

House Appropriations Subcommittee on Corrections

February 20, 2007

Testimony of Citizens Alliance on Prisons and Public Spending

Good morning. My name is Barbara Levine. I'm the executive director of CAPPs, the Citizens Alliance on Prisons and Public Spending, a nonprofit public policy organization with a dual mission. CAPPs members are concerned that Michigan incarcerates far more people than is necessary for public safety. This not only takes a high toll on prisoners and their families, it drains scarce resources from the very services that contribute to crime prevention. Thus we advocate reducing the prisoner population and investing instead in children and families, in education and health care, in mental health and substance abuse treatment, and in support for former prisoners returning to the community.

We are pleased, of course, that the MDOC is taking steps in these directions. Releasing to appropriate placements such groups as the elderly, the seriously ill and those subject to deportation is both humane and cost-effective. Continuing the drug law reforms that Families Against Mandatory Minimums spearheaded, which have already saved many prison beds, is another fair and responsible step. And expanding the Michigan Prisoner Re-entry Initiative is rightfully high on everyone's agenda. The mobilization of community support for returning prisoners, accomplished through the extraordinary efforts of Dennis Schrantz and his staff, has been impressive and early results are promising.

Having consistently advocated for increased grants of parole, we are also glad that the department is planning to release 3,400 people who are past their earliest release dates. But I have to admit to some concerns. For one thing, this is not a new technique. The board engaged in two "continuance review" projects in 2004, releasing hundreds of people after reconsidering decisions to continue their incarceration. Denying people parole until there is a bedspace crisis, then concluding that they're good to go after all, naturally raises a question. If they could be safely paroled a matter of months after being denied, why weren't they paroled in the first place? We have 16,000 people in prison who are currently eligible for parole – about 30% of the total population. If thousands could be supervised in the community, why are we cramming people into offices and exercise rooms and closets?

A related point is that the department is advocating changes to sentencing guidelines that would move a significant number of defendants from straddle cells to lock out cells. It suggests judges are exercising their discretion to send people to prison who don't need to be there. Yet 5,000 of the people who have been denied parole fell into straddle cells when they were sentenced. Apparently the 3,400 people who will now be released were straddle cell defendants. This leaves the relationship between sentencing and parole decision-making very unclear.

Still another concern is that the DOC is relying so heavily on sentencing guidelines changes to make this one-time bed reduction permanent. While we strongly support any effort that diverts people from prison, clearly a fear of cost shifts to the counties will make these changes difficult.



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Finally, we are concerned that although the department says it is currently using every space available and has a razor thin margin of empty beds, it is counting on further “bedspace efficiencies.” It is hard to imagine what these efficiencies will be. The department recognizes, of course, that crowding more and more people into less and less space, while providing fewer activities to alleviate the monotony and discomfort, inevitably breeds tension. Overcrowding is simply not safe for prisoners or for correctional officers.

So while the department’s proposals are all necessary, more can be done. Slower growth in the DOC budget does not reflect a fundamental change in spending priorities. It does not allow for more funding to be shifted to other critical services. And it does not address a number of the reasons why so much prison growth has occurred. In absolute terms, for 2008 corrections would see a four percent increase in its General Fund spending, it would still consume 20 percent of the total General Fund, and its gross appropriation would exceed two billion dollars. We need structural changes that will significantly reduce the prisoner population in an ongoing, consistent way.

There are several additional strategies that could result in sustained savings of as much as \$230 million and 8,000 beds, depending on how they interact. These strategies all involve pulling back from policies that have fueled prison growth, without any proven impact on public safety, and returning to practices considered normal during the 1990s. None require the early release of any prisoner, much less anyone who is currently dangerous. I would like to explain each of them briefly.

- First, we recommend the **enforcement of parole guidelines** to increase paroles of low-risk offenders who have completed their minimum terms.

In 1992, when the civil service parole board was replaced by the current appointed board, the DOC was required to devise guidelines to govern the exercise of the board’s discretion. Prisoners who score “high probability of release on the guidelines,” indicating that they are a low risk for re-offending, must be paroled unless the board has “substantial and compelling reasons” not to grant release.

The parole board’s grant rate in high probability cases has steadily declined. In 1996, the board paroled 81% of people in that category. In 2006, the rate was 53%. The cutoff point for determining who falls into the high probability range was also changed, decreasing the pool of high probability cases. As the guidelines scores were weighted before 2001, no more than 6.5 % of people who scored high probability would commit a new assaultive offense. Then the scoring was adjusted to lower the risk to 4.3%.

Much of the problem is that there is no mechanism for enforcing the “substantial and compelling” standard. Prisoners cannot appeal decisions to deny parole and there is no other independent review of board actions. In part because the parole grant rate has dropped and the same people get reviewed and denied repeatedly, board members have become increasingly over-burdened. They conduct 25 interviews a day, generally without reviewing the prisoner’s file in advance. They depend heavily on brief summaries in forms that give little insight into an individual’s history and character. Naturally concerned about being responsible for releasing someone dangerous, it is easiest to err on the side of denying release.

The process leads to cases like Aldo Gallina’s, whose profile is attached to my written testimony. Gallina was convicted of second-degree murder for aiding and abetting the shooting of another teenager

in 1989, when Gallina was 15. He has no juvenile record, a fine institutional record, excellent therapy reports and a very supportive family. He successfully spent two years in the community on bond pending appeal. His co-defendant, with a similar history, was paroled in 2005. But Gallina has been continued for a second year. The board's substantial and compelling reason is just the conclusion that it doesn't feel assured Gallina is not a risk to public safety. No specific facts supporting this conclusion were identified.

We have a number of recommendations for how the parole guidelines can be improved and enforced that are beyond the scope of my remarks this morning. But the bottom line is that statutorily required guidelines must be enforced not only at the sentencing stage but at the release stage as well.

If the cutoff point for entry into the high probability range and the former parole grant rate for these prisoners were both restored, 4,626 beds could be saved at a net cost savings (after parole supervision) of more than \$114 million.

- Second, we recommend that you reinstate **disciplinary credits** in conformity with national norms so that prisoners with good institutional conduct can earn modest amounts. This is a very straightforward way to obtain substantial savings.

“Truth in sentencing,” which was adopted in 1998, does two things. It bars prisoners from community placements until they have served their entire minimum sentence. This led, as you heard last week, to the demise of the highly successful community residential program for prisoners nearing parole. Truth in sentencing also prospectively eliminated all disciplinary credits, so that no matter how well they are doing, prisoners can earn no time off their sentences. At the time of enactment, truth in sentencing was expected to increase average sentence length by 1.16 years and to require 5,400 new beds by 2007.

Although admittedly popular with prosecutors and victims, the total elimination of disciplinary credits was an extreme and costly measure that put Michigan out of sync with virtually the entire country. As Mr. Schrantz explained, only Wisconsin awards no time off for good behavior and it still has a much lower incarceration rate than we do. Michigan had reined in very generous awards of “good time” in 1978, long before most other states. By 1998, we already met the federal standard of requiring violent offenders to serve 85% of their sentences. Awarding modest amounts of disciplinary credit makes someone eligible for parole sooner, but it does not require that they be released. And, by definition, credit is only awarded to people whose behavior warrants it.

If the average Michigan sentence of 7.7 years were reduced to 6.4 years and 3,000 people who earned the maximum amount of disciplinary credits were released when they first became eligible, the net savings (after parole supervision) would be nearly \$100 million.

- Third, we recommend that the parole board be required to apply the “lifer law” as intended when more than 800 **parole-eligible lifers** were sentenced.

The board has also changed the treatment of parolable lifers – people sentenced to life terms for crimes other than first-degree murder who became eligible for parole after serving 10 years. While the old board decided these cases like any other involving a serious offense and a long sentence, paroling people who had demonstrated maturation and responsibility over a period of years, the new board has decided that “life means life” and releases very few. Of the 800-1,000 parole-eligible lifers, many have served

decades longer than their sentencing judges intended.

Most parole-eligible lifers are middle-aged, have excellent institutional records and pose very low risk to the community. They are increasingly expensive to house as they age and develop medical problems. Many were first offenders. An example is Ross Hayes, who has now served 33 years. His profile is also attached. Despite exceptional accomplishments in prison and the support of the victim's family, Hayes was given another five-year continuance and will not be considered again until 2009.

Paroling 500 lifers would save (after supervision costs) more than \$15 million a year.

- Finally, we propose limiting the length of prison returns for **technical parole violators** with no new criminal conduct to one year or less.

The population includes nearly 3,700 technical parole violators – people who have violated the conditions of their supervision. The average time they are kept before being released again appears to be at least 18 months. In Michigan it used to be 10 months; in many states it is only six.

For some individuals, like Chris Murzin, whose profile is also attached, it is much, much longer. Murzin had completed 21 months of a 24-month parole when he was returned to prison for possessing a pornographic magazine. In August 2006, the board continued his incarceration for a sixth year for this technical violation of a parole condition.

The MDOC notes that many technical violators actually engaged in criminal conduct that was not prosecuted. **Even if just 1,000 technical violators were limited to serving 12 months, the savings would be \$13 million. If returns were limited to six months, the savings would be \$26 million.**

From 1992 to now, the prisoner population has grown by 13,000, largely because of measures unnecessary for public safety. There is no evidence that reduced parole grant rates, redefining the meaning of parolable life terms, long stints in prison for technical parole violations or the elimination of disciplinary credits have any impact on crime rates. On the contrary, there is a margin of diminishing returns in just keeping people locked up for more and more years.

We are at that margin and we urge you to pull back to the more moderate practices that used to be the norm. If we reduce our prisoner population to what it was in 1996, we would still have 42,000 people in prison and our incarceration rate would still be higher than that of our Great Lakes neighbors. But at least we would have a few hundred million dollars more to spend on badly needed services that will help reduce crime in the future.

Thank you.