden shall designate personnel for screening, selecting, and processing work release applications.

(4) Work release employment shall not result in the displacement of employed persons in the community. The pay scale shall meet minimum wage requirements and prevailing wages for similar work in the community. The place of employment shall provide proof of worker's compensation coverage and shall meet prevailing safety standards. The department shall maintain liaison with the employer and the appropriate Michigan employment security commission office.

(5) The wages of a prisoner who is engaged in paid employment in the community shall be collected by the work camp and disbursed as set forth in section 65c(7) of Act No. 232 of the Public Acts of 1953, as amended, being S791.265c(7) of the Michigan Compiled Laws. In addition, a prisoner who has dependents for whom there is a court order for support shall have an amount deducted to satisfy that order.

History: 1979 AC.; 1987 AACS; 1993 AACS.

R 791.4425 Community status; residence; expenses; conditions; violation.

Rule 425. (1) A prisoner who is classified to community status and who is placed in a community corrections center shall be placed in a center that is located in either the county of the prisoner's most recent residence as listed on the prisoner's presentence report or a county in which the prisoner's spouse, parent, grandparent, brother, sister, or child resides. Not more than 10% of the prisoner population of any community corrections center, at any one time, may consist of prisoners who would not be placed in that community corrections center pursuant to the provisions of this subrule.

(2) Notwithstanding the provisions of subrule (1) of this rule, the department may operate a community corrections center that serves more than 1 county. Any prisoner who is placed in a center that serves more than 1 county shall meet the conditions of subrule (1) of this rule.

(3) Each prisoner who is classified to community status shall be subject to general and special conditions that are established by the head of the office of residential and electronic programs. Special conditions of placement shall be reasonably necessary to maintain public protection and assist the prisoner in making a successful adjustment to the community. When a violation of a condition is alleged, which constitutes major or minor misconduct, the charged resident is entitled to an administrative hearing as provided for in R 791.3310 and R 791.3315. A violation of a special condition of placement may be the basis for reclassification to a higher level of security.

(4) A prisoner who has been released on parole may be temporarily housed in a community corrections center if the prisoner agrees to abide by center rules and if placement is approved by the head of the office of residential and electronic programs.

(5) Each prisoner who is classified to community status shall pay expenses as specified by the director.

History: 1979 AC.; 1993 AACCS.

PART 5. PRISONER MISCONDUCT

R 791.5501 Major misconduct; minor misconduct; hearing; confiscation and disposition of contraband.

Rule 501. (1) An alleged violation of department rules shall be classified as major misconduct or minor misconduct on the basis of the seriousness of the act and the disciplinary sanctions allowed. The director shall determine what constitutes major and minor misconduct, the time limits for conducting hearings, and the range of disciplinary sanctions which may be imposed upon a finding of guilt.

(2) A prisoner charged with major misconduct shall be provided a formal hearing conducted in accordance with R 791.3315. A prisoner charged with minor misconduct shall be provided a fact-finding hearing conducted in accordance with R 791.3310. Upon a finding of guilt of major or minor misconduct, the prisoner shall be subject to the disciplinary sanctions ordered by the hearing officer.

(3) A prisoner may plead guilty to a minor misconduct and waive a hearing by signing a written waiver. If the waiver is accepted, disciplinary sanctions may be imposed by the department official accepting the waiver.

(4) In addition to the disciplinary sanctions imposed by the hearing officer, a prisoner who is found guilty of a major misconduct shall be subject to both of the following provisions:

(a) A prisoner who is subject to good time or disciplinary credits will not earn good time or disciplinary credits during the month in which the major misconduct violation occurred. The warden also may forfeit previously earned good time and disciplinary credits pursuant to R 791.5513, and not grant special good time and special disciplinary credits.

(b) A prisoner who is subject to disciplinary time will accumulate disciplinary time for the major misconduct pursuant to R 791.5515.

(5) Property determined to be contraband at a misconduct hearing or based on a waiver accepted pursuant to this rule shall be confiscated and disposed of in accordance with department policy as directed by the hearing officer or department official who accepted the waiver.

History: 1979 AC; 1987 AAC; 2002 AAC.

R 791.5505 Rescinded.

History: 1979 AC.; 1987 AAC; 1993 AAC; 1995 AAC; 2002 AAC.

R 791.5510 Rescinded.

History: 1979 AC; 1987 AAC; 1989 AAC; 2002 AAC.

R 791.5513 Forfeiture of good time and disciplinary credit.

Rule 513. (1) A prisoner who is found guilty of 1 or more of the following violations of prison rules, or of an attempt or conspiracy to violate these rules, or of acting as an accomplice to a violation may forfeit additional earned and special good time and disciplinary credits, for each violation, as follows:

(a) Up to all earned and special good time and disciplinary credits for any of the following major misconduct:

- (i) Assault resulting in serious physical injury.
- (ii) Sexual assault.
- (iii) Homicide.
- (iv) Inciting to riot or strike; rioting or striking.
- (v) Escape.
- (vi) Possession of a weapon. The

(b) Up to 2 years of earned and special good time and disciplinary credits for any of the following major misconduct:

- (i) Fighting.

- (ii) Threatening behavior.
- (iii) Failure to disperse.
- (iv) Creating a disturbance.
- (v) Destruction or misuse of property with a value of \$10.00 or more.
- (vi) Possession of dangerous contraband.
- (vii) Bribery.
- (viii) Possession of money.
- (ix) Sexual misconduct.
- (x) Any act that constitutes a felony under state law.
- (xi) Substance abuse.
- (xii) Assault and battery.
- (xiii) Smuggling.

(c) Up to 1 year of earned and special good time and disciplinary credits for any of the following major misconduct:

- (i) Disobeying a direct order.
- (ii) Forgery.
- (iii) Interference with the administration of rules.
- (iv) Insolence.
- (v) Theft; possession of stolen property.
- (vi) Failure to maintain employment.
- (vii) Unauthorized occupation of a cell or room.
- (viii) Out of place.
- (ix) Gambling; possession of gambling paraphernalia.

(2) Within the limits set forth in this rule, the warden shall determine the amount of earned and special good time and disciplinary credits that the prisoner forfeits, if any, pursuant to subrule (1) of this rule.

History: 1980 AACCS; 1987 AACCS; 1989 AACCS; 1993 AACCS; 1998-2000 AACCS.

R 791.5515 Addition and reduction the disciplinary time.

Rule 515. (1) As used in this rule, "prisoner subject to disciplinary time" has the same meaning as defined in section 34(5) of Act No. 218 of the Public Acts of 1994, being S800.34(5) of the Michigan Compiled Laws.

(2) A prisoner subject to disciplinary time who is found guilty of any of the following violations of prison rules, of an attempt or conspiracy to violate these rules, or of acting as an accomplice to violate these rules shall accumulate the following amount of disciplinary time for each violation, which shall be submitted to the parole board for consideration at the time of the prisoner's parole review or interview:

(a) All disciplinary time for the major misconduct of homicide.

(b) One hundred eighty days of disciplinary time for any of the following major misconducts:

- (i) Any act that constitutes a felony under state law.
- (ii) Assault resulting in serious physical injury.
- (iii) Escape.
- (iv) Insighting to riot or strike; riding or striking.
- (v) Possession of a weapon.

(vi) Sexual assault.

(c) Thirty-five days of disciplinary time for any of the following major misconducts:

- (i) Assault and battery.
- (ii) Creating a disturbance.
- (iii) Possession of dangerous contraband.
- (iv) Possession of money.
- (v) Substance abuse.
- (vi) Failure to disperse.

(d) Fifteen days of disciplinary time for any of the following major misconducts:

- (i) Bribery.
- (ii) Fighting.
- (iii) Sexual misconduct.
- (iv) Threatening behavior.
- (v) Smuggling.

(e) Ten days of disciplinary time for any of the following major misconducts:

- (i) Destruction or misuse of property with the value of \$10.00 or more.
- (ii) Disobeying a direct order.
- (iii) Insolence.
- (iv) Theft; possession of stolen property.
- (v) Unauthorized occupation of the cell or room.

(f) Seven days of disciplinary time for any of the following major misconducts:

- (i) Failure to maintain employment.
- (ii) Gambling; possession of gambling paraphernalia.
- (iii) Interference with the administration of rules.
- (iv) Out of place.
- (v) Possession of forged documents; forgery.

(3) If a prisoner is found guilty of more than 1 violation arising from a single incident, then the disciplinary time accumulated for each violation shall run concurrently.

(4) Disciplinary time that is been accumulated maybe reduced for exemplary good conduct. The director shall establish the amount, if any, of disciplinary time accumulated pursuant to subrule (2) of this rule that maybe reduced or exemplary good conduct.

(5) The director shall establish the amount, if any, of disciplinary time deducted pursuant to subrule (4) of this rule to be restored if a prisoner is subsequently found guilty of a major misconduct.

(6) Notwithstanding subrules (2), (3), and (5) of this rule, a prisoner's minimum sentence plus disciplinary time shall not exceed the prisoner's maximum sentence.

History: 1998-2000 AACCS.

PART 6. PRISONER RIGHTS AND PRIVILEGES

R 791.6603 Incoming and outgoing mail requirements; inspection; limitations; legal correspondence; notice of rejection; appeals.

Rule 603. (1) A prisoner who is in general population status shall be permitted to send sealed letters to any person or organization, subject to the limitations of this rule. However, all outgoing mail shall contain a return address, including the prisoner's first and last name and identification number and the facility's name and address. Any outgoing mail that does not contain at least the prisoner's name and identification number may be destroyed. Outgoing mail of a prisoner who is in segregation status shall be subject to inspection, except for correspondence to any of the following:

- (a) Attorneys.
- (b) Courts.
- (c) Public officials.
- (d) The department's central office staff.
- (e) The office of the legislative corrections ombudsman.
- (f) Representatives of the news media.

(2) A prisoner determined to be indigent by department policy shall be loaned a reasonable amount of postage each month, not to exceed the equivalent of 10 first-class mail stamps for letters within the United States of 1 ounce or less. Additional postage shall be loaned to prisoners as necessary to post mail to courts, attorneys, and parties to a lawsuit that is required for pending litigation. The department shall provide air, certified, oversize, foreign, and overweight mail service for use at the prisoner's individual expense only, except that the cost of certified mail will be loaned to a prisoner if the department is required to do so by a court order.

(3) Subject to the limitations of this rule, a prisoner may receive printed, typed, or handwritten items that are transmitted through the United States postal service, interdepartmental mail, or a commercial delivery service. Books, magazines, and other publications shall be permitted only if sent directly to the prisoner from internet book vendors authorized by the department or from the publisher, or if ordered by the prisoner through the facility and sent directly to the prisoner from a vendor authorized by the department. Catalogs, except as specifically authorized by department policy, and used publications are prohibited.

(4) All incoming mail shall be opened and inspected for contraband before delivery to the addressee. Contraband is defined as any property that a prisoner is not specifically authorized to possess by department policy. All incoming mail from another prisoner may be read.

(5) A prisoner shall not be allowed to send or receive any item of mail that is or does any of the following:

- (a) Contravenes federal or state law.
- (b) Violates postal regulations.
- (c) Contains a criminal plan or conspiracy.
- (d) Is threatening.

(e) Is addressed to any party who expressly objects to receiving mail from a prisoner if the item is sent after the prisoner has been notified of the objection.

(f) Is a threat to the order and security of the facility or the rehabilitation of a prisoner.

(g) Is for the purpose of operating a business enterprise.

(6) A prisoner may send mail to, and receive mail from, another prisoner only as set forth in department policy.

(7) The department may intercept, open, inspect, read, and refuse to transmit mail when there are reasonable grounds to believe the mail is being sent contrary to the provisions of this rule. This subrule shall not apply to clearly identified correspondence to any of the following entities, unless a specific written request is made by the entity:

(a) Courts.

(b) Attorneys.

(c) Public officials.

(d) The office of the legislative corrections ombudsman.

(e) The department's central office staff.

(f) Staff of the institution in which the prisoner is incarcerated.

(8) When the department rejects mail pursuant to this rule, it shall send written notification of the rejection to the sender if the sender's address is included on the mail. The sender may appeal the rejection to the warden.

(9) A prisoner who is not allowed to send or receive an item of mail pursuant to this rule may appeal the determination by filing a grievance.

History: 1979 AC.; 1987 AACS; 1989 AACS; 1993 AACS; 2002 AACS.

Editor's Note: On November 6, 2001 at 3:55 p.m. EST, the Department of Corrections, pursuant to MCL 24.248, filed with the Secretary of State an emergency rule that, in part, amended R 791.6603 by deleting subsection 4 and re-numbered the subsections that follow. The emergency rule appears in Michigan Register 2001 MR 20.

R 791.6605 Access to the news media and interviews; suspension during emergencies.

Rule 605. (1) A prisoner shall be allowed uncensored correspondence with a news media representative subject to R 791.6603.

(2) A prisoner shall be allowed telephone access to a news media representative subject to reasonable regulation. Access by a prisoner in a facility also is subject to R 791.6638.

(3) A prisoner in a facility may be personally interviewed by a news media representative only during a visit conducted pursuant to R 791.6607 through R 791.6611 and R 791.6614, except that a prisoner on community status pursuant to R 791.4410 shall not be personally interviewed in a community corrections center. A news media representative shall not be allowed to use or possess a camera or other audio or visual recording device while on a visit with a prisoner.

(4) Except if housed in a facility, a parolee or a probationer may be personally interviewed by a news media representative unless interviews are not permitted by an order of probation or parole.

(5) The warden may temporarily suspend prisoner access to the news media during emergencies or disorders. Such suspension shall end with the return to normalcy.

(6) Nothing in this rule creates an enforceable right of a prisoner, the news media, or a news media representative.

History: 1979 AC; 1987 AACS; 1998-2000 AACS.

R 791.6607 Visitation; visiting hours; quotas; religious, legal, and official visits.

Rule 607. (1) The department shall establish reasonable visiting hours and uniform quotas at each institution for visits to prisoners to promote order and security in the institutions and to prevent interference with institutional routine or disruption of the prisoner's programming. A visit described in subrule (2) of this rule shall not be counted toward a prisoner's visiting quota.

(2) Except when the person is related to the prisoner by blood or marriage, a prisoner shall be allowed to visit with any of the following persons, who shall not be required to be on the prisoner's approved visitor list:

(a) Qualified members of the clergy of the prisoner's designated religion or clergy that the prisoner specifically requests to see.

(b) Volunteers in an outreach program that is sponsored by an external religious organization if the volunteers meet the requirements issued by the director for approved volunteers.

(c) Attorneys on official business or a legal paraprofessional or law clerk who is acting as an aide to counsel for the prisoner.

(d) An official representative of the legislative, judicial, or executive branch of government.

History: 1979 AC; 1993 AACS; 1995 AACS.

R 791.6609 Limits on visitation.

Rule 609. (1) Except as otherwise provided in this rule, any person who is not subject to a current visitor restriction pursuant to the provisions of R 791.6611 may visit a prisoner if all of the following provisions are complied with:

(a) The person presents valid and adequate proof of identification.

(b) The person is on the prisoner's list of approved visitors, as provided in subrule (2) of this rule.

(c) The visit is within the allowable quota established by the department.

(d) The visit does not constitute a threat to the prisoner's physical or mental well-being.

(e) The visit does not constitute a threat to public safety or to the order and security of the institution.

(f) Allowing the visit is not harmful to the prisoner's rehabilitation.

(g) The purpose of the visit is not to commit an illegal act.

(2) Except as provided in R 791.6607(2) and subrule (3) of this rule, a person may visit a prisoner only if he or she is on the list of approved visitors for that prisoner, which shall consist of the prisoner's immediate family members and not more than

10 other persons. The approved visitors list shall be subject to all of the following restrictions:

(a) A person may be on the approved visitors list of any prisoner to whom she or he is related as an immediate family member, but shall be on the list of only 1 prisoner at a time to whom she or he is not related as an immediate family member.

(b) A person on an approved visitor list shall be not less than 18 years of age, unless he or she is the child, stepchild, or grandchild of the prisoner or an emancipated minor who can show proof of emancipation.

(c) If the person is claimed to be an immediate family member, the prisoner shall present adequate proof of the relationship, as determined by the warden or his or her designee.

(d) A prisoner may add or delete names of immediate family members from his or her approved visitors list at any time, but shall be allowed to add or delete other names only once every 6 months.

(e) A person shall be removed from a prisoner's approved visitors list upon written request by the listed person.

(f) A warden may deny placement of anyone on a prisoner's approved visitors list for reasons of safety or security of the institution, protection of the public, previous violations of visiting room rules by the person, or for other cause as determined by the warden. A denial of placement on the list may be appealed through the prisoner grievance process.

(3) The warden may allow a single visit between a prisoner and a person who is not on the approved visitors list of the prisoner if the warden determines the visit is in the best interest of the prisoner and is not a threat to the good order and security of the facility.

(4) Each institution shall prescribe and display reasonable rules of conduct for visits to preserve public safety and institutional security and order and to prevent conduct that may be offensive to others who may be present. If a prisoner or visitor violates the provisions of this subrule, then the visit may be terminated and the prisoner and visitor may be subject to sanctions up to and including a permanent restriction of all visits or restriction to noncontact visiting only.

(5) Subject to the restrictions in subrule (6) of this rule, a child who is under the age of 18 may visit a prisoner only if the child is on the prisoner's approved visitors list and is accompanied by an adult immediate family member or a legal guardian, unless the individual is an emancipated minor.

(6) A child who is under the age of 18 shall not be permitted to visit if any of the following provisions apply:

(a) The parental rights of the prisoner to the child have been terminated.

(b) There is a court order prohibiting visits between the child and the prisoner.

(c) The prisoner has been convicted of child abuse, criminal sexual conduct, or any other assaultive or violent behavior against the child or a sibling of the child, unless specific approval for the visit has been granted by the director.

(7) Except as provided in subrule (8) of this rule, a prisoner, a former prisoner, a probationer, or a parolee shall not be allowed to visit with a prisoner unless the person is on the prisoner's approved visitors list and all of the following criteria are met:

(a) The person is an immediate family member of the prisoner.

(b) Prior approval for the visit is obtained from the warden of the institution where the visit will occur.

(c) In the case of a probationer or parolee, prior approval for the visit is obtained from the warden of the institution and the supervising field agent.

(8) A former prisoner shall be allowed to visit if she or he is one of the individuals identified in R 791.6607(2).

(9) For purposes of this rule, "immediate family member" means any of the following persons:

- (a) Grandparent.
- (b) Parent.
- (c) Stepparent.
- (d) Spouse.
- (e) Mother-in-law or father-in-law.
- (f) Child.
- (g) Stepchild.
- (h) Grandchild.
- (i) Sibling.
- (j) Stepbrother or stepsister.

(k) Aunts and uncles if verification is provided that they served as surrogate parents.

(10) A prisoner who is hospitalized may receive visitors only if he or she is critically ill, as verified by the attending physician, and prior approval is granted by the warden or deputy warden.

(11) The director may permanently restrict all visitation privileges, except with an attorney or member of the clergy, for a prisoner who is convicted or found guilty of any of the following:

- (a) A felony or misdemeanor that occurs during a visit.
- (b) A major misconduct violation, as defined in R 791.5501, that occurs during a visit or is associated with a visit.
- (c) An escape, attempted escape, or conspiracy to escape.
- (d) Two or more violations of the major misconduct charge of substance abuse.

(12) The director may grant reconsideration and removal of a permanent visitor restriction of all visitation privileges that is imposed pursuant to subrule (11) of this rule.

(13) Nothing in this rule creates an enforceable right of the prisoner to receive a visit or of a visitor to visit a prisoner.

History: 1979 AC.; 1993 AACS; 1995 AACS.

R 791.6611 Visit restrictions; criteria; visitor restriction list; hearing.

Rule 611. (1) A person shall not be allowed to visit, and shall be required to immediately leave department property, if he or she appears intoxicated or drugged or refuses to submit to a reasonable search.

(2) A visitor shall be permanently restricted from visits at all facilities if any 1 of the following occurs:

(a) The visitor smuggles, or conspires or attempts to smuggle, any item into or out of the facility.

(b) The visitor assaults staff or others or threatens them with physical harm.

(c) The visitor assists, or conspires or attempts to assist, a prisoner to escape.

(d) The visitor or prisoner touches or exposes breasts, buttocks, or the genital area during a visit. Touching that is incidental to a brief embrace permitted at the beginning and end of a visit shall not be subject to this restriction.

(e) The visitor has a pending felony or misdemeanor charge or has been found guilty of a felony or misdemeanor that occurred in connection with a visit.

(3) A visitor shall be placed on a 90-day restriction of visits at all facilities if any 1 of the following occurs:

(a) The visitor makes a false statement with respect to visiting.

(b) The visitor damages, or attempts to damage, department property or engages in disruptive behavior while on department property.

(c) The visitor removes or attempts to remove any item from the institution that is not authorized by the institution.

(4) When a visitor restriction is proposed by the institution, the visitor shall be temporarily restricted from visits at all facilities pending a formal hearing, pursuant to the provisions of R 791.3315, to determine if the restriction is proper based upon the requirements of subrules (2) and (3) of this rule. The hearing shall be held within 30 business days of the date that notice of the hearing is mailed or given to the visitor, unless there is a reasonable cause for delay as determined by the hearing officer.

(5) A visitor who has been restricted from visits at all facilities pursuant to the provisions of subrules (2) and (3) of this rule shall be placed on a restricted visitor list. The deputy director for correctional facilities may grant reconsideration and removal from the restricted visitor list for visitors who have been permanently restricted.

History: 1979 AC.; 1993 AACS; 1995 AACS.

R 791.6614 Noncontact visitation.

Rule 614. (1) Visits by members of the public with prisoners who are classified to security levels V, VI, and segregation and who are housed in an institution or housing unit of that security level may be limited to noncontact visits, except that a contact visit between a prisoner and his or her attorney shall be allowed if requested by the attorney, except as provided in subrule (2) of this rule.

(2) Visits by members of the public with prisoners who are housed in any security level may be limited to noncontact visits for any of the following reasons:

(a) A search of the visitor pursuant to the provisions of R 791.2210 cannot be conducted due to the presence of a cast, prosthetic device, oxygen tank, or any medically required device.

(b) A prisoner is being monitored for suicidal behavior and noncontact visiting is determined by the warden to be necessary to ensure the prisoner's physical safety.

(c) It is determined by the warden, based on a review of a hearing officer's finding of guilt of a major misconduct charge or upholding of a visitor restriction, that a prisoner or visitor demonstrates unmanageable behavior that is related to contact visiting.

(d) A prisoner is found guilty of a major misconduct violation of substance abuse.

(3) Notwithstanding the provisions of subrules (1) and (2) of this rule, contact visits between a prisoner and staff from the office of the legislative corrections ombudsman shall be allowed if requested by the ombudsman's staff member.

History: 1992 AACCS; 1995 AACCS.

R 791.6638 Telephone monitoring.

Rule 638. (1) The director shall select a call control system that will permit the monitoring of telephone calls placed by prisoners in a facility or institution over telephones which are designated for use by prisoners. Monitoring shall be routinely conducted at facilities or institutions designated by the director.

(2) Monitoring shall be conducted to preserve the security and orderly management of the institution or facility; to prevent criminal activity, including the smuggling of contraband; and to protect the general public. Telephone calls to an attorney or any federal, state, or local public official shall not be monitored if all of the following conditions are met:

(a) The attorney is not related to the prisoner by blood or marriage.

(b) The prisoner identifies the telephone number as that of his or her attorney or a federal, state, or local public official and staff verify the information.

(c) The federal, state, or local public official requests, in writing, that telephone calls placed to that public official not be monitored.

(3) A request to place an unmonitored call under the provisions of subrule (2) of this rule shall be honored within 3 business days of receipt of the request by the warden or facility head, or designee, if the conditions specified in subrule (2) are met.

(4) Notice of call monitoring shall be provided as follows:

(a) A written notice shall be posted on or near each telephone subject to monitoring. The notice shall state that calls may be monitored.

(b) There shall be a recorded message at the beginning of each call that is placed. The message shall be audible to both parties and state that the call may be monitored.

(c) A copy of this rule shall be placed in a designated location in each facility or institution for review by prisoners.

(5) The monitoring of telephone calls shall be conducted in a manner so that only the following entities have access to the monitoring equipment and the record of monitored calls:

(a) The director.

(b) The deputy director in charge of correctional facilities.

(c) Regional prison administrators.

(d) The warden or facility head.

(e) Deputy wardens, assistant deputy wardens, and inspectors.

(f) Staff specifically designated by the warden or facility head to be responsible for the call control system.

(g) Other department staff specifically designated by the director.

(h) A law enforcement agency.

(6) Information which is obtained from monitored telephone calls and which is evidence of a violation of, or an attempt to violate, state law or which evidences the commission of, or attempt to commit, a major misconduct violation, as defined in

R 791.5501, shall be disclosed to any law enforcement agency having jurisdiction over the violation of, or attempt to violate, a state law and shall be disclosed to department staff as necessary to conduct a major misconduct hearing pursuant to R 791.3315. Upon request, a law enforcement agency shall be provided with a certified copy of the record of a monitored telephone call that contains evidence of a crime or an attempted crime.

(7) For purposes of this rule, "monitoring" means to listen to or record, or both.

History: 1995 AACCS.

R 791.6639 Prisoner accounts; accumulation and use of funds; institutional medium of exchange; solicitation of funds; controls of spending; illegal funds; negative balance; authorized withdrawals; return of balance.

Rule 639. (1) The department shall allow each prisoner to have an institutional account in which he or she may accumulate funds without limit, subject to regulation as to the authorized sources of funds.

(2) Unless the funds are designated by the source for the specific purpose of release planning or payment for medical or educational expenses, or are subject to court-ordered child support or other court-ordered payments, the funds may be used by the prisoner for any of the following purposes:

(a) Transfer to family members.

(b) Payment of business expenses, as approved by the facility head or designee.

(c) Payment of legal fees or costs that are associated with filing or pursuing litigation.

(d) The purchase of United States savings bonds in the prisoner's name only.

(e) Payment for services or merchandise, as approved by the facility head or designee.

(3) The solicitation of funds from other prisoners or members of the public by a prisoner or an organization that is exclusively or primarily comprised of prisoner members is prohibited, except that prisoner organizations may be authorized by the deputy director for correctional facilities to conduct fund-raising activities in security level I through V facilities, subject to regulation by the department.

(4) Funds from legitimate, identified outside sources may be placed in a prisoner's account, but visitors to an institution shall not be permitted to purchase the institutional medium of exchange. Unless approved by the warden, other prisoners, parolees, probationers, and their families shall not be considered legitimate sources of funds. The institution may require that funds sent through the mail be in the form of a certified check or money order only.

(5) Controls may be imposed on a prisoner's spending if it is established at a hearing, pursuant to the provisions of R 791.3310, that the prisoner is involved in any of the following situations:

(a) Is incurring heavy indebtedness to other prisoners.

(b) Is a victim of extortion by other prisoners.

(c) Is using the institutional medium of exchange or store purchases to exploit or corrupt other prisoners.

(d) Is setting up his or her own store.

(e) Is stockpiling store merchandise in his or her cell.

(6) Possession of money or the institutional medium of exchange in violation of these rules constitutes possession of illegal funds. A prisoner who is alleged to be in possession of illegal funds shall be subject to disciplinary action. In addition to the sanctions authorized by the provisions of R 791.5505, a prisoner who is found guilty of such misconduct shall have the illegal funds confiscated and placed in the prisoner benefit fund.

(7) When a prisoner's account has a negative balance, collections on department debts shall be limited to half of the prisoner's subsequent funds, unless the prisoner consents, in writing, to a larger assessment.

(8) Funds shall not be taken from a prisoner's account, except under any of the following circumstances:

(a) At the prisoner's request.

(b) Pursuant to an order of a court.

(c) Pursuant to a state or federal tax levy.

(d) As a sanction for restitution pursuant to the provisions of R 791.5505.

(e) Justification for taking funds from a prisoner's account has been established, at a fact-finding hearing conducted pursuant to the provisions of R 791.3310, except if the prisoner has been charged with, or heard on, a major misconduct violation for the same behavior, then funds can only be taken pursuant to subrule (8)(d) of this rule.

(9) A prisoner who is released from sentence shall receive the balance of his or her account.

History: 1979 AC.; 1987 AACS; 1987 AACS; 1993 AACS.

PART 7. PAROLE, PARDON, REPRIEVE, AND COMMUTATION OF SENTENCE

R 791.7715 Factors considered in granting or denying parole; psychological or psychiatric evaluations.

Rule 715. (1) Except as provided in section 34a of Act No. 232 of the Public Acts of 1953, as amended, being S791.234a of the Michigan Compiled Laws, a prisoner shall not be released on parole until the parole board has considered all relevant facts and circumstances, including the prisoner's probability of parole as determined by the parole guidelines set forth in R 791.7716 and any crime victim's statement provided under section 21 of Act No. 87 of the Public Acts of 1985, as amended, being S780.771 of the Michigan Compiled Laws.

(2) The parole board may consider all of the following factors in determining whether parole is in the best interests of society and public safety:

(a) The prisoner's criminal behavior, including all of the following:

(i) The nature and seriousness of the offenses for which the prisoner is currently serving.

(ii) The number and frequency of prior criminal convictions.

(iii) Pending criminal charges.

- (iv) Potential for committing further assaultive or property crimes.
- (v) Age as it is significant to the likelihood of further criminal behavior.
- (b) Institutional adjustment, as reflected by the following:
 - (i) Performance at work or on school assignments.
 - (ii) Findings of guilt on major misconduct charges and periods of confinement in administrative segregation.
 - (iii) Completion of recommended programs.
 - (iv) Relationships with staff and other prisoners.
 - (v) Forfeitures or restorations of good time or disciplinary credits.
- (c) Readiness for release as shown by the following:
 - (i) Acquisition of a vocational skill or educational degree that will assist in obtaining employment in the community.
 - (ii) Job performance in the institution or on work-pass.
 - (iii) Development of a suitable and realistic parole plan.
 - (d) The prisoner's personal history and growth, including the following:
 - (i) Demonstrated willingness to accept responsibility for past behavior.
 - (ii) Employment history before incarceration.
 - (iii) Family or community ties.
 - (e) The prisoner's physical and mental health, specifically any hospitalizations or treatment for mental illness and any irreversible physical or mental condition which would reduce the likelihood that he or she would be able to commit further criminal acts.

(3) The parole board may consider the prisoner's marital history and prior arrests that did not result in conviction or adjudication of delinquency, but shall not base a denial of parole solely on either of these factors.

(4) The parole board shall not consider any of the following in making a parole release decision:

(a) A juvenile record that a court has ordered the department to expunge.

(b) Information that is determined by the parole board to be inaccurate or irrelevant after a challenge and presentation of relevant evidence by a prisoner who has received a notice of intent to conduct an interview as provided in R 791.7701. This subrule applies only to presentence investigation reports prepared before April 1, 1983.

(5) A prisoner being considered for parole shall receive psychological or psychiatric evaluation before the release decision is made if the prisoner has a history of any of the following:

(a) Hospitalization for mental illness within the past 2 years.

(b) Predatory or assaultive sexual offenses.

(c) Serious or persistent assaultiveness within the institution.

History: 1979 AC; 1988 AACS; 1996 AACS.

R 791.7716 Parole guidelines; factors; departure; appeal.

Rule 716. (1) Parole guidelines that do not create disparities in release decisions based on race, color, national origin, gender, religion or disability shall be used to assist the parole board in making release decision that enhance the public safety.

(2) Not less than once every 2 years, the department shall publish a numeric score for the factors set forth in subrule (3) of this rule and shall establish parole guideline score ranges which shall, to the extent possible based on current validity research, ensure that prisoners who score in the high probability of parole range do not exceed an assaultive felony recidivism rate of 5%.

(3) A parole guideline score shall be based on a combination of the length of time the prisoner has been incarcerated for the offense for which parole is being considered and each of the following factors:

(a) The nature of the offense(s) for which the prisoner is incarcerated at the time of parole consideration, as reflected by all of the following aggravating and mitigating circumstances:

- (i) Use of a weapon or threat of a weapon.
 - (ii) Physical or psychological injury to a victim.
 - (iii) Property damage of more than \$5,000.00.
 - (iv) Excessive violence or cruelty to a victim beyond that necessary to commit the offense.
 - (v) Sexual offense or sexually assaultive behavior.
 - (vi) Victim transported or held captive beyond that necessary to commit the offense.
 - (vii) Multiple victims.
 - (viii) Unusually vulnerable victim, as reflected by age, impairment, or physical disproportionality.
 - (ix) The prisoner acted as a leader of joint offenders.
 - (x) The prisoner has been designated as involved in organized crime under R 791.4410(l)(k)(iii).
 - (xi) The prisoner has been designated as being a career criminal under R 791.4410(l)(k)(iv).
 - (xii) The prisoner has been designated as a drug trafficker under R 791.4410(l)(k)(v).
 - (xiii) The prisoner is serving life or a long indeterminate sentence and is being considered for parole under section 34(4) of Act No. 232 of the Public Acts of 1953, as amended, being §791.234(4) of the Michigan Compiled Laws.
 - (xiv) The act was a situational crime with low probability of reoccurrence.
 - (xv) The prisoner's role was minor or peripheral to other joint offenders.
- (b) The prisoner's prior criminal record, as reflected by all of the following:
- (i) Assaultive misdemeanor convictions that occurred after the prisoner's seventeenth birthday.
 - (ii) The number of jail and prison sentences imposed.
 - (iii) The number of felony convictions.
 - (iv) The number of convictions for assaultive felonies as defined in R 791.4410(l)(l).
 - (v) The number of prior convictions for sex offenses or sexually motivated crimes.
 - (vi) The number of probation, delayed sentence, and parole failures.
 - (vii) Whether the offense for which parole is being considered was committed while the prisoner was on probation, delayed sentence, or parole.

(viii) Whether the prisoner was incarcerated for a violation while on probation for the offense for which parole is being considered.

(ix) The number of commitments as a juvenile for acts that would have been crimes if committed by an adult.

(x) Whether the prisoner was on probation as a juvenile for acts that would have been crimes if committed by an adult at the time the offense for which parole is being considered was committed.

(c) The prisoner's conduct during confinement to a department facility, community corrections center, community residential home, hospital, or local jail, as reflected by the following:

(i) The number of major misconduct convictions and security classification increases over the previous 5 years and during the year immediately before parole consideration.

(ii) The number of nonbondable major misconduct convictions over the previous 5 years.

(iii) The number of major misconduct convictions for assault, sexual assault, rioting, or homicide during the previous 5 years.

(d) The prisoner's placement on the assaultive and property risk screening scales.

(e) The prisoner's age at the time of parole eligibility.

(f) The prisoner's performance in institution programs and community programs during the period between the date of initial confinement on the sentence for which parole is available and parole eligibility, including, but not limited to, participation in work, school, and therapeutic programs.

(g) The prisoner's mental health as reflected by the following:

(i) A psychiatric hospitalization as a result of criminal activity in the background of the prisoner.

(ii) A history of physical or sexual assault related to a compulsive, deviant, or psychotic mental state.

(iii) A serious psychotic mental state that developed after incarceration.

(iv) Whether subsequent behavior or therapy suggests that improvement has occurred.

(4) A prisoner may challenge his or her parole guideline category by filing a written objection with the parole board.

(5) The parole board may depart from the parole guideline by not granting parole to a prisoner who has a high probability of parole or by granting parole to a prisoner who has a low probability of parole. A departure shall be for substantial and compelling reasons stated in writing.

(6) The parole board shall not use a prisoner's gender, race, ethnicity, alienage, national origin, or religion as a reason to depart from a parole guideline.

History: 1996 AACCS.

R 791.7730 Conditions of parole.

Rule 730. (1) Each order of parole shall set the parole term and shall contain conditions of parole that are reasonably necessary to assist a parolee to lead a law-abiding life. There shall be a reasonable relationship between parole conditions and

both the prisoner's previous conduct and present capabilities. All conditions shall be sufficiently specific to guide both supervision and conduct.

(2) Parole may be conditioned on residence at a community correctional facility when the parole board determines this to be necessary to parole adjustment.

(3) An order of parole shall contain the following conditions:

(a) Payment of restitution to, or the performance of services for, the victim of the prisoner's crime or the victim's estate if the prisoner has been sentenced to make restitution under section 16 of Act No. 87 of the Public Acts of 1985, as amended, being S780.766 of the Michigan Compiled Laws.

(b) Payment of a parole oversight fee as set forth in section 36a of Act No. 232 of the Public Acts of 1953, as amended, being S791.236a of the Michigan Compiled Laws.

(c) Payment of any assessment that the prisoner was ordered to pay pursuant to section 5 of Act No. 196 of the Public Acts of 1989, as amended, being S780.905 of the Michigan Compiled Laws.

(d) If the prisoner is a sex offender, as defined in section 2 of Act No. 295 of the Public Acts of 1994, being S28.722 of the Michigan Compiled Laws, a condition that the prisoner shall maintain registration with the department of state police as required by the act.

(4) A paroled prisoner shall comply with the conditions of parole contained in the parole order and with all subsequent conditions approved by the chairperson of the parole board. A subsequent condition of parole imposed by a parole agent is valid immediately subject to approval by the chairperson of the parole board within 60 days of notice to the paroled prisoner of the condition.

(5) Except where the parole term is set by statute, the period of time set by the parole order during which a prisoner remains on parole may be altered by the chairperson of the parole board, upon a recommendation of the parole agent, for good cause.

(6) Notice of the parole term and all conditions of parole shall be provided to the parolee in writing.

History: 1979 AC; 1988 AACS; 1996 AACS.

R 791.7735 Search of parolee's person or property.

Rule 735. (1) A parole agent may conduct a warrantless search of a parolee's person or property under any of the following circumstances:

(a) Incident to a lawful arrest pursuant to section 39 of Act No. 232 of the Public Acts of 1953, as amended, being S791.239 of the Michigan Compiled Laws.

(b) A stop and frisk, if there is reasonable cause to believe that the parolee is presently involved in criminal conduct, has violated a condition of parole, or is carrying a weapon.

(c) Seizure of evidence or contraband in plain view.

(d) With the consent of the parolee or a third party having mutual control over the property to be searched.

(2) Where none of the circumstances specified in subrule (1) of this rule are present and there is reasonable cause to believe that a violation of parole exists, a parole

agent may conduct a search of a parolee's person or property if, as soon as possible thereafter, the parole agent files a written report with his or her supervisor setting forth the specific reasons for the search, describing the location or place searched, and describing the specific items seized.

History: 1979 AC; 1988 AACS.

R 791.7740 Preliminary parole revocation hearing; time; substitution of preliminary examination.

Rule 740. (1) As set forth in section 39a of Act No. 232 of the Public Acts of 1953, as amended, being S791.239a of the Michigan Compiled Laws, a parolee is entitled to a preliminary hearing within 10 days after his or her arrest for an alleged violation of parole or a fact finding hearing held pursuant to section 40a of Act No. 232 of the Public Acts of 1953, as amended, being S791.240a of the Michigan Compiled Laws. For purposes of this subrule, "arrest" means either of the following:

(a) The placement of a parolee in custody solely for a parole violation.

(b) The retention in custody of a parolee who has been held on a criminal charge and who has posted bond on that charge and is now held solely as a parole violator.

(2) If a parolee is being held on a criminal charge which is also the basis for an alleged parole violation, the preliminary examination on the criminal charge may be substituted for the preliminary parole revocation hearing. If the parolee is bound over on the criminal charge, it shall be established that probable cause exists to believe that the conditions of parole have been violated. A parolee shall be given written notice before his or her preliminary examination on the criminal charge that the results of that preliminary examination also will be used to establish probable cause that parole has been violated. If the preliminary examination is waived or the parolee is not bound over on the criminal charge, a preliminary parole revocation hearing may be held unless that hearing is waived by the parolee.

History: 1979 AC; 1988 AACS.

R 791.7745 Preliminary parole revocation hearing; rights of alleged violator.

Rule 745. In addition to the rights set forth in section 39a of Act No.232 of the Public Acts of 1953, as amended, being S791.239a of the Michigan Compiled Laws, a parolee at a preliminary parole revocation hearing has the right to be heard by a hearing officer who has had no prior direct involvement in the matter at issue at the hearing and has the right to be represented by retained or appointed counsel if any of the following provisions applies:

(a) A request for counsel is made not less than 24 hours before the hearing, and the parolee has made a claim of innocence which is plausible but may be difficult to prove.

(b) There might be substantial reasons which justify or mitigate the violation, which make revocation inappropriate, and which are complex or otherwise difficult to present.

(c) The accused is mentally unable to properly present a defense. In all cases where a request for counsel is denied, the grounds for refusal shall be stated in the written report of the hearing.

History: 1979 AC; 1988 AACCS.

R 791.7750 Preliminary parole revocation hearing; waiver; summary of hearing; sufficiency of evidence.

Rule 750. (1) An alleged parole violator may waive a preliminary parole revocation hearing or any of the rights in the parole revocation process specified by statute or rule. A waiver shall be in writing and signed by the person charged.

(2) When a preliminary parole revocation hearing is held, the hearing officer shall make a written summary of the hearing, which shall include the substance of the statements and evidence in support of the parolee's position and the department's position and the reasons for the hearing officer's decision.

(3) If the evidence presented at the hearing is insufficient to support a probable cause finding, a finding of no probable cause shall be entered and the parolee shall be released immediately. If the evidence presented at the hearing is sufficient to support a probable cause finding, the parolee shall be continued in custody pending the decision of the deputy director or designate regarding his or her return.

History: 1979 AC; 1988 AACCS.

R 791.7760 Pardons, reprieves, and commutations.

Rule 760. (1) A person who is convicted of a crime may apply for a pardon, reprieve, or commutation by filing a notarized copy of the appropriate application with the parole board. The application shall contain all of the following information:

(a) Date of conviction and sentence imposed for the crime for which the person is seeking clemency.

(b) Personal history, including all of the following information:

(i) Age.

(ii) Citizenship.

(iii) Marital status.

(iv) Number of dependents.

(v) If on parole or discharged from sentence, employment history and character references.

(c) Criminal record.

(d) Circumstances of crime for which the person is seeking clemency.

(e) Reasons for seeking clemency.

(f) Other relevant information requested by the parole board.

(2) Upon receipt of an application for pardon, reprieve, or commutation, the parole board shall handle the application pursuant to the procedures contained in section 44 of Act No. 232 of the Public Acts of 1953, as amended, being S791.244 of the Michigan Compiled Laws, except that the parole board is not required to act upon an application that is substantially identical to one which has been denied within 2 years of the date of the present application.

(3) If a public hearing is held on an application for pardon, reprieve, or commutation, notice of the hearing shall be provided as set forth in section 44(2)(g) of Act No. 232 of the Public Acts of 1953, as amended, being S791.244(2)(g) of the Michigan Compiled Laws, and shall also be provided to the public press.

(4) If a public hearing is held, it shall be conducted by at least 1 member of the parole board who will be involved in the formal recommendation to grant or deny the application for pardon, reprieve, or commutation. The parole board shall give liberal construction to any technical rules of evidence.

(5) At a public hearing on the applicant's petition for pardon, reprieve, or commutation, the applicant may testify and present relevant witnesses and oral documentary evidence. The applicant may be represented by retained or appointed counsel. The public shall be represented by the department of attorney general. The presiding parole board member shall summarize all statements and documents presented both for and against the application for clemency.

(6) A person who is a victim of the applicant's offense, as defined in section 2(1)(i) of Act No. 87 of the Public Acts of 1985, as amended, being S780.752(1)(i) of the Michigan Compiled Laws, shall be given an opportunity to address and be questioned by the parole board or if a public hearing is conducted, to submit written testimony. The victim shall be given notice if a reprieve, commutation, or pardon has been granted.

History: 1979 AC; 1988 AACS; 1996 AACS.

R 791.7765 Parole board panels.

Rule 765. (1) The parole board shall be divided into panels that are comprised of 3 members each, as designated by the chairperson of the parole board, and shall make parole release, revocation, and rescission decisions for prisoners serving indeterminate sentences, except for decisions under section 34(4) of Act No. 232 of the Public Acts of 1953, as amended, being S791.234(4) of the Michigan Compiled Laws. The decisions specified in this subrule shall be made by a concurrence of the majority of the parole board panel members.

(2) A parole release, revocation, or rescission decision for a prisoner considered for parole pursuant to section 34(4) of Act No. 232 of the Public Acts of 1953, as amended, being S791.234(4) of the Michigan Compiled Laws, and all other parole board decisions required by statute, rule, or policy, including, but not limited to, commutation requests and special paroles, shall be made by the parole board. The decisions specified in this subrule shall be made by a concurrence of the majority of the parole board members.

History: 1984 AACS; 1996 AACS.

PART 9. PROBATION

R 791.9901 Definitions.

Rule 901. As used in this part:

(a) "Disposition" means a term of probation or imprisonment, or a fine, or any combination thereof, imposed upon the offender by the sentencing court.

(b) "Offender" means a person convicted of a felony or misdemeanor.

(c) "Presentence investigation" means an investigation of the antecedents, character, and circumstances of the offender and the offense, made by the presentence investigator for the purpose of preparing a presentence report.

(d) "Presentence investigator" means a probation agent responsible for conducting presentence investigations and preparing presentence reports.

(e) "Presentence report" means a written report, based on the presentence investigation, made by the presentence investigator to the sentencing court for the purpose of aiding the court in reaching a just and rational disposition of an offender's case.

(f) "Probation agent" means a member of the bureau of field services or a public employee certified by the corrections commission, who is responsible for the preparation of presentence reports on offenders or for the supervision of probationers placed in his or her care by the sentencing court, or responsible for both such functions.

(g) "Probation plan" means a statement by the presentence investigator in the presentence report describing proposed terms and conditions of probation, the objectives to be achieved by probation, and the program of supervision proposed in order to achieve those objectives.

(h) "Probationer" means an offender who is placed on probation by the sentencing court.

(i) "Sentencing court" means the court with jurisdiction to pass or modify sentence on a particular offender's case, or a member of the bench of that court who has responsibility for sentencing, resentencing, or modifying the sentence of a particular offender.

(j) "Short form" means a brief presentence report which contains a summary of the data relating to the current offense, the offender's criminal and social history, and a recommended disposition.

History: 1979 AC.

R 791.9910 Presentence report; contents; confidentiality of certain sources; submission of prior report.

Rule 910. (1) A presentence report shall contain all of the following information:

(a) An objective description of the offense, based on all the relevant information that is acquired by the probation agent during the presentence investigation.

(b) The offender's description of the current offense and the circumstances surrounding it.

(c) A written impact statement that is submitted by the victim pursuant to the provisions of section 14 of Act No. 87 of the Public Acts of 1985, as amended, being S780.764 of the Michigan Compiled Laws, if requested by a victim, which may include, but is not limited to, any of the following:

(i) An explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim.

(ii) An explanation of the extent of any economic loss or property damage suffered by the victim.

(iii) An opinion of the need for, and extent of, restitution and whether the victim has applied for or received compensation for loss or damage.

(iv) The victim's recommendation for an appropriate sentence.

(d) A statement that is prepared by the prosecuting attorney on the applicability of any consecutive sentencing provision.

(e) A full description of the prior criminal convictions and juvenile dispositions of the offender.

(f) A description and status of all criminal charges that are pending against the offender at the time of the presentence investigation.

(g) A personal profile of the offender, including all of the following information:

(i) Educational background.

(ii) Employment qualifications, background, and status, including any military record.

(iii) Social history, including all of the following:

(A) Family relationships.

(B) Marital status.

(C) Personal habits.

(D) Interests.

(E) Activities.

(F) Residence history.

(iv) Medical history, including a psychiatric or psychological report when available and appropriate or when requested by the sentencing court.

(v) Economic situation.

(vi) Other information that is relevant to the offender's character and circumstances.

(h) A proposed plan, which shall include all of the following:

(i) An evaluation of the offender with respect to all of the following:

(A) Strengths.

(B) Weaknesses.

(C) Abilities.

(D) Established behavior patterns.

(E) Readiness for change.

(ii) Information about available resources, including, all of the following:

(A) Treatment centers.

(B) Residential facilities.

(C) Vocational training services.

(D) Special educational facilities.

(E) Rehabilitative programs of various institutions to which the offender might be committed.

(F) Special programs in the probation department.

(G) Other similar programs that are relevant to the particular offender's situation.

(iii) A probation plan, as defined in R 791.9901(g), if probation is a possible disposition.

(i) Recommended disposition, including restitution when appropriate unless prohibited by the sentencing court.

(2) A source of information that is obtained on a promise of confidentiality, as well as a diagnostic opinion that might seriously disrupt a program of rehabilitation, shall be listed separately from the body of the report.

(3) When the sentencing court or probation office has, or can obtain, a presentence report that has been prepared on an offender within 3 years of the present offense, that report may be submitted if it is supplemented by a short form report that documents changes in the offender's status since the presentence report was prepared.

History: 1979 AC.; 1993 AACCS.

R 791.9920 Supervision of probationer; notice of conditions; methods of supervision; modification of order.

Rule 920. (1) When an offender is placed on probation, the supervising probation agent shall provide the offender with a copy of the order and inform the offender of the statutory conditions, as well as all of the terms and conditions contained in the order, and the possible consequences of a failure to adhere to the conditions of probation.

(2) For the purpose of monitoring the probationer's adjustment while on probation, the probation agent may:

(a) Inquire into the probationer's employment status, including, but not limited to, the probationer's performance on the job, relationships with fellow employees, and relationships with supervisors.

(b) Conduct interviews with probationer, members of the probationer's family, and acquaintances.

(c) Make other reasonable inquiries to determine whether the objectives of probation are being met.

(3) Whenever it appears to the probation agent that a modification of the terms or conditions of probation is necessary to achieve the objectives of probation, the agent may petition the sentencing court for a modification of the probation order. The petition shall contain a clear statement of the requested modification and the reason for the change. The probation agent shall provide the probationer with a copy of the modified order of probation and shall explain the changes made by the modified order to the probationer.

History: 1979 AC.

R 791.9930 Petition for probation revocation hearing; notice; violation report.

Rule 930. (1) A probation agent shall petition the sentencing court for a probation revocation hearing when instructed to do so by the court or when the probation agent believes that revocation is necessary.

(2) A petition for a probation revocation hearing shall contain a statement of the specific condition allegedly violated and a brief description of the circumstances of the alleged violation.

(3) The probation agent shall provide the probationer with a copy of the petition not less than 24 hours before the scheduled hearing.

(4) The probation agent shall file a probation violation report with the sentencing court within a reasonable time before the hearing. The report shall contain a full description of the alleged violation and the circumstances surrounding it and a summary of the probationer's development and adjustment while on probation.

History: 1979 AC.; 1993 AACS.

PART 10. INTERSTATE COMPACT ON PAROLE AND PROBATION

R 791.10001 Rescinded.

History: 1979 AC.; 1993 AACS; 1997 AACS.