

**Joint Legislative Committee on Performance
Evaluation and Expenditure Review (PEER)**

Report to
the Mississippi Legislature



A Review of Selected Parole, Restitution, and Timely Release Issues of the Department of Corrections and State Parole Board

The Mississippi Department of Corrections (MDOC) and the State Parole Board both have responsibilities in administering the state's parole system. PEER found that the Parole Board's staff does not avail itself of all of the pertinent reports that Offender Trak, MDOC's offender management system, can generate to determine which offenders are eligible for parole. Thus some offenders do not receive timely parole hearings, which could result in additional costs to the state of holding such persons in custody beyond the time at which they could potentially have been released on parole.

The MDOC Restitution Center Program provides an alternative to incarceration for minimal risk offenders by facilitating their transition to the community. The program is designed to provide a structured environment in which services and opportunities are provided that encourage residents to take responsibility for their actions and work for businesses in the community to pay for their personal expenses and for court-ordered costs, fees, and restitution. However, according to MDOC policy and staff, victims who are owed court-ordered restitution have last priority in receiving recompense from a resident of a restitution center because MDOC's practice is to disburse funds from residents' accounts to their personal living expenses first, then to court-ordered costs and fees. Only after a resident amasses the total amount of court-ordered restitution that is owed in his or her account or leaves the restitution center does the victim receive restitution.

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September 9, 2014

Honorable Phil Bryant, Governor
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Members of the Mississippi State Legislature

On September 9, 2014, the PEER Committee authorized release of the report entitled **A Review of Selected Parole, Restitution, and Timely Release Issues of the Department of Corrections and State Parole Board.**

A handwritten signature in cursive script that reads "Nancy Adams Collins".

Senator Nancy Adams Collins, Chair

This report does not recommend increased funding or additional staff.

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A Review of Selected Parole, Restitution, and Timely Release Issues of the Department of Corrections and State Parole Board

Executive Summary

Introduction

The PEER Committee received a request from a legislator who wanted to know whether timely parole hearings are provided for offenders who are eligible for parole and whether offenders' court-ordered restitution payments are remitted in a timely manner.

Shortly thereafter, the Committee received a request from another legislator who wanted to know whether offenders are released from incarceration in accordance with their discharge dates and what costs the state incurs if offenders are incarcerated beyond their discharge dates.

PEER sought to answer the following questions in this review:

- Do the State Parole Board and the Department of Corrections ensure that offenders who are eligible for parole receive timely parole hearings?
- Does the Department of Corrections release offenders in a timely manner and in accordance with state law and departmental policy?
- Does the Department of Corrections ensure that victims who are owed court-ordered restitution receive timely payments?

Conclusions

Do the State Parole Board and the Department of Corrections ensure that offenders who are eligible for parole receive timely parole hearings?

Current procedures utilized by the two agencies that share responsibility for developing the monthly parole docket--the Parole Board and the Department of Corrections--do not ensure that all offenders who are eligible for parole receive timely hearings before the Parole Board. This potentially could result in additional costs to the state of holding such persons in custody beyond the time at which they could have been released on parole.

The Parole Board staff compiles the monthly docket for parole hearings from two reports that are generated by Offender Trak, MDOC's offender management system. The monthly docket may not include the names of some offenders who are parole-eligible because some offenders may be credited with earned time or time served prior to conviction after the Offender Trak reports are generated on the first working day of the month. To help correct this problem, the Parole Board staff maintains a supplementary document of the names of parole-eligible offenders that is called the "add-on" list and moves names from that list to the monthly docket. However, the names of offenders on the add-on list are not added to the top of the next month's docket. As a result, some offenders do not receive timely parole hearings.

From four randomly selected dates in 2014, PEER identified seventeen offenders who became eligible for parole after Parole Board staff had generated the docket for that month. These offenders did not receive a hearing during the month of their eligibility. Also, as of July 2014, these seventeen offenders had not had the opportunity to appear in a hearing before the Parole Board and may not appear on the board's docket for several months due to the number of offenders that predate them.

If eleven of the seventeen parole-eligible offenders (64%) in PEER's random sample had received timely parole hearings and had been granted parole just one month earlier, MDOC could have avoided \$5,263 in unnecessary incarceration costs. Regarding the backlog of 1,250 parole-eligible offenders who have not yet had parole hearings,³ PEER estimates that for each month that MDOC

³Between January 2013 and April 2014, the Parole Board granted parole to 64% of the offenders who appeared before it in hearings. PEER used this percentage to estimate costs of holding parole-eligible offenders beyond their discharge date.

⁴According to MDOC, the number of offenders that appeared on the Parole Board's add-on list in May (1,250) might not reflect the number of offenders that, based on a long-term historical analysis, could be expected to appear on the list. MDOC asserts that a large number of offenders became parole-eligible and were thus included in the board's add-on list as a result of an Attorney

houses 800 (64%) of these offenders beyond the date on which they were placed on the Parole Board staff's add-on list, the department incurs \$382,800 in unnecessary incarceration costs.

Does the Department of Corrections release offenders in a timely manner and in accordance with state law and departmental policy?

MDOC calculates a tentative discharge date²² for each offender that may create an expectation of a certain release date for the offender and his or her family, but some offenders may be incarcerated beyond their tentative discharge dates. This could occur due to legitimate reasons such as the amount of time needed to confirm release eligibility, the lack of an approved residence address, a rule violation report issued to the offender, or the offender's failure to complete court-ordered programs (such as alcohol and drug counseling).

The MDOC Records Division calculates offenders' time to be served based on multiple factors (e.g., type of crime committed, length of sentence). State law and MDOC policies provide for offenders' time to be reduced with good behavior and/or participation in certain programs (e.g., the trusty program, alcohol and drug counseling). As a result, MDOC calculates multiple discharge dates for each offender, all of which--except the maximum discharge date--serve only as estimates of the date by which an offender may be discharged if certain administrative and inmate eligibility conditions are met.

In PEER's sample, every offender with a maximum or tentative discharge date was released on that date, but not all offenders were released by their ERS or parole eligibility dates.²³ Although MDOC has reasonable justification (e. g.,

General's opinion issued in August 23, 2013, that provided that offenders who were convicted of non-residential burglary or burglary of an unoccupied dwelling were eligible for parole.

²²The *tentative discharge date* is the maximum release date less any meritorious earned time, trusty earned time, or executive time.

²³*Earned release supervision* (ERS) is an early release from incarceration component that is also known to be a result of the Truth-in-Sentencing law (MISS. CODE ANN. Section 47-5-138 [1972]). Participation is contingent on good behavior and work ethic. ERS is the maximum release date less 15% of earned time allowance and any meritorious earned time (MET), trusty earned time (TET), or executive time and is only applicable to some offenders (CODE Section 47-5-138). The *parole eligibility date* is the date on which an inmate becomes eligible for release by parole, which is generally 25% of the total sentence less any meritorious earned time or trusty earned time (CODE Section 47-7-3). The date is determined by the laws in effect on the date the offense was committed, offender's age upon first commitment, number of prior incarcerations, prior probation or parole failures, the severity and the violence of the offense committed, employment history, whether the offender served in the United States Armed Forces and has an honorable discharge, and other criteria deemed appropriate by the State Parole Board.

public safety) to hold some offenders beyond their parole and ERS dates, some offenders in the sample were not released because they were not granted parole hearings during the month that they became eligible and thus were held in MDOC custody beyond their parole eligibility dates. PEER found no instance in the sample wherein MDOC policy or the legal rights of inmates were violated regarding the date of discharge.

Does the Department of Corrections ensure that victims who are owed court-ordered restitution receive timely payments?

According to MDOC policy and staff, victims who are owed court-ordered restitution have last priority in receiving recompense from a resident of a restitution center because MDOC's practice is to disburse funds from residents' accounts to their personal living expenses first, then to court-ordered costs and fees. Only after a resident amasses the total amount of court-ordered restitution that is owed in his or her account or leaves the restitution center does the victim receive restitution.

The MDOC Restitution Center Program provides an alternative to incarceration for minimal risk offenders by facilitating their transition to the community. The program is designed to provide a structured environment in which services and opportunities are provided that encourage residents to take responsibility for their actions and work for businesses in the community to pay for their personal expenses and for court-ordered costs, fees, and restitution.

Restitution centers are responsible for collecting and verifying residents' wages and monies weekly. Restitution centers request all disbursements, including court-ordered restitution, from residents' accounts from the Central Accounting Office. That office disburses restitution payments to the circuit clerk's office of the county wherein the offender was convicted. Generally, the Central Accounting Office applies funds to residents' court costs first, followed by fees and court-ordered restitution.

As a direct result of MDOC policy, crime victims have last priority in receiving court-ordered restitution because the costs of a resident's personal responsibilities must be paid first, as well as any court-ordered costs and fees. Only after a resident amasses the total amount of court-ordered restitution that he owes or leaves the restitution center does the victim receive any restitution. As a result, a victim could theoretically wait up to five years to receive all or part of the restitution owed.

Public policy favors imposing restitution as part of a sentence to require an offender to compensate the victim for damages and injury. Thus, the state should ensure that the victim is recompensed fully and prior to any other responsibilities of the offender. Full and primary restitution to the victim is an appropriate outcome, as it is consistent with the penological and rehabilitational aims of restitution.

MDOC's policy regarding the management of the department's restitution program is inconsistent with this public policy rationale, because the program gives priority to an offender's personal responsibility issues--e. g., room and board at the restitution center--ahead of an offender's responsibility to pay court-ordered restitution to compensate victims of their crimes.

Recommendations

1. Because offenders' time is entered into and calculated by Offender Trak frequently, the Parole Board should periodically pull the interim report during the month that a docket is generated in order to determine all offenders who are eligible for parole in that month.
2. MDOC staff should ensure that all offenders' information is entered accurately into Offender Trak to ensure that offenders are incarcerated in accordance with sentencing orders and legal mandates and are not released prematurely.
3. MDOC's MIS should modify the three Offender Trak reports (i. e., the future, past, and interim reports) to include a search field that would enable the board's staff to segregate offenders who are parole-eligible from those that have been sentenced to retained jurisdiction.

MIS and MDOC should continue to meet and discuss other methods of using Offender Trak effectively and efficiently in order to identify all parole-eligible offenders for a particular month.

4. The Chair of the State Parole Board should evaluate the board's current personnel capabilities and determine whether additional staffing and/or resources are necessary to address the backlog of offenders with past parole eligibility dates who have not had a hearing before the board and who not yet been added to the board's docket.

Because the allocation of the Parole Board's resources lies within MDOC's budget, if the Chair of the Parole Board determines that he needs additional resources to address the backlog, he should work with the Commissioner of Corrections to ensure that adequate resources and funding are requested and provided to the board.

5. Considering the public policy rationale behind restitution (i. e., financial compensation to crime victims) and potential constitutional challenges that might be raised in imposing indebtedness on residents of restitution centers who remain wards of the state in order to generate revenue, MDOC should modify its

practices and develop a formal written policy that limits the amount of time (e. g., to one month) that a resident who is unable to secure a job is financially responsible for unpaid payments for room and board.

6. MDOC should track the amount of court-ordered restitution that is collected by residents of the restitution centers and the amount remitted by the MDOC Central Accounting Office to ensure accountability in the collection and distribution of residents' funds to recompense victims of crimes, as well as to identify general fund information that may be relevant to third-party reviewers such as the PEER Committee.

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A Review of Selected Parole, Restitution, and Timely Release Issues of the Department of Corrections and State Parole Board

Introduction

Authority

The PEER Committee reviewed selected parole, restitution, and timely release issues of the Department of Corrections and State Parole Board.

PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972). The Committee acted in accordance with MISS. CODE ANN. Section 5-3-51 et seq.

Problem Statement

The PEER Committee received a request from a legislator who wanted to know whether timely parole hearings are provided for offenders who are eligible for parole and whether offenders' court-ordered restitution payments are remitted in a timely manner.

Shortly thereafter, the Committee received a request from another legislator who wanted to know whether offenders are released from incarceration in accordance with their discharge dates and what costs the state incurs if offenders are incarcerated beyond their discharge dates.

Scope and Purpose

PEER undertook this review to determine whether the policies, procedures, and practices of the State Parole Board and Department of Corrections (MDOC) related to the discharge of offenders are causing offenders to be kept in prison longer than necessary, resulting in additional costs to the state and depriving offenders of their freedom after completing their sentences.

PEER also wanted to determine whether MDOC's accountability measures ensure that offenders are given credit for earning the amount of restitution imposed by a court and whether restitution is paid to crime victims in a timely manner.

To accomplish the above, PEER sought to answer the following specific questions in this review:

- Do the State Parole Board and the Department of Corrections ensure that offenders who are eligible for parole receive timely parole hearings?
- Does the Department of Corrections release offenders in a timely manner and in accordance with state law and departmental policy?
- Does the Department of Corrections ensure that victims who are owed court-ordered restitution receive timely payments?

Method

During the course of this review, PEER:

- interviewed staff and reviewed records of the Department of Corrections and the State Parole Board, Leflore County Restitution Center, Flowood Restitution Center, Pascagoula Restitution Center, and the Hinds County Restitution Center;
- reviewed applicable state law;
- reviewed policies and procedures of the Department of Corrections and the State Parole Board;
- randomly sampled records of offenders located in correction facilities statewide to determine whether they had been released according to their respective discharge dates; and,
- sampled the sentencing orders and MDOC accounting records of residents who were discharged from restitution centers statewide during April, May, and June 2014 to determine whether they paid their court-ordered restitution upon their discharge.

Background

This chapter will address the following questions:

- What is the purpose of Mississippi's parole system?
- What are the responsibilities of the State Parole Board?
- What is *restitution*?

What is the purpose of Mississippi's parole system?

The purpose of the state's parole system is to transition offenders from incarceration to the community, under correctional and judicial supervision, in order to re-integrate offenders into society as law-abiding and productive citizens.

Mississippi, like many other states, has made conditional release programs part of its criminal justice system. Parole is a transition between incarceration and return to the community. It is a form of restricted release from incarceration that allows some offenders to serve the balance of their sentence outside of a correctional institution under the supervision and assistance of a parole officer and the jurisdiction of a circuit or county judge.

The majority of incarcerated offenders, except those sentenced to serve a term of life, are sentenced to a definite term (i. e., the term of imprisonment is set for a specific period), the completion of which leads to release or discharge from a correctional institution. However, under parole, offenders are not completely free without supervision. "The concept of parole," according to the State Parole Board's policy, "is based on the belief that in the case of some offenders there should be gradual, controlled and supported release to help them to re-integrate into society as law abiding citizens and help them to contribute to a safer society."

Once an offender is paroled, he or she is required to comply with certain conditions that are intended to ensure transition to the community as a law-abiding citizen. Some of the conditions that apply to offenders released on parole include reporting to a field officer, avoiding illegal drugs and excessive use of alcohol, and avoiding firearms or other deadly weapons. Failure of an offender to comply with these conditions may result in revocation of parole and require that he or she serve more of the original sentence.

What are the responsibilities of the State Parole Board?

The Parole Board has exclusive statutory authority to grant, refuse, or revoke parole of eligible offenders and considers various factors to determine parole eligibility (e. g., an inmate's criminal history).

The Probation and Parole Law, codified as MISS. CODE ANN. Section 47-7-1 et seq. (1972), establishes the Mississippi State Parole Board. The board is composed of five members who serve terms that are set at the will and pleasure of the Governor. The members of the board are appointed by the Governor and are confirmed by the Senate. Board members must possess at least a bachelor's degree or a high school diploma and four years' work experience. Each board member is required to devote full time to the duties of the board and not engage in any other business, profession, or hold public office.

The Parole Board reviews the files of parole-eligible offenders, attends victim/advocate meetings, and holds hearings several times each week. Between January 2013 and April 2014, the board presided over a docket of approximately 662 offenders each month.

Offenders' eligibility for parole is not guaranteed. CODE Section 47-7-5 (3) grants the Parole Board the exclusive authority to grant, refuse, or revoke the parole of offenders convicted of a felony, sentenced to the custody of MDOC, and deemed eligible for parole under state law. The board considers various factors, such as an inmate's criminal history, crime, incarceration date, and sentence, to determine whether an inmate is eligible for parole consideration after serving a portion of his or her sentence. (See the Appendix, page 33, for a list of conditions established by state law for parole.) CODE Section 47-7-3 (3) authorizes the Parole Board to establish a method of determining a tentative parole hearing date for each eligible offender.

What is *restitution*?

***Restitution* is payment of damages by a convicted offender to his or her crime victim.**

MISS. CODE ANN. Section 99-37-1 (1972) defines restitution as "full, partial or nominal payment of pecuniary damages to a victim." CODE Section 99-37-3 limits a victim's financial recovery from pecuniary damages that result after their perpetrator is convicted of a crime. Section 99-37-5 provides that a court may order that restitution be made immediately, within a specified period of time, or in installments. In imposing restitution, Section 99-37-3 requires a court to consider:

- the financial resources of the defendant and the burden that payment of restitution will impose in consideration of the other obligations of the defendant;

- the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; and,
- the rehabilitative effect on the defendant of the payment of restitution and the method of payment.

Although state law establishes an offender's obligation to pay restitution, it does not provide a guarantee of recompense of court-ordered restitution to victims while a resident resides in a restitution center. CODE Section 99-37-17 provides a civil remedy for victims to pursue restitution and Section 99-37-11 provides for courts to find an offender in contempt if he defaults on restitution payments. However, courts also have discretion to give the offender additional time for payment, reduce the amount owed, or revoke the fine or order of restitution or the unpaid portion if it is found that a default in the payment of restitution is not contempt.

Do the State Parole Board and the Department of Corrections ensure that offenders who are eligible for parole receive timely parole hearings?

Current procedures utilized by the two agencies that share responsibility for developing the monthly parole docket--the Parole Board and the Department of Corrections--do not ensure that all offenders who are eligible for parole receive timely hearings before the Parole Board. This potentially could result in additional costs to the state of holding such persons in custody beyond the time at which they could have been released on parole.

This chapter will address the following:

- How do the State Parole Board and the Department of Corrections identify offenders who are eligible for parole?
- Why are the Parole Board and MDOC encountering difficulty in identifying all offenders who are eligible for parole?
- What is the effect of the Department of Corrections' and State Parole Board's difficulty in determining all offenders who are eligible for parole?

How do the State Parole Board and the Department of Corrections identify offenders who are eligible for parole?

The Parole Board staff compiles the monthly docket for parole hearings from two reports that are generated by Offender Trak, MDOC's offender management system.

The support staff for the Parole Board compiles a monthly docket of parole-eligible offenders statewide who should appear at parole hearings before the board. The Department of Corrections' Management Information Systems (MIS) provides end-user support for MDOC's offender management system, known as Offender Trak.

Offender Trak provides a single, centralized database of offender information, activities, and operations that is used by corrections officials throughout the state to manage the incarceration and supervision of all offenders, including parolees. Offender Trak compiles offender information that has been entered into the system into easily accessible reports for review by interested parties that have access to the system, such as the Parole Board.

Currently, the Parole Board staff relies on the following reports that are available from Offender Trak to compile the docket of parole-eligible offenders for a given month:

- a report that identifies all incarcerated offenders, by correctional facility, who have a parole eligibility date¹ or parole set-off date² within the calendar month that is three months in advance of the date that the report is pulled from Offender Trak (i. e., hereafter referred to as “future report”); and,
- a report that identifies all incarcerated offenders who have a parole eligibility date or parole set-off date in the past but who have not yet had a parole hearing as of the date that the report is pulled from Offender Trak (i. e., hereafter referred to as “past report”).

The docket includes a list of the names of offenders who have a parole eligibility date that is three months in advance. It is generated on the first working day of each month. For example, if the Parole Board compiles a docket on May 1, 2014, offenders listed on the docket will have a parole eligibility date of August 2014.

The Parole Board holds parole hearings the following month after the docket is generated. During that month, parole specialists undergo a labor-intensive process that involves checking information in Offender Trak and re-verifying that every offender on the docket is still eligible for parole--e. g., confirming that the offender is still incarcerated or has not received a rule violation report (RVR) for violating written or posted rules of the Department of Corrections. Also, parole specialists compile information into offenders’ files that the board relies on in deciding whether to grant, deny, or revoke parole.

¹The *parole eligibility date* is the date on which an inmate becomes eligible for release by parole, which is generally 25% of the total sentence less any meritorious earned time or trusty earned time (CODE Section 47-7-3). The date is determined by the laws in effect on the date the offense was committed, offender’s age upon first commitment, number of prior incarcerations, prior probation or parole failures, the severity and the violence of the offense committed, employment history, whether the offender served in the United States Armed Forces and has an honorable discharge, and other criteria deemed appropriate by the State Parole Board. The board has complete discretion in parole decisions.

²The Parole Board may decide to deny parole but set a date to review the offender for parole at some time in the future, generally one year later.

Why are the Parole Board and MDOC encountering difficulty in identifying all offenders who are eligible for parole?

The monthly parole docket may not include the names of some offenders who are parole-eligible because the Parole Board does not avail itself of all of the pertinent reports that the Offender Trak system can generate to determine which offenders are eligible for parole. As a result, some offenders do not receive timely parole hearings.

Why Names of Some Parole-Eligible Offenders May Not Appear on the Monthly Parole Docket

According to Parole Board staff, the monthly parole docket may not include the names of some offenders who are eligible for parole for a particular month because those offenders were credited with earned time or time served prior to conviction after the Offender Trak reports were generated on the first working day of the month. To help correct this problem, the Parole Board staff maintains a supplementary document of the names of parole-eligible offenders that is called the "add-on" list and moves names from that list to the monthly docket. However, the names of offenders on the add-on list are not added to the top of the next month's docket.

When the Parole Board staff generates the parole docket on the first working date of each month, the names of offenders whose parole eligibility dates are moved forward after that date because of the accumulation of earned time³ are not included in the future or past reports on Offender Trak and thus are missing from the board's docket for that particular month. This is because of the method that the staff uses to generate the docket (see page 7).

For example, the Parole Board compiles a docket on May 1, 2014. Offender A has a parole eligibility date of September 2014. Under normal circumstances, Offender A's name would

³An offender's sentence may be reduced due to his or her earning of meritorious earned time, trusty earned time, or pre-sentence time served. *Meritorious earned time* (MET) is a discretionary grant of earned time that may be awarded to eligible offenders at a maximum rate of ten days per month for successful participation in approved educational, vocational, religious, and work programs. Inmates may not earn both MET and trusty time for the same program. Offenders serving habitual or mandatory sentences are not eligible for MET (CODE Section 47-5-142). *Trusty Earned Time* (TET) is a reduction in sentence that may be granted for successful participation in selected work and educational programs in addition to any other administrative reduction in sentence to an offender in trusty status. From and after April 28, 2004, a trusty earned time allowance of thirty days' reduction of sentence may be granted for each thirty days of participation in an approved program while in trusty status (CODE Section 47-5-138.1). *Pre-sentence time* is any jail time that an offender served prior to conviction that will offset his/her sentence. For example, if an offender served one year prior to a conviction for burglary whereby he was sentenced to a term of five years, the offender's five-year sentence would be reduced to four years as a result of the year of pre-sentencing time (CODE Section 99-19-23).

not appear on the May docket, because the docket only lists the names of offenders with a parole eligibility date of August 2014. Offender A earned MET for work detail participation during the month of April, which moved his parole eligibility date forward to August 2014. However, Offender A's MET was not entered and/or recalculated in Offender Trak until May 3 and, as a result, neither the future nor past reports included the name of Offender A with a parole eligibility date of August 2014. As a result, Offender A's name is not included on the board's May 2014 docket.

The Parole Board staff primarily becomes aware of the names of offenders who have passed their eligibility dates but are not listed on the parole docket from contacts by offenders' family members, MDOC case managers, or the MDOC Records Department. Such offenders' names are added to the docket after the Parole Board staff verifies that they are eligible for parole.

Because of problems with identifying parole-eligible offenders who are credited with earned or pre-sentence time after a month's Offender Trak reports are generated on that month's first working day, the Parole Board staff maintains a supplementary document of the names of parole-eligible offenders called the "add-on" list. Referring to the example above, because Offender A's name was not included on the board's May 2014 docket, his or her name would be placed on the add-on list and would be moved to the docket at a later date. As of May 2014, the names of approximately 1,250 offenders appeared on the Parole Board's add-on list.

According to MDOC, the number of offenders who appeared on the Parole Board's add-on list in May might not reflect the number of offenders who, based on a long-term historical analysis, could be expected to appear on the list. MDOC asserts that a large number of offenders became parole-eligible and were thus included in the board's add-on list as a result of an Attorney General's opinion issued in August 23, 2013, that provided that offenders who were convicted of non-residential burglary or burglary of an unoccupied dwelling were eligible for parole.

PEER notes that offenders' names on the add-on list are *not* moved to the top of the next month's docket. The names on the add-on list do not appear in chronological order of the date of parole eligibility, but are listed in the order in which the Parole Board staff became aware of their eligibility. Thus, each month, offenders who have just recently become parole-eligible might have a higher probability of receiving a hearing than some offenders who have been eligible for parole for several months but who were not initially identified through Offender Trak due to revisions in their parole-eligibility dates later in the month during which the docket was generated.

The Parole Board Staff Was Unaware of an Additional Offender Trak Report that Could Be Generated

The Parole Board does not utilize Offender Trak effectively because the board does not avail itself of all reports that the system can generate that are pertinent to determine which offenders are eligible for parole. As a result, the Parole Board does not include the names of all offenders who are eligible for parole in its initial docket, thus resulting in some offenders not receiving timely parole hearings. Other factors such as retained jurisdiction may also affect the timely identification of parole-eligible offenders.

Although unknown to Parole Board staff who generate the parole docket until PEER commenced field work for this project, Offender Trak also generates a third report (i. e., hereafter referred to as the “interim report”) that identifies incarcerated offenders who are eligible for parole, by correctional facility, within prescribed date parameters. Because offenders’ time is entered and recalculated by Offender Trak frequently, the Parole Board could utilize the interim report’s date parameters throughout the month to determine whether an offender who has accumulated earned time or received credit for pre-sentence time should be included in that month’s parole docket.

Referring to the example beginning on page 8, if the Parole Board staff had periodically checked the interim report that was available in Offender Trak throughout the month, the Parole Board could have identified Offender A and other offenders who might have a parole eligibility date for August 2014 and could have possibly included their names on the May 2014 docket of parole-eligible offenders.

During July 2014, PEER staff met with staff from the Parole Board and MDOC’s MIS to discuss how reports generated by Offender Trak could be used to identify all parole-eligible offenders for a particular month. During the meeting, the Parole Board staff acknowledged that although the interim report, in tandem with the future and past reports, would help to identify a larger population of parole-eligible offenders for the initial docket, using all three reports still might not address all issues that hinder the Parole Board staff’s ability to identify parole-eligible offenders in a timely manner.

For example, at present, the Offender Trak reports identify all offenders with a parole eligibility date three months in advance, including offenders for whom a court has retained jurisdiction per their actual sentence term, as being parole-eligible.⁴ Although offenders ordered to retained jurisdiction have a parole eligibility date, these offenders cannot appear before the Parole Board until the expiration of their year of retained jurisdiction. Offender Trak cannot presently distinguish offenders with retained jurisdiction from other offenders. Thus, Parole Board staff must manually verify all

⁴Retained jurisdiction is a sentencing alternative ordered by a court that requires the offender, after a term of one year of programming and evaluation, to return before the sentencing judge for final adjudication.

offenders identified as parole-eligible each month, then exclude offenders with retained jurisdiction status from the docket.

At PEER staff's meeting with staff from the Parole Board and MIS, MIS staff noted that the three reports could also be modified to exclude offenders placed on retained jurisdiction. This would eliminate an unnecessary step for Parole Board staff, which would no longer have to attempt to verify parole eligibility for offenders who could not yet appear before the Parole Board due to their court orders.

What is the effect of the Department of Corrections' and State Parole Board's difficulty in determining all offenders who are eligible for parole?

If eleven of the seventeen parole-eligible offenders (64%)⁵ in PEER's random sample had received timely parole hearings and had been granted parole just one month earlier, MDOC could have avoided \$5,263 in unnecessary incarceration costs. Regarding the backlog of 1,250 parole-eligible offenders who have not yet had parole hearings, PEER estimates that for each month that MDOC houses 800 (64%) of these offenders beyond the date on which they were placed on the Parole Board staff's add-on list, the department incurs \$382,800 in unnecessary incarceration costs.

Results of PEER's Sample of Parole-Eligible Offenders

From four randomly selected dates in 2014, PEER identified seventeen offenders who became eligible for parole after Parole Board staff generated the docket for that month. These offenders did not receive a hearing during the month of their eligibility. Also, as of July 2014, these seventeen offenders had not had the opportunity to appear in a hearing before the Parole Board and may not appear on the board's docket for several months due to the number of offenders that predate them.

PEER randomly selected four dates in 2014 (April 18, May 14, June 2, and June 20) and used Offender Trak to identify offenders with tentative discharge,⁶ ERS (see footnote on page 15), or parole eligibility dates that corresponded to any of the four randomly selected dates to determine whether the offenders were actually released on that date. If an offender was not released, PEER interviewed MDOC and Parole Board staff to determine why the offender was not released.

PEER identified fifty-seven offenders with a parole eligibility date that corresponded to one of the four selected dates. Of

⁵Between January 2013 and April 2014, the Parole Board granted parole to 64% of the offenders who appeared before it in hearings. PEER used this percentage to estimate costs of holding parole-eligible offenders beyond their discharge date.

⁶The *tentative discharge date* is the maximum release date less any meritorious earned time, trusty earned time, or executive time.

these fifty-seven offenders, seventeen became parole-eligible after Parole Board staff generated the docket for the month in which they became eligible. As a result, these offenders did not receive hearings for the month of their eligibility, but were subsequently added to the Parole Board's add-on list (see page 9).

An offender's parole eligibility date is not a guaranteed date of discharge, but is an *estimated* date by which an offender will be eligible for parole, because parole-eligible offenders are required to fulfill certain conditions prior to release. These conditions include securing a post-release address to be approved by an MDOC field officer and, in some instances, completing certain programs, such as alcohol and drug counseling. Also, MDOC and the Parole Board staff⁷ must also fulfill certain duties--such as notifying victims of an offender's pending release--that are mandated by law and MDOC policy prior to releasing offenders on parole. These administrative duties require time to fulfill and, depending on the staff's workload, could delay an offender's release beyond his or her parole eligibility date.

The seventeen offenders identified in PEER's sample not only remained in custody beyond their parole eligibility dates, but also, as of July 2014, had not had the opportunity to appear in a hearing before the Parole Board. The Parole Board's staff may not be able to add the names of these seventeen offenders to the parole docket for several months due to the number of offenders that predate them (1,250 as of May 2014) on the add-on list (see page 9).

Estimated Monthly Costs of Incarcerating Parole-Eligible Offenders Who Have Not Had Timely Hearings

Between January 2013 and April 2014, the Parole Board granted parole to 64% of the offenders who appeared before it in hearings. In theory, if the seventeen offenders in PEER's sample had appeared before the board in the first month in which they were parole-eligible, eleven of them (64% of seventeen) would have been granted parole. PEER estimates that by housing eleven offenders for one month beyond the date at which they were parole-eligible, MDOC incurred \$5,263 in unnecessary costs.

To provide perspective on the potential additional costs that the Department of Corrections incurs by incarcerating parole-eligible offenders beyond their parole eligibility date, PEER estimated costs based on a calculation of the variable cost per inmate day⁸ for a model correctional facility based on the

⁷The Parole Board's staff, in tandem with MDOC staff, is only responsible for the discharge of offenders released on parole.

⁸PEER used variable costs, as opposed to actual costs, in order to provide a conservative estimate of an actual cost per inmate day (\$15.95). Variable costs included food, medical and other costs, which include facility management and maintenance; clothing, bedding and supplies; travel costs; vehicle and other equipment costs; and employee training, uniforms and supplies.

report *Mississippi Department of Corrections' FY 2012 Cost Per Inmate Day* (PEER Report #565).⁹

PEER notes that the cost-based model used as the basis of the cost per inmate day calculation in PEER Report #565 applies only to MDOC's Walnut Grove Youth Correctional Facility; however, the model is not materially different from models that may be constructed for MDOC facilities statewide.

Keeping in mind that the delays in scheduling parole hearings for eligible offenders could result from parole-eligible offenders meeting the conditions of parole or the fulfillment of administrative duties by MDOC and the Parole Board, for illustrative purposes, PEER assumed that the seventeen offenders from the sample would be added to the board's docket on the subsequent month after they became eligible for parole, thus only remaining incarcerated for one month longer than if they had been added to the docket when they became eligible for parole.

According to the Parole Board, between January 2013 and April 2014, the board granted parole to 64% of offenders. In theory, if the seventeen offenders in PEER's sample had appeared before the board, eleven of them (64% of seventeen) would be granted parole. MDOC would incur \$175.45 per day to incarcerate these eleven offenders, or approximately \$5,263 for one month.

Estimated Monthly Costs of Incarcerating the Backlog of Parole-Eligible Offenders Who Have Not Had Timely Hearings

In theory, if the 1,250 offenders that have not been added to the docket via the add-on list (i. e., the "backlog") had appeared before the board in the first month after being placed on Parole Board staff's add-on list, 800 of them (64%) would have been granted parole. PEER estimates that by housing 800 offenders for one month beyond the date at which they were placed on the Parole Board staff's add-on list, MDOC incurred \$382,800 in unnecessary costs.

As stated previously, as of May 2014, the names of approximately 1,250 offenders appeared on the Parole Board staff's add-on list. These 1,250 offenders (i. e., the "backlog") have past parole eligibility dates, have not had hearings before the Parole Board, and have not been placed on the board's docket.

To provide perspective on the potential additional costs that the Department of Corrections incurs by incarcerating this backlog of offenders beyond their parole eligibility dates, PEER again estimated costs based on a calculation of the variable cost per inmate day for a model correctional facility based on the report *Mississippi Department of Corrections' FY 2012 Cost Per Inmate Day* (PEER Report #565). PEER assumed that the

⁹PEER calculated a variable cost per inmate day based on the most recent official cost per inmate day as reported in December 2012.

1,250 offenders on the Parole Board staff's list would be added to the board's docket via the "add-on" list in the subsequent month, thus only remaining incarcerated for a month longer than if they had been added to the docket and had been paroled.

In theory, if the 1,250 offenders had been added to the docket via the "add-on" list and appeared before the board, 800 of them (64%) would have been granted parole. Thus MDOC incurs \$12,760 per day to incarcerate these 800 offenders, or approximately \$382,800 per month.¹⁰

¹⁰This savings amount is derived from an analysis utilizing the number of parole-eligible inmates in the system at a particular time. PEER notes that legal anomalies could have caused the number to be this large and future numbers may be lower. PEER would also suggest that the department should nonetheless pursue any potential savings derived from improvement in its processes for docketing parole eligible inmates.

Does the Department of Corrections release offenders in a timely manner and in accordance with state law and departmental policy?

MDOC calculates a tentative discharge date for each offender that may create an expectation of a certain release date for the offender and his or her family, but some offenders may be incarcerated beyond their tentative discharge dates. This could occur due to legitimate reasons such as the amount of time needed to confirm release eligibility, the lack of an approved residence address, a rule violation report issued to the offender, or the offender's failure to complete court-ordered programs (such as alcohol and drug counseling).

This chapter will address the following:

- How does MDOC calculate an offender's sentence and what dates of discharge are calculated for an offender?
- Does MDOC fail to release offenders in a timely manner and if so, does the department have reasonable justification?

How does MDOC calculate an offender's sentence and what dates of discharge are calculated for an offender?

The MDOC Records Division calculates offenders' time to be served based on multiple factors (e. g., type of crime committed, length of sentence). State law and MDOC policies provide for offenders' time to be reduced with good behavior and/or participation in certain programs (e. g., the trusty program, alcohol and drug counseling). As a result, MDOC calculates multiple discharge dates for each offender, all of which--except the maximum discharge date--serve only as estimates of the date by which an offender may be discharged if certain administrative and inmate eligibility conditions are met.

State law and MDOC policies allow offenders to reduce their sentences with good behavior and/or participation in certain programs (e. g., the trusty program, alcohol and drug counseling). MDOC calculates the following discharge dates for each offender:

- a maximum discharge date;
- a tentative discharge date;
- an Earned Release Supervision (ERS) date;¹¹ and,

¹¹*Earned release supervision* (ERS) is an early release from incarceration component that is also known to be a result of the Truth-in-Sentencing Law (MISS. CODE ANN. Section 47-5-138 [1972]). Participation is contingent on good behavior and work ethic. ERS is the maximum release date less 15% of earned time allowance and any meritorious earned time (MET), trusty earned time (TET), or executive time and is only applicable to some offenders (CODE Section 47-5-138).

- a parole eligibility date.

The public often may have misconceptions about the relationship between the abovementioned dates and an offender's sentence. The *maximum discharge date* is an absolute date whereby MDOC must release the offender from custody in accordance with state and federal constitutional guarantees of due process. However, *tentative discharge*, *ERS*, and *parole eligibility* dates are conditional dates and only reflect a date by which an offender *may* be discharged if certain conditions are met.

Although an offender may decrease his or her time to be served by earning MET, TET, Executive Time, and/or having pre-sentence time credit or may possibly be released on ERS or parole, other factors also affect an offender's ultimate discharge date.

- *MDOC and Parole Board staff¹² must fulfill certain duties mandated by law and departmental policy prior to releasing offenders on ERS or parole.* These administrative duties require time to fulfill and, depending on the staff's workload, may prevent an offender from being released on his or her ERS or parole eligibility date. For example, both agencies must submit notifications to victims of crimes perpetrated by an offender, as well as the sentencing authorities (e. g., police chief, district attorney) located in the jurisdiction in which the offender was sentenced.¹³
- *Offenders who are eligible for ERS or parole must meet certain conditions prior to being released from MDOC custody.* MDOC policy requires that offenders meet specified conditions prior to release on ERS or parole in order to ensure adequate rehabilitation and reduce the likelihood of recidivism. For example, prior to being released on ERS or parole, an offender must provide an address at which he or she plans to reside after release. An MDOC field officer must determine that such residence is appropriate and must formally approve the address.

According to MDOC policy, offenders eligible for ERS will not be released if they:

- receive a serious Rule Violation Report (RVR) within six months of their ERS date;
- attempt escape or were convicted of escape from an adult correctional facility or jail; or,
- have an out-of-state or federal detainer.

¹² The Parole Board staff, in tandem with MDOC staff, is only responsible for the discharge of offenders released on parole.

¹³ House Bill 585, Regular Session 2014, requires that MDOC and the Parole Board notify sentencing authorities of offenders who are released on ERS or parole after July 1, 2014, in both the jurisdiction of conviction and the jurisdiction in which they will reside after release.

Also, depending on the crime of conviction and discretionary powers of the court of adjudication, some offenders who are eligible for release on ERS or parole are also subject to specific conditions that the sentencing judge has ordered prior to being released from custody, such as the completion of alcohol and drug counseling or adult education courses.

Thus an offender's tentative discharge, ERS, and parole eligibility dates are subject to all pertinent conditions being met. As noted previously, the only date calculation that is absolute is the offender's maximum discharge date.

According to staff with MDOC's MIS, Offender Trak generates a report of offenders who have not been released on their respective discharge dates (i. e., tentative discharge, ERS, or parole eligibility dates). According to staff from MDOC Records Department, the Director of Records pulls this report from Offender Trak daily, reviews the status of offenders on the report to determine the reasons why the offender has not been released, and reports the results to the MDOC Commissioner.

Does MDOC fail to release offenders in a timely manner and if so, does the department have reasonable justification?

In PEER's sample, every offender with a maximum or tentative discharge date was released on that date, but not all offenders were released by their ERS or parole eligibility dates. Although MDOC has reasonable justification (e.g., public safety) to hold some offenders beyond their parole and ERS dates, some offenders in the sample were not released because they were not granted parole hearings during the month that they became eligible and, thus, were held in MDOC custody beyond their parole eligibility dates. PEER found no instance in the sample wherein MDOC policy or the legal rights of inmates were violated regarding the date of discharge.

To determine whether offenders were released on their tentative discharge, ERS, and parole eligibility dates, on July 14, 2014, PEER randomly selected four dates (April 18, May 14, June 2, and June 20, 2014) and used Offender Trak to identify all offenders with a discharge date that corresponded to one of the randomly selected dates. With respect to offenders that Offender Trak identified as still incarcerated who were not released on one of the selected dates, PEER interviewed MDOC and Parole Board staff to determine the reasons why the offender had not been released.

Exhibit 1, page 18, provides details of PEER's sample of offenders with tentative discharge, ERS, or parole eligibility dates on one of the four randomly selected four dates. The exhibit provides the status category of offenders on their respective discharge dates and the number of offenders by that status category.

Exhibit 1: Details of PEER's Sample of Offenders with Tentative Discharge, Earned Release Supervision, or Parole Eligibility Dates on April 18, May 14, June 2, or June 20, 2014, as of July 14, 2014

Status Category on Discharge Date	Tentative Discharge Date	Earned Release Supervision Date	Parole Eligibility Date	Total
Released	83	66	22	171
Discharged/ Died	0	3	2	5
Not Released (by Justification):				
Ineligible for Discharge Type	0	1	1	2
Rule Violation Report	0	3	0	3
Restitution Center	0	0	1	1
Set-off	0	0	4	4
No Approved Address	0	10	10	20
Parole Eligibility Date	0	0	17	17
Total	83	83	57	223

SOURCE: Department of Corrections and State Parole Board.

In the sample, PEER found 223 offenders with tentative discharge, ERS, or parole eligibility dates on one of the four randomly selected dates. Of these 223 offenders, PEER found that 171 had been released. Of these 171 released offenders, sixty-six with ERS dates and twenty-two with parole eligibility dates were released.

Eighty-three offenders had tentative discharge dates that corresponded to one of the four randomly selected dates. Every offender in the sample with a tentative discharge date was released on that date; however, PEER cannot warrant that there are not instances in which an offender may be kept beyond his or her maximum or tentative discharge date. With respect to offenders with ERS and parole eligibility dates, PEER identified eighty-three offenders with an ERS date and fifty-seven offenders with a parole eligibility date that corresponded to one of the four selected dates.

With respect to these eighty-three offenders with an ERS date that corresponded to one of the four selected dates, PEER identified seventeen offenders that Offender Trak noted were still incarcerated on their ERS date. Of those seventeen offenders, PEER found that:

- three had been discharged or died while in custody (but Offender Trak still detailed their status as being incarcerated);¹⁴
- one was ineligible for ERS (even though Offender Trak identified an ERS date for the offender);¹⁵
- three had received a serious RVR within six months of their ERS date, which disqualified them from ERS; and,
- ten had not secured an address at which to reside that had been approved by an MDOC field officer.

With respect to the fifty-seven offenders with a parole eligibility date that corresponded to one of the four selected dates, PEER identified thirty-five that Offender Trak noted who were still incarcerated on their parole eligibility date. Of those thirty-five offenders, PEER found that:

- two had been released on parole (but Offender Trak still detailed their status as being incarcerated);
- one was ineligible for parole (even though Offender Trak identified a parole eligibility date for the offender);
- one was ordered by the sentencing court to enter a restitution center;
- four had been set off;
- ten had not secured an address that had been approved by an MDOC field officer; and,
- seventeen had become parole eligible after the Parole Board generated the docket for the parole board and, as a result, did not receive a hearing for the month of their eligibility. These offenders were placed on the add-on list (see page 9).

In its sample of offenders with tentative discharge, ERS, or parole eligibility dates that corresponded to four randomly selected dates to determine whether offenders were actually released on one of the specified dates, of the 83 offenders PEER identified that had an ERS date (see footnote on page 15), PEER found that thirteen offenders were not released on their ERS date due to time needed to satisfy departmental policies that require the offenders to fulfill specified conditions prior to release. These policies are designed to ensure adequate rehabilitation of the offender and the safety of the public (i. e., to what degree the offender poses a likelihood of re-offending) after the offender's release into the community. For example, it would not be in the interest of public safety to release an offender from custody if the offender does not have an address at which to reside or if the residence is not conducive for transitioning a convicted felon into the community (e. g., alcohol and weapons are located in the home). Offenders who are released from custody and have no address at which to

¹⁴Like any other system that relies on input from multiple parties, Offender Trak is subject to human error, as well as network system malfunctions and breakdowns.

¹⁵ The offender was a habitual offender and thus precluded from ERS by statute.

reside or those who will live in a residence that contains prohibited items are more likely to re-offend and re-enter a correctional facility.

PEER also found in its sample that fifteen of the thirty-five offenders who were not released on their parole eligibility date were retained due to public safety concerns (e. g., failure to obtain an approved address, set off [see page 7]) or additional time needed to fulfill administrative responsibilities (e. g., notice requirements). As noted previously in this report, seventeen offenders were not granted parole hearings during the month that they became eligible and thus were held in MDOC custody beyond their parole eligibility date.

PEER notes that in its sample, Offender Trak detailed five offenders who had been discharged or had died while in custody, even though Offender Trak identified ERS and parole eligibility dates for the offenders. Offender Trak also provided ERS and parole eligibility dates for two offenders who were not eligible for either release according to statutory restrictions.

PEER found no instance in the sample wherein MDOC policy or the legal rights of inmates were violated regarding the dates of discharge.

Does the Department of Corrections ensure that victims who are owed court-ordered restitution receive timely payments?

According to MDOC policy and staff, victims who are owed court-ordered restitution have last priority in receiving recompense from a resident of a restitution center because MDOC's practice is to disburse funds from residents' accounts to their personal living expenses first, then to court-ordered costs and fees. Only after a resident amasses the total amount of court-ordered restitution that is owed in his or her account or leaves the restitution center does the victim receive restitution.

This chapter will address the following:

- What is MDOC's Restitution Center Program?
- How does MDOC collect and disburse residents'¹⁶ funds and for what purposes?
- Do victims of crimes perpetrated by residents receive court-ordered restitution in a timely manner?

What is the Department of Corrections' Restitution Center Program?

The MDOC Restitution Center Program provides an alternative to incarceration for minimal risk offenders by facilitating their transition to the community. The program is designed to provide a structured environment in which services and opportunities are provided that encourage residents to take responsibility for their actions and work for businesses in the community to pay for their personal expenses and for court-ordered costs, fees, and restitution.

The Department of Corrections' Community Services Division administers four restitution centers throughout the state that house offenders. In order to reside in a restitution center, an offender must participate in the MDOC Restitution Center Program. According to MDOC, the program provides an alternative to incarceration for minimal risk offenders by facilitating their transition to the community.

The program is designed to provide a structured environment in which services and opportunities (e. g., community services, alcohol and drug counseling) are provided that encourage residents to take responsibility for the crimes they have committed. Residents serving their sentences at restitution centers work for businesses in the community to pay for their

¹⁶After an offender enters MDOC's restitution program and moves into a restitution center, the department refers to that offender as a *resident*.

personal expenses and for court-ordered costs, fees, and restitution.¹⁷

According to MDOC, candidates for the MDOC Restitution Center Program must meet the following criteria:

- must be a first-time offender;
- must be convicted of a nonviolent felony;
- must not have drug, alcohol, or emotional problems that are so serious that the offender appears unlikely to be able to meet the obligations of the restitution sentence;
- must not be convicted of a sex crime;
- must be in good mental and physical health;
- must be employable; and,
- must have a sincere desire to participate in the restitution program.

Offenders may enter the MDOC Restitution Center Program either through initial sentencing by a circuit judge, through modification of probation, or as a condition of Earned Release Supervision (ERS) or parole when restitution is court-ordered. According to MISS. CODE ANN. Section 47-7-34 (1972), the maximum amount of time to which a court may sentence a resident to a restitution center is five years.

According to MDOC, as of April 2014, 126 residents resided in the state's four restitution centers. In that month, the Leflore County Restitution Center housed forty-four residents, the most of all of the centers, and Pascagoula housed nineteen, the smallest number of residents. Exhibit 2, page 23, provides the locations of each of the restitution centers, as well as the gender and number of residents per center as of April 2014.

¹⁷In some instances, residents sentenced to restitution centers do not only owe court-ordered restitution to a victim. In addition to restitution, a court may sentence residents to centers to pay various costs and fees (e. g., court costs and fees, supervision fees, costs incurred by law enforcement or prosecuting agencies in apprehending or prosecuting the resident, or child support).

Exhibit 2: Gender and Number of Residents in Restitution Centers Administered by the Department of Corrections, by Location, as of April 2014

Restitution Center Location	Gender	Number of Residents
Leflore County (Greenwood)	Male	44
Flowood	Female	35
Hinds County (Jackson)	Male	28
Pascagoula	Male	19
Total		126

SOURCE: Mississippi Department of Corrections

Per MDOC policy, offenders must earn a minimum number of 8,000 “points” as a condition to completing the Restitution Program. According to MDOC policy, the point system is “used as a means of behavioral modification along with compliance to the conditions specified in [each offender’s] court order.” Offenders earn points in various areas (e. g., good behavior, employment) that each garner a specific number of points that are gathered and tabulated weekly by each offender’s field officer or case manager.

Although state law provides for a court to impose restitution for pecuniary damages incurred by a victim up to \$5,000, as well as the method by which restitution is to be paid (e. g., in installments), state law does not guarantee that victims receive payments of court-ordered restitution while a resident resides in a restitution center. See page 4 for statutory requirements on imposing court-ordered restitution.

How does MDOC collect and disburse residents’ funds and for what purposes?

Restitution centers are responsible for collecting and verifying residents’ wages and monies weekly. Restitution centers request all disbursements, including court-ordered restitution, from residents’ accounts from the Central Accounting Office. That office disburses restitution payments to the circuit clerk’s office of the county wherein the offender was convicted. Generally, the Central Accounting Office applies funds to residents’ court costs first, followed by fees and court-ordered restitution.

Collection of Residents’ Funds

Restitution centers are responsible for collecting and verifying residents’ wages and monies weekly. The Central Accounting Office for the restitution centers collects residents’ wages, verifies the amounts, deposits the funds, and posts the deposits to residents’ accounts weekly.

Per MDOC policy, each restitution center commander must establish and ensure a consistent system for the collection of court-ordered costs, fees, and restitution received from residents. Commanders also must establish procedures for the weekly collection or disbursement of monies earned by residents through paid employment.

According to MDOC policy, residents must submit all wages and monies (e. g., checks, money orders, cash) to the officer-in-charge at the restitution center. The officer issues the resident a numbered receipt, denoting the date of receipt, name of resident, time monies were received, center name, account received, type of payment, name of employer, type of monies received, and resident and officer-in-charge signatures.

The officer-in-charge records the receipt information onto a “shift receipt” form, places the monies in a money receipt envelope, records information related to the transaction on the envelope, and places the envelope into a secured lock box.

An accounting clerk from the Central Accounting Office for the restitution centers collects the envelopes each week from the Hinds and Flowood restitution centers.¹⁸ The centers in Greenwood and Pascagoula mail their envelopes each week. Once received, the accounting clerks verify the contents,¹⁹ prepare the deposit, make the deposit, and post the amounts deposited to the residents’ accounts, which are maintained on QuickBooks. The Central Accounting Office processes deposits daily. The restitution center provides residents a printout of the details of their account balances and activity on a monthly basis.

Disbursement of Residents’ Funds

Restitution centers request all disbursements, including court-ordered restitution, from residents’ accounts from the Central Accounting Office. However, according to MDOC policy and staff, the Central Accounting Office disburses funds to pay residents’ personal living expenses (e. g., room and board) prior to paying court-ordered restitution. Although there is no policy that dictates how counties’ circuit clerks should prioritize payment of court costs, fees, and restitution, according to PEER’s discussions with personnel of selected clerks’ offices, clerks generally make payments in accordance with a resident’s sentencing order, which generally lists court costs first, followed by fees and court-ordered restitution.

The restitution centers request all disbursements from residents’ accounts from the Central Accounting Office. Once an accounting clerk verifies that the requested amount of funds is available in a resident’s account, the clerk issues a check according to the disbursement request.

¹⁸All cash received at the restitution centers located in Greenwood and Pascagoula is deposited into a checking account at a local bank and transferred by check to the Central Accounting Office for posting and deposit to residents’ accounts.

¹⁹Accounting clerks verify that the amounts denoted on the “shift receipt” form prepared by the officer-in-charge balance with the deposit slip.

According to MDOC, once a resident leaves a restitution center, his account will be disbursed to \$0. According to MDOC *Standard Operating Procedures (SOP) Number 41-01-09*, the Central Accounting Office must disburse payments for room and board from residents' accounts prior to any other disbursements. According to MDOC, the restitution center will request that the office disburse the resident's funds to cover personal living expenses (e. g., medical expenses) first and use any remaining funds to pay for restitution, court costs, and fees.

The restitution center then notifies the Central Accounting Office to disburse funds for court-ordered restitution, court costs, and fees to the circuit clerk's office in the county wherein the offender was convicted and the clerk then allocates the funds to each court-ordered debt. The Central Accounting Office submits the offender's remaining balance in a lump sum amount via check for each amount owed for any and all court costs, fees, and restitution.

During fieldwork, PEER discussed the prioritization of allocating payments for court costs, fees, and restitution with staff of selected circuit clerks' offices. According to these individuals, there is no statewide policy that dictates the prioritization of payments; however, clerks allocate funds according to how a resident's sentencing order lists the categories. Generally, according to the circuit clerks, sentencing orders list court costs first, followed by fees and court-ordered restitution.

Therefore, if a sentencing order follows this order of prioritization, when the Central Accounting Office remits a check to a circuit clerk's office that does not cover the total costs owed by a resident for court costs, fees and restitution, the clerk will allocate funds to pay court costs and fees first. As a result, crime victims may receive partial or no payment for court-ordered restitution.

Categories of Disbursement of Residents' Funds

In addition to court-ordered costs, fines, and restitution, residents of restitution centers must pay for their personal living expenses (e. g., room and board, medical expenses). Per MDOC policy, residents pay personal living expenses while they reside in the restitution center and court costs, fines, and restitution are paid only when a resident amasses an amount sufficient to cover each or leaves the restitution center.

As stated previously, residents of restitution centers are required to work and pay court-ordered costs, fines, and restitution to crime victims. However, residents are also responsible for their personal living expenses while residing in centers. According to MDOC *Standard Operating Procedures (SOP) Number 41-01-09*, personal living expenses are paid while the resident resides in the center and payment of court costs, fines and restitution will only be made when:

- the total amount of each is amassed in a resident's account; or,
- the resident leaves the restitution center.

When a court sentences a resident to a restitution center, typically the sentence is documented in the resident's sentencing order. However, according to MDOC, if a resident amasses the total amount of court-ordered restitution while residing in the center, but has more time to serve according to his sentencing order, the center's field officer will notify the sentencing judge of the resident's ability to pay his restitution and request that the judge modify the order to release the resident. MDOC staff stated that under these circumstances, the judge generally modifies the order to allow the resident to leave the center.

Under MDOC policy, residents are required to pay \$11 per day for room and board. Although not specifically authorized by MDOC policy, according to MDOC staff, residents who are unable to pay for room and board because they have not secured employment when they enter the restitution center accumulate a balance that must be paid prior to leaving the center. For example, if a resident enters a center in May 2014 but does not secure employment until July 2014, the resident will owe MDOC for two months of room and board expenses.

In addition, residents are required to pay for items to cover their personal and hygienic needs. Residents must request funds for personal allowance, which is disbursed to the resident at a maximum of \$20 each week. The amount of the personal allowance disbursement is based on the resident's gross weekly income.

Residents must also pay for their personal expenses (e. g., personal items, bus tickets, identification fees), family support, transportation, medical expenses, pharmacy costs, and account closeout fees.

Do victims of crimes perpetrated by residents receive court-ordered restitution in a timely manner?

As a direct result of MDOC policy, crime victims have last priority in receiving court-ordered restitution because the costs of a resident's personal responsibilities must be paid first, as well as any court-ordered costs and fees. Only after a resident amasses the total amount of court-ordered restitution that he owes or leaves the restitution center does the victim receive any restitution. As a result, a victim could theoretically wait up to five years to receive all or part of the restitution owed.

As stated previously, MDOC policy provides that the payment of court costs, fines and restitution will only be made when:

- the resident amasses the total amount of each in his account, which generally results in the residents' discharge from the center; or,
- the resident leaves the program.

In order to determine whether residents paid all or part of their court-ordered restitution once they were discharged from a restitution center, PEER reviewed MDOC accounting information and sentencing orders of residents who were released from each of the state's four restitution centers during April, May, and June 2014. This sample included seventy-seven residents.

PEER reviewed each resident's sentencing order to determine the amount of court-ordered restitution owed. PEER also reviewed accounting information provided by MDOC to determine the amount of funds disbursed from each resident's account to pay for restitution, court costs, and other fines and/or fees.

PEER found that fifty-five residents released during the three-month span did not owe any court-ordered restitution and/or in some cases the sentencing orders of residents did not denote itemized amounts owed for restitution, court costs, or fines, but only noted a lump sum owed by the resident.

In instances in which the sentencing orders clearly denoted itemized restitution, PEER found twenty-two residents whereby a court had ordered the resident to pay restitution in addition to other court costs and fees. Of those twenty-two offenders, PEER found that nine offenders did not pay the total amount of their court-ordered restitution, court costs, and fees upon release from the restitution centers. After the conclusion of fieldwork for this project, PEER learned that the nine residents had later paid the total amount owed in court costs, fees, and restitution after being released from the restitution center.

Exhibit 3, page 28, provides details of PEER's sample of residents released from the state's restitution centers in April, May, and June 2014.

Exhibit 3: Details of PEER’s Sample of Residents Released from Restitution Centers in April, May, and June 2014

Restitution Center	Total Number of Residents Released	Number of Residents Released Who Did Not Owe Restitution or Whose Orders Did Not Itemize Amounts Owed (Only Showed Lump Sum Owed)	Number of Residents Released Who Paid Restitution and All Court Costs and/or Fees Owed	Number of Residents Released Who Still Owed Restitution, Court Costs, and/or Fees*
Hinds County	15	8	5	2
Pascagoula	25	20	3	2
Leflore County	21	16	4	1
Flowood	16	11	1	4
Total	77	55	13	9

*MDOC policy requires that residents who leave restitution centers but still owe restitution, court costs, and/or fees be put on a payment plan through which to complete their obligations. PEER did not confirm whether these nine residents had payment plans.

SOURCE: Mississippi Department of Corrections

According to MDOC policy and staff, victims who are owed court-ordered restitution have last priority in receiving recompense from the resident, because the Central Accounting Office disburses residents’ personal living expenses first. Only after the resident amasses the total amount of restitution that he owes in his account or leaves the restitution center does the victim receive any restitution. As stated previously, circuit clerks who spoke with PEER generally apply offenders’ funds to pay court costs and fees before court-ordered restitution. Thus, victims could receive partial or no restitution.

A resident could theoretically be sentenced to the restitution center up to five years, at which time the victim would be able to receive all or partial restitution owed, unless that resident is able to amass the total sum of restitution owed while working and residing in the restitution center.

Per state law, victims are entitled to restitution to help recover financial losses suffered as the direct result of a crime. Public policy favors imposing restitution as part of a sentence to require an offender to compensate the victim for damages and injury. Thus, the state should ensure that the victim is recompensed fully and prior to any other responsibilities of the offender. Full and primary restitution to the victim is an appropriate outcome, as it is consistent with the penological and rehabilitational aims of restitution.

MDOC's policy regarding the management of the department's restitution program is inconsistent with the public policy rationale, because the program gives priority to an offender's personal responsibility issues--e. g., room and board at the restitution center--ahead of an offender's responsibility to pay court-ordered restitution to compensate victims of their crimes.

Recommendations

1. Because offenders' time is entered into and calculated by Offender Trak frequently, the Parole Board should periodically pull the interim report during the month that a docket is generated in order to determine all offenders who are eligible for parole in that month.
2. MDOC staff should ensure that all offenders' information is entered accurately into Offender Trak to ensure that offenders are incarcerated in accordance with sentencing orders and legal mandates and are not released prematurely.
3. MDOC's MIS should modify the three Offender Trak reports (i. e., the future, past, and interim reports) to include a search field that would enable the board's staff to segregate offenders who are parole-eligible from those that have been sentenced to retained jurisdiction.

MIS and MDOC should continue to meet and discuss other methods of using Offender Trak effectively and efficiently in order to identify all parole-eligible offenders for a particular month.

4. The Chair of the State Parole Board should evaluate the board's current personnel capabilities and determine whether additional staffing and/or resources are necessary to address the backlog of offenders with past parole eligibility dates who have not had a hearing before the board and who not yet been added to the board's docket.

Because the allocation of the Parole Board's resources lies within MDOC's budget, if the Chair of the Parole Board determines that he needs additional resources to address the backlog, he should work with the Commissioner of Corrections to ensure that adequate resources and funding are requested and provided to the board.

5. Considering the public policy rationale behind restitution (i. e., financial compensation to crime victims) and potential constitutional challenges that might be raised in imposing indebtedness on residents of restitution centers who remain wards of the state in order to generate revenue, MDOC should modify its practices and develop a formal written policy that limits the amount of time (e. g., to one month) that a resident who is unable to secure a job is financially responsible for unpaid payments for room and board.
6. MDOC should track the amount of court-ordered restitution that is collected by residents of the restitution centers and the amount remitted by the

MDOC Central Accounting Office to ensure accountability in the collection and distribution of residents' funds to recompense victims of crimes, as well as to identify general fund information that may be relevant to third-party reviewers such as the PEER Committee.

Appendix: Glossary of Terms Related to Parole and Restitution

Detainer warrant--filed when an offender is subject to a sentence in one state but is incarcerated in another state or by the Federal Bureau of Prisons in order to request notification for when the offender is ready for release.

Earned release supervision (ERS)--an early release from incarceration component, which is also known as a result of the Truth-in-Sentencing law. Participation is contingent on good behavior and work ethic. ERS is the maximum release date less 15% of earned time allowance and any meritorious earned time (MET), trusty earned time (TET), or executive time and is only applicable to some offenders (CODE Section 47-5-138).

Executive time--a reduction in sentence that may be earned by an offender while engaged in work following a crisis or natural disaster per the Governor's request.

Maximum discharge date--the date of release if the offender serves his or her sentence day for day.

Meritorious earned time (MET)--a discretionary grant of earned time that may be awarded to eligible offenders for successful participation in approved educational, vocational, religious, and work programs. Inmates may not earn both MET and trusty time for the same program. Offenders serving habitual or mandatory sentences are not eligible for MET (CODE Section 47-5-142).

Parole--parole is a form of restricted release from incarceration that allows some offenders to serve the balance of their sentences outside of a correctional institution under the supervision and assistance of a parole officer and which could be subject to revocation by a circuit or county judge.

CODE Section 47-7-3 establishes the conditions for parole eligibility. An offender must be sentenced to one year or more to be eligible for parole and an offender's initial parole eligibility date can never be less than one year. To be parole-eligible, an offender must serve the greater of 25% of his sentence or the following statutory minimums:

- If the sentence is from one to two years, he/she must serve at least nine months.
- If the sentence is two to five years, he/she must serve at least ten months.
- If the sentence is more than five years but less than thirty years, he/she must serve at least one year.

- If the sentence is thirty years to life, he/she must serve at least ten years.

Persons convicted of a drug or driving under the influence felony must complete a drug and alcohol rehabilitation program prior to parole or complete a post-release drug and alcohol program as a condition of parole.

Under CODE Section 47-7-3, the following offenders are not eligible for parole:

- Habitual offenders convicted under § 99-19-81 or § 99-19-87 are not eligible for parole.
- A sex offender who committed his/her crime on or after August 23, 1994, must serve his/her sentence day for day, except a person under the age of nineteen convicted under § 97-3-67 is eligible for parole. As of July 1, 1995, all sex crime sentences became mandatory in their entirety and are not parole-eligible.
- A person convicted of armed robbery or attempted armed robbery committed between January 1, 1977, and October 1, 1994, is not eligible for parole or earned time until he/she has served ten years of the sentence. As of October 1, 1994, armed robbery and attempted armed robbery sentences became mandatory in their entirety and are not parole-eligible.
- A person convicted of armed carjacking or drive-by shooting committed on or after October 1, 1994, is not eligible for parole.
- A person sentenced to life imprisonment under § 99-19-101 for a crime committed on or after July 1, 1994, is not eligible for parole.
- A person who is convicted of aggravated domestic violence must serve one year of his/her sentence before being eligible for parole.
- A person convicted of a violent crime committed after June 30, 1995,²⁰ is not eligible for parole.

The above description is based on language in the referenced CODE sections in force and effect when offenders referenced in

²⁰Under CODE Section 47-7-3, a “violent crime” includes homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under Section 97-5-33 or Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a violation of Section 63-11-30(5). An offender convicted of a violation under Section 41-29-139(a), not exceeding the amounts specified under Section 41-29-139(b), may be eligible for parole. In addition, an offender incarcerated for committing the crime of possession of a controlled substance under the Uniform Controlled Substances Law after July 1, 1995, shall be eligible for parole.

this report were first incarcerated. However, PEER notes that several CODE sections dealing with parole and criminal offenses were amended during the 2014 Regular Session of the Legislature. Future offenders and parolees will be affected by those amendments.

Parole eligibility date--the date on which an inmate becomes eligible for release by parole, which is generally 25% of total sentence less any meritorious earned time or trusty earned time (CODE Section 47-7-3). The date is determined by the laws in effect on the date the offense was committed, offender's age upon first commitment, number of prior incarcerations, prior probation or parole failures, the severity and the violence of the offense committed, employment history, whether the offender served in the United States Armed Forces and has an honorable discharge, and other criteria deemed appropriate by the State Parole Board. The board has complete discretion in parole decisions.

Pre-trial or pre-sentence time--any jail time that an offender served prior to conviction that will offset his/her sentence. For example, if an offender served one year prior to a conviction for burglary whereby he was sentenced to a term of five years, the offender's time remaining to be served would be reduced to four years as a result of the year of pre-sentencing time (CODE Section 99-19-23).

Recidivism--relapse into criminal acts that result in rearrest, reconviction, or return to prison with or without a new sentence during a three-year period following release from incarceration.

Remand warrant--means to detain or to put someone in custody. A person remanded on a warrant goes to jail until his or her case is over. Being remanded does not necessarily mean that you are guilty of a crime, but that authorities believe there is a significant reason why they should not let you go free.

Restitution--payment by an offender to the victim for the harm caused by the offender's wrongful acts. Courts have the authority to order convicted offenders to pay restitution to victims as part of their sentences.

Restitution center--a residential facility that is located in a selected community that provides an alternative to incarceration for minimal risk offenders in a highly structured environment.

Retained jurisdiction--a sentencing alternative ordered by a court that requires the offender, after a term of one year of programming and evaluation, to return before the sentencing judge for final adjudication.

Revocation--the act of removing an offender from community supervision, parole, or mandatory supervision due to the offender's violating the conditions of his or her supervision and/or committing a new crime.

Rule Violation Report (RVR)--a reporting form that is used by MDOC staff to document when an inmate violates written or posted rules and outlines the alleged violation, the underlying facts, departmental findings, and disciplinary action.

Set-off date--a decision by the Parole Board to deny parole but set a date to review the offender for parole at some time in the future; generally, that date will be one year later.

Tentative discharge date--the maximum release date less any Meritorious Earned Time (MET), Trusty Earned Time (TET), or Executive Time.

Trusty Earned Time (TET)--a reduction in sentence that may be granted for successful participation in selected work and educational programs in addition to any other administrative reduction in sentence to an offender in trusty status. From and after April 28, 2004, a trusty earned time allowance of thirty days' reduction of sentence may be granted for each thirty days of participation in an approved program while in trusty status (CODE Section 47-5-138.1).

Victim--a person against whom the criminal offense has been committed whom a court determines has suffered pecuniary damages as a result of the defendant's criminal activities (CODE Section 99-37-1).

SOURCES: MISSISSIPPI CODE ANNOTATED, Department of Corrections.

Agency Responses



STATE OF MISSISSIPPI
DEPARTMENT OF CORRECTIONS
CHRISTOPHER B. EPPS
COMMISSIONER



September 2, 2014

Max K. Arinder, Ph. D.
Executive Director, PEER
Post Office Box 1204
Jackson, MS 39215

RE: RESPONSE TO PEER REPORT - MDOC

Dear Mr. Booth:

Please find below the Mississippi Department of Corrections (MDOC) response to the PEER report "*A Review of Selected Parole, Restitution, and Timely Release Issues of the Department of Corrections and State Parole Board.*"

The Department of Corrections does not take great issue with the recommendations or the general findings of the report. However, there are a few inaccuracies that must be pointed out. Since the report is not written with section numbers, I will identify issues based on the page number of the report that has been provided to me. I understand that these page numbers may change in the final draft of the report and therefore, the page numbers in my response may not accurately identify the issue in the final draft.

On page 8, the Heading provides: **Why are the Parole Board and MDOC encountering difficulty in identifying all offenders who are eligible for parole?**

This heading is inaccurate in that the report never establishes that any offenders who are eligible for parole are not identified. The actual issue that was reviewed is whether all offenders who are eligible for parole are reviewed in a timely manner by the parole board.

MDOC acknowledges that there exists a backlog (add-on list) of offenders to be seen by the parole board. However, the backlog is not the result of the policies or procedures used by MDOC or the parole board in reviewing offenders who are eligible for parole. The backlog was created as a result of a large number of offenders who were previously determined to be ineligible for parole suddenly being made parole eligible due to an Attorney General's opinion and a Mississippi Supreme Court ruling. Prior to these two rulings, the parole board reviewed an average of one hundred ten (110) offenders from the add-on list each month and there was no backlog. This is in addition to the number of inmates being reviewed from the regular parole docket, approximately four hundred (400) each month. All of inmates that were granted parole were being released on their parole

eligibility date regardless of whether they were on the regular parole docket or the add-on list.

When this large number of inmates were determined to suddenly be eligible for parole based on the Attorney General's opinion and the Supreme Court ruling, their names were added to the add-on list and the backlog was created. The parole board has almost doubled the number of offenders being reviewed each month from the add-on list, averaging two hundred thirteen (213) per month with a goal of eliminating the backlog in the next couple of months.

It is inaccurate and misleading to say that inmates are not being released to parole in a timely manner because MDOC and the parole board are having difficulty in determining all offenders who are eligible for parole. Any inmate not being released on his parole eligibility date can be indirectly attributed to the backlog created by the Attorney General's opinion and the Supreme Court ruling which facilitated a large number of inmates suddenly becoming eligible for parole.

MDOC was pleased to see that PEER acknowledged that every offender with a maximum or tentative discharge date was release on that date (page 17).

On page 27, the Report states:

As a direct result of MDOC policy, crime victims have last priority in receiving court ordered restitution because the costs of a resident's personal responsibilities must be paid first.

This is somewhat misleading. MDOC policy clearly states that "Disbursements will be made in accordance with each court order." Should the court order provide that restitution be collected first, MDOC complies with that order. PEER staff noted that circuit clerks generally allocate funds to pay court costs first, followed by fees and then court ordered restitution (page 25). It is unfair to state that crime victims have last priority in receiving court ordered restitution as a direct result of MDOC policy when it is the practice of circuit clerks to allocate disbursements to fines and fees before restitution.

As stated earlier, MDOC does not take great issue with the recommendations or the general findings of the report and welcomes the suggestions offered that will help MDOC operate more efficiently. Should the PEER Committee members desire to discuss any issues raised in this response, I will be happy to accommodate them.

Sincerely,



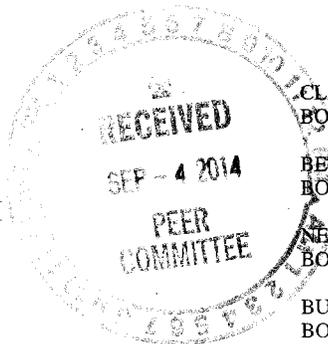
Christopher B. Epps
Corrections Commissioner
State of Mississippi

STEVEN PICKETT
CHAIRMAN

STEPHANIE SKIPPER
EXECUTIVE SECRETARY



PAROLE BOARD
STATE OF MISSISSIPPI
September 5, 2014



CLARENCE BROWN
BOARD MEMBER
BETTY LOU JONES
BOARD MEMBER
NHEMIAH FLOWERS, JR.
BOARD MEMBER
BUTCH TOWNSEND
BOARD MEMBER

The Honorable Mississippi Legislature
Joint Committee on Performance Evaluation Expenditure Review Committee
Jackson, Mississippi

Honorable Members of the Mississippi Legislature,

The Mississippi Parole Board is pleased to file this response to the portions of the review that are relevant to Parole. As of the date of this letter, please know that in calendar year 2014, your Parole Board has reviewed in excess of 7,083 cases. The statistics of successful paroles are on the rise. The Parole Board is utilizing GPS tracking systems and community alcohol and drug rehabilitation programs with non-violent offenders who are parole eligible.

The "backlog" was created in August 2013 when some 2,800 inmates "house burglars" became parole eligible by case law. We admit the Parole Board Staff could have been more diligent and efficient by creating a separate docket in lieu of adding them onto the regular monthly dockets. The decision not to create a separate docket was a decision made during a transition time of 3 Parole Board Chairmen from July of 2013 - October 2013.

The PEER Review recommendations have been adopted into our daily routine. Commissioner Epps has accommodated the Parole Board with additional technical staff that has accounting expertise to help track and "fast track" persons who are found to be parole eligible. The Staff will run the docket on the 1st and 15th of every month to examine the ever changing record of eligibility dates to insure Parole hearings are timely.

The backlog cited in the report of 1200 persons was reduced to 800 by the time of our first preliminary review meeting and by the time this report is published, all cases will have been heard and new practices will be in place to diligently review cases while keeping victim rights, the interest of justice, and the safety of Mississippians as our first and foremost duty.

Respectfully submitted,

Steven Pickett

PEER Committee Staff

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