

STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Court of Appeals

Consolidated Per Curiam Opinion of Feeney, P.J., Kelly, J., and Rick, J.

MICHIGAN IMMIGRANT RIGHTS
CENTER,

Plaintiff,

v.

GRETCHEN WHITMER, in her official
capacity as Governor of the State of
Michigan,

Defendant,

MSC Case No. 167300

Court of Appeals Nos. 361451 & 362515

(Feeney, P.J., Kelly, M.J. and Rick, J.J.)

Court of Claims No. 21-000208-MZ

(Hon. Elizabeth L. Gleicher)

**BRIEF OF AMICI CURIAE
UNITED FARM WORKERS FOUNDATION
DETROIT JUSTICE CENTER
FARMWORKER LEGAL SERVICES
NATIONAL IMMIGRATION LAW CENTER
NATIONAL EMPLOYMENT LAW PROJECT
CENTRO DE LOS DERECHOS DEL MIGRANTE
NATIONAL LAWYER'S GUILD – DETROIT & MICHIGAN CHAPTER**

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INTERESTS OF AMICI CURIAE¹

The **Detroit & Michigan Chapter of the National Lawyers Guild (“NLG”)** is a progressive association of lawyers, legal workers, and law students committed to the principle that human rights are more sacred than property interests. The Detroit and Michigan Chapter of the NLG is particularly focused on defending civil rights and supporting movements for social justice within the state. The NLG is concerned that the Court of Appeals' ruling imposes significant procedural barriers that could prevent individuals and groups from challenging state actions that violate their civil rights. As an organization that frequently provides legal representation to those whose rights have been infringed upon by state actors, the NLG recognizes the chilling effect this decision could have on civil rights litigation. By interpreting the statute of limitations to run from the first instance of harm, rather than the last or ongoing instance, the Court of Appeals has effectively limited the ability of victims to seek justice for continuous violations. The NLG believes that this decision, if upheld, will disproportionately affect marginalized communities that are often the targets of state overreach. The organization is committed to ensuring that these communities retain access to the courts and the legal remedies necessary to challenge unconstitutional actions, and therefore joins this brief in support of overturning the Court of Appeals' decision.

The **Detroit Justice Center (“DJC”)** is a non-profit law firm working alongside Metro Detroit communities to create economic opportunities, transform the justice system, and promote equitable and just cities. Through our work, we regularly represent clients whose rights have been violated by the police and other state actors. We are deeply concerned that the Court of Appeals'

¹ No party or counsel for a party authored this brief either in whole or in part. No person or entity other than the amici curiae, their members or their counsel, contributed money intended to fund preparing or submitting this brief.

decision in this case will prevent those individuals and communities we work closely with from seeking justice through the court system. Many of our clients have little or no income. It regularly takes years for them to find an organization willing to advocate for their rights. During that time, those clients have often been harmed repeatedly by the police or other state actors, and the Court of Appeals decision may very well foreclose any opportunity they might have for relief. In addition, our work alongside movements also means that we collaborate with community groups and other organizations and file cases on their behalf. DJC and our partners have seen first-hand how harm inflicted on a single community member is harm inflicted on the whole. The Court of Appeals' decision rejects that fundamental truth and should not stand. DJC joins this brief to ensure that we can continue to challenge unconstitutional practices and advocate for justice for our community partners.

United Farm Workers Foundation (“UFW”) is a Department of Justice-accredited immigration legal service provider that offers critical services and resources to farm workers and immigrant communities. UFW Foundation’s regional offices, including a regional office in Michigan, annually serve over 100,000 immigrants in leading agricultural regions. The organization has a long history of fighting for safe working conditions and protection against exploitation, particularly for workers who are often marginalized and face significant barriers to justice. The organization is concerned that the Court of Appeals' decision will hinder the ability of workers to seek redress for ongoing violations of their rights, such as continuous wage theft, unsafe working environments, and discriminatory practices. The UFW Foundation joins this brief out of a commitment to ensuring that agricultural workers retain the ability to challenge these ongoing violations and to uphold the principles of fairness and justice central to its mission..

Farmworker Legal Services (“FLS”) is a division of the Michigan Advocacy Program dedicated to ensuring that immigrant, migrant, and seasonal farmworkers have equal access to economic and social justice. FLS engages in civil impact litigation, particularly in employment and civil rights cases, to protect the rights of farmworkers who are often vulnerable to exploitation and discrimination. With a small team of dedicated staff attorneys, FLS provides direct legal representation to migrant farmworkers in Michigan, advocating for fair wages, safe working conditions, and protection against unlawful employment practices. The Court of Appeals' decision, by limiting the statute of limitations to the first instance of harm, threatens to undermine the ability of farmworkers to seek justice for ongoing violations, such as continuous wage theft or discriminatory practices. FLS joins this brief to emphasize the importance of preserving legal remedies for these workers and to ensure that the courts remain a viable avenue for challenging ongoing injustices.

National Immigration Law Center (“NILC”) is a leading organization dedicated to defending and advancing the rights of low-income immigrants in the United States. Through its work, NILC ensures that immigrant communities have access to justice and are protected against discriminatory practices and governmental overreach. The Court of Appeals' decision, by narrowly interpreting the statute of limitations, threatens to undermine the ability of immigrants to seek legal redress for ongoing violations of their rights, such as continuous discrimination or prolonged detention. NILC joins this brief out of a commitment to protecting the legal rights of immigrant communities and ensuring that the courts remain a viable avenue for challenging ongoing injustices.

Centro de los Derechos del Migrante (“CDM”) is a transnational organization dedicated to protecting the rights of migrant workers in the United States and Mexico. CDM advocates for

fair treatment, safe working conditions, and equal access to justice for migrant workers who often face significant barriers due to their immigration status and the cross-border nature of their work. The Court of Appeals' decision threatens to undermine the ability of migrant workers to seek redress for ongoing violations of their rights, such as continuous exploitation or unsafe working conditions. By limiting the statute of limitations to the first instance of harm, the ruling effectively restricts migrant workers' access to legal remedies, particularly for those who experience ongoing abuses. CDM joins this brief out of a commitment to ensuring that migrant workers have the legal protections necessary to challenge these ongoing violations and to advocate for an interpretation of the law that upholds justice and fairness.

National Employment Law Project (“NELP”) is a national organization dedicated to advocating for the rights of workers, with a focus on promoting fair labor standards, ensuring safe working conditions, and protecting against wage theft and other forms of exploitation. NELP works to advance policies that support low-wage and immigrant workers, who are often the most vulnerable to ongoing labor violations. The Court of Appeals' decision, by narrowly interpreting the statute of limitations, poses a significant threat to the ability of workers to seek justice for continuous violations, such as ongoing wage theft, harassment, or unsafe working conditions. NELP joins this brief to emphasize the critical importance of maintaining access to legal remedies for workers facing persistent abuses and to advocate for a legal framework that upholds workers' rights and ensures that justice is not denied due to arbitrary limitations on the ability to bring claims.

STATEMENT OF QUESTIONS PRESENTED

- I. WHETHER A CLAIM FOR PROSPECTIVE EQUITABLE RELIEF TO PREVENT FUTURE INJURIES IS UNTIMELY UNDER MCL 600.6431 IF SIMILAR CONDUCT INJURED THE PLAINTIFF MORE THAN ONE YEAR BEFORE FILING.

Amici answer: “no.”

Plaintiff’s answer: “no.”

Defendant’s answer: “yes.”

- II. WHETHER THE DEFENDANT CAN INVOKE SOVEREIGN IMMUNITY THROUGH MCL 600.6431 WHEN THE PLAINTIFF SOLELY SEEKS PROSPECTIVE EQUITABLE RELIEF TO STOP OFFICIALS’ UNLAWFUL CONDUCT.

Amici answer: “no.”

Plaintiff’s answer: “no.”

Defendant’s answer: “yes.”

INTRODUCTION

This case challenges the Court of Appeals' interpretation of MCL § 600.6431, a statute that, as currently construed by the Court of Appeals, bars relief (even prospective relief) from ongoing unlawful state policies where the first injury to a plaintiff group occurred more than one year before filing a complaint. The Court of Appeals' rigid interpretation of this statute not only threatens to bar plaintiffs from seeking relief for ongoing constitutional violations but also significantly undermines the foundational principles of justice and accountability within Michigan's legal system. The amici curiae, representing a broad coalition of civil rights organizations, legal advocacy groups, and public interest entities, urge this Court to grant Plaintiffs' request for leave to appeal and reverse the Court of Appeals' decision, which, if left uncorrected, risks setting a dangerous precedent that could erode the protections guaranteed under both the Michigan and U.S. Constitutions.

The controversy at the heart of this case stems from the Court of Appeals' interpretation of when a claim "accrues" under MCL § 600.6431. By enforcing a strict one-year notice period that begins at the first instance of harm, regardless of whether the harm is ongoing, the Court of Appeals has effectively expanded the doctrine of sovereign immunity in a manner that shields state officials from accountability for continuous unlawful conduct. This interpretation not only conflicts with Michigan's established legal precedents but also distorts the very purpose of sovereign immunity, transforming it into a shield that protects state actors from being held accountable for ongoing constitutional violations.

Historically, Michigan courts have recognized the necessity of allowing claims for ongoing violations, particularly when plaintiffs seek prospective relief to prevent future harm. This understanding is deeply rooted in both Michigan and federal jurisprudence. *Ex Parte Young*, 209 U.S. 123 (1908); *Smith v. Department of Public Health*, 428 Mich. 540 (1987). These cases, among others, affirm that sovereign immunity does not bar suits seeking to enjoin ongoing unconstitutional actions. The doctrine of prospective relief serves as a critical mechanism for ensuring that constitutional rights are upheld, providing a necessary check on governmental power to prevent prolonged and systemic abuses.

The implications of the Court of Appeals' decision extend far beyond the immediate parties involved in this case. Should this interpretation of MCL § 600.6431 be allowed to stand, it would establish a precedent that severely limits the ability of individuals and organizations to challenge ongoing violations by state actors. This is particularly concerning in cases involving civil rights or marginalized communities where systemic abuses can persist over long periods, compounding the harm to affected communities. The decision threatens to close the courthouse doors to those who most need judicial intervention to stop continuous and egregious violations of their rights.

The amici curiae, who represent a diverse array of legal and advocacy organizations, are deeply concerned about the broader implications of the Court of Appeals' ruling. The decision directly impacts their ability to protect the rights of their clients and constituencies, particularly in cases involving ongoing violations of constitutional and statutory rights. For example, in the context of the Flint Water Crisis, the one-year pre-suit notice requirement under MCL § 600.6431 could have unjustly barred claims, even as the harm to residents continued unabated. Similarly, in cases involving continuous discriminatory employment practices or unlawful immigration

enforcement, the Court of Appeals' ruling could prevent timely legal challenges, thereby allowing such practices to persist unchecked.

This ruling represents a significant departure from established legal principles and threatens to undermine the rule of law in Michigan. By expanding sovereign immunity beyond its proper bounds, the Court of Appeals has created a legal landscape where state actors can evade accountability for ongoing misconduct. This outcome is not only legally unsound but also morally unacceptable in a system that values justice and fairness. The amici curiae argue that such an interpretation of sovereign immunity and pre-suit notice requirements effectively sanctions ongoing violations by state officials, removing one of the primary checks on governmental power and eroding the protections that are essential to a just and equitable legal system.

At the core of this case is the principle that sovereign immunity should not be used as a tool to shield state officials from being held accountable for ongoing violations of constitutional rights. The legal framework established by *Ex Parte Young* and reaffirmed by Michigan courts underscores the importance of allowing plaintiffs to seek prospective relief to prevent continuous harm. This framework is essential to ensure that the courts remain accessible to those seeking justice, particularly in cases where state actions result in prolonged and systemic abuses.

The amici curiae contend that the Court of Appeals' decision is not only a misapplication of MCL § 600.6431 but also a significant departure from established Michigan jurisprudence. The rigid application of the one-year notice requirement conflicts with the broader legal principles that govern the accrual of claims for ongoing violations. These principles recognize that each instance of unlawful conduct by state officials can give rise to a new claim, thereby ensuring that plaintiffs are not unjustly barred from seeking relief simply because they did not file a claim at the first instance of harm.

The Supreme Court has a critical role in correcting this dangerous precedent. By reversing the Court of Appeals' decision, the Court can reaffirm its commitment to upholding the constitutional protections that are essential to the functioning of a just and equitable legal system. This case presents an opportunity for the Court to clarify the proper application of MCL § 600.6431, ensuring that procedural barriers do not prevent meritorious claims from being heard and that state officials are held accountable for continuous violations of rights.

The amici curiae urge this Court to grant leave to appeal and reverse the Court of Appeals' decision. The stakes in this case are profound, as the ruling not only threatens to undermine the protection of constitutional rights but also risks setting a precedent that could allow state-sanctioned abuses to persist unchecked. The Michigan Supreme Court must act to restore balance and ensure that the legal system remains a place where individuals can seek justice and where constitutional protections are upheld. By reversing the Court of Appeals' decision, the Court can reaffirm the importance of prospective relief as a critical tool for preventing ongoing harm and maintaining the integrity of Michigan's legal system.

LEGAL ARGUMENT

I. The Court of Appeals' Interpretation of MCL § 600.6431 Undermines the Availability of Prospective Relief, Leading to Significant Harm to Affected Individuals.

The Court of Appeals' interpretation of MCL § 600.6431 imposes an overly restrictive interpretation of the one-year pre-notice requirement that effectively shields the state from accountability for ongoing and future violations of constitutional rights. By starting the clock at the first instance of harm, this rule prevents plaintiffs from addressing continuous or recurring harms, even when those harms persist well beyond the initial violation. This interpretation not only sets a dangerous precedent by enabling state actors to evade legal consequences but also

disproportionately affects marginalized and vulnerable communities, who are often the most at risk from ongoing violations.

A. Application of the One-Year Pre-Notice Requirement to Prospective Relief Would Shield the State from Accountability for Continuous and Future Violations.

The Court of Appeals' interpretation of MCL § 600.6431, which begins the one-year pre-notice requirement at the first instance of harm, creates substantial barriers to holding the state accountable for ongoing and future violations, fundamentally undermining accountability. By starting the clock at the first instance of harm, the ruling allows the state to continue harmful practices without fear of legal consequences, as long as the initial violation remains unchallenged within one year. *Michigan Immigrant Rights Ctr v Governor*, unpublished opinion of the Court of Appeals, issued May 30, 2024 (Docket No. 361451), 2024 WL 2790290. This interpretation has strong implications for individuals who continue to suffer ongoing violations of their rights, as it effectively bars them (or their representatives) from seeking redress from the ongoing harm.

By creating procedural barriers that insulate ongoing violations from judicial scrutiny, the Court of Appeals' interpretation of MCL § 600.6431 will make it significantly more challenging for Amici to effectively advocate for their clients. The additional burden of navigating heightened procedural hurdles will not only contribute to a strain on Amici's ability to serve vulnerable populations most likely to be harmed by these requirements, but also leave many individuals without access to the legal remedies to which they would otherwise be entitled.

1. Incarceration/Detention

Many individuals detained in Michigan facilities face denials of medical treatment – a situation the civil rights Amici are intimately familiar with. Under MCL § 600.5503(1), a prisoner must exhaust all available administrative remedies before filing an action against the state for

prison conditions. *See also Wilcox v Wheatley*, 342 Mich App 551, 596-97; 995 NW2d 594 (2022). For prisoners, the administrative remedy for most prison condition claims is governed by MDOC's grievance policy. *See Exh. 1*. The policy outlines a four-step process: prior to even filing a formal grievance, an incarcerated individual is first expected to attempt to resolve the issue with the staff member involved. *Id.* at 4. Assuming the attempt is unsuccessful, the individual is then able to file a formal grievance. *Id.* at 5. The facility then has 15 business days to respond to the grievance, with a possible extension of an additional 15 business days. *Id.* If the grievance does not resolve the issue, the individual may file an appeal to the warden or designee; similarly, the facility has 15 business days to respond with the possibility of a 15-day extension. *Id.* at 6. If the situation remains unresolved, the individual can file an appeal to the MDOC's Grievance and Appeals Section; "generally" these responses can come within 60 business days. *Id.* at 7. The whole process could take well over 120 business days (six months) to complete. *Id.* at 4-7.

This lengthy administrative process consumes a significant portion of the one-year period the individual would have to file notice of intent to sue the state on these claims, leaving very little for them to identify the specific cause(s) of action, secure legal representation, and prepare the necessary documents to file their claims. The Court of Appeals' interpretation of MCL § 600.6431 effectively penalizes detained individuals for following the mandatory grievance process; by the time they have exhausted their administrative remedies, the clock on their ability to seek judicial relief may have nearly or totally run out, leaving them vulnerable to continuous violations of their rights.

While Article I, § 17 of the Michigan Constitution guarantees due process of law, it is not unheard of for an individual to experience unlawful intrusions by state actors. Mich Const art I, § 17. Under the Court of Appeals' interpretation of MCL § 600.6431, the one-year pre-notice period

would begin at the moment of the first violation. For instance, if MSP employs a “stop and frisk” policy, an individual repeatedly subjected to these unlawful intrusions would have only one year from the first instance of being unlawfully stopped to file a claim. If they fail to do so in that period, they are barred from challenging the practice altogether, even as the unconstitutional actions continue, effectively stripping them of their right to seek redress for the ongoing violations.

2. Government Benefits

Moreover, this interpretation of MCL § 600.6431 has far-reaching implications for individuals who rely on government protections, particularly in the employment and benefits arenas—implications that would be felt by immigrants, low-income workers, and other vulnerable populations. Individuals who receive unemployment benefits may be subject to overpayment determinations by the Michigan Unemployment Insurance Agency (“UIA”). The process for contesting these determinations is rigorous and time-consuming. First, the individual must file a protest within 30 days. MCL § 421.32a (1). If they disagree with the UIA’s redetermination, they have 30 days to file an appeal to the Michigan Administrative Hearing System for a formal hearing. MCL § 421.32a (2). If either party disagrees with that decision, they have 30 days to appeal to the Michigan Compensation Appellate Commission. MCL § 421.33(2). Further appeals can be taken to the Michigan Court of Appeals. MCL § 421.33(2).

This administrative process can easily consume many months. Throughout this time, the overpayment determination continues to affect the individual’s financial stability, leading to garnishments, loss of benefits, and potential legal actions by the state to recover the alleged overpayments. Under the Court of Appeals’ interpretation of MCL § 600.6431, by the time the individual has exhausted all available administrative remedies, the one-year pre-notice period

could be expired, leaving them unable to challenge the ongoing harm, even if the overpayment determination was incorrect.

In Michigan, many immigrants, low-wage workers, and formerly incarcerated individuals often rely on public benefits, such as MI Bridge, Medicaid, and the Family Independence Program to help fill the gap to meet basic needs. These programs are crucial for low-income families, immigrants, and formerly incarcerated individuals who are often attempting to establish stability. Despite this, the implication of the Court of Appeals' interpretation of MCL § 600.6431 will likely result in fewer eligible people successfully securing these services.

The process for securing Medicaid coverage is complex; individuals must either submit an application for the first time, or if formerly incarcerated, submit a renewal application. MDHHS then has up to 45 days to determine an individual's eligibility. 42 CFR § 435.912(c)(3). If MDHHS determines the individual is ineligible, they have either 90 or 120 days to request a State Fair hearing to appeal the decision. *See Exh. 2*. If the individual is unsatisfied with the administrative law judge's decision, they can ask Michigan Office of Administrative Hearings and Rules for a rehearing or reconsideration of the decision or appeal the decision to the circuit court within 30 days. *Id.*

For individuals facing wrongful denials—particularly where due process rights are violated, such as Spanish speakers who are not provided with translation services, or those disqualified based on outdated criminal history records—they must first go through the above process before a claim against state agencies can be brought. Exhausting their administrative remedies might make up a significant portion of a year following the denial while they continue to be harmed by the denial—particularly each time they incur a medical expense.

B. The Court of Appeals' Ruling Disproportionately Impacts Marginalized and Vulnerable Communities.

The Court of Appeals' interpretation of MCL § 600.6432 disproportionately impacts on marginalized and vulnerable populations, who are often the most affected by state infringements on individual rights. These groups, including individuals with records, low-income workers, and immigrants, may already face significant barriers to accessing justice, and the imposition of a rigid notice requirement only exacerbates these challenges. Discrimination faced in housing, public benefits, and employment will become especially harsher on these communities under the current interpretation.

Consider that the Elliott-Larsen Civil Rights Act (“ELCRA”) prohibits discrimination in various areas, including employment, based on race, color, religion, national origin, age, sex, height, weight, family status, or marital status. An individual facing ongoing discrimination at work—perhaps for a hostile work environment or failure to observe religious practices—can either file a claim with the Michigan Department of Civil Rights within 180 days of the act or in state court within three years. **Exh 3.** MDCR investigations can take several months to over a year to complete. *See Exh. 4.* A state employee who initiated an MDCR complaint to challenge ongoing discrimination at work could find that time has run out to pursue the claim against the state agency that employs them, despite the continuing harm they face.

ELCRA similarly prohibits discrimination in housing, working in conjunction with Michigan Fair Housing Act. However, many individuals—particularly former incarcerated individuals and immigrants—are more likely to face discrimination in this area, including denial of housing, higher rent and stricter terms, harassment. Indeed, one can easily imagine discriminatory practices by the Michigan State Housing Development Authority (MSHDA) that could be actionable by those injured. Similar to employment discrimination claims, individuals facing discrimination from MSHDA or other state agencies related to housing may file a claim

with MDCR within 180 days. **Exh. 3.** Likewise, an individual who has filed a complaint with MDCR may find that other avenues to address their claim have since closed off due to the one-year pre-notice requirement, despite their claim being actionable.

C. The Court of Appeals' Interpretation Would Lead to Unjust Results.

This Court has frequently held that the statutory interpretation of a law should not be interpreted in such a way that would lead to absurd or unjust results. *People v Bewersdorf*, 438 Mich 55, 68; 475 NW2d 231 (1991). In line with this principle, the Court of Appeals has previously recognized that exceptions to statutes of limitations and statutory notice requirements are warranted where applying the statute would produce such “harsh and unreasonable consequences” that it would “effectively divest” a plaintiff of access to the courts. *Rusha v Dep’t of Corr*, 307 Mich App 300, 311; 859 NW2 735 (2014).

Consider the Flint Water Crises of 2014 – where the city of Flint switched the water supply leading to an influx of lead contamination. *See Exh. 5.* Several suits were initiated—many settled or won—on behalf of the Flint residents who were impacted by the harm caused by the lead contamination. *See Exh. 6.* In *Mays v Snyder*, No 16-000017-MM, slip op (Mich Ct Cl Oct 26, 2016) (Boonstra, J), the Court confronted the application of MCL § 600.6431’s notice requirements to these claims. The Court recognized that strictly enforcing the six-month notice requirement in these instances would have led to an unjust result, as it would have required plaintiffs to file notice at a time when the full extent of their harm was not yet apparent, barring their claims for relief. *Id.* at 11. The Court held that application of the notice requirement would “divest” plaintiffs of their opportunity to vindicate their serious and ongoing harms against the state. *Id.* at 9, 11-12. If the Court of Claims had followed the Court of Appeals current interpretation of MCL § 600.6431,

these cases, instead, would have been dismissed—a result Michigan courts have recognized would be unjust.

Michigan courts have recognized the harm in applying strict notice requirements on constitutional claims, particularly in cases where the harm is gradual or not readily apparent. The Court of Appeal’s current interpretation of MCL § 600.6431 conflicts with this precedence, particularly when applied to prospective relief. For instance, groups facing similar or collective harms often rely on legal aid or advocacy organizations (e.g., Amici) to seek redress from the state actions. Under the Court of Appeals’ strict interpretation, the clock for filing notice for prospective relief from the harm would begin at the first moment of harm for the first individual affected in the group. This approach risks “divest[ing]” later-affected individuals of their ability to vindicate their harms in court, as the notice period could expire long before the full extent of the harm is realized by all members of the group.

II. The Court of Appeals' Ruling Conflicts with Established Precedents and Constitutional Principles.

The Court of Appeals' interpretation of MCL § 600.6431 represents a significant departure from well-established legal principles and threatens to undermine the courts' ability to provide prospective relief. The decision not only conflicts with key precedents, such as the doctrines established under *Ex Parte Young*, 209 U.S. 123 (1908), but also disrupts the balance between sovereign immunity and the enforcement of constitutional rights. If allowed to stand, this interpretation would create a legal environment where ongoing violations could persist unchallenged, leading to severe and unjust consequences for those most vulnerable to state misconduct.

A. Prospective Relief Is Essential for Addressing Ongoing Violations of Rights.

The judiciary has consistently recognized the necessity of prospective relief to address ongoing harm, particularly when the harm extends beyond the initial violation. This principle ensures that plaintiffs are not left without recourse simply because the statute of limitations has expired for the original wrongdoing. The availability of equitable remedies, such as injunctions and declaratory relief, is crucial in addressing continuous violations that can cause sustained damage to individuals and communities.

Legal precedents firmly establish that courts must intervene when ongoing violations persist, regardless of whether the statute of limitations has run on the initial claims. *Ex Parte Young*, 209 U.S. at 123. The Court recognized that while sovereign immunity protects states from certain legal actions, it does not extend to actions by state officials that violate federal law or the Constitution, ensuring plaintiffs could obtain relief to stop ongoing unlawful conduct, even if the original violation occurred outside the statute of limitations. SCOTUS reinforced this principle in *Edelman v. Jordan*, 415 U.S. 651, 675-78 (1974) when it clarified that sovereign immunity bars retroactive monetary relief against the state, but *not* injunctive relief aimed at stopping ongoing unconstitutional actions.

In the cases that Amicus often take on—those implicating civil and employment rights, or immigration—prospective relief is often the only effective means of addressing systemic issues that impact the community they serve, as evidenced by the numerous cases in which this Court (and the Court of Appeals) has granted such. *See, e.g., Radtke v Everett*, 442 Mich 368, 382-84; 501 NW2d 155 (1993) (granting injunctive relief to prevent a hostile work environment due to sexual harassment); *Dep't of Civil Rights ex rel Burnside v Fashion Bug of Detroit, Inc.*, 473 Mich 863, 864; 698 NW2d 404 (2005) (upholding an injunction to stop ongoing racial discrimination in the workplace); *McCready v Hoffius*, 459 Mich 131, 142-44; 586 NW2d 723 (1998) (upholding

an injunction to prevent housing discrimination); *Champion v Nation Wide Security, Inc*, 450 Mich 702, 707-08; 545 NW2d 596 (1996) (affirming an injunction against racial discrimination and hostile work environment).

Without such prospective relief, the systemic violation of rights in these contexts would persist, leaving individuals and communities without the necessary legal tools to halt ongoing harm. The Michigan Court of Appeals' interpretation of § 600.6431 threatens this legal mechanism, potentially allowing harmful practices to continue unchecked.

B. MCL 600.6431 was intended to provide fair notice, not to bar legitimate claims for ongoing harms.

i. The Court of Appeals Misinterprets when "Accrual" Begins.

MCL § 600.6431's requirement for timely notice is designed to ensure that the state is informed of potential claims in a manner that allows for adequate investigation and preparation of a defense. The primary purpose of this procedural safeguard is to protect the state from being unfairly surprised by claims that arise long after the alleged incident occurred. However, the Court of Appeals' interpretation of this statute misapplies established precedents, particularly regarding when a claim accrues.

The Court of Appeals erroneously held that the one-year notice requirement begins at the first instance of harm, regardless of whether the harm continues or new violations occur. This interpretation conflicts with established Michigan case law, which recognizes that a plaintiff's failure to timely sue on the first violation does not grant the defendant immunity for subsequent violations. As this Court explained in *Township of Fraser v Haney*, 509 Mich. 18, 28, 983 NW2d 309 (2022), "each time a defendant commits a new violation," a new claim accrues. The ruling in *Haney* makes it clear that ongoing violations, such as repeated misapplications of a policy, give rise to new, actionable claims each time the violation occurs.

Furthermore, the Court of Appeals' reliance on the date of the first harm as the sole marker for claim accrual misinterprets the precedent set by this Court in *Sunrise Resort Ass'n, Inc v Cheboygan Cnty Rd Comm'n*, 511 Mich 325, 999 NW2d 423 (2023). In *Sunrise*, this Court acknowledged that ongoing or recurrent harm, such as environmental damage from a defective drainage system, constitutes a new and independent cause of action each time the harm occurs. *Id.* at 339-340. This understanding of claim accrual ensures that plaintiffs are not unfairly barred from seeking relief for continuous or repeated violations, as it recognizes the reality that ongoing harms often require ongoing legal redress.

The Panel's assertion that the date of accrual is the first time the harm is "not merely hypothetical or anticipated" ignores this Court's reasoning in *Haney* and *Sunrise*. As articulated in *Haney*, "requiring plaintiffs to file their claims at the first violation or forever lose their leverage to urge the government to remedy defects" defies the logic of this Court's precedent. *Haney* explicitly rejected the notion that the first violation in a series should grant a defendant immunity for future violations, emphasizing that each new violation renews the claim.

This rigid interpretation of accrual directly contradicts the principles laid out in *Bauserman v. Unemployment Ins. Agency*, 503 Mich. 169, 183–85, 188–90; 931 NW2d 539 (2019) (relying on the discussion of claim accrual in *Frank v. Linkner*, 500 Mich 133 (2017)). In *Bauserman I*, this Court made it clear that the meaning of accrual should not be narrowly interpreted in a way that precludes legitimate claims for ongoing or new harms. The consistent recognition across these cases—that a new violation results in a new cause of action—underscores the importance of allowing claims that address ongoing or future harms, ensuring that plaintiffs have the opportunity to seek redress.

MCL § 600.6431's requirement for timely notice was never intended to be wielded as a tool for state actors to avoid accountability for ongoing violations of rights. The statute's language does not explicitly preclude plaintiffs from seeking relief for ongoing harm, nor does it mandate that all claims arising from continuous violations be barred if they were not initiated within a year of the first instance of harm. The notice provision should be understood as a procedural requirement, intended to facilitate the state's preparation for litigation, not as a substantive barrier to the enforcement of constitutional rights.

ii. The Court of Appeals' Interpretation Fails to Balance Notice Requirements with Access to Justice.

The Michigan Legislature, in enacting MCL § 600.6431, intended to balance the need for timely notice to the state with the preservation of individuals' rights to seek redress for harm. This statutory provision was designed to protect the state from the burden of defending stale claims, ensuring that the state has sufficient time to investigate and prepare an appropriate defense. However, the statute was not intended to provide blanket immunity for ongoing misconduct by state actors, particularly when such actions infringe upon constitutional rights.

In *Rowland v Washtenaw Cnty Road Com'n*, 477 Mich. 197 (2007), this Court emphasized the importance of notice provisions in ensuring the state's ability to respond to claims in a timely manner. However, this Court also acknowledged that these provisions should not be interpreted in a manner that would defeat legitimate claims, especially where ongoing harm is concerned, emphasizing that while procedural safeguards are essential, they must not override substantive rights, particularly in cases where continuing violations occur. *Id.* at 212-14. A rigid application of notice requirements that effectively bars claimants from seeking redress for ongoing violations would undermine the very principles of justice that these provisions are intended to protect.

Denying prospective relief based on a rigid application of the notice requirement would upset this balance, effectively allowing the state to continue unlawful actions without fear of legal challenge. Such an interpretation would undermine the statute's purpose and create an unjust and legally unsound precedent that runs counter to the principles of fairness and justice that underlie Michigan's legal system.

C. *Ex Parte Young* and Related Precedents Mandate the Availability of Prospective Relief Against State Officials.

The Court of Appeals' interpretation of MCL § 600.6431 does not just misapply the statute; it fundamentally distorts the established legal principles surrounding sovereign immunity. Sovereign immunity, while providing necessary protections to the state, was never intended to serve as a shield for ongoing unlawful conduct by state officials. The doctrine has always recognized a critical balance—protecting state interests without undermining the enforcement of federal and constitutional rights. However, by effectively barring prospective relief against state officials, the Court of Appeals' ruling threatens to erode this balance, allowing continuous violations of rights to persist unchecked. The Court of Appeals' decision, in rejecting *Ex Parte Young* and related precedents, dangerously expands the scope of sovereign immunity. This expansion not only conflicts with Michigan's legal tradition but also places the state in opposition to well-established constitutional principles that protect individuals from ongoing harm inflicted by state actors.

i. Ex Parte Young Establishes That Sovereign Immunity Does Not Bar Suits for Prospective Relief.

Ex Parte Young and its progeny unequivocally establish that plaintiffs can seek injunctive relief against state officials to prevent ongoing or future violations of federal or constitutional law. *Ex Parte Young* is a cornerstone of American jurisprudence, ensuring that sovereign immunity

does not bar courts from granting prospective relief against state officials who violate federal law. The decision recognized that while states enjoy sovereign immunity, this immunity cannot extend to actions by state officials that contravene federal law or the Constitution. *Ex Parte Young*, 209 U.S. at 155-56. By permitting courts to issue injunctions against state officials, *Ex Parte Young* provides a necessary mechanism to prevent ongoing harm and to ensure that state actions conform to constitutional requirements. *Id.*

The panel's assertion that forward-looking declaratory relief is unavailable when a statutory time-bar has run on the claim for substantive relief is directly at odds with precedent set by *Ex Parte Young*. The U.S. Supreme Court made it clear that when a state official's actions conflict with federal law, they are stripped of their official character, and sovereign immunity does not protect them from prospective relief. *Ex Parte Young*, 209 U.S. at 159-60 (1908). The Michigan Supreme Court has similarly recognized this principle *See Smith v. Dep't of Public Health*, 428 Mich. 540, 544-46; 410 NW2d 749 (1987).

The Court of Appeals' ruling, however, explicitly dismissed the applicability of *Ex Parte Young* to Michigan law, incorrectly asserting that sovereign immunity in Michigan does not allow for exceptions where claims seek prospective equitable relief. *Michigan Immigrant Rights Ctr v Governor*, No. 361451), 2024 WL 2790290 at 5-6. This misinterpretation not only conflicts with long-standing Michigan jurisprudence but also represents a significant departure from the principles that have guided state and federal courts in protecting constitutional rights against ongoing violations.

Despite its rejection of *Ex Parte Young*, the panel failed to address the fact that Michigan courts have long held that sovereign immunity does not extend to claims seeking prospective equitable relief to stop government misconduct. *See Li v. Feldt*, 439 Mich. 457, 468; 487 NW2d

127 (1992) (emphasizing that state officials cannot invoke sovereign immunity to avoid compliance with constitutional obligations). By requiring claims to be filed within a rigid one-year notice period, even in the face of continuous violations, the Court of Appeals' decision undermines the very purpose of *Ex Parte Young*, creating a perverse incentive for state actors to prolong unconstitutional actions, secure in the knowledge that delayed discovery or procedural hurdles will protect them from judicial scrutiny.

ii. The COA's Ruling Ignores Well-Established Doctrine and is a Precedential Outlier.

The decision by the Court of Appeals conflicts with well-established precedent, which firmly holds that sovereign immunity cannot be invoked to shield state officials from being ordered to comply with the law. Michigan courts have long recognized the necessity of limiting sovereign immunity in circumstances where it would otherwise conflict with the enforcement of constitutional rights. *See Smith*, 428 Mich at 545 (affirming that while sovereign immunity may protect the state from certain forms of liability, it does not extend to situations where state officials are actively engaged in ongoing violations of constitutional rights).

In *Li*, 439 Mich 457, this Court explicitly stated that sovereign immunity does not bar claims seeking prospective equitable relief. The Court held that while governmental immunity might protect the state from damages claims, it does not preclude injunctive relief aimed at stopping ongoing unlawful actions. *Id.* This principle has been a cornerstone of Michigan's sovereign immunity doctrine, underscoring the distinction between immunity from retrospective damages and liability for prospective injunctive relief. Despite this clear precedent, the Court of Appeals erroneously asserted that *Li* was non-binding, mischaracterizing the opinion as lacking a majority. This misinterpretation disregards the established understanding that Michigan courts have long upheld the availability of prospective relief in cases where ongoing harm is at issue.

The Court of Appeals ignored a wealth of other decisions reinforcing this principle. *See, e.g., McDowell v State Highway Commissioner*, 365 Mich 268; 112 NW2d 491 (1961) (reaffirming that sovereign immunity does not prevent courts from issuing injunctive relief to stop ongoing unlawful conduct); *Thompson v Auditor General*, 261 Mich 624; 247 NW 360 (1933) (holding that Michigan courts could, and indeed should, apply a "liberal rule" in favor of prospective relief, ensuring that state officials cannot use sovereign immunity as a shield against being compelled to follow the law); *House Speaker v Governor*, 195 Mich App 376 (1992), rev'd on other grounds, 443 Mich 560 (1993) (reiterating that actions seeking only equitable relief, such as injunctions or declaratory judgments, do not fall within the purview of governmental immunity). The Court of Appeals' recent decision represents a significant departure from these well-established principles.

Furthermore, this decision places the Court of Appeals as an outlier in the broader context of American jurisprudence. Courts across various jurisdictions have consistently recognized that prospective relief is not subject to the same procedural requirements as claims seeking retrospective relief. *See, e.g., Pennhurst State School & Hospital v Halderman*, 465 US 89 (1984) (reiterating sovereign immunity does not extend to suits seeking prospective injunctive relief against state officials); *Idaho v Coeur d'Alene Tribe of Idaho*, 521 US 261 (1997) (reaffirming that "an allegation of an ongoing violation of federal law where the requested relief is prospective is ordinarily sufficient to invoke the *Young* fiction."); *Verizon Md, Inc. v Pub Serv Com'n of Md.*, 535 US 635, 645 (2002) (holding the application of *Ex Parte Young* should focus on whether the complaint alleges an ongoing violation and seeks prospective relief); *Marie O v Edgar*, 131 F3d 610 (CA 7, 1997) (holding state actions constituting new violations can and should be challenged in court); *Edwards v Ohio DOT*, 2016-Ohio-5221, 2016 WL 3902325 (Ohio Ct Cl 2016) (holding

state officials cannot hide behind sovereign immunity to avoid accountability for continuous violations).

The ruling by the Court of Appeals diverges sharply from this consensus, potentially leaving individuals and organizations without recourse to challenge ongoing violations of their rights.

D. The Court of Appeals' Decision Expands Sovereign Immunity Beyond Its Proper Bounds.

The Court of Appeals' decision marks a dangerous expansion of the doctrine of sovereign immunity, transforming it into a shield for state officials who engage in unlawful conduct. This overreach is not only inconsistent with the purpose of sovereign immunity but also threatens to erode the fundamental rights protected by both the Michigan and U.S. Constitutions.

Sovereign immunity has traditionally served to protect the state from retrospective liability for damages, ensuring that state officials are not unduly burdened by lawsuits for actions taken in their official capacities. However, this immunity has never been absolute, particularly when it comes to ongoing violations of constitutional rights. The U.S. Supreme Court has consistently recognized that sovereign immunity does not bar suits for prospective relief, as established in *Ex Parte Young*, 209 U.S. 123 (1908). The Michigan courts have similarly affirmed that sovereign immunity does not extend to actions seeking to enjoin ongoing unlawful conduct by state officials. *See, e.g., Smith*, 428 Mich. 540; *McDowell*, 365 Mich. 268 (1961).

The Court of Appeals' ruling distorts this well-established legal framework, effectively allowing state officials to evade accountability even in cases of ongoing constitutional violations. By extending sovereign immunity to shield state officials from prospective relief, the Court of Appeals has expanded the doctrine beyond its proper bounds, contrary to both Michigan and federal jurisprudence.

If this expansion of sovereign immunity is allowed to stand, it could set a precedent that enables state officials to act with impunity, knowing that procedural barriers will protect them from accountability for ongoing violations. This outcome is legally unsound and morally unacceptable, as it erodes the protections guaranteed by the Michigan and U.S. Constitutions and undermines the fundamental principles of justice and fairness that form the foundation of our legal system.

The Michigan Supreme Court must recognize the dangers inherent in this expansive interpretation of sovereign immunity and reverse the Court of Appeals' decision. By doing so, the Court can reaffirm its commitment to upholding the constitutional protections that are essential to the functioning of a just and equitable legal system.

III. The Broader Implications of the Court of Appeals' Ruling Endanger Civil Rights and Constitutional Protections.

The Court of Appeals' decision has far-reaching consequences that extend beyond the immediate case at hand. By restricting the availability of prospective relief and expanding the doctrine of sovereign immunity, the ruling threatens to undermine the very foundation of civil rights and constitutional protections in Michigan. This decision not only affects individuals currently seeking justice but also sets a dangerous precedent that could erode the ability of the courts to serve as a check on unlawful state actions. This Court must recognize the gravity of this issue and take action to prevent the long-term harm that this ruling could inflict on the legal system and the protection of individual rights.

A. The Inability to Seek Prospective Relief Undermines Constitutional Protections.

Denying prospective relief in cases of ongoing harm fundamentally undermines the protection of constitutional rights, leaving individuals and groups vulnerable to continued state

abuses. Prospective relief, such as injunctions, is a critical tool for ensuring that constitutional rights are upheld and that state actions do not result in prolonged harm to individuals.

Without the ability to seek such relief, individuals are left defenseless against state actions that continuously violate their rights. This is particularly concerning in areas such as civil rights, where systemic abuses can persist over long periods, compounding the harm to affected communities. The denial of prospective relief effectively sanctions ongoing violations by state officials, removing one of the primary checks on governmental power. This not only weakens the protection of individual rights but also threatens the overall integrity of the legal system.

The significance of prospective relief is firmly rooted in both federal and Michigan law. The U.S. Supreme Court established that sovereign immunity does not bar suits seeking to enjoin ongoing unconstitutional actions. *Ex Parte Young*, 209 U.S. 123. This doctrine was adopted by the Michigan Supreme Court, affirming its application to Michigan law. *Smith*, 428 Mich. 540. The purpose of this legal framework is to protect individuals' constitutional rights by ensuring that state officials cannot hide behind sovereign immunity to continue violating those rights. The Court of Appeals' interpretation, limiting access to prospective relief, fundamentally undermines this protection, leaving individuals vulnerable to ongoing state abuses.

The implications of this denial extend across multiple legal fields, where ongoing violations are common and require judicial intervention to prevent further harm. In civil rights cases, for example, the inability to obtain injunctive relief could allow discriminatory practices to continue unchecked, exacerbating inequalities and undermining efforts to achieve justice. The same is true in contexts such as employment law, where ongoing discrimination or harassment can cause significant and lasting harm if not promptly addressed by the courts.

B. The Ruling Could Lead to Systemic Erosion of Civil Rights Protections.

If left uncorrected, the Court of Appeals' decision threatens to create a dangerous precedent that could erode constitutional protections and embolden state actors to engage in unlawful conduct without fear of legal challenge. The expansion of sovereign immunity and the restrictive interpretation of the accrual rule could lead to a situation where ongoing violations of rights are effectively sanctioned by the legal system.

This precedent would have wide-ranging consequences, potentially affecting not only civil rights cases but also disputes involving employment law, immigration enforcement, and other areas where state actions have a direct and continuous impact on individuals' lives. This Court must intervene to prevent this outcome and ensure that the legal system remains a place where all individuals can seek justice.

By granting leave on the appeal of the Court of Appeals' decision, this Court can reaffirm the importance of access to the courts, the availability of prospective relief, and the protection of constitutional rights. This is crucial not only for the immediate parties involved but for the broader legal community which relies on the judiciary to safeguard rights and ensure that no individual or group is left without recourse.

C. The Michigan Supreme Court Must Restore Balance by Reversing the Court of Appeals' Decision to Prevent Further Harm.

This Court has a critical role in ensuring that constitutional protections are upheld and that the courts remain accessible to those seeking relief from ongoing violations. The Court of Appeals' decision threatens this accessibility by imposing procedural barriers that effectively close the doors of the courthouse to individuals suffering continuous harm. To restore balance and protect constitutional rights, the Michigan Supreme Court must reverse the Court of Appeals' ruling.

Doing so would reaffirm the judiciary's role as a safeguard against unlawful state actions and ensure that individuals can seek prospective relief to prevent further harm.

Upholding the availability of prospective relief is essential for maintaining the integrity of Michigan's legal system. It ensures that the courts can fulfill their duty to protect individuals from ongoing violations and provides a necessary check on state power. A reversal would send a clear message that the courts will not allow procedural technicalities to be used to deny justice, particularly in cases where the stakes are as high as the protection of constitutional rights.

The Amici Support the Reversal of the Court of Appeals' Decision to Protect the Integrity of the Judicial System. The amici curiae, representing a broad spectrum of legal and advocacy organizations, strongly support the reversal of the Court of Appeals' decision. They argue that the decision not only threatens the rights of those they represent but also undermines the integrity of the judicial system. The amici emphasize that this case has far-reaching implications beyond the immediate parties involved, and a ruling that protects the availability of prospective relief would help ensure that the judicial system remains robust, fair, and capable of addressing the needs of all individuals, particularly those who are most vulnerable to ongoing harm.

By reversing the decision, this Court would send a clear message that procedural technicalities cannot be used to deny justice and that the courts will remain a venue where individuals can seek redress for continuous violations of their rights. This is essential to maintaining the public's trust in the legal system and ensuring that justice is accessible to all.

CONCLUSION

The Court of Appeals' interpretation of MCL 600.6431 poses a significant threat to the protection of constitutional rights and the enforcement of justice. By narrowly construing the statute's notice requirement, the Court of Appeals effectively shields state officials from

accountability for ongoing violations, undermining the well-established principle that prospective relief must remain available to prevent continuous harm. This interpretation not only conflicts with Michigan's legal precedents but also distorts the fundamental purpose of sovereign immunity, which was never intended to allow state actors to act with impunity.

The Michigan Supreme Court must intervene to correct this dangerous precedent. Upholding the availability of prospective relief is essential to maintaining the integrity of Michigan's legal system and ensuring that constitutional protections are not rendered meaningless by procedural technicalities. By reversing the Court of Appeals' decision, the Michigan Supreme Court can reaffirm its commitment to safeguarding the rights of individuals and communities against ongoing abuses, preserving the rule of law, and ensuring that justice remains accessible to all.

Respectfully submitted,

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WORD COUNT STATEMENT

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MICHIGAN DEPARTMENT OF CORRECTIONS		EFFECTIVE DATE	NUMBER
POLICY DIRECTIVE		09/25/2023	03.02.130
SUBJECT		SUPERSEDES	
PRISONER/PAROLEE GRIEVANCES		03.02.130 (03/18/2019)	
		AUTHORITY	
		MCL 791.203	
		PAGE	1 OF 9

POLICY STATEMENT:

Prisoners and parolees shall be provided with an effective method of seeking redress for alleged violations of policy and procedure or unsatisfactory conditions of confinement.

RELATED POLICIES:

- 01.01.140 Internal Affairs
- 03.02.131 Prisoner State Administrative Board Property Claims
- 03.03.140 Sexual Abuse and Sexual Harassment of Prisoners - Prison Rape Elimination Act (PREA)

DEPARTMENT-WIDE OPERATING PROCEDURE:

03.02.130 Prisoner/Parolee Grievances

POLICY:

DEFINITIONS

- A. Business day: Monday through Friday excluding State observed holidays.
- B. Respondent: The staff person who investigates and responds to a grievance.

GENERAL INFORMATION

- C. Complaints filed by prisoners/parolees regarding grievable issues as defined in this policy serve to exhaust their administrative remedies only when filed as a grievance through all three steps of the grievance process in compliance with this policy.
- D. Grievances filed regarding sexual abuse, including those filed by a third party, shall not be processed as grievances under this policy but shall be reported in accordance with PD 03.03.140 "Sexual Abuse and Sexual Harassment of Prisoners - Prison Rape Elimination Act (PREA)." Any grievance submitted under this policy that contains an allegation of sexual abuse shall be copied by the Grievance Coordinator and forwarded to the PREA Coordinator for investigative referral if warranted. The original grievance shall be returned to the prisoner. If the grievance also includes a non-PREA grievable issue, it will need to be refiled by the prisoner on the appropriate Prisoner/Parolee Grievance form.
- E. Initial requests for reasonable accommodations under the Americans with Disabilities Act shall not be processed as grievances under this policy but shall be forwarded to the Worksite ADA Coordinator for processing under PD 04.06.155 "Offenders With Disabilities." Appeals of a final determination shall not be processed as grievances under this policy but shall be forwarded to the Worksite ADA Coordinator to be processed under PD 04.06.155 "Offenders With Disabilities."
- F. If a Step I grievance is received regarding a previously approved ADA accommodation, the Grievance Coordinator shall assign the Worksite ADA Coordinator as responder. The Worksite ADA Coordinator shall investigate, compile evidence, draft a proposed response, and forward it to the Statewide ADA Coordinator to receive direction with respect to a final response. The Worksite ADA Coordinator shall then forward the final Step I response to the Grievance Coordinator. If the Grievance Coordinator intends to reject the grievance for reasons defined in policy, they shall forward the draft rejection to the Manager of the Grievance Section, Office of Legal Affairs (OLA), for guidance.
- G. Initial requests for gender identity accommodations shall not be processed as grievances under this policy but

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shall be forwarded to the Health Unit Manager (HUM) for processing as set forth in PD 04.06.160 "Medical Details and Special Accommodation Notices."

- H. If a Step I grievance is received regarding a gender identity issue, including an already approved medical accommodation, the Grievance Coordinator shall assign the HUM as a responder. The HUM shall investigate, compile evidence, draft a proposed response, and forward it to the Michigan Department of Corrections (MDOC) Chief Medical Officer (CMO) or designee to seek direction with respect to a final response. The HUM shall then forward the final Step I response to the Grievance Coordinator. If the Grievance Coordinator intends to reject the grievance for reasons defined in policy, they shall forward the draft rejection to the Manager of the Grievance Section, OLA, for guidance.
- I. Initial requests for religious accommodations shall not be processed as grievances under this policy but shall be forwarded to the Chaplain and processed in accordance with PD 05.03.150 "Religious Beliefs and Practices of Prisoners."
- J. If a Step I grievance is received pertaining to (1) a previously approved religious accommodation, or (2) an issue pertaining to a religious belief or practice, the Grievance Coordinator shall assign the Chaplain as responder. The Chaplain shall investigate, compile evidence, draft a proposed response, and forward it to the CFA Special Activities Coordinator to seek direction with respect to a final response. The Chaplain shall then forward the final Step I response to the Grievance Coordinator. If the Grievance Coordinator intends to reject the grievance for reasons defined in policy, they shall forward the draft rejection to the Manager of the Grievance Section, OLA, for guidance.
- K. The grievance process shall be equally available to all prisoners housed in a correctional facility, including prisoners incarcerated under the Holmes Youthful Trainee Act, and all parolees unless placed on modified access pursuant to this policy. Probationers are not covered by this policy but may resolve specific problems and complaints with supervising staff and, if not resolved, with the sentencing court. If the probationer is housed in the Special Alternative Incarceration Program, they shall follow the grievance process set forth in PD 05.01.142 "Special Alternative Incarceration Program." Prisoners housed in non-MDOC facilities shall follow the established grievance process for the facility in which they are confined.
- L. Grievances may be submitted regarding alleged violations of policy or procedure or unsatisfactory conditions of confinement that personally affect the grievant, including alleged violations of this policy and related procedures.
- M. If a prisoner chooses to file a claim for reimbursement of personal property allegedly lost or damaged while in the Department's sole possession, they shall request a Prisoner Claim Against the State of Michigan (DTMB-1104-P) form from the Grievance Coordinator in accordance with PD 03.02.131 "Prisoner State Administrative Board Property Claims."
- N. Grievances shall not be rejected or denied solely because the prisoner has not included with their grievance exhibits or other documents related to the grievance; funds shall not be loaned to a prisoner to pay for photocopying of such documents. If the grievance references documents that are not in the prisoner's files or otherwise available to the Grievance Coordinator or respondent except through the prisoner, the documents shall be reviewed with the prisoner as part of the grievance investigation process if necessary to respond on the merits. If the Grievance Coordinator or respondent determines that a copy of a document is needed for the grievance investigation, the copy shall be made at Department expense.
- O. A grievant whose grievance is rejected may appeal the rejection to the next step as set forth in this policy. A new grievance shall not be filed regarding the rejection. Grievances categorized as non-grievable must be appealed pursuant to this policy through all three steps of this grievance process in order to exhaust administrative remedies since the non-grievable designation may be overturned at Step II or Step III.

REASONS FOR REJECTION

- P. Prisoners and parolees are required to file grievances in a responsible manner. A grievance shall be rejected by the Grievance Coordinator if:
 - 1. It is vague, illegible, or contains multiple unrelated issues.

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2. It raises issues that are duplicative of those raised in another grievance filed by the grievant.
3. The grievant is on modified access pursuant to Paragraphs PP through TT and has filed a grievance in violation of those paragraphs.
4. The grievant did not attempt to resolve the issue with the staff member involved prior to filing the grievance unless prevented by circumstances beyond their control or if the issue falls within the jurisdiction of Internal Affairs in the Office of Executive Affairs. An attempt to resolve Health Care grievances regarding routine care is accomplished by submitting a Health Care Request form (CHJ-549) to the facility Health Care staff as directed in PD 03.04.100 "Health Services."
5. The grievance is filed in an untimely manner. The grievance shall not be rejected if there is a valid reason for the delay; e.g., transfer.
6. It contains profanity, threats of physical harm, or language that demeans the character, race, ethnicity, physical appearance, gender, religion, or national origin of any person, unless it is part of the description of the grieved behavior and is essential to that description.
7. Two or more prisoners and/or parolees have jointly filed a single grievance regarding an issue of mutual impact or submit identical individual grievances regarding a given issue as an organized protest.
8. The prisoner is grieving content of the policy or procedure except as it was specifically applied to the grievant. If a prisoner has a concern with the content of a policy or procedure, they may direct comments to the Warden's Forum as provided in PD 04.01.105 "Prisoner Housing Unit Representatives/Warden's Forum."
9. The prisoner is grieving a decision made in a Class I misconduct hearing or other hearings conducted by Administrative Law Judges (ALJ's) employed by the Michigan Department of Licensing and Regulatory Affairs (LARA), including property disposition and issues directly related to the hearing process (e.g., sufficiency of witness statements; timeliness of misconduct review; timeliness of hearing). Prisoners are provided an appeal process for Class I decisions pursuant to PD 03.03.105 "Prisoner Discipline." However, if the prisoner wishes to pursue a claim that retaliation is the basis for a Class I misconduct, they must file a grievance on the sole issue of retaliation and it shall not be rejected as a grievance on the hearing decision.
10. The prisoner is grieving a decision made by the Parole Board to grant, deny, rescind, amend or revoke parole, or not to proceed with a lifer interview or a public hearing. This includes grieving the tools (scoring weights and ranges) utilized in developing guideline scores. However, a prisoner may challenge the calculation of their parole guideline score, including the accuracy of the information used in calculating the score by filing a grievance.
11. The prisoner is grieving a decision made in a Class II or Class III misconduct hearing, including property disposition, and issues directly related to the hearing process (e.g., sufficiency of witness statements, timeliness of misconduct review, timeliness of hearing). Prisoners are provided an appeal process for Class II and Class III decisions pursuant to PD 03.03.105 "Prisoner Discipline." However, if the prisoner wishes to pursue a claim that retaliation is the basis for a Class II or III misconduct, they must file a grievance on the sole issue of retaliation, and it shall not be rejected as a grievance on the hearing decision.
12. The prisoner/parolee is grieving issues not within the authority of the Department to resolve (e.g., disputes between a prisoner and an MDOC vendor or outside agency (courts), etc.). The grievant shall be told who to contact in order to attempt to resolve the issue, if known.
13. The prisoner/parolee is grieving the result of a Risk Assessment Instrument (e.g., COMPAS) or Case Plan. However, a prisoner/parolee may challenge the accuracy of the information used in assessments, including in the Case Plan.
14. The prisoner is seeking reimbursement for property loss or damage that must be submitted pursuant to PD 03.02.131 "Prisoner State Administrative Board Property Claims."

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15. The Grievance filed is regarding sexual abuse, including those filed by a third party. Grievances regarding sexual abuse shall be handled as set forth in Paragraph D.

- Q. Grievances shall not be placed in prisoner/parolee files or placed in the prisoner health record. Grievances also shall not be referenced on any document placed in these files or the prisoner health record, except as necessary pursuant to Paragraph S. Grievance documents and files shall be accessed only to investigate or respond to a pending grievance, to respond to a request under the Freedom of Information Act, to respond to a request from the Department of Attorney General or appropriate Central Office staff, for audits, for statistical reporting, or to the Warden or their supervisor.
- R. Retaliation against a prisoner/parolee for filing a grievance is prohibited. A grievant shall not be penalized in any way for filing a grievance except as provided in this policy for misusing the grievance process. Staff shall avoid any action that gives the appearance of reprisal for using the grievance process.
- S. With the Warden's approval, a prisoner may be issued a Class II misconduct report (e.g., Interference With Administration of Rules) if the grievant intentionally files a grievance that is investigated and determined to be unfounded that, if proven true, may have caused an employee or a prisoner to be disciplined or an employee to receive corrective action. The Class II misconduct may be elevated to a Class I misconduct only if approved by the Warden. The misconduct report shall be processed as set forth in PD 03.03.105 "Prisoner Discipline." If the grievant is found guilty of the misconduct, the grievant shall be placed on modified access consistent with Paragraphs PP through TT.
- T. Wardens and FOA Region Managers shall ensure prisoners and parolees, respectively, are provided assistance in completing a grievance form, if they determine it is needed. In such cases, assistance shall be provided by a staff member who is not involved in the grievance.

GRIEVANCE COORDINATORS

- U. Each Warden shall designate at least one staff member to serve as the Step I Grievance Coordinator and at least one staff member to serve as the Step II Grievance Coordinator. The FOA Deputy Director shall designate staff members to serve as Step I Grievance Coordinators and Step II Grievance Coordinators for each FOA field office. Step III grievances shall be processed by the Grievance Section in the OLA.
- V. Each Step I Grievance Coordinator shall prepare and submit monthly reports on grievances filed in their respective facility or office to the Grievance Section, as directed by the Manager of the Grievance Section. The monthly report shall include information on the subject matter of each grievance filed and, for rejected grievances, the basis for the rejection.

GRIEVANCE PROCESS

- W. Prior to submitting a written grievance, the grievant shall attempt to resolve the issue with the staff member involved within two business days after becoming aware of a grievable issue, unless prevented by circumstances beyond their control or if the issue is believed to fall within the jurisdiction of Internal Affairs. If the issue is not resolved, the grievant may file a Step I grievance. The Step I grievance must be filed within five business days after the grievant attempted to resolve the issue with appropriate staff.
- X. All grievances alleging conduct that may be an alleged work rule violation shall be forwarded to the worksite administrator for review and entry into the Administrative Investigation Management (AIM) database pursuant to PD 01.01.140 "Internal Affairs" even if they would otherwise be rejected. The Manager of Internal Affairs or designee shall notify the Warden or FOA Deputy Director or designee, and either the Inspector or Grievance Coordinator as appropriate, in writing if the grievance is determined to fall within the jurisdiction of Internal Affairs; in such cases, an investigation shall be conducted in accordance with PD 01.01.140 and the grievant notified that an extension of time is therefore needed to respond to the grievance. The Manager of Internal Affairs or designee also shall notify the Warden or FOA Deputy Director or designee, and the Inspector or Grievance Coordinator as appropriate, if it is determined that the grievance is not within the jurisdiction of Internal Affairs; in such cases, the grievance shall continue to be processed as a Step I grievance in accordance with this policy.
- Y. A grievant shall use a Prisoner/Parolee Grievance Form (CSJ-247A) to file a Step I grievance. A Prisoner/Parolee Grievance Appeal (CSJ-247B) shall be used to file a Step II or Step III grievance. The forms

may be completed by hand or by typewriter; however, handwriting must be legible. The issue should be stated briefly but concisely. Information provided is to be limited to the facts involving the issue being grieved (i.e., who, what, when, where, why, how). Dates, times, places, and names of all those involved in the issue being grieved are to be included. Information should be confined to the form and not written on the back, sides, or margins of the form, or in the response area. Additional pages may be attached to the grievance form if necessary to provide required information; however, grievants are encouraged to limit the information to the grievance form itself. If the grievant believes additional pages are necessary, they are to submit four copies of each additional page; Departmental forms are not to be used for this purpose. The grievant may use an intradepartmental mail run, if available, to send a grievance to another facility, or to send a Step III grievance, to the Grievance Section. If an intradepartmental mail run is not available and the grievant does not have sufficient funds to mail the grievance, postage shall be loaned as set forth in PD 05.03.118 "Prisoner Mail."

- Z. Grievances and grievance appeals at all steps shall be considered filed on the date received by the Department. All grievances and appeals shall be date stamped upon receipt. Time frames for responding to grievances are set forth in this policy directive. An extension may be granted at the discretion of the Grievance Coordinator for a Step I or II response. However, the extension shall not exceed 15 business days. The Grievance Coordinator shall immediately notify the grievant in writing whenever an extension has been approved. The extension also shall be noted in the grievance response.
- AA. If a grievant chooses to pursue a grievance that has not been responded to by staff within required time frames, including any extensions granted, the grievant may forward the grievance to the next step of the grievance process within ten business days after the response deadline expired, including any extensions that have been granted.
- BB. Prisoners and staff who may be involved in the issue being grieved shall not participate in any capacity in the grievance investigation, review, or response, except as necessary to provide information to the respondent.

Step I

- CC. Within five business days after attempting to resolve a grievable issue with appropriate staff, a grievant wishing to advance a grievance must send a completed Prisoner/Parolee Grievance form (CSJ-247A) to the Step I Grievance Coordinator designated for the facility or other office being grieved. If the office being grieved does not have a designated Grievance Coordinator, the grievance shall instead be sent to the Step I Grievance Coordinator for the facility in which the grievant is housed. A grievant in a CFA facility alleging conduct under the jurisdiction of the Internal Affairs Division may send the grievance to the Inspector for investigation and processing as set forth in Paragraph X.
- DD. The Grievance Coordinator shall log and assign a unique identifying number to each Step I grievance received, including those that may be rejected. A computerized grievance tracking system shall be used for this purpose.
- EE. After receipt of the grievance, the Grievance Coordinator shall determine if the grievance should be rejected pursuant to this policy. If the grievance is rejected, the grievance response shall state the reason for the rejection without addressing the merits of the grievance. The Grievance Coordinator's supervisor shall review the reason for the rejection to ensure it is in accordance with policy; both the Grievance Coordinator and the supervisor shall sign the grievance before returning the grievance to the grievant. If the grievance is accepted, the Grievance Coordinator shall assign an appropriate respondent and identify the date by which the response is due. The respondent shall generally be the supervisor of the person being grieved except:
 1. For grievances involving Clinical Issues, the HUM shall designate the respondent.
 2. For grievances regarding Michigan State Industries (MSI), the Administrator of MSI shall designate the respondent.
 3. For grievances involving administrative support functions for correctional facilities, the appropriate Administrative Manager shall designate the respondent.
 4. For grievances referred to Internal Affairs, the Internal Affairs Manager or designee shall be the respondent. However, if the grievance is determined not to fall under the jurisdiction of Internal Affairs, it shall be returned to the Grievance Coordinator at the facility at which the grievance is filed to complete grievance processing.

5. For grievances involving court-ordered payment of victim restitution, filing fees, criminal fines/fees/costs or other assessments, child support obligations or bankruptcy actions, the responder shall be designated by the financial Services Court order Unit at Central Office.
 6. For grievances involving transportation issues, the Transportation Section Manager in the Operations Division, CFA shall designate the respondent.
 7. For grievances regarding time computation, the Manager of the Time Computation Unit (TCU), Operations Division, CFA shall designate the respondent.
 8. For grievances involving the Parole Board, the Parole Board Chairperson shall designate the respondent.
- FF. A Step I grievance shall be responded to within 15 business days after receipt of the grievance unless an extension is granted pursuant to Paragraph Z. If the issue is of an emergent nature, the Grievance Coordinator may order a Step I response within two business days. The Grievance Coordinator may respond at Step I to grievances that require only minimal investigation or are rejected for reasons authorized by this policy.
- GG. The respondent shall interview the grievant to clarify issues of merit, to further an investigation, or otherwise aid in the resolution of the grievance at Step I. An interview is not required when:
1. The grievance is rejected pursuant to policy.
 2. The prisoner refuses to participate in the interview in which case the date and time the interview was attempted shall be recorded in the Step I response.
 3. The respondent is not assigned to the location at which the grievant is confined.
 4. The grievant is on parole in the community, and the respondent does not have ready access to the field office to which the grievant is assigned.
 5. No further clarification is needed.

At any time, the Grievance Coordinator may require an interview if they determine it to be essential to an adequate response. At Step II, the Warden or designee may conduct an interview whether or not one was performed at Step I. If the grievant is not interviewed at Step I the reason shall be recorded in the Step I response. Prisoners do not have a due process right to an interview.

- HH. Each Step I grievance response shall be reviewed by the respondent's supervisor prior to the grievance being returned to the Step I Grievance Coordinator to ensure that it appropriately addresses the issue raised in the grievance and accurately reflects Department policy and procedure. The respondent shall identify in the response applicable policies, rules, or procedures that are directly related to the issue or conduct being grieved.
- II. The Step I Grievance Coordinator shall ensure that a thorough investigation was completed for each Step I grievance accepted, that the response was reviewed by the appropriate supervisor, and that a copy of the response is provided to the grievant by the due date, including any extension granted.

Step II

- JJ. A grievant may file a Step II grievance if they are dissatisfied with the response received at Step I or if they did not receive a timely response. To file a Step II grievance, the grievant must request a Prisoner/Parolee Grievance Appeal (CSJ-247B) from the Step I Grievance Coordinator and send the completed form to the Step II Grievance Coordinator designated for the facility, field office, or other office being grieved within ten business days after receiving the Step I response or, if no response was received, within ten business days after the date the response was due, including any extensions. If the office being grieved does not have a designated Grievance Coordinator, then the grievant is to send the grievance to the Step II Grievance Coordinator for the facility in which they are housed. If a pre-Step II procedural error is identified at Step II, the Step II appeal shall not be answered and the Step I response shall be returned to Step I for an amended response to correct the procedural error. All rights and timeframes for appeal of the amended Step I grievance shall be reset.

- KK. The Grievance Coordinator shall log each Step II grievance received, including those that may be rejected. The Grievance Coordinator shall use a computerized grievance tracking system to do so. The Grievance Coordinator shall determine if the grievance should be rejected pursuant to this policy. If the grievance is rejected, the grievance response shall state the reason for the rejection without addressing the merits of the grievance. If accepted, the Grievance Coordinator shall assign an appropriate respondent and indicate the date by which the response is due. The due date shall be within 15 business days after receipt of the grievance, unless an extension is granted as set forth in Paragraph Z.
- LL. The respondents for Step II grievances shall be as follows:
1. The Warden, except that they may delegate this responsibility to the appropriate Deputy Warden if more than one institution is supervised.
 2. For grievances regarding clinical issues, the Step II clinical authority as determined by the Bureau of Health Care Services (BHCS) Administrator, or, for Duane L. Waters Health Center (DWH), the Warden of the Charles E. Egeler Reception and Guidance Center (RGC).
 3. For grievances regarding Michigan State Industries (MSI), the Administrator of MSI or designee.
 4. For grievances involving administrative support functions for correctional facilities, the appropriate Administrative Manager.
 5. For FOA area offices and facilities, the appropriate Region Manager.
 6. For all other FOA grievances, the FOA Deputy Director or designee.
 7. For grievances involving court-ordered payment of victim restitution, filing fees, criminal fines/fees/costs or other assessments, child support obligations or bankruptcy actions, the responder shall be designated by the Financial Services Court Order Unit at Central Office.
 8. For grievances involving transportation issues, the Transportation Section Manager in the Operations Division, CFA.
 9. For grievances regarding time computation, the Manager of TCU, Operations Division, CFA.
 10. For grievances involving the Parole Board, the Parole Board Chairperson.
- MM. The Grievance Coordinator shall ensure that any additional investigation was completed as necessary for each Step II grievance accepted and that a copy of the response is provided to the grievant by the due date.

Step III

- NN. A grievant may file a Step III grievance if they are dissatisfied with the Step II response or does not receive a timely response. To file a Step III grievance, the grievant must send a completed Prisoner/Parolee Grievance Appeal form (CSJ-247B) to the Grievance Section, OLA, within ten business days after receiving the Step II response or, if no response was received, within ten business days after the date the response was due, including any extensions. If a pre-Step III procedural error is identified at Step III, the Step III appeal shall not be answered but shall be returned to the appropriate step for an amended response to correct the procedural error. All rights and timeframes for appeal of the amended grievance shall be reset.
- OO. The Grievance Section shall be the respondent for Step III grievances on behalf of the Director. Each grievance received at Step III, including those that may be rejected, shall be logged on a computerized grievance tracking system. The tracking system shall include information on the subject matter of each grievance received and, for rejected grievances, the basis for the rejection. The Grievance Section shall forward grievances regarding clinical issues to the Administrator of the BHCS. The BHCS Administrator shall ensure the referred grievance is investigated and a response is provided to the Grievance Section timely. The Manager of the Grievance Section shall ensure that any additional investigation is completed as necessary for each Step III grievance accepted, and that a copy of the Step III response is provided to the grievant. Generally, Step III responses will be responded to within 60 business days. The Step III response is final.

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MODIFIED ACCESS

- PP. A prisoner or parolee who files an excessive number of grievances (three within a 30 calendar day span) that are rejected or the prisoner is found guilty of misconduct for filing an unfounded grievance as set forth in Paragraph S, may have access to the grievance process limited by the Warden or FOA Region Manager for an initial period of not more than 90 calendar days. If the prisoner or parolee continues to file such grievances while on modified access, the Warden or FOA Region Manager may extend the prisoner's or parolee's modified access status for not more than an additional 30 calendar days for each violation. A recommendation to place a prisoner on modified access shall be submitted only by the Grievance Coordinator or the Grievance Section Manager and shall include a list of the grievances forming the basis for the recommendation and the reason for the recommendation.
- QQ. The Warden or FOA Region Manager, as appropriate, shall ensure that a prisoner or parolee placed on modified access, or who has had that status extended, is immediately notified in writing of this determination, including a list of the grievances upon which the determination was based. The Warden or FOA Region Manager also shall immediately notify the Grievance Section Manager in writing whenever they place/extend a prisoner or parolee on modified access.
- RR. The Manager of the Grievance Section also may place a prisoner or parolee on modified access, or extend that status, for the reasons set forth in Paragraph PP. The Manager of the Grievance Section shall ensure that each prisoner or parolee placed on modified access or who has that status extended is immediately notified in writing of that determination, including a list of the grievances upon which the determination was based. The Manager of the Grievance Section also shall ensure that the appropriate Warden or FOA Region Manager is notified in writing of the determination.
- SS. While on modified access, the prisoner or parolee shall be able to obtain grievance forms only through the Step I Grievance Coordinator. A grievance form shall be provided if the Step I Grievance Coordinator determines that the issue the prisoner or parolee wishes to grieve is grievable and otherwise meets the criteria outlined in this policy. The Grievance Coordinator shall maintain a record of requests received for grievance forms and whether the request was approved or denied and, if denied, the reason for the denial. If a prisoner or parolee on modified access attempts to file a grievance using a form not provided by the Grievance Coordinator, the Grievance Coordinator may reject the grievance in accordance with Paragraph P. The Warden, FOA Region Manager, or Manager of the Grievance Section may extend the prisoner's or parolee's modified access status for not more than an additional 30 days for each violation. Notification of such extensions shall be consistent with the requirements set forth in Paragraphs QQ and RR.
- TT. A prisoner or parolee shall remain on modified access for the approved period even if transferred to another facility. The Grievance Coordinator for the sending facility shall ensure that the Grievance Coordinator for the receiving facility is notified of this information.

OPERATING PROCEDURE

- UU. If necessary, the Administrator of the OLA shall ensure that procedures are developed/updated to implement requirements set forth in this policy directive.

AUDIT ELEMENTS

- VV. A Primary Audit Elements List has been developed and is available on the Department's Document Access System (DAS) to assist with self-audit of this policy pursuant to PD 01.05.100 "Self-Audits and Performance Audits."

State of Michigan



Michigan Office of Administrative Hearings and Rules

Medicaid Hearings

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
for
THE MICHIGAN DEPARTMENT OF HEALTH and HUMAN SERVICES

P.O. Box 30763

Lansing, MI 48909

Phone: 800-648-3397 TTY users call: 711

Fax: 517-763-0146

Medicaid Hearings are held by the Michigan Office of Administrative Hearings and Rules (MOAHR) for the Michigan Department of Health and Human Services (MDHHS). This process is available to everyone who applies for or receives Medicaid benefits and services. A Hearing is a chance for you to ask an Administrative Law Judge (ALJ) with MOAHR to look at your case and confirm whether the decision that was made followed Medicaid rules, also known as Medicaid policy.

When can you ask for a Hearing?

You (your parent or guardian if you are a minor, or your authorized or legal representative) may ask for a hearing when any of the following things happen:

- You are denied enrollment in Medicaid.
- You are denied a Medicaid service or did not get all the services you asked for.
- Medicaid services you are already getting are going to be reduced or ended.
- Medicaid did not pay for part or all of a service.
- Decisions about Medicaid eligibility, enrollment, or services are taking too long.
- You disagree with a decision that MDHHS, its contractor, or a managed care organization (MCO) made.
- Your MCO has not replied to your internal appeal.
- You disagree with out-of-pocket costs you must pay.
- You disagree with a decision to move you to a different nursing home.
- You disagree with being discharged from a nursing home.
- You disagree with a pre-admission screening or annual resident review.

When decisions are made about your Medicaid eligibility, enrollment, or your Medicaid services, a letter must be sent to you. This is called a notice. You should get a notice every time your Medicaid

benefits or services are denied, reduced, or ended. The notice tells you who made the decision, when it takes effect, and other helpful information.

Managed Care Health Plans, MI Health Link Plans, Community Mental Health Services Programs (CMHSP), Prepaid Inpatient Health Plans (PIHP), MI Choice Waiver Programs, and Healthy Kids Dental Programs are all MCOs. They have special rules. You must ask for an internal appeal with the MCO before you can ask for a hearing from MOAHR. The notice from the MCO is called an Adverse Benefit Determination. This notice will tell you about the action that was taken, and the internal appeals process you can use if you disagree with that action.

How long do you have to ask for a hearing and for benefits to continue?

The notice you get will tell you how many days you have to ask for a hearing with MOAHR. If the notice is about services or benefits you are already getting and is telling you that they will be reduced or will end, this is called an advance notice. You will need to act quickly if you want those services to continue or stay in place while your case is under review and the ALJ makes a decision.

For actions that were NOT taken by an MCO:

- You have 90 days from the date that the notice was mailed to you to ask for a hearing.
- If you want benefits that you are already getting to continue, you must ask for a hearing **before the date the notice said your benefits would change or stop**. Make sure you state in your hearing request that you want those benefits to continue.

For actions that were taken by an MCO, and you have gone through the internal appeals process:

- You have 120 days from the date of the Notice of Resolution from the MCO to ask for a State Fair Hearing.
- If you are asking that benefits you are already getting to continue, you must have asked for those benefits to continue in your internal appeals request to ask for them to continue in your hearing request. Make sure you state in your hearing request that you want those benefits to continue and send your request in **before the date the Notice of Resolution from the MCO said your benefits would change or stop**.
- If you asked the MCO for an internal appeal and you did not get a response to your appeal within 30 days (or 44 days if there was an extension), you can ask for a State Fair Hearing due to that lack of response.

If you think an action was taken that you did not get a notice for, you can still ask for a hearing. You will need to tell MOAHR what that action was, who took the action, when the action was taken, and why you want the hearing.

All of the notices will have information on how to ask for an appeal or hearing and where to call if you need help or have questions. MCOs have Member Handbooks that will also have information on appeals and hearings. The notices will have information if there are other external reviews that you can ask for.

How do you ask for a hearing?

When you get a notice, you should also get a hearing request form. There are different hearing forms depending on what action was taken and who is sending the notice.

- If you want a hearing because you were denied eligibility for Medicaid, you should get the Request for Hearing (DHS-18) form that you need to send to your MDHHS local office. Your MDHHS worker can help you with this type of hearing and answer any questions you have.
- If you want a hearing because you were denied Medicaid services or admission into facilities or Waiver Programs, you will get the Request for Hearing for Medicaid Enrollees, PACE Enrollees or MI Choice Waiver Enrollees (DCH-0092) form.
- If you want a hearing because you were denied Medicaid services by your MCO, once you have gone through the MCO internal appeals process, you will get the Request for State Fair Hearings (MDHHS-5617) form.

The hearing forms have information on how to fill them out and send them in. You can use the forms to ask for a hearing, but you do not have to. If you do not use the forms, you will need to make sure you tell why you are asking for the hearing, the action you do not like and why, and what agency took that action.

The request needs to be signed by you or your parent or legal guardian. If you have an authorized or legal representative, they must sign the request too. You should send a copy of the notice letter you got and any other information you think is important.

If you do not have a hearing form, you can get one from the following agencies:

- MDHHS Local Office
- Medicaid Health Plan
- Healthy Kids Dental Plan
- MI Health Link Plans
- MI Choice Waiver Agency
- PACE Agency
- CMHSP or PIHP
- MI ENROLLS call: 800-642-3195 TTY:866-501-5656
- Online at www.michigan.gov/mdhhs
Click >> Assistance Programs >> Medicaid >> Medicaid >> Program Resources >> Michigan Office of Administrative Hearings and Rules
- Online at www.michigan.gov/lara
Click >> Bureaus >> Michigan Office of Administrative Hearings and Rules >> Benefit Services Hearings

MDHHS: [Michigan Office of Administrative Hearings and Rules for Michigan Department of Health and Human Services](#)

LARA: [Information Regarding Public Assistance \(michigan.gov\)](#)

Can someone represent you at the hearing?

Yes, you may have another person represent you at the hearing. You need to tell us who you want to represent you in writing and you both need to sign the request. The hearing request form has a section about having an authorized hearing representative that you can fill out if you want to. MDHHS does not pay for lawyers, legal fees, or give legal advice.

How will you be notified of the hearing date and location?

After you ask for a hearing, MOAHR will send you a Notice of Hearing in the mail that tells you the date, time, and how you can be a part of the hearing. This Notice of Hearing also tells you what to do if the date, time, or location of the hearing will not work for you.

Who will hear your case and where will the hearing be held?

An ALJ from MOAHR will hear your case. Hearings are held by telephone or video (computer) conference call. The Notice of Hearing will tell you how to call into the hearing with the telephone number and pass code to use to reach the ALJ at the date and time listed. You can call from any place where you will have the privacy to talk about your hearing. If your hearing request listed an authorized representative, the representative will get this information too. You can have witnesses with you to be a part of the hearing.

You may ask for an in-person hearing with the ALJ by mailing or faxing a written letter to MOAHR telling them why you want the hearing to be in-person. The ALJ will decide if there is good cause to hold your hearing in-person and will decide who will be in-person, who will still call in to the hearing and where the hearing will be held. In-person hearings could be at a local MDHHS office, CMHSP or PIHP office, or at the Cadillac Place in Detroit.

What will happen at the hearing?

The ALJ will start the hearing once everyone calls in and explain what will happen. The hearing will be recorded and everyone taking part in the hearing will be sworn in. You will get to tell the ALJ why you asked for the hearing. The agency representative or MCO will tell the ALJ what action was taken and present testimony and witnesses to support the action. You will be able to ask them questions if you want. You will be able to tell the ALJ why you do not agree with the action. You can have witnesses if you want. You may be asked questions by the agency representative or MCO. The ALJ may also ask questions. If you do not understand the questions, you can ask the ALJ to help you. The ALJ will explain what will happen after the hearing.

How will you be notified of the ALJ Decision?

The ALJ will send you, and your authorized representative if you had one, a written Decision and Order in the mail. It will tell you the decision that was made and why.

You may get an Order of Dismissal in the mail if you withdraw your request before or during the hearing or if you do not show up for the hearing.

What if you disagree with the decision?

You can ask MOAHR for a rehearing or reconsideration of the decision. This needs to be in writing within 30 days of the date the Decision and Order was mailed to you. You can also appeal the Decision and Order to your county circuit court. Circuit court appeals need to be filed within 30 days of the date the Decision and Order was mailed to you. Information on how to do this will be in the Decision and Order. Again, MDHHS does not pay for a lawyer, legal fees, or give legal advice.

Health Information Disclosure

When you ask for a hearing, all information about your case that is needed for the hearing will be shared with everyone that is taking part in the hearing. This information will be used for purposes related to the hearings process.

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule allows MDHHS, its contracted agencies, MCOs, and MOAHR to share this information without your written permission. This is because this information is needed to decide if you are eligible for Medicaid, Medicaid-covered services, or if Medicaid can pay for those services.

When you have someone represent you or speak on your behalf at a hearing, you agree that this person can hear information about you.

For More Information

If you have questions on the hearings process, you can write, call, fax, or email:

Michigan Office of Administrative Hearings and Rules for the
Michigan Department of Health and Human Services

P.O. Box 30763

Lansing, MI 48909

Call: 800-648-3397 TTY users call: 711

Fax: 517-763-0146

Email: LARA-MOAHR-DCH@michigan.gov

42 CFR 431.200 et seq.

42 CFR 438.1 et seq.

DCH 4829-0700 (MOAHR) Rev. 2/23



MDCR

MDCR Jurisdiction

The Michigan Department of Civil Rights enforces two state laws:

- The Elliott-Larsen Civil Rights Act #453, Public Acts of 1976, as amended.
- The Persons with Disabilities Civil Rights Act #220, Public Acts 1976, as amended.

Because the Elliott-Larsen Civil Rights Act covers some of the same jurisdictions as Title VII of the US Civil Rights Act of 1964 and the Age Discrimination in Employment Act, the Michigan Department of Civil Rights is also authorized to take and investigate complaints under those acts through an agreement with the US Equal Employment Opportunity Commission (EEOC). MDCR has a similar agreement with the US Department of Housing and Urban Development (HUD) to accept HUD housing complaints under the Fair Housing Act, Title VIII, US Civil Rights Act of 1968, as amended.

Discrimination is against the law.

The above laws prohibit discrimination in:

- Employment
- Public Accommodations
- Public Service
- Education
- Housing (Owner-occupied one or two family dwellings are excluded. Does include financing and insurance.)

Because of:

- Religion (Does not include religious accommodation in employment. However, complaints of denial of religious accommodation may be filed under Title VII, US Civil Rights Act of 1964, as amended.)
- Race
- Color
- National Origin (Includes the national origin of an ancestor.)
- Age (Means chronological age, and there is no upper or lower age limit, except as otherwise provided by law. Under the education section, applies only to admissions.)
- Sex (Includes sexual harassment and pregnancy or conditions related to pregnancy. Generally an employer must treat pregnancy like any other temporary disability.)
- Height and Weight (Employment only)
- Marital Status (Means the state of being married, single or divorced, and does not include a difference in treatment because of the identity of the spouse, as in anti-nepotism policies. Under the education section, it applies only to admissions.)
- Familial Status (Means children under 18 living with parent or person having custody. Applies only to housing.)
- Physical or Mental Disability (Not affecting the person's ability to do the job or benefit from a service, public accommodation, education or housing.)
- Arrest Record (Regarding employment applications, this law prohibits an employer, employment agency or labor union from inquiring about arrest records that did not result in conviction, except felony arrests prior to dismissal or conviction.)
- Retaliation (The law also prohibits retaliation against a person who has complained of discrimination.)

Statute of Limitation

Complaints must be filed with the Michigan Department of Civil Rights within 180 days following the alleged act of discrimination. Complaints more than 180 days that do not also fall under federal jurisdiction may be filed in State Court within three years. Complaints may be filed in State Court without first filing with the Michigan Department of Civil Rights.

Complaints of discrimination covered by Title VII of the US Civil Rights Act occurring over 180 days but less than 300 days in the past may be filed at either agency but will be handled only by the EEOC.

Similarly, housing complaints alleging discrimination that occurred more than 180 days but less than 365 days in the past will be handled by HUD.

Case In Court

If a case is filed in court, the Michigan Department of Civil Rights lacks jurisdiction to pursue the matter. If the court does not rule on the merits, and there is no signed settlement agreement, MDCR may be asked to review the complaint within 30 days.



MDCR Jurisdiction

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Audit: Michigan civil rights agency slow to investigate discrimination



August 24, 2023

[Lauren Gibbons \(Email\)](#)[Michigan Government](#)

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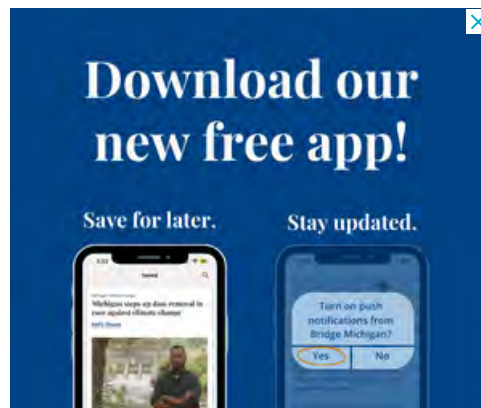
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ADAURIS *Great journalism deserves to be heard*

- ***State agency reviewing discrimination claims took an average of 19 months to resolve complaints, well over its 6-month goal***
- ***The department 'needs to significantly improve' timeliness to boost public faith in the process***
- ***Department officials say a \$10 million boost in its budget will provide staffing support needed to address backlog***

The Michigan Department of Civil Rights took 19 months on average to resolve complaints of alleged discrimination, far exceeding the department's 6-month turnaround goal and resulting in delays in 62 percent of cases, a state audit released Thursday concluded.

SPONSOR



[A report from the Office of the Auditor General](#) found that the department — which is tasked with handling discrimination complaints and determining whether they amount to a violation of Michigan's civil rights law — was “not effective” at completing investigations in a timely manner.

Agency officials said they agreed with the audit's findings and blamed delays on staffing shortages.

The department “needs to significantly improve its timeliness in completing civil rights complaint investigations to bolster the public's confidence regarding expeditious enforcement of the state's civil rights laws,” the audit report states.

During an 18-month audit period ending June 30, 2022, the department completed 2,096 civil rights complaints investigations. Of those, only 8 percent were completed within 6 months, and fewer than 30 percent were completed within a year. The 2,405 open investigations on the department's docket as of the audit's completion had been open for 18 months on average.

An in-depth review of 39 sampled cases found significant delays by the department in 62 percent of cases, including delays in assigning a case to an investigator, contacting the claimant for an initial interview and initiating investigation into the case.

Nearly half of the cases reviewed by the Auditor General's Office went an average of four months without evidence of the department actively investigating the complaint.

Under state law, people protected by the Elliott-Larsen Civil Rights Act can file complaints if they believe they were discriminated against for employment, housing or other opportunities based on their religion, race, color, national origin, age, sex, sexual orientation, gender identity/expression or their familial or marital status.

A 2022 Michigan Supreme Court ruling expanded the law's scope to include explicit protections for LGBTQ+ people. Since Democrats won the legislative majority, legislation codifying LGBTQ+ protections, as well as additional protections for hairstyles and people who obtain abortions, have been signed by Democratic Gov. Gretchen Whitmer.

Department officials, who initially requested the audit take place, said they were "not surprised" by the findings, attributing the backlog to understaffing. Investigators were typically handling between 80 to 100 cases apiece, the audit found.

"We agree with the audit results and view their report as a roadmap, pointing the way to where we need to make improvements, and many of those efforts are already underway," Michigan Department of Civil Rights Executive Director John E. Johnson, Jr. said in a statement.

The department's budget is set to increase by more than \$10 million in the next fiscal year from \$21.6 million to \$31.7 million, including an ongoing \$5.7 million for adding employees to address the backlog.

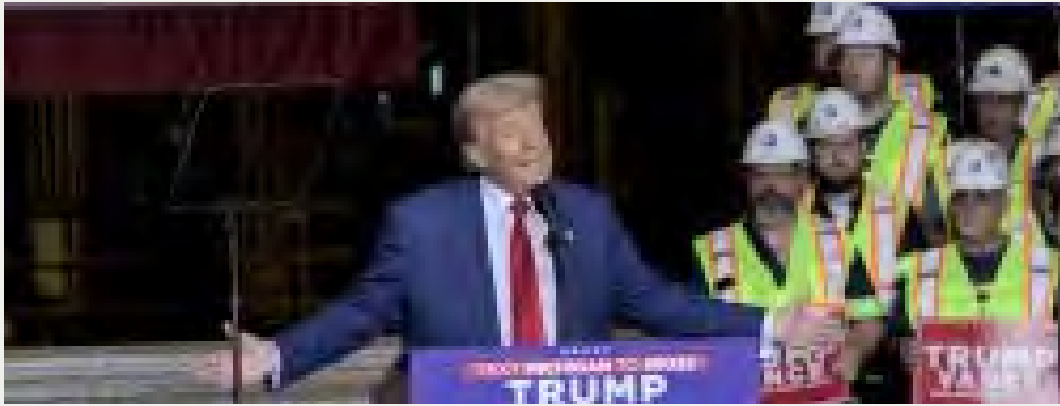
The new funding marks the first time in years the Legislature has recognized the department's need for more support, Johnson said, noting the funding would be used "to hire additional enforcement staff, reduce the time it takes to resolve complaints and dramatically enhance our services to Michigan residents."

A state budget document shows the department is expected to grow from 115 to 166 full time employees in the coming fiscal year.

The audit also recommended the department beef up its process for taking in and keeping track of incoming complaints. The department did not maintain adequate records of telephone complaints or intake interviews, the audit found, and a handful of emailed complaints were never reviewed at all, instead ending up in a junk email folder where 97 percent of emails went unread.

Department officials told auditors the agency would update its policies to make sure all incoming telephone contacts were logged and that junk email would be reviewed daily, as well as provide additional training to enforcement staff to ensure proper documentation of complaints.

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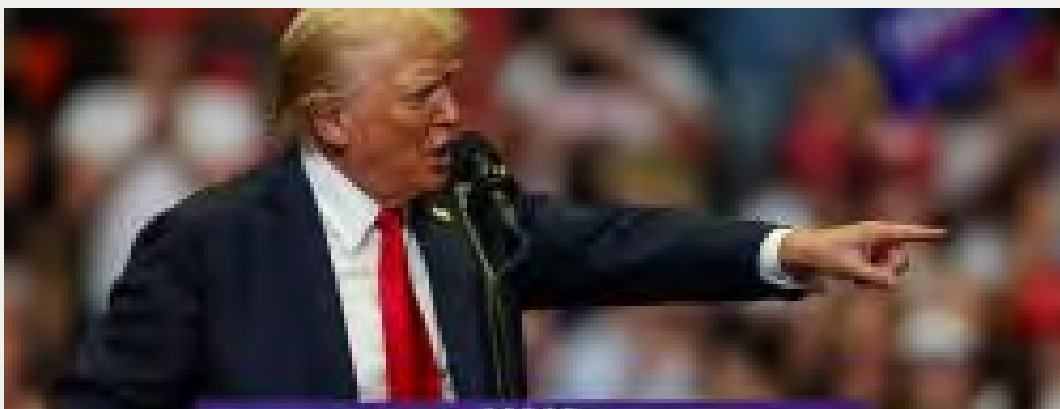
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Guide

Flint Water Crisis: Everything You Need to Know

After officials repeatedly dismissed claims that Flint's water was making people sick, residents took action. Here's how the lead contamination crisis unfolded—and what we can learn from it.

April 16, 2024



Fearful of using the tap water to wash their food, Flint residents Melissa and Adam Mays prepare meals with bottled water. | [Brittany Greeson](#)

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A story of environmental injustice and bad decision-making that has yet to be fully resolved <https://www.nrdc.org/stories/flint-water-crisis-everything-you-need-know#update>, the water crisis in Flint, Michigan, began on April 25, 2014, when the city switched its drinking water supply from Detroit's system to the Flint River in a cost-saving move. Inadequate treatment and testing of the water resulted in a series of major water quality and health issues for Flint residents—issues that were chronically ignored, overlooked, and discounted by government officials even as complaints mounted that the foul-smelling, discolored, and off-tasting water piped into Flint homes for 18 months was causing skin rashes, hair loss, and itchy skin.

The Michigan Civil Rights Commission, a state-established body, concluded that the poor governmental response to the Flint crisis was a “result of systemic racism.”

Later studies would reveal <https://ajph.aphapublications.org/doi/pdfplus/10.2105/ajph.2015.303003> that the contaminated water was also contributing to a doubling—and in some cases, tripling—of the incidence of elevated blood lead levels in the city's children <https://www.nrdc.org/stories/causes-and-effects-lead-water>, imperiling the health of its youngest generation. It was ultimately the determined, relentless efforts of the Flint community <https://www.nrdc.org/resources/fighting-safe-drinking-water-flint>—with the support of doctors, scientists, journalists, and citizen activists—that shined a light on the city's severe mismanagement of its drinking water. It forced a reckoning over how such a scandal could have been allowed to happen.

Table of Contents



Flint water crisis summary

Long before the crisis garnered national headlines, the city of Flint was eminently familiar with water woes. For more than a century, the Flint River, which flows through the heart of town, has served as an unofficial waste disposal site for treated and untreated refuse from the many local industries that have sprouted along its shores, from carriage and car factories to meatpacking plants and lumber and paper mills. The waterway has also received raw sewage from the city's waste treatment plant, agricultural and urban runoff, and toxics from



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Not surprisingly, the Flint River is rumored to have caught fire—twice.

As the industries along the river's shores evolved, so, too, did the city's economy. In the mid-20th century, Flint—the birthplace of General Motors—was the flourishing home to nearly 200,000 people, many employed by the booming automobile industry.

But the 1980s put the brakes on that period of prosperity, as rising oil prices and auto imports resulted in shuttered auto plants and laid-off workers, many of whom eventually relocated. The city found itself in a precipitous decline: Flint's population plummeted to just 100,000 people, a majority of whom are Black, and about one-third of its residents live below the poverty line. Nearly one in six of the city's homes had been abandoned.

This was the lay of the land in 2011, when Flint, cash-strapped and shouldering a \$25 million deficit, fell under state control. Michigan Governor Rick Snyder appointed an emergency manager (basically an unelected official chosen to set local policy) to oversee and cut city costs.

This precipitated the tragic decision in 2013 to end the city's five-decade practice of piping treated water for its residents from Detroit in favor of a cheaper alternative: temporarily pumping water from the Flint River until a new water pipeline from Lake Huron could be built. Although the river water was highly corrosive, Flint officials failed to treat it properly, and lead leached out from aging pipes into thousands of homes.

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Five-month-old Dakota Erler of Flint gets blood drawn to have her lead levels tested at Carriage Town Ministries in 2016. | *Brittany Greeson*

Lead levels in Flint water

Soon after the city began supplying residents with Flint River water in April 2014, residents started complaining that the water from their taps looked, smelled, and tasted foul. Despite protests by residents lugging jugs of discolored water, officials maintained that the water was safe.

A study conducted the following year by researchers at Virginia Tech revealed the problem:

Water samples collected from 252 homes through a resident-organized effort indicated

citywide lead levels had spiked, with nearly 17 percent of samples registering above the federal action level of 15 parts per billion (ppb), the level at which corrective action must be taken. More than 40 percent measured above 5 ppb of lead, which the researchers considered an indication of a "very serious" problem.

Even more alarming were findings reported in September 2015 by Flint pediatrician Mona Hanna-Attisha: The incidence of elevated blood-lead levels in children citywide had nearly doubled since 2014—and nearly tripled in certain neighborhoods. As Hanna-Attisha noted, “Lead is one of the most damning things you can do to a child in their entire life-course trajectory.” In Flint, nearly 9,000 children were supplied lead-contaminated water for 18 months.

More problems with Flint water

Flint’s water supply was plagued by more than lead. The city’s switch from Detroit water to the Flint River coincided with an outbreak of Legionnaires’ disease (a severe form of pneumonia) that killed 12 and sickened at least 87 people between June 2014 and October 2015. The third-largest outbreak of Legionnaires’ disease recorded in U.S. history—as well as the discovery in 2014 of fecal coliform bacteria in city water—was likely a result

<http://www.pnas.org/content/115/8/e1730> of the city’s failure to maintain sufficient chlorine in its water mains to disinfect the water.

Ironically, the city’s corrective measure—adding more chlorine without addressing other underlying issues—created a new problem <https://www.ncbi.nlm.nih.gov/pmc/articles/pmc5353852/>: elevated levels of total trihalomethanes <https://www.nrdc.org/stories/whats-your-drinking-water> (TTHM), cancer-causing chemicals that are by-products of the chlorination of water.

Flint residents go to court

One of the few bright spots of the Flint water crisis was the response of everyday citizens who, faced with the failure of city, state, and federal agencies to protect them, united to force the government to do its job.

On the heels of the release of test results in the fall of 2015 showing elevated lead levels in Flint’s water—and its children—NRDC joined with local residents and other groups

<https://www.nrdc.org/stories/uphill-battle-and-persistence-flint> to petition the U.S. Environmental

Protection Agency (EPA) to launch an immediate emergency federal response to the disaster.

The EPA failed to act, which only spurred residents on



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In early 2016, a coalition of citizens and groups—including Flint resident Melissa Mays, the local group Concerned Pastors for Social Action, NRDC, and the ACLU of Michigan—sued

<https://www.nrdc.org/press-releases/fix-flint-groups-file-federal-lawsuit-secure-safe-drinking-water-flint> the city and

state officials in order to secure safe drinking water for Flint residents. Among the demands of the suit: the proper testing and treatment of water for lead and the replacement of all the city's lead pipes.

In March 2016, the coalition took additional action to address an urgent need, filing a motion <https://www.nrdc.org/press-releases/groups-ask-federal-court-order-home-water-delivery-flint-tap-water-remains-unsafe> to ensure that all residents—including children, the elderly, and others unable to reach the city's free water distribution centers—would have access to safe drinking water through a bottled water delivery service or a robust filter installation and maintenance program.

Those efforts paid off. In November 2016, a federal judge <https://www.nrdc.org/press-releases/federal-court-orders-bottled-water-delivery-flint-residents> sided with Flint residents and ordered that the government provide every home in Flint with either a properly installed and maintained faucet filter or door-to-door delivery of bottled water.

A more momentous win came the following March with a major settlement requiring the city to replace the city's thousands of lead pipes with funding from the state, and guaranteeing further funding for comprehensive tap water testing, a faucet filter installation and education program, free bottled water through the following summer, and continued health programs to help residents deal with the residual effects of Flint's tainted water.

But the work of Flint residents and their advocates isn't finished yet. Ensuring that the provisions of the 2017 settlement are met is an ongoing task. Indeed, members of the lawsuit are still in court <https://www.nrdc.org/court-battles/concerned-pastors-social-action-v-khoury> to ensure that the city properly manages its lead service line replacement program.

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Melissa Mays and other Flint residents address the media after the House Committee on Oversight and Government Reform hearing to examine the Flint water situation in 2016. | Molly Riley/Associated Press

Flint water crisis update

Does Flint have safe water yet?

Governor Snyder seemed to signal the all clear in April 2018 when he announced that the city would stop providing bottled water to residents. While the situation has improved, with lead levels remaining below the federal action level for the past seven years, the city has failed to meet its court-ordered deadlines to check the service line material at all eligible homes and replace the lead service lines it finds.

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means potentially hundreds of Flint residents are still getting their water from lead pipes. And the federal action level for lead is not a health-based number; it is merely an administrative trigger for remediation by the water utility. The EPA and other health authorities agree that there is no safe level of lead in water, so the continuing presence of lead pipes at hundreds of Flint homes remains a concern, particularly in light of their

cumulative lead exposure over many years. Indeed, in 2024

<https://www.epa.gov/system/files/documents/2023-11/lcri-fact-sheet-for-the-public_final.pdf>, the EPA proposed reducing the federal action level for lead from 15 ppb to 10 ppb and mandating the replacement of all lead service lines in the United States within 10 years.

Flint's program to replace the thousands of lead and galvanized-steel service lines that connect city water mains to local homes began in March 2016. The program was initially scheduled to be completed within three years but as of April 2024, 10 years since the city of Flint set off the water crisis, the work of identifying and replacing lead service lines remains unfinished. Nearly 2,000 homes also still require repairs for property damage caused by the lead pipe replacement program. Meanwhile, the city's population has declined by nearly 20,000 people since the crisis began.

The slow pace of progress has drawn NRDC and local residents back to court—multiple times—to demand that Flint comply with its obligations. Recently <<https://www.nrdc.org/press-releases/city-flint-held-contempt-failing-meet-lead-pipe-settlement-deadlines>>, a federal court found the city in contempt of a February 2023 order to reach certain milestones in its lead pipe replacement program.

Flint water crisis charges

In early 2016, Michigan Attorney General Bill Schuette announced an independent review to “determine what, if any, Michigan laws were violated” during Flint’s drinking water disaster. This mission to criminally prosecute those responsible for causing or contributing to the crisis was continued by Attorney General Dana Nessel upon taking office in 2019.

In 2021, nine people were charged by the attorney general’s office, including Governor Snyder; Nick Lyon, director of Michigan’s Department of Health and Human Services; and Dr. Eden Wells, the state’s chief medical executive.

But in October 2023, after facing legal setbacks <<https://www.michigan.gov/ag/news/press-releases/2023/09/20/flint-water-prosecution-team-response-to-michigan-supreme-court-decision-on-the-felony-charges>>,

the attorney general’s office announced an end to the criminal prosecutions. While Flint residents have been successful in some civil lawsuits, including one that was settled for \$626

on <<https://www.bridgemi.com/michigan-environment-watch/judge-approves-626-million-settlement-flint-water-crisis>> in 2023, none of the individuals in power have faced criminal penalties for their actions.

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Resident Lorenzo Lee Avery Jr. stands outside of Flint City Hall during a Flint Lives Matter event in 2016 while the city's water crisis left residents dependent on bottled water. | *Brittany Greeson*

Why is lead-contaminated water bad?

Easy to melt and malleable, lead <https://www.nrdc.org/stories/causes-and-effects-lead-water> is a heavy metal that has been used by people for millennia. The Romans added it to makeup, cookware, and pipes.

Yet, then as now, lead exposure was linked to serious health impacts—including madness and death. Modern science shows that even low levels of lead can impair the brain development of fetuses, infants, and young children. The damage can reverberate for a lifetime, reducing IQ and physical growth and contributing to anemia, hearing impairment, cardiovascular disease, and behavioral problems. Large doses of lead exposure in adults have been linked to high blood pressure, heart and kidney disease, and reduced fertility.

Pure lead pipes, solders, and fittings were banned from U.S. water systems in 1986 (it was only in 2014 that allowable lead levels in plumbing and fixtures dropped to 0.25 percent), and national regulations for lead testing and treatment of public water supplies were established in 1991 with the Lead and Copper Rule. While action by the water utility is required once the level of lead in public water supplies reaches 15 ppb (as measured at the 90th percentile of samples collected), the EPA acknowledges that “there is no safe level of exposure to lead.”

Independent tests conducted in fall 2015 revealed <http://flintwaterstudy.org/information-for-flint-residents/results-for-citizen-testing-for-lead-300-kits/> that nearly 17 percent of samples from hundreds of Flint homes measured above the 15 ppb federal lead action level, with several samples registering above 100 ppb.

Beyond Flint

Safe water is a human right that should not be determined by where you live or what you look like. But Flint serves as a reminder that safe water isn’t a guarantee. Far more than pipes are corroded during a water crisis like this one. City, state, and federal missteps can also destroy residents’ trust in government agencies.

One NRDC analysis found that thousands of community water systems have violated federal drinking water laws, including the Lead and Copper Rule, which provides safeguards against lead. Meanwhile, there are many water contaminants <https://www.nrdc.org/stories/whats-your-drinking-water> that aren’t even monitored or federally regulated, such as perchlorate (a component of rocket fuel) and PFOA/PFOS/PFAS <https://www.nrdc.org/stories/forever-chemicals-called-pfas-show-your-food-clothes-and-home> (chemical cousins of Teflon).

To protect our water supplies, it is crucial that we upgrade our nationwide water infrastructure, prioritizing the replacement of millions of lead pipes, which are found across every state <https://www.nrdc.org/resources/lead-pipes-are-widespread-and-used-every-state>. After years of public advocacy, federal laws like the Bipartisan Infrastructure Law are finally infusing this work with desperately needed funds.

Strengthening existing government protection is also critical. Later this year, the Biden administration is expected to publish a new Lead and Copper Rule, including a requirement that water utilities replace their lead service lines within 10 years. But NRDC and other allies



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in the fight for clean drinking water are keeping a close eye on much-needed improvements to the final rule <<https://www.nrdc.org/bio/erik-d-olson/whats-great-and-what-needs-fixing-epas-proposed-lead-rule>>.

If you are concerned about your own drinking water <<https://www.nrdc.org/stories/how-protect-yourself-lead-contaminated-water>>, take a look at your water utility's annual water quality report (also called a consumer confidence report), which is usually posted online and is required to disclose if contaminants have been found in your water. If contaminants have reached dangerous levels, the water supplier is required to send customers public notification.

The EPA's Safe Drinking Water Information System also maintains information about public water systems and their violations. You can go one step farther by having your water tested, either by your water supplier (which may provide this service for free) or by a certified lab.

If you discover your water is contaminated, one option is to use NSF-certified water filters that are designed to eliminate specific contaminants. It is most important, though, that you notify your water utility. If necessary, you can also contact your elected officials, your state's drinking water program, or the EPA's Safe Drinking Water Hotline (800-426-4791).

What happened to the people of Flint should never have happened. Yet seven years after the city agreed to clean up its act—and after six legal motions to enforce that agreement—it is still not honoring its commitments to the community nor the court. The residents of Flint and their partners, including NRDC, will not quit until the job is done.

This story was originally published on November 8, 2018, and has been updated with new information and links.

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Tell the EPA we need safe drinking water!

There is no safe level of lead exposure. But millions of old lead pipes contaminate drinking water in homes in every state across the country. We need the EPA to do its part to replace lead pipes equitably and quickly.

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Federal judge approves \$626 million Flint, Michigan water settlement

By Tyler Clifford and Kanishka Singh

November 11, 2021 2:49 AM EST · Updated 3 years ago



[1/2] The Flint River is seen flowing through downtown Flint, Michigan, December 16, 2015. REUTERS/Rebecca Cook/File Photo [Purchase Licensing Rights](#) 



Nov 10 (Reuters) - A federal judge on Wednesday approved a settlement worth \$626 million for victims of the lead water crisis in Flint, Michigan, in a case brought by tens of thousands of residents affected by the contaminated water.

"The settlement reached here is a remarkable achievement for many reasons, not the least of which is that it sets forth a comprehensive compensation program and timeline that is consistent for every qualifying participant," U.S. District Judge Judith Levy said in a 178-page order.

Earlier this year, the judge gave [preliminary approval](#)  to a partial settlement of lawsuits filed by victims of the water crisis against the state. [read more](#)

Flint's troubles began in 2014 after the city switched its water supply to the Flint River from Lake Huron to cut costs. Corrosive river water caused lead to leach from pipes, contaminating the drinking water and causing an outbreak of Legionnaires' disease.

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The Flint water crisis was one of the country's worst public health crises in recent memory. The case became emblematic of racial inequality in the United States as it afflicted a city of about 100,000 people, more than half of whom are African-Americans.

The contamination prompted several lawsuits from parents who said their children were showing dangerously high blood levels of lead, which can cause development disorders. Lead can be toxic and children are especially vulnerable.

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Former Michigan Governor Rick Snyder was [charged in January](#) with two counts of willful neglect of duty over the lead-poisoning of drinking water in Flint. [read more](#)

Payouts from the settlement approved on Wednesday will be made based on a formula that directs more money to younger claimants and to those who can prove greater injury. Michigan's attorney general has previously said that the settlement would rank as the largest in the state's history.

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"Although this is a significant victory for Flint, we have a ways to go in stopping Americans from being systematically poisoned in their own homes, schools, and places of work", Corey Stern, a counsel for the plaintiffs, said in a statement after the judge's order on Wednesday.

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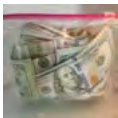
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