

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE	EFFECTIVE DATE 08/01/2016	NUMBER 03.01.102
SUBJECT HABITUAL OFFENDERS	SUPERSEDES 03.01.102 (08/01/1988)	
AUTHORITY MCL 769.10-769.12, MCL 791.233b; MCL 791.234; MCL 800.33; <i>Lamb vBureau of Pardons and Paroles</i> , 106 Mich App 175 (1981), <i>People ex rel. Oakland County Prosecuting Atty v Bureau of Pardons and Paroles and Trudeau v Oakland Circuit Judge</i> , 78 Mich App 111 (1977), <i>Hayes v Parole Board</i> , Court of Appeals No. 321547		
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POLICY STATEMENT:

Habitual offenders shall have their minimum dates and Parole Board Jurisdiction dates calculated, and be eligible for parole consideration, as set forth in this policy.

DEFINITIONS:

- A. Habitual Offender - A prisoner who is serving a sentence under the Habitual Offender statutes, MCL 769.10 - 769.12.
- B. Minimum Date - The minimum sentence imposed by the court with all credits applied at the time of calculation.
- C. Parole Board Jurisdiction Date (PBJ) - The earliest date an offender is eligible for parole. For a habitual offender identified in Paragraph E, number 2(a), this is the calendar minimum unless the sentencing judge or his/her successor approves parole on or after the minimum date.

POLICY:

GENERAL INFORMATION

- D. If in conflict with another policy, this policy controls for purposes of parole consideration for habitual offenders.
- E. In 1977, the Michigan Court of Appeals decided *People ex rel Oakland County Prosecuting Attorney v Bureau of Pardons and Paroles and Trudeau v Oakland Circuit Judge*, 78 Mich App 111; 259 NW2d 385 (1977), generally known as the *Trudeau* decision. As a result, the minimum sentences of habitual offenders are treated differently than those of non-habitual offenders, although the maximum sentences are treated the same. As a result, there are two separate categories of habitual offenders:
 - 1. Habitual offenders who committed their underlying offense prior to February 4, 1978. They may be paroled on or after their minimum date without the approval of the sentencing judge or his/her successor.
 - 2. Habitual offenders who committed their underlying offense on or after February 4, 1978 who are:
 - a. Eligible to receive good time and/or disciplinary credits on their minimum sentence. These habitual offenders may not be paroled prior to their PBJ date ("calendar minimum") without the approval of the sentencing judge or his/her successor, in accordance with MCL 769.12(4)(a). The Parole Board will consider the habitual offender for parole on the minimum date even though the Board does not have jurisdiction to parole the habitual offender prior to the PBJ date. If the Parole Board has interest in paroling the habitual offender prior to the PBJ date, approval must be obtained from the sentencing judge or his/her successor prior to granting parole.

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- b. Serving a sentence subject to disciplinary time. These habitual offenders may not be paroled prior to the PBJ date (“calendar minimum”).
- F. Security classification of a habitual offender who committed his/her underlying offense on or after February 4, 1978 shall be based on their PBJ dates. However, if the habitual offender is eligible to receive good time and/or disciplinary credits on his/her minimum sentence, eligibility for programming shall be based on his/her minimum date unless the sentencing judge or his/her successor does not approve parole prior to the PBJ date.

Parole Eligibility

- G. This section applies only to habitual offenders whose underlying offense was committed on or after February 4, 1978, and who are eligible to receive good time and/or disciplinary credits on their minimum sentence.
- H. Parole Eligibility Reports for habitual offenders shall be initiated based on the habitual offender’s minimum date, and prepared in accordance with PD 06.05.103 “Parole Eligibility/Lifer Review Reports.” The habitual offender shall be processed for parole consideration based on the minimum date.
- I. If the Parole Board has interest in paroling a habitual offender prior to the PBJ date, the Board shall notify the sentencing judge or his/her successor in writing of the interest to parole and seek the judge’s approval to parole the habitual offender prior to the PBJ date. If the sentencing judge or his/her successor does not provide written approval to parole the habitual offender prior to the PBJ date, the Board may not parole the habitual offender prior to his/her PBJ date. If the sentencing judge or his/her successor provides written approval to parole the habitual offender prior to the PBJ date, the Parole Board may proceed with the parole.
- J. The Parole Board shall notify the Central Records Section whenever the sentencing judge or his/her successor gives written approval to parole a habitual offender prior to the PBJ date. The Central Records Section shall change the PBJ date for the habitual offender to be the same as the minimum date and issue a new Basic Information Sheet (CSX-117) to reflect the change. The Central Records Section shall notify the Records Office of the institution where the offender is housed of the change. Security classification and eligibility for reduced custody placement may also be affected based upon the new PBJ date.

OPERATING PROCEDURES

- K. Operating procedures are not required for this policy.

AUDIT ELEMENTS

- L. Audit elements are not required for this policy.

APPROVED: HEW 07/25/2016