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**RECEIVED**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

APR - 5 2005  
Clerk's Office  
U.S. District Court  
Ann Arbor, MI

Exhibits  
1-7

**05-71318**

KENNETH FOSTER-BEY,  
JOHN ALEXANDER,  
WAYMON KINCAID,  
WILLIAM SLEEPER,  
ROBERT WEISENAUER,  
ERIC MCCULLUM,  
GERALD LEE HESSEL,  
on behalf of themselves and all others  
similarly situated,

File No. \_\_\_\_\_

Hon. NANCY G. EDMUNDS

U.S Mag. Judge VIRGINIA MORGAN

Plaintiffs,

**FILED**

vs.

APR - 5 2005

CLERK'S OFFICE  
U.S. DISTRICT COURT  
ANN ARBOR, MI

JOHN S. RUBITSCHUN, Chair,  
JAMES ATTERBERRY,  
MIGUEL BERRIOS,  
CHARLES BRADDOCK,  
STEPHEN DEBOER,  
ENID LIVINGSTON,  
JAMES QUINLAN,  
MARIANNE SAMPER,  
BARBARA SAMPSON,  
ARTINA HARTMAN,  
individually and in their official capacities  
as members of the Michigan Parole Board,  
and PATRICIA L. CARUSO, individually  
and in her official capacity as director of  
the Michigan Department of Corrections,

Defendants.

**CLASS ACTION COMPLAINT**

The plaintiffs, by their counsel, state the following for their complaint:

**Introduction**

1. This is an action for declaratory and injunctive relief under 42 U.S.C. § 1983.

The plaintiffs are prisoners in the custody of the Michigan Department of Corrections (MDOC)

who were convicted before October 1, 1992, and who were sentenced to parolable life.

2. The plaintiffs seek relief for the defendants' retroactive use of substantive parole standards that were not in effect when the plaintiffs were convicted, in violation of the *ex post facto* and due process clauses of the United States Constitution.

3. Specifically, after October 1, 1992, the Michigan parole board adopted a policy that "life means life." The new policy precludes meaningful parole review for parolable lifers and effectively converts their sentences to mandatory life terms.

4. The plaintiffs also seek relief for the defendants' retroactive use of parole laws and policics that were not in effect when the plaintiffs were convicted. The cumulative changes have created a different parole regime, in violation of the *ex post facto* and due process clauses of the United States Constitution.

5. The changed standards, laws, and policies have deprived the plaintiffs of effective parole consideration, have created a parole system for lifers in which the parole board no longer exercises discretion in individual cases, and have made a parolable life sentence the equivalent of a mandatory life sentence in Michigan.

6. The changed standards, laws, and policies all but guarantee that the plaintiffs will never be paroled, or will not be paroled until years later than they would have been paroled under the substantive parole standards and the laws and policies that were in effect when the plaintiffs were convicted.

7. The plaintiffs do not seek their release. Instead they seek parole consideration using the substantive standards and the law and policy protections that were in effect when the plaintiffs were convicted.

**Conditions Precedent to this Action**

8. The plaintiffs, by previously having filed this complaint in the form of administrative grievances, which were denied at Steps I, II, and III of the MDOC grievance process, have satisfied the pre-filing requirements of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). See Exhibits 1-8, attached.

**Jurisdiction and Venue**

9. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, which authorizes federal courts to decide cases concerning federal questions, and by 28 U.S.C. § 1343(a), which authorizes federal courts to hear civil cases brought under 42 U.S.C. § 1983.

10. Pursuant to the recent case of *Wilkinson v. Dotson*, \_\_\_ U.S. \_\_\_, 2005 WL 516415 (3/7/05), challenges to parole procedures are permitted to be brought under § 1983.

11. Venue is proper in this Court because the defendants conduct their business across the state, including in the Eastern District. In addition, some of the named plaintiffs and many of the proposed class members are in custody in the Eastern District of Michigan. Thus their claims arise in the Eastern District as well.

**Parties**

**The Plaintiffs**

12. Plaintiff Kenneth Foster-Bey is an inmate (#142187) in the custody of the MDOC at the Ryan Correctional Facility in Detroit, Michigan.

13. Plaintiff John Alexander is an inmate (#163875) in the custody of the MDOC at the Gus Harrison Correctional Facility in Adrian, Michigan.

14. Plaintiff Waymon Kincaid is an inmate (#137927) in the custody of the MDOC at the Marquette Branch Prison in Marquette, Michigan.

15. Plaintiff William Sleeper is an inmate (#116539) in the custody of the MDOC at the Macomb Correctional Facility in New Haven, Michigan.

16. Plaintiff Robert Weisenauer is an inmate (#157085) in the custody of the MDOC at the Thumb Correctional Facility in Lapeer, Michigan.

17. Plaintiff Eric McCullum is an inmate (#120287) in the custody of the MDOC at the Mound Correctional Facility in Detroit, Michigan.

18. Plaintiff Gerald Lee Hessell is an inmate (#150163) in the custody of the MDOC at the Carson City Correctional Facility in Carson City, Michigan.

#### Class Allegations

19. The proposed class definition, as set forth in the accompanying motion, is:

All parolable lifers in the custody of the Michigan Department of Corrections who were convicted before October 1, 1992, and whose parole the "new" parole board has denied, passed over, expressed no interest in pursuing, or otherwise rejected or deferred.

20. The class is so numerous that joinder of all members is impracticable.

21. There are questions of law and fact common to the class.

22. The claims of the named plaintiffs are typical of the claims of the class members.

23. The named plaintiffs will fairly and adequately protect the interests of the class.

24. Class counsel have the time, resources, and expertise to represent the class.

25. If the Michigan parole board had applied the substantive parole standards and the parole laws and policies that were in effect when the plaintiffs were convicted, they would have been paroled long ago, and/or they would have a reasonable chance for parole within 12-20 years of incarceration.

26. Even if their parole remained uncertain, their parole is being decided under substantive parole standards and under parole laws and policies that were not in effect when they

were convicted, that deprive them of meaningful parole review, and that effectively guarantee the denial of their parole.

**The Defendants**

27. Defendant John S. Rubitschun is the chairman of the Michigan parole board.

28. Defendants James Atterberry, Miguel Berrios, Charles Braddock, Stephen De-Boer, Enid Livingston, James Quinlan, Marianne Samper, Barbara Sampson, and Artina Hartman are members of the Michigan parole board.

29. The Michigan parole board, under the authority of MCL 791.234, decides which Michigan prisoners to parole, and when to parole them.

30. Defendant Patricia L. Caruso is the director of the Michigan Department of Corrections. In that capacity she has authority over the Michigan parole board. MCL 791.231(a).

**Factual Allegations of Named Plaintiff Kenneth Foster-Bey**

31. Kenneth Foster-Bey was convicted in Detroit Recorder's Court of two counts of second-degree murder, MCL 750.317, in 1975. For these convictions, on July 16, 1975, Judge Robert J. Columbo sentenced Mr. Foster-Bey to two concurrent life sentences with the possibility of parole.

32. Under MCL 791.234, in 1975, a recipient of a parolable life sentence came within the jurisdiction of the parole board (and thus was eligible for parole) after ten years in prison.

33. In 1975, rehabilitated prisoners serving parolable life sentences were routinely paroled within 12-20 years.

34. At Mr. Foster-Bey's sentencing hearing, Judge Colombo told Mr. Foster-Bey:

This offense is parolable within ten years. If you become rehabilitated within that period of time, I state publicly here on the record that I have no objection to your parole. I state that because I may not be here in ten years, but any judge who is looking at this record will know what I had in mind at the time I sentenced you.

35. In 1975, in deciding whether or not to grant parole to a parolable lifer after ten years, the parole board used essentially the same substantive standards that it used for prisoners who had been sentenced to long indeterminate terms (like 25--40 years).

36. During the time of his confinement, Mr. Foster-Bey has compiled an exemplary record of achievement, including attainment of a G.E.D. in 1982, an associate's degree in 1985, a bachelor's degree in 1993, and nearly 50 certificates and awards recognizing various social and vocational aptitudes.

37. By the time of his first parole review, Mr. Foster-Bey had demonstrated enough rehabilitation and maturation that his warden (Gary Wells) requested special parole for him.

38. Mr. Foster-Bey has long had a job assured him upon his release from prison.

39. The Honorable Robert J. Columbo, Mr. Foster-Bey's sentencing judge, wrote a letter to Mr. Foster-Bey on July 24, 2001. In that letter, Judge Columbo stated:

At the time of sentencing not only I, but the vast majority of trial judges in the State of Michigan were aware that by imposing life sentences rather than determinative sentences of minimums and maximums, the Michigan Parole Board at that time was able to parole defendants who had made substantial progress toward rehabilitation upon completion of a term of ten years. It was with that in mind that I imposed a sentence of Life for Second Degree in the case of Mr. Foster.... The reason I did this was also to encourage Mr. Foster to take advantage of all the programs the Corrections Department had for self-improvement which apparently Mr. Foster has done with outstanding success. ... Mr. Foster is caught in the middle of it having served now over 27 years for a crime that I never would have intended him to serve that long. ... Moreover, I would never have sentenced Mr. Foster to a term of more than two concurrent terms of 25 to 30 years.... Mr. Kenneth Foster is serving a sentence of life which the Parole Board now treats as life, something this sentencing Judge never expected or intended to happen when he sentenced him in 1975.

40. Since 1994, the Michigan parole board has denied parole for Mr. Foster-Bey. At each review it has either (a) exercised no discretion at all, but simply passed on his case because of his status as a lifer, or (b) retroactively applied substantive standards and parole laws and poli-

cies that were not in effect when Mr. Foster-Bey was convicted, and that are far more stringent than the standards, laws, and policies that were in effect in 1975.

41. Mr. Foster-Bey has now served over 30 years in prison. Under current board policy he has no realistic chance for parole.

**Factual Allegations of Named Plaintiff John Alexander**

42. Plaintiff John Alexander was convicted of second-degree murder, MCL 750.317, and felony firearm possession, MCL 750.227b, in 1981. For these convictions, on March 25, 1981, Judge Michael F. Sapala sentenced Mr. Alexander to parolable life plus a two-year term for the weapons charge.

43. At Mr. Alexander's sentencing hearing, Judge Sapala told Mr. Alexander:

I'm going to leave the determination of release to the parole board by the sentence that I will fashion. If you show them the kind of progress some years down the line that indicates that you should be released, they will release you. But I will leave it up to their discretion.

44. During the time of his confinement, Mr. Alexander has compiled an excellent record of educational, social, emotional, and vocational growth.

45. In 2001, Mr. Alexander filed a motion for re-sentencing under MCR 6.500, the state *habeas* provision for collateral attacks on convictions.

46. On March 13, 2002, Judge Sapala, Mr. Alexander's original sentencing judge, granted the motion and agreed to re-sentence him to an indeterminate term of years, so that he would no longer be effectively precluded from parole eligibility because of his parolable life status.

47. Judge Sapala stated his reasons for granting relief as follows:

Obviously, in 1981, no judge, in imposing a life sentence, could see down the road, if I could put it this way, that the Parole Board would change to the extent that it wouldn't simply change policies, but, in fact, would ignore the law.... It was clearly my intent in

this case ... that I intended that should Mr. Alexander be in a position to show the Parole Board that he should be released, that he should be. That was my intention. ... [I]f I wanted to make sure he stayed in prison the rest of his life, I would have imposed those kinds of sentences ... like 80 to 150 years, but I did not do that. ... [W]e can say with confidence this man will not be released under the current policy of the Parole Board. That's contrary to this Judge's sentence.

48. Judge Sapala's decision to re-sentence Mr. Alexander was reversed on appeal by the Michigan Court of Appeals, based on *People v. Moore*, 468 Mich. 573 (2003), which held that, as a matter of *state* law, state trial courts lacked jurisdiction to re-sentence parolable lifers.

49. Since 1994, the parole board has denied parole for Mr. Alexander. Each time it has either (a) exercised no discretion at all, but simply passed on his case because of his status as a lifer, or (b) retroactively applied substantive standards and parole laws and policies that were not in effect when Mr. Alexander was convicted, and that are far more stringent than the standards, laws, and policies that were in effect in 1981.

50. Mr. Alexander has now served over 23 years in prison. Under current board policy he has no realistic chance for parole.

**Factual Allegations of Named Plaintiff William Sleeper**

51. Mr. Sleeper pled guilty to second-degree murder, MCL 750.317, in 1966, when he was 17 years old. Although he had no prior criminal record, he was sentenced to parolable life.

52. Mr. Sleeper's last disciplinary misconduct report in prison was written in August of 1967.

53. For much of the 1970s and early 1980s, Mr. Sleeper was assigned to trustee divisions of the state prison system.

54. For several years he served as the inmate fire chief for the Jackson facilities. In that capacity he had access to the prison fire trucks and regularly drove without supervision on



public roads.

55. He also worked as a chef at a restaurant in Brighton, as a scale operator at the Grass Lake weigh station on I-94, as a sidewalk paver for the Department of Natural Resources, and as a driver for the MDOC.

56. In every setting, his work reports were excellent and he was rewarded with more and more responsibility; in some of these jobs he drove unsupervised all across the state.

57. In 1984, lifers were barred from prison work-release programs.

58. Mr. Sleeper has completed nearly every prison educational and rehabilitation program that it is possible for an inmate to complete.

59. On July 11, 1974, after eight years in prison, Mr. Sleeper was told that he would be recommended for "positive action" by the parole board at the end of ten years.

60. In 1976, a board member told him that he would be paroled at 15 years.

61. On May 26, 1988, in executive session, the full parole board voted unanimously (5-0) that Mr. Sleeper's parole should go forward to public hearing.

62. For unexplained reasons – what was later described as a "clerical error" – the public hearing was never scheduled.

63. In 1992, Mr. Sleeper's warden personally contacted the parole board to try to get the public hearing process started.

64. In July 1992, the full board again voted (5-0) to proceed to public hearing, and told Mr. Sleeper that it would "begin active processing of your case in the next few months."

65. In the interim, the "new" parole board, created by the October 1, 1992, amendments to the parole law, came into being, and the parole process for parolable lifers was stalled.

66. The "new" board vetoed his parole and gave him a five-year flop.

67. In 1998, the board expressed “no interest” and gave him a five-year flop.

68. In 2003, the board expressed “no interest” and gave him a five-year flop. Mr. Sleeper is not scheduled for parole review again until February 2008.

69. Since 1994, the parole board has denied parole for Mr. Sleeper. Each time it has either (a) exercised no discretion at all, but simply passed on his case because of his status as a lifer, or (b) retroactively applied substantive standards and parole laws and policies that were not in effect when Mr. Sleeper was convicted, and that are far more stringent than the standards, laws, and policies that were in effect in 1966.

70. Mr. Sleeper has now served over 38 years in prison. Under current board policy he has no realistic chance for parole.

#### **Factual Allegations on Behalf of the Other Named Plaintiffs**

71. The four additional named plaintiffs all have facts similar to those of Mr. Foster-Bey, Mr. Kincaid, and Mr. Sleeper. (To avoid repetition, their specific facts will be reserved.)

72. Since 1994, the parole board has denied them parole. Each time the board has either (a) exercised no discretion at all, but simply passed on their cases because of their status as lifers, or (b) retroactively applied substantive standards and parole laws and policies that were not in effect when they were convicted, and that are far more stringent than the standards, laws, and policies that were in effect when they were convicted.

73. Cumulatively, Messrs. Kincaid, Weisnauer, McCullum, and Hessell have now served approximately 119 years in prison – 29 years apiece on average. Under current board policy they have no realistic chance for parole.

74. All of the named plaintiffs have superb institutional records. But for the board’s refusal to exercise discretion, or but for the retroactive application of the post-1994 substantive

parole standards, and but for the retroactive application of the cumulative changes to Michigan's parole laws and policies, the named plaintiffs would have been paroled by 2005.

**Factual Allegations on Behalf of the Proposed Class**

**Changes in Substantive Parole Standards**

75. Under Michigan law, all members of the proposed class came within the jurisdiction of the parole board after ten years of incarceration.

76. At the same time, prisoners with long indeterminate sentences (like 25–40 years) were not eligible for parole under Michigan law until they had served their mandatory minimum (*e.g.*, 25 years) less good time.

77. As a result of this anomaly in the law, parolable lifers became subject to parole review, and could in fact be paroled, *sooner* than prisoners serving long indeterminate sentences.

78. Up until 1993-94, in deciding whether or not parolable lifers should go forward in the parole process (to be paroled), the board used essentially the same substantive standards for parolable lifers that it used in making the parole decisions for prisoners serving long indeterminate sentences who had completed their mandatory minimum, less “good time.”

79. Throughout the period when the proposed plaintiff class committed their crimes, the parole board routinely paroled *rehabilitated* parolable lifers within 12–20 years.

80. This was so precisely because parolable lifers got before the parole board sooner than long term-of-years prisoners, and because the parole board used essentially the same substantive standards with both groups of prisoners in deciding whom to parole.

81. Indeed, for a parolable lifer to serve 20–25 years would have been viewed as an unusually long sentence, reserved for someone who had adjusted poorly to prison, or who had other significant problems in his or her file, apart from the fact of the parolable life sentence.

82. Beginning in 1993-94, and continuing to the present day, the Michigan parole board radically altered the substantive standards it used to decide parolable lifer cases.

83. Beginning in 1993-94, and continuing to the present day, the parole board adopted an explicit policy that "life means life."

84. Under the "new" board's substantive standards, it almost never grants parole to parolable lifers, except for terminally ill prisoners, or as a reward for heroic acts like saving the life of a corrections officer.

85. From 1994 to the present, the parole board has essentially conflated the meaning of parolable life and mandatory life in Michigan.

86. As a result, the parole board has stopped exercising its discretion in parolable lifer cases, because the fact of the parolable life sentence alone dictates the result in nearly every case.

87. In some cases co-defendants were charged with the same crime. The more culpable person was sentenced to mandatory life or was given a very long term-of-years sentence (like 60-80 years), while the less culpable person was given a reduced sentence of parolable life.

88. Under the board's post-1994 substantive standards, the two are now treated the same, or in some cases the more culpable defendant may be released before the parolable lifer.

89. The radical change in the parole board's substantive standards was intended to increase retroactively the punishment for the crimes committed by the plaintiff class, without regard to the norms of practice in place – as understood by prosecutors, judges, probation departments, defense counsel, the public, and the defendants themselves – when the members of the plaintiff class were convicted.

90. The radical change in the parole board's substantive standards has retroactively increased the punishment for the crimes committed by the plaintiff class.

**Changes in Parole Law and Policy**

91. Before October 1, 1992, by law or policy, most of the proposed class members were entitled to parole review starting in the fourth or seventh year of incarceration – that is, even before the prisoner came within the formal jurisdiction of the board (after the tenth year).

92. The purpose of the pre-parole review was for the board to get to know the prisoner and for the prisoner to learn – even before coming within the parole board’s formal jurisdiction – what the board wanted the prisoner to do in order to maximize his or her chances for parole.

93. Due to a mushrooming prison population and an overworked parole board, many members of the proposed class never got the required lifer hearings that they were supposed to get during the first ten years of their incarceration.

94. Before October 1, 1992, by law or policy, the proposed class members were entitled to parole review after ten years of incarceration no less frequently than every other year.

95. Today, Michigan’s parole laws and policies have changed to reduce the frequency of review for parolable lifers to every five years instead of every two years.<sup>1</sup>

96. Before October 1, 1992, by law or policy, the proposed class members were entitled to parole review that included an in-person hearing with a member of the parole board.

97. Today, Michigan’s parole laws and policies have changed so that the parole board need not *ever* meet personally with parolable lifers, but instead can conduct file or paper reviews.

98. Before October 1, 1992, by law or policy, all proposed class members were entitled to written reasons for the denial of parole if the board expressed “no interest” in moving the prisoner forward to a public hearing, or otherwise rejected the prisoner’s parole.

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<sup>1</sup> This change – in and of itself – was held not to violate the *ex post facto* clause, on the proofs available as of 1997. See *Shabazz v. Gabry*, 123 F.3d 909 (6th Cir. 1997), *cert. denied*, 522 U.S. 1120 (1998).

99. Today, the parole board's expression of no interest, or a pass-over, does not require written reasons.

100. Before October 1, 1992, by law or policy, all proposed class members were entitled to parole review in which a statement of no interest or a pass-over was considered to be a formal decision of the board, namely a denial of parole.

101. Today, the parole board's expression of no interest or a pass-over is not viewed as a denial of parole; indeed, it is not even viewed as a decision of the board.

102. Before October 1, 1992, by law or policy, the proposed class members were entitled to parole review in which a statement of no interest or a pass-over was subject to judicial review in state circuit court, with further appeal available to the state appellate courts.

103. Today, the parole board's expression of no interest or a pass-over is not subject to judicial review of any kind in any state court, except that the prosecutor or the victim can appeal a parole decision in the prisoner's favor.

104. Before October 1, 1992, the parole board was established as an independent entity subject to state civil service rules, which insulated it from political influence.

105. Today, the parole board is under the direct authority of an executive department, subject to political influence.

106. All of the changes described above were applied retroactively to the plaintiffs.

107. All of the changes described above were intended (a) to lengthen the prison sentences of the plaintiff class, (b) to limit the discretion of the parole board, and (c) to take parole policy out of the hands of an autonomous body (insulated from political influence) and to place it instead in an executive department (subject to political influence).

108. All of the changes described above had the effect of (a) lengthening the prison

sentences of the plaintiff class, (b) limiting the discretion of the parole board, and (c) taking parole policy out of the hands of an autonomous body (insulated from political influence) and placing it directly in an executive department (subject to political influence).

109. The combined cumulative changes in the state's substantive parole standards and in the state's parole laws and policies have deprived the plaintiffs of the opportunities for meaningful parole review that they were promised when they committed their crimes and were sentenced.

110. The combined cumulative changes in the state's substantive parole standards and in the state's parole laws and policies have increased the sentences of the named plaintiffs by up to 12 years (and counting), and have made the plaintiff class effectively ineligible for parole.

#### **Irreparable Harm**

111. The named plaintiffs and the proposed plaintiff class have suffered irreparable harm, in that they are subject to substantive parole standards and parole laws and policies that are far more stringent than were in effect when they were convicted.

112. The retroactive changes in Michigan's substantive parole standards and in the state's parole laws and policies make it nearly impossible for these prisoners to be paroled, with the result that they have served, are serving, and will serve sentences far longer than what their sentencing judges intended or anticipated.

#### **Related Cases**

113. Plaintiffs Waymon Kincaid and John Alexander have *habeas corpus* petitions pending in this Court, raising substantially the same issues as are raised here. *See Kincaid v. Jones*, File No. 04-CV-71090-DT (Hon. Avern Cohn) and *Alexander v. Birkett*, File No. 04-CV-73953-DT (Hon. Robert Cleland).

## Claims

### Ex Post Facto Violations

114. The changes to Michigan's substantive parole standards and to the state's parole laws and policies, described above, effectively alter or extend the plaintiffs' prison terms, in violation of the *ex post facto* clause of the U.S. Constitution, Article 1, Section 10, Clause 1.

### Due Process Violations

115. The changes to Michigan's substantive parole standards and to the state's parole laws and policies, described above, could not have been foreseen by the state court trial judges when they sentenced the plaintiffs.

116. Where state court trial judges sentenced the plaintiffs under one parole regime, and where a far different regime came into effect years later and was applied retroactively, and where the state supreme court has denied all state-law based relief, the plaintiffs rights have been violated under the due process clause of the U.S. Constitution, Amendment XIV.

117. The changes to Michigan's substantive parole standards and to the state's parole laws and policies, described above, have deprived the plaintiffs of meaningful parole review, and have resulted in a system in which the parole board no longer exercises discretion in lifer cases, in violation of the due process clause of the U.S. Constitution, Amendment XIV.

### Relief Requested

Wherefore, the plaintiffs, on behalf of themselves and the plaintiff class, ask the Court to:

- (a) certify this action as a class action, pursuant to the accompanying motion;
- (b) enter declaratory relief finding that the defendants' retroactive use of the post-1992 substantive parole standards, combined with the defendants' retroactive use of the cumulative post-1992 changes to Michigan's parole laws and policies, violates the *ex post facto* and due process clauses of the U.S. Constitution;



- (c) enter injunctive relief barring the defendants from using the post-1992 substantive parole standards and the cumulative changes to the state's parole laws and policies, as applied to the named plaintiffs and the plaintiff class;
- (d) order the defendants to conduct new parole hearings for the named plaintiffs and the plaintiff class, using the pre-1992 substantive parole standards and the parole laws and policies that were in effect when the plaintiffs committed their crimes;
- (e) grant the plaintiffs their costs and reasonable attorneys' fees as permitted by federal law, including 42 U.S.C. § 1988; and
- (f) grant such further relief as the Court deems fair and just.

Respectfully submitted,

MICHIGAN CLINICAL LAW PROGRAM



By: Paul D. Reingold (P27594)

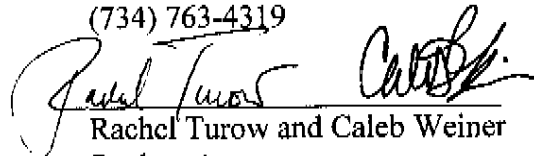
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Rachel Turow and Caleb Weiner  
Student Attorneys

Dated: April 4, 2005

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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individually and in their official capacities  
as members of the Michigan Parole Board,  
and PATRICIA L. CARUSO, individually  
and in her official capacity as director of  
the Michigan Department of Corrections,

Defendants.

EXHIBITS FOR CLASS ACTION COMPLAINT

### **Index of Exhibits**

1. Kenneth Foster-Bey's grievance, Step I – Step III, with responses
2. John Alexander's grievance, Step I – Step III, with responses
3. Waymon Kincaid's grievance, Step I – Step III, with responses
4. William Sleeper's grievance, Step I – Step III, with responses
5. Robert Weisenauer's grievance, Step I – Step III, with responses
6. Eric McCullum's grievance, Step I – Step III, with responses
7. Gerald Lee Hessell's grievance, Step I – Step III, with responses

1

MICHIGAN DEPARTMENT OF CORRECTIONS  
PRISONER/PAROLEE GRIEVANCE FORM

4835-4247 10/94  
CSJ-247A

Date Received at Step I JUL 01 2004 Grievance Identifier: RRF040700661276

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
KENNETH A. FOSTER BEY	142187	RRF	4B-06U	12/08/03	06/23/04

What attempt did you make to resolve this issue prior to writing this grievance? On what date? 01/08/2004 A.D.  
If none, explain why.

Grievant filed a "Request For Reconsideration Of: December 8, 2003, 'No Interest' Decision", rendered by MDOC Parole Board.

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

This grievance is being filed against the following state agencies and officials, in concert with the State Agency MDOC as followed: MDOC Agency; former MDOC Director Mr. William S. Overton; MDOC Director Mrs. Patricia Caruso; Michigan Governor Mrs. Jennifer M. Granholm; Michigan Attorney General Mr. Mike Cox; and, MDOC Parole Board, and its members individually, i.e., Chairman Mr. John S. Rubitschun; Mr. Charles Braddock; Mr. William Slaughter; Ms. Marianne Samper; Mr. George Lellis; Mr. Miguel Berrios; Mr. James E. Atterbury; Mr. James J. Quinlan; and, Ms. Barbara S. Sampson.

Grievant files this grievance according to MDOC Policy Directives, namely PD-03.02.130(E), and PD-06.05.104(XX). The authority of this grievance is the violation of statutory law and MDOC policies, committed by the above named persons in their collective and individual "failure to follow the parole process as outlined in this [i.e., PD-06.05.104] and other policy directives may be grieved in accordance with PD-03.02.130 "Prisoner/Parolee Grievances".

(NOTE: SEE ATTACHED PAGES, HERETO).

Grievant's Signature  
*Kenneth A. Foster Bey*

RESPONSE (Grievant Interviewed?  Yes  No If No, give explanation. If resolved, explain resolution.)  
P.D. 03.02.130 calls for grievances that are non-grievable not to be processed. Your issue is the content of policy and therefore is non-grievable. Furthermore, decisions made by the Parole Board and recommendations made by its hearings officers to grant, deny, rescind, amend or revoke parole, or not to proceed with a lifer interview or public hearing are non-grievable, and therefore your grievance is being rejected. Please refer to P.D. 06:05.104 "Parole Process" for more information on the parole process.

*M. Myles* 7/2/04  
Respondent's Signature Date  
M. Myles, Grievance Coordinator  
Respondent's Name (Print) Working Title

*William P. Ray* 8/20/04  
Reviewer's Signature Date  
*W. P. Ray* D.W.  
Reviewer's Name (Print) Working Title

Date Returned to Grievant: 7/8/04 If resolved at Step I, Grievant sign here. Resolution must be described above. Grievant's Signature \_\_\_\_\_ Date \_\_\_\_\_

The challenge of this grievance, is that 'failure to follow the parole process as outlined in the various policy directives' (i.e., PD-06.05.100, PD-06.05.103, PD-06.05.104, and, PD-06.05.105), relating to the processing of a parole release in a "parolable" lifer case. In other words, the release on parole according to these policy directives.

The timing of this grievance does not violate policy, as there is no policy of statute limitation of time. Therefore, this grievance meets all of the statutory and policy requirements for filing this grievance.

By the "collective" and/or "individual" acts, omissions, customs and policies, the herein named persons have violated grievant's constitutional rights under both state and federal constitutions. Equally so, the herein named persons have applied parole laws, rules, regulations, policies, procedures and practices, erroneously and retroactively to grievant's case, in direct violation of the "due process" and "ex post facto" clauses. And in support of these claims, grievant states the following:

1) On July 2, 1975, grievant was convicted of a crime and sentenced to a "parolable" life sentence in prison.

2) At the time of grievant's conviction and sentencing, a different parole regime existed than exists today.

3) On July 16, 1975, grievant's sentencing judge sentenced grievant to a parolable life sentence, knowing that at the time, lifers: a) had the right to have a personal interview at frequent intervals; b) to be given reasons for a[ny] parole pass-over; c) to have a parole pass-over treated as a denial of parole for purposes of judicial review; and d) to appeal such an adverse decision to the court.

In addition to these, at that time, parolable lifers were reviewed by the parole board under the same, or nearly the same, standards for parole as other inmates with long indeterminate (i.e., term-of-years) sentences.

4) At the time, many Michigan judges viewed a parolable life sentence as more lenient than a long term-of-years sentence, simply because eligibility began after just ten years instead of later, but was otherwise the same in virtually all respects.

5) Since 1994, Michigan parole laws, policies, and procedures have changed radically for the worse for this grievant. According to the former parole board chairman, since 1994, "life means life." Grievant therefore, contends that since 1994, there has been almost no distinction between parolable life and mandatory life in Michigan.

Grievant further contends, that this concept of "life means life", is a direct violation of both parole board policy and Michigan statutory law.

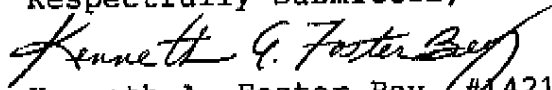
6) On December 8, 2003, the Michigan parole board decided to deny grievant a parole release, via a public hearing. The parole board cited an action of "NO INTEREST", which grievant contends is also a violation of parole board policy, as well as Michigan statutory law. There is no such action as "No Interest".

7) The above named persons, agencies, and officials have erroneously applied the new parole laws, policies, practices, and procedures retroactively, to this grievant's detriment, and in direct violation of the due process and ex post facto clauses of the state and federal constitutions.

Grievant therefore, requests that he be reviewed for a parole release under the parole regime and the parole standards that existed when grievant was convicted and sentenced to prison.

(NOTE: See Exhibit "A", attached hereto).

Respectfully Submitted,

  
Kenneth A. Foster Bey, #142187

<b>Name:</b> FOSTER KENNETH	<b>Number:</b> A142187	<b>Location:</b> RRF	<b>Mailed:</b> 12/11/2003
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4B-06u

The Michigan Parole Board, having conducted a review of the above prisoner's case, has determined the following:

The majority of the Parole Board has no interest in taking action at this time. Your case will be reviewed as required by law.

<b>DECISION DATE:</b> 12/08/2003	<b>ACTION:</b> No Interest	<b>Next Interview Scheduled:</b> <u>10-8-2008</u>
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"EXHIBIT" A



**Michigan Department of Corrections**  
**GRIEVANCE APPEAL RECEIPT - STEP II**

**DATE:** 7/27/04

**TO:** FOSTER 142187

**LOCATION:** RRF 4B-6U

**FROM:** Grievance Coordinator: Rita Crittenden

**SUBJECT:** Receipt of the Grievance Appeal Form

I acknowledge receipt of your Step II grievance appeal, identifier **RRF / 2004 / 07 / 0661 / 27B** which was received in this office on **7/27/04**

Unless you are otherwise notified you should be provided a Step II response within 15 business days of the date your appeal was received or no later than **8/17/04**

If you have not received a response by this date or the approved extension, you may submit your Step III Appeal to the Directors office.

**TO:** MDOC Director's Office  
Grandview Plaza Building  
P.O. Box 30003  
Lansing, Michigan 48909

**FR:** Kenneth A. Foster Bey, #142187  
Ryan Regional Corr. Facility  
17600 Ryan Road  
Detroit, Michigan 48212-1155

**RE: Step III Grievance Appeal.**

August 19, 2004 A.D.

Dear Director's Office:

Enclosed, please find the following documents: Grievant's Step I and II Grievance (with original grievance page attached); Additional Pages #2-3 (two (2) copies); MDOC Parole Board Notice of Decision (dated 12/08/2003); Steps I and II Grievance Responses; and, Prisoner/Parolee Grievance Appeal Form (Steps II and III), all for filing within this office.

**PLEASE NOTE:** that on August 16, 2004 A.D., grievant received the Step II Response from Mr. Raymond D. Booker, Warden.

Thanking you for your time in this matter.

Respectfully Submitted,

  
Kenneth A. Foster Bey #142187

CC: file/kafb.

MICHIGAN DEPARTMENT OF CORRECTIONS  
**PRISONER/PAROLEE GRIEVANCE APPEAL FORM**

4835-4248 12/97  
 CSJ-247 B

Date Received by Grievance Coordinator  
 at Step II: ADJ. ASST JUL 27 04

Grievance Identifier

RRF040700661276

**INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.**

The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

RECEIVED  
 AUG 26 2004  
 MICHIGAN DEPT. OF CORRECTIONS  
 PRISONER AFFAIRS

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: Adm. Asst  
Crittenden by 7/27/04. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
<u>Foster-Bey, K.</u>	<u>142187</u>	<u>RRF</u>	<u>4B-6U</u>	<u>12/08/03</u>	<u>07/21/04</u>

**STEP II--Reason for Appeal** Grievant is not satisfied with the response provided at the Step I level. Step I response is not correct. Once again, this grievant clearly states that he is filing this grievance against the parole board's **"FAILURE TO FOLLOW THE PAROLE PROCESS AS OUTLINED IN PD-06.05.104"**, as well as other policy directives.

Policy clearly indicates in this regard, a grievance **CAN BE** written and filed on the parole board. Grievant **IS NOT** grieving the parole board's decision or recommendation. The language of PD-06.05.104(X) is very clear. It is written in plain "English". The parole board can be grieved. Grievant seeks the Step II Respondent, to reply according

**STEP II--Response** to the policy. (SEE GRIEVANCE ENCLOSED).

Date Received by  
 Step II Respondent:  
7/27/04

After review of your grievance, I find the Step I response is upheld and there is no violation of Policy Directive 03.02.130, *Prisoner/Parolee Grievances*. Paragraph F (2), reads in part, "... Grievances that raise the following non-grievable issues also shall be rejected by the Grievance Coordinator: (2) Decisions made by the Parole Board and recommendations made by its hearing officers to grant, deny, rescind, amend or revoke parole, or not to proceed with a lifer interview or a public hearing." Your grievance is as a result of a finding by the Parole Board. Grievance Rejected.

R. BOOKER  
 Respondent's Name (Print)

R. Booker  
 Respondent's Signature

8-5-04  
 Date

Date Returned to  
 Grievant:  
8/6/04

**STEP III--Reason for Appeal** **AGAIN**, and for the **third** time, Grievant **IS NOT** "grieving" a 'parole board's decision'. Quite the contrary! Grievant is grieving the parole board's **"FAILURE TO FOLLOW THE PAROLE PROCESS AS OUTLINED IN PD-06.05.104"**. See PD-06.05.104(X).

Grievant would like for his grievance to be adjudicated accordingly. The parole board "failed" in its procedural duties.

**NOTE: Only a copy of this appeal and the response will be returned to you.**

**STEP III--Director's Response** is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

DISTRIBUTION: White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

**OVER →**

4B Done

THIRD STEP GRIEVANCE RESPONSE

Kenneth Foster, #142187  
RRF-04-07-00661-27b

The Grievant presents an issue which alleges on December 8, 2003, the Michigan parole board decided to deny him a parole release, via a public hearing. The parole board cited an action of "no interest" which the grievant states is a violation of the parole board policy. The issue was found not grievable at the local level according to the provisions of Policy Directive/Operating Procedure 03.02.130 (Prisoner/Parolee Grievances).

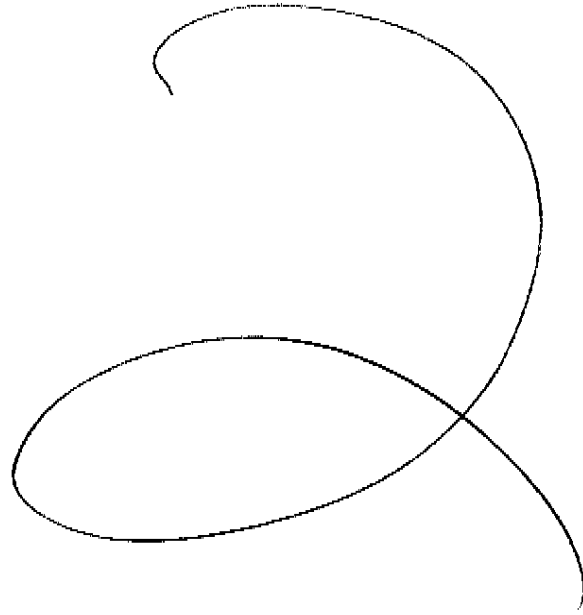
This investigator has reviewed the record presented with the appeal to Step Three. Upon further review of the documents presented, the record supports the Step One and Step Two responses to the grievance.

Additional information has not been presented to demonstrate an error in this determination. This decision is upheld at this level. Therefore, this grievance appeal is denied.

Approval Signature: Jim Armstrong Date: 10/26/04

#8/10-25-04/27b

cc: Warden  
Grievant

A handwritten signature in black ink, consisting of a large, stylized letter 'S' with a loop at the top and a tail that curves to the right.

MICHIGAN DEPARTMENT OF CORRECTIONS  
PRISONER/PAROLEE GRIEVANCE FORM

4835-4247 10/94  
CSI-247A

Date Received at Step I \_\_\_\_\_ Grievance Identifier: \_\_\_\_\_

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
Alexander, John	163875	SMF	3-219	4-12-04	4-19-04

What attempt did you make to resolve this issue prior to writing this grievance? On what date? 4-12-04  
If none, explain why.

I wrote the Warden of SMF concerning the matter, and received his response. "The wardens office is not involved in the parole process."

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130. This grievance is intended to run against all employees, agents, and agencies of the State of MI, who have any influence on the composition, laws policies, practices, and procedures of the Michigan Parole Board, including but not limited to the following individuals and entities:

- 1. Chairperson John S. Rubitechun
- 2. Charles Braddock
- 3. William Slaughter
- 4. Marjorie McNutt
- 5. Marianne Samper
- 6. George Lellis
- 7. Miguel Serrios
- 8. James F. Atterbury
- 9. James J. Quinlan
- 10. Barbara S. Sampson
- A. Governor Jennifer Granholm
- B. Attorney General Mike Cox
- C. Patricia Carney, Director of M.D.O.C.
- D. The Michigan Dept of Corr.
- E. The MICH Parole Board, and individually its members.

(See Attached Sheets) Con't.

Grievant's Signature \_\_\_\_\_

'Documents enclosed.'

RESPONSE (Grievant Interviewed?  Yes  No If No, give explanation. If resolved, explain resolution.)

Grievance code has been changed from 16c to 28a. Grievance is rejected at Step I. It is a duplication of several grievances you have filed to the Parole Board on this same issue. Do not continue to file additional grievances on this issue which has been addressed, or it may result in your placement on Modified Access Status.

Respondent's Signature _____	Date <u>5/10/04</u>	Reviewer's Signature <u>[Signature]</u>	Date <u>5/10/04</u>
Respondent's Name (Print) <u>D. Smith</u>	Grievance Coord. Working Title	Reviewer's Name (Print) <u>B. Meagher</u>	Deputy Warden Working Title

Date Returned to Grievant: <u>5/10/04</u>	If resolved at Step I, Grievant sign here. Resolution must be described above.	Grievant's Signature _____	Date _____
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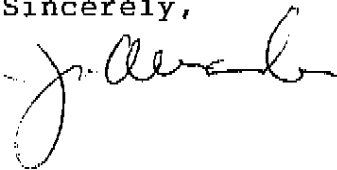
Con'ted. pg.2.

I, Johnny Alexander, #163875, complain that the above-named parties/agencies, by their collective or individual acts and omissions, or by their customs and policies, have violated my constitutional rights under the state and federal constitutions. Specifically, they have applied parole laws, rules, regulations, policies, procedures, and practices retroactively in violation of the due process and ex post facto clauses.

In support of my grievance, I state the following:

1. In 1981, I was convicted of a crime and sentenced to parolable life in prison with the expressed intent for the possibility of parole (Parolable Life).
2. At the time of my conviction and sentencing, a different parole regime existed than exists today.
3. At that time parole lifers had the right to have a personal parole interview at frequent intervals, to be given reasons for a parole pass-over, to have a parole pass-over treated as a denial of parole for purposes of judicial review, and to appeal such an adverse decision to court. In addition, at that time parolable lifers were reviewed by the board under the same, or near the same, standards for parole as any other inmates with long indeterminate (term-of-years) sentences.
4. At the time, many Michigan judges viewed a parolable life sentence as more lenient than a long term-of-years sentence, because parole eligibility began after just ten years instead of later, but was otherwise the same in virtually all aspects.
5. Since 1994, Michigan's parole laws, policies, practices, and procedures have changed radically for the worse for me. According to the former parole board chair, since 1994 "Life means Life". I believe that since 1994 there has been almost no distinction between parolable life and mandatory life in Michigan, in violation of legislative intent. And sentencing judge intent, (See attached Document 'Articles').
6. The above-named people/agencies have applied the new parole laws, policies, practices, and procedures retroactively, to me detriment, and in violation of the due process and ex post facto clauses of the state and federal constitutions. I therefore request that I be reviewed for parole/public hearing under the parole regime and the parole standards that exist when I was convicted and sentenced, and that the intent of my sentencing judge be met.

Sincerely,



Date: 4-14-04

MICHIGAN DEPARTMENT OF CORRECTIONS

CSI-247 B

PRISONER/PAROLEE GRIEVANCE APPEAL FORM

SMF-04.04.0794-2B6

Date Received by Grievance Coordinator at Step II: 5-18-04

Grievance Identifier

[Grid for Grievance Identifier]

INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.

The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) MUST be attached to the white copy of this form if you appeal it at both Step II and Step III.

MICHIGAN DEPT. OF CORRECTIONS PRISONER APPEALS

MAY 26 2004

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: G/D. Smith by 5-20-04. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
Alexander, John	163875	SME	3-218	4-12-04	5-13-04

STEP II--Reason for Appeal Step one response does not address the issues. And the reasons given are wholly false, for I have not filed any grievances against the parole board on this matter. Therefore, I seek a reply to said issues stated in step one.

STEP II--Response

The response at Step I addresses your issue. The Parole Board states your issue has been addressed in previous grievances. Appeal denied.

Date Received by Step II Respondent: 5-18-04

B. Meagher for: Warden (Birkett) Respondent's Name (Print)

[Signature] Respondent's Signature

5-21-04 Date

Date Returned to Grievant: 5-24-04

STEP III--Reason for Appeal

I assert the same position as in step I & II. The issues have not been addressed, nor have they been grieved before.

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III--Director's Response is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

DISTRIBUTION: White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

→ over



THIRD STEP GRIEVANCE RESPONSE

John Alexander, #163875  
SMF, 04-04-00794, 16C

3-218

The Grievant presents an issue which alleges that the grievance is against all State of Michigan employees, agents, and agencies. The grievance was not rejected at the local level according to the provisions of Policy Directive 03.02.130, titled "Prisoner/Parolee Grievances" and Operating Procedure, 03.02.130 titled "Prisoner/Parolee Grievances."

This investigator has reviewed the record presented with the appeal to step three. It is noted that the grievance issue does not present a grievable issue in a rational and responsible manner. Relief is not warranted or recommended. Upon further review of the documents presented, the record supports that additional information has not been presented on appeal to demonstrate an error in this determination. This decision is upheld at this level. This grievance appeal is denied.

Approval Signature: \_\_\_\_\_

*Jim Armstrong*

Date: \_\_\_\_\_

6/26/04

#4/6-24-04/16C

C: Warden  
Grievant

3

MICHIGAN DEPARTMENT OF CORRECTIONS  
PRISONER/PAROLEE GRIEVANCE FORM

4835-4247 10/94  
CSI-247A

Date Received at Step I 5-17 Grievance Identifier: MRP/YESK/117/1272

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
Waymon Lincoln	137127	MBP	D-3	11-19	5-16-04

What attempt did you make to resolve this issue prior to writing this grievance? On what date? The last 27 years.  
If none, explain why.

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

SEE ATTACH TWO SHEET.

Waymon Lincoln  
Grievant's Signature

RESPONSE (Grievant Interviewed?  Yes  No If No, give explanation. If resolved, explain resolution.)

Your grievance has been rejected as a non-grievable issue per PD-03 02 130. Decisions made by the Parole Board and recommendations made by its Hearings Officers to grant, deny, rescind, amend or revoke Parole, or not to proceed with a Lifer Interview or Public Hearing are non-grievable issues.

Respondent's Signature	Date	Reviewer's Signature	Date
Respondent's Name (Print)	Working Title	Reviewer's Name (Print)	Working Title

Date Returned to Grievant: <u>5-17</u>	If resolved at Step I, Grievant sign here. Resolution must be described above.	Grievant's Signature	Date
--	--	----------------------	------

Grievance

This grievance is intended to run against all employees, agents, and agencies of the State of Michigan who have any influence on the composition, laws, policies, practices, and procedures of the Michigan Parole Board, including but not limited to the following individuals and entities:

- A. Governor Jennifer M. Granholm
- B. Attorney General Mike Cox
- C. Patricia Caruso, Director of the Michigan Department of Corrections
- D. The Michigan Department of Corrections
- E. The Michigan Parole Board, and individually its members:
  1. Chairperson John S. Rubitschun
  2. Charles Braddock
  3. William Slaughter
  4. Marjorie McNutt
  5. Marianne Samper
  6. George Lellis
  7. Miguel Berrios
  8. James E. Atterbury
  9. James J. Quinlan
  10. Barbara S. Sampson

I, Waymon Kincaid, # 137927, complain that the above-named parties/agencies, by their collective or individual acts and omissions, or by their customs and policies, have violated my constitutional rights under the state and federal constitutions. Specifically, they have applied parole laws, rules, regulations, policies, procedures, and practices retroactively in violation of the due process and *ex post facto* clauses.

In support of my grievance, I state the following:

1. In 1996 I was convicted of a crime and sentenced to life in prison with the possibility of parole (parolable life).
2. At the time of my conviction and sentencing, a different parole regime existed than exists today.
3. At that time parolable lifers had the right to have a personal parole interview at frequent intervals, to be given reasons for a parole pass-over, to have a parole pass-over treated as a denial of parole for purposes of judicial review, and to appeal such an adverse decision to court. In addition, at that time parolable lifers were reviewed by the board under the same, or nearly the same, standards for parole as other inmates with long indeterminate (term-of-years) sentences.

Grievance  
Page Two

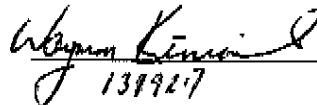
4. At the time, many Michigan judges viewed a parolable life sentence as more lenient than a long term-of-years sentence, because parole eligibility began after just ten years instead of later, but was otherwise the same in virtually all respects.

5. Since 1994, Michigan's parole laws, policies, practices, and procedures have changed radically for the worse for me. According to the former parole board chair, since 1994 "life means life." I believe that since 1994 there has been almost no distinction between parolable life and mandatory life in Michigan.

6. The above-named people/agencies have applied the new parole laws, policies, practices, and procedures retroactively, to my detriment, and in violation of the due process and *ex post facto* clauses of the state and federal constitutions.

I therefore request that I be reviewed for parole under the parole regime and the parole standards that existed when I was convicted and sentenced.

Sincerely,

  
138927

Date: 5-16-04, 2004

MICHIGAN DEPARTMENT OF CORRECTIONS  
GRIEVANCE APPEAL RECEIPT - STEP II

4835-0978  
CAJ-978 11/94

DATE: 6/14/04

TO: 137927 KINCAID

LOCATION: MBP

*B=2*  
~~8~~

FROM: MBP Grievance Coordinator *Casey Tallio* Casey Tallio

SUBJECT: Receipt of the Grievance Appeal Form

I acknowledge receipt of your Step II grievance appeal, Identifier MBP 04 05 1121 270D,

which was received in this office on 6/10/04 .

Unless you are otherwise notified, you should be provided a Step II response within 15 business days of the date your appeal was received or no later than 7/1/04 . If you have not received a response by this date or agreed to an extension, you may submit your Step III appeal to the Director's office.

MICHIGAN DEPARTMENT OF CORRECTIONS  
**PRISONER/PAROLEE GRIEVANCE APPEAL FORM**

Date Received by Grievance Coordinator  
at Step II: 6-10-04

Grievance Identifier

MBP 04 05 1121 270E

**INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.**

The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: Step II  
MBP by 6/11/04. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
KINCAID	137927	MBP	D-3	1994	6-7-04

**STEP II--Reason for Appeal**

*I am not satisfied with Step one Response  
(SEE ATTACH #3 sheets)*

**STEP II--Response**

It is noted your Step I grievance was rejected as a non grievable issue regarding decisions made by the Parole Board. After reviewing your Step I grievance and subsequent appeal, that rejection is supported.

Date Received by  
Step II Respondent:  
6-10-04

Jerry Hofbauer, Warden

Respondent's Name (Print)

*J. Hofbauer*  
Respondent's Signature

6-18-04  
Date

Date Returned to  
Grievant:  
6-18-04

**STEP III--Reason for Appeal**

*I am not satisfied with Step #1 or Step #2*

6-24-2004

**NOTE: Only a copy of this appeal and the response will be returned to you.**

**STEP III--Director's Response** is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

**DISTRIBUTION:** White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

THIRD STEP GRIEVANCE RESPONSE

Waymon Kincaid, #137927  
MBP-04-05-1121-27d

*B-2*

The Grievant presents an issue which is related to a Parole Board decision. The issue was found not grievable at the local level according to the provisions of Policy Directive/Operating Procedure 03.02.130 (Prisoner/Parolee Grievances).

This investigator has reviewed the record presented with the appeal to Step Three. Upon further review of the documents presented, the record supports the Step One and Step Two responses to the grievance. Additional information has not been presented to demonstrate an error in this determination. This decision is upheld at this level. Therefore, this grievance appeal is denied.

Approval Signature: \_\_\_\_\_

*Jim Armstrong*

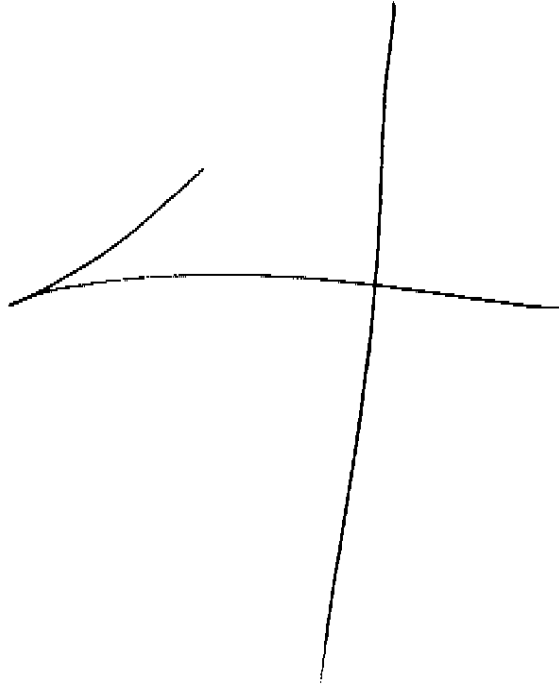
Date: \_\_\_\_\_

*7/13/04*

#6/7-9-04/27d

cc: Warden  
Grievant





MICHIGAN DEPARTMENT OF CORRECTIONS  
PRISONER/PAROLEE GRIEVANCE FORM

7-19-04

SRP 04-07 00778-27d

Date Received at Step I \_\_\_\_\_

Grievance Identifier: \_\_\_\_\_

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
WILLIAM SLEEPER	116539	SRP	800/053	7/13/04	7/15/04

What attempt did you make to resolve this issue prior to writing this grievance? On what date? 5/25/04

If none, explain why.

On June 25, 2004, I wrote the Chairman of the Michigan Parole Board and requested re-consideration of my parole. (See attached Exhibit 1) On this date, I received a letter from the Parole Board stating they would consider State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

My letter in Feb. 2008 during my next review....

PLEASE SEE ATTACHED GRIEVANCE INFORMATION THAT EXPLAINS IN DETAIL WHO AND WHAT I AM GRIEVING.

*William Sleeper*  
Grievant's Signature

RESPONSE (Grievant Interviewed?)  Yes  No If No, give explanation. If resolved, explain resolution.)

Your grievance is being returned to you without being processed for reason that the issue(s) contained in the grievance are non-grievable per policy Per PD-03.02.130  
Prisoner/Parolee Grievances Resolved in accordance by the Parole Board and

Respondent's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Grievant's Name (Print): William Sleeper Working Title: \_\_\_\_\_  
 Reviewer's Name (Print): Susan Kottel Working Title: \_\_\_\_\_  
 Date: 7/19/04

Date Returned to Grievant: <u>7-19-04</u>	If resolved at Step I, Grievant sign here. Resolution must be described above.	Grievant's Signature: _____	Date: _____
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GRIEVANCE, STEP ONE:

Page 1 of 2

This grievance is intended to run against all employees, agents, and agencies of the State of Michigan who have any influence on the composition, laws, policies, practices, and procedures of the Michigan Parole Board, including but not limited to the following individuals and entities:

- A. Governor Jennifer M. Granholm
- B. Attorney General Mike Cox
- C. Patricia Caruso, Director, Michigan Dept. of Corrections.
- D. The Michigan Department of Corrections.
- E. The Michigan Parole Board, and individually its members:

- 1. Chairperson John S. Rubitschun
- 2. Charles Braddeock
- 3. William Slaughter
- 4. Marjorie McNutt
- 5. Marianne Samper
- 6. George Lellis
- 7. Miguel Berrios
- 8. James E. Atterbury
- 9. James J. Quinlan
- 10. Barbara S. Sampson

I, William Slaughter, # 116539, complain that the above-named parties/agencies, by their collective or individual acts and omissions, or by their customs and policies, have violated my constitutional rights under the state and federal constitutions. Specifically, they have applied parole laws, rules, regulations, policies, procedures, and practices retroactively in violation of the due process and ex post facto clauses.

In support of my grievance, I state the following:

- 1. In 1966 I was convicted of a crime and sentenced to life in prison with the possibility of parole, (paroleable life).
- 2. At the time of my conviction and sentencing, a different parole regime existed than exists today.
- 3. At that time paroleable lifers had the right to have a personal parole interview at frequent intervals, to be given reasons for a parole pass-over, to have a parole pass-over treated as a denial of parole for purposes of judicial review, and to appeal such an adverse decision to court. In addition, at that time paroleable lifers were reviewed by the board under the same, or nearly the same, standards for parole as other inmates with long indeterminate (term-of-years) sentences.

4. At the time, many Michigan judges viewed a parolable life sentence as more lenient than a long term-of-years sentence,  
Page two: Step one Grievance:

because parole eligibility began after just ten years instead of later, but was otherwise the same in virtually all respects.

5. Since 1994, Michigan's parole laws, policies, practices, and procedures have changed radically for the worse for me. According to the former parole board chair, since 1994 "life means life." I believe that since 1994 there has been almost no distinction between parolable life and mandatory life in Michigan.

6. The above-named people/agencies have applied the new parole laws, policies, practices, and procedures retroactively, to my detriment, and in violation of the due process and ex post facto clauses of the state and federal constitutions.

I therefore request that I be reviewed for parole under the parole regime and the parole standards that existed when I was convicted and sentenced.

Sincerely,

*William David Sleeper*  
William David Sleeper

Date: July 23, ,2004

Date Received by Grievance Coordinator  
 at Step II: 7/30/04

Grievance Identifier SRP 116539 7-23-04

**INSTRUCTIONS:** THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.  
 The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: \_\_\_\_\_  
 by Warden Lafler 7-30-04. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
<u>Bill Sleeper</u>	<u>116539</u>	<u>SRP</u>	<u>8083</u>	<u>07/23/04</u>	<u>07/30/04</u>

**STEP II--Reason for Appeal**

Step one response was that I am grieving the parole boards decision in my case. At no time have I said or indicated that I am grieving the parole boards "DECISION" in my case, I am however, grieving the parole board, and all parties involved with the "CURRENT PROCEDURE", in which they arrived at that decision, and I continue to do so to step two (?).

*Bill Sleeper 116539 7-23-04*

**STEP II--Response**

See attached response.

Date Received by  
 Step II Respondent:  
7/30/04

B. Lafler, Warden-SRP

Respondent's Signature

07/30/04

Date

Date Returned to  
 Grievant:  
07/30/04

**STEP III--Reason for Appeal**

A "PROCEDURE" can and should be able to be grieved when it so dramatically and negatively effects an individual and I feel the merits of this grievance is valid and stands on its own, and I continue to step 3.

*William D. Sleeper*  
**WILLIAM D. SLEEPER 116539 Aug. 2, 2004**

**NOTE:** Only a copy of this appeal and the response will be returned to you.

**STEP III--Director's Response** is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

**DISTRIBUTION:** White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

Response - Step II Grievance Appeal  
SRF-04-07-00778-27d  
Sleeper #116539

Grievant claims that his constitutional rights have been violated by the State of Michigan and its Officers when they have applied parole laws, rules, regulations, policies, procedures and practices retroactively. Grievant is requesting that he be reviewed for parole under a parole regime and parole standards that existed when he was convicted and sentenced.

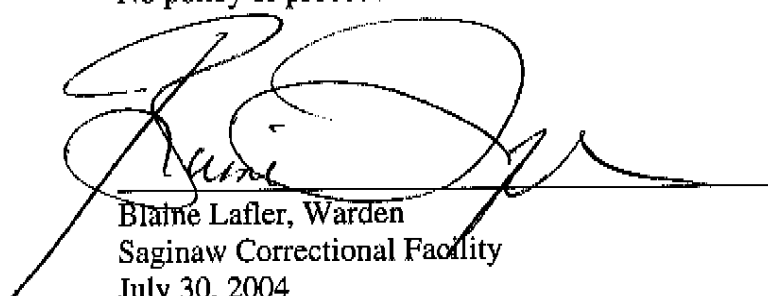
The Grievance Coordinator rejected the grievance for containing issues that are non-grievable, per PD 03.02.130. Decisions of the Parole Board and recommendations made by its hearings officers to grant, rescind, amend or revoke are specifically listed in policy as non-grievable.

Grievant claims on appeal to Step II that he is not grieving the decision, but is grieving the current procedure which was used to arrive at the decision.

The record has been reviewed on appeal.

The Grievance Coordinator acted appropriately in rejecting the grievance. Grievant cannot grieve a Parole Board decision and the grievance procedure has no jurisdiction over how the Parole Board arrives at decisions. Procedures cannot be grieved, per policy, and the changes made within the Parole Board have taken place under legislative enactments, which are also non-grievable as the facility has no control over legislative decrees. No further action is required at this step.

No policy or procedure violations have been shown. The grievance is denied at this step.



Blaine Lafler, Warden  
Saginaw Correctional Facility  
July 30, 2004

Cc: Grievance Coordinator - SRF  
file

THIRD STEP GRIEVANCE RESPONSE

WILLIAM SLEEPER, #116539  
SRF, 04-07-00778-27d

The Grievant presents an issue which alleges that his constitutional rights have been retroactively violated. He is seeking a review for parole under a parole regime and parole standards that existed when he was convicted and sentenced. This issue was non-grievable at the local level in accordance with the provisions of Policy Directive PD03.02.130, titled "Prisoner/Parolee Grievances". There was no documentation to support the Grievant's allegations of staff misconduct. Therefore, the step one and two response is upheld and relief is not warranted at this level.

This investigator has reviewed the record presented with the appeal to step three. The record supports that staff properly responded to this grievance at step two and it is not clear why the step one response was not attached. Additional information has not been presented to demonstrate an error in this determination. This decision is upheld at this level. This grievance appeal is denied.

Approval Signature: \_\_\_\_\_

*Jim Amstrong*

Date: \_\_\_\_\_

*12/22/04*

#J/12-20-04-1

cc: Warden  
Grievant

5



MICHIGAN DEPARTMENT OF CORRECTIONS  
PRISONER/PAROLEE GRIEVANCE FORM

4835-4247 10/94  
CSJ-247A

Date Received at Step I APR 14 2004 Grievance Identifier: ITC10210409370020P

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
Robert Weisenauer	157085	TCF	CA-39	04/03/04	04/03/04

What attempt did you make to resolve this issue prior to writing this grievance? On what date? \_\_\_\_\_  
If none, explain why.

No resolution can be obtained at this level of the process. The issues involved are constitutional in nature, and prior to pursuing these claims in court, the issues must be presented in this grievance and administratively exhausted.

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

This grievance is against all employees, agents, and agencies of the State of Michigan who have any influence on the composition, laws, policies, practices, and procedures of the Michigan Parole Board, including but not limited to the following individuals and entities: Governor Jennifer Granholm; Attorney General Mike Cox; Director Patricia Caruso of the Michigan Department of Corrections, the Michigan Department of Corrections; Michigan Parole Board and individually its members (Chairperson John S. Rubitschun, Charles Braddock, William Slaughter, Marjorie McNutt, Marianne Samper, George Lellis, Miguel Berrios, James Atterbury, James J. Quinlan, and Barbara S. Sampson). I, Robert Weisenauer grieve/complain that the above named parties, by their collective or individual acts and omissions, or by their customs and policies, have violated my constitutional rights under the state and federal constitutions. Specifically, they have applied parole laws, rules, regulations, policies, procedures, and practices retroactively in violation of the due process and ex post facto clauses.

In support of this grievance, I state the following:

1. In 1979 I was convicted of a crime and sentenced to life in prison with the possibility of parole.
2. At the time of my conviction and sentencing a different parole regime existed than exists today.

(Continued on page two)

*Robert Weisenauer*  
Grievant's Signature

RESPONSE (Grievant Interviewed?  Yes  No If No, give explanation. If resolved, explain resolution.)

**REJECTED**  
**SEE ATTACHED STATEMENT**

Respondent's Signature \_\_\_\_\_ Date \_\_\_\_\_ Reviewer's Signature \_\_\_\_\_ Date \_\_\_\_\_

Respondent's Name (Print) \_\_\_\_\_ Working Title \_\_\_\_\_ Reviewer's Name (Print) \_\_\_\_\_ Working Title \_\_\_\_\_

Date Returned to Grievant: 4-14-04 If resolved at Step I, Grievant sign here. Resolution must be described above. Grievant's Signature \_\_\_\_\_ Date \_\_\_\_\_

Weisenauer Grievance - Page Two

Robert Weisenauer      157085      TCF      CA-39      04/03/04      04/03/04

(Continued from page one)

3. At that time parolable lifers had the right to have a personal parole interview at frequent intervals; to be given reasons for a parole pass-over; to have a parole pass-over treated as a denial of parole for purposes of judicial review; and to appeal such an adverse decision to court. In addition, at that time parolable lifers were reviewed by the board under the same, or nearly the same, standards for parole as other inmates with long indeterminate (term-of-years) sentences.

4. At the time, many Michigan judge's viewed a parolable life sentence as more lenient than a long term-of-years sentence, because parole eligibility began after just ten years instead of later, but was otherwise the same in virtually all other respects.

5. Since 1994, Michigan's parole laws, policies, practices, and procedures have changed radically for the worse for me. According to the former parole board chair, since 1994, "life means life." I believe that since 1994 there has been almost no distinction between parolable life and mandatory life in Michigan.

6. The above named people/agencies have applied the new parole laws, policies, practices, and procedures retroactively, to my detriment, and in violation of the due process and ex post facto clauses of the state and federal constitutions.

I therefore request that I be reviewed for parole under the parole regime and the parole standards that existed when I was convicted and sentenced.

*Robert Weisenauer #157085*

ROBERT WEISENAUER #157085

DATE 4/5/04