

Joint Hearing  
House Judiciary Committee  
House Appropriations Subcommittee on Corrections

March 19, 2007

Testimony of  
Citizens Affiance on Prisons and Public Spending

Chairperson Smith, Chairperson Condino, Members of the Committees: Good afternoon.

My name is Barbara Levine. I'm the executive director of CAPPs, the Citizens Affiance 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.

The growth in corrections is in no way inevitable. It is not driven by crime rates or by other factors beyond our control. It is the result of policy choices made over the last 20 years. So I am very grateful for the opportunity to speak directly with the people who are in a position to reassess those policy choices and set a new direction.

I would like to begin my remarks by quoting from remarks prepared by then-MDOC director Kenneth McGinnis for a conference of the State Bar Criminal Law Section in June 1993. Director McGinnis said:

"Unless steps are taken immediately to significantly slow the number of people being sentenced to prison, we will literally run out of prison beds by the end of next year. In fact, by late fall of '94, based on our most current population projection, we'll have 38,782 prisoners in a system operating with 38,370 beds.

... Michigan has the highest incarceration rate of any northern industrial state. Corrections' share of the overall state budget has gone from a mere three percent in 1978 — to nine percent in 1990 — to 14 percent in the proposed FY '94 budget.

Michigan too frequently uses the most expensive form of punishment for offenders...the criminal justice system continues to send people to prison who could safely and more economically be handled in the community.

In addition, proposals are pending that could exacerbate our population problem, including the so-called "truth in sentencing" legislation and additional mandatory minimums.

...we in Corrections are actively supporting efforts to create a State Sentencing Commission which would take the capacity of the prison system into account when setting sentencing guidelines... the sentencing commission concept could be the best long-term solution to our prison population."

Sound like deja vu all over again? All we have to do is update the figures. Now we're at 51,500 prisoners and running out of beds. Now the MDOC budget is about to top \$2 billion and consumes more than 20 percent of General Fund spending. Our incarceration rate is still substantially above that of other states in the region. Many of our annual commitments are still non-violent offenders with short minimum sentences.

So what have we done in the last 13 years to increase the prison population by 13,000 people?

- Well, we did establish a sentencing commission, but then we eliminated it so we have no mechanism for routinely monitoring the impact of sentencing guidelines and making needed adjustments.
- We adopted "truth in sentencing", which was projected to require 5,400 additional beds by 2007, and it has had exactly the impact that Mr. McGinnis feared.
- We established a new parole board that drastically decreased parole grant rates, so that today about 16,000 people who have served their minimum terms and are eligible for parole are piled up at the back doors of our prisons just marking time while they await release.
- We adopted parole guidelines that are supposed to guide the board's exercise of discretion, but we eliminated appeals of parole decisions by prisoners so the guidelines go unenforced.
- We continue to return thousands of people to prison for violating the conditions of their parole supervision, sometimes for a very long time for violations that pose no apparent risk to the community.
- We send thousands of people who are mentally ill to prison because we do not have adequate treatment resources in the mental health system.

We have also done some very positive things. Although there is still some clean-up to do, we fundamentally changed our drug laws and eliminated the harshest mandatory minimum sentences. We established very successful drug courts in many communities. And, of course, the MDOC is working very hard to help more people succeed on parole through the Michigan Prisoner Re-entry Initiative.

Nonetheless, the "get tough" measures have dearly overwhelmed the positive ones, so far. We need to take the challenge that the budget crisis has created and use it as an opportunity to engage in comprehensive, long-range criminal justice planning. Obviously, we need to take some steps very quickly, like the Governor's proposal to expedite the release of five thousand people who are past their earliest release dates. But we also need to examine the practices of states with lower incarceration rates than ours and build a cohesive strategy for keeping Michigan's prison system only as large as it needs to be for public safety.

Attached to my written testimony is a document that illustrates what a strategy like this might include. In 2002, the American Bar Association adopted *a Blueprint for Cost Effective Pretrial Detention, Sentencing and Corrections Systems* that included many carefully researched general principles. That Blueprint incorporates the basic concept that prison should be treated as a scarce resource and that

offenders should be kept in or returned to the community to the full extent that public safety allows.

The Prisons and Corrections Section of the State Bar of Michigan built on the ABA's model and developed a Michigan-specific blueprint that covers a wide range of issues. These very thoughtful proposals were prepared by people from diverse backgrounds with a lot of criminal justice and corrections experience. I strongly encourage you to consider them.

More specifically, I would like to make a number of recommendations that we feel should get the highest priority, in addition to the changes in sentencing guidelines and the funding for MPRI that the Governor has requested.

We strongly support restoration of the Sentencing Commission so that we can ensure on an ongoing, consistent basis that our sentencing policies are proportional, fair, data-driven and cost-effective; that is, that they do not result in more incarceration than is necessary for public safety.

We strongly support restoration of the Legislative Corrections Ombudsman's Office. That relatively small investment would, among other things, help to ensure that hundreds of millions of dollars are spent effectively on medical and mental health care for prisoners, instead of on expensive litigation.

We strongly support the development of mental health courts and the investment of needed resources in community mental health treatment so that the epidemic of incarcerating the mentally ill in state prisons and county jails, also described in our handouts, can be reversed.

Finally, 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 interacted. 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. They are summarized in the handout called "Six Strategies for Right-Sizing Michigan's Prison Population", but I would like to touch on them briefly. Also please note that our handout includes a number of prisoner profiles. I'm not going to go into the details of those cases but I will identify which ones illustrate specific proposals.

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

By statute, prisoners who score "high probability of release" on the parole guidelines, which indicates 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.

Much of the problem is that there is no mechanism for enforcing the "substantial and compelling" standard. In part because the parole grant rate has dropped and the same people get reviewed and denied repeatedly, board members have become increasingly overburdened. 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 conceited 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 and Micah Mayhew's.

We have a number of recommendations for how the parole guidelines can be improved and enforced in our attached handout called, not very imaginatively, CAPPs Recommendations for Improving and Enforcing Parole Guidelines. There is also an article on the subject in the newsletter that I've given you. 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.

"Truth in sentencing," which was adopted in 1998, did two things. It prohibited what had been a highly successful community residential program for prisoners nearing parole. It also prospectively eliminated all time off for good behavior, known as disciplinary credit, so that no matter how well they are doing, prisoners cannot earn even a modest reduction of their sentences.

Although 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. 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 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. Some, like Chris Murzin, Harvey Reese and Estevan Gonzales, are kept for two, three, even five years for non-criminal behavior.

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.**

- Finally, 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 current board has changed the treatment of people sentenced to life terms for crimes other than

first-degree murder who became eligible for parole after serving 10 years. It 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. Many were first offenders. They are increasingly expensive to house as they age and develop medical problems. Among them are people like Ross Hayes and Derek Foster.

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

There is a margin of diminishing returns in just keeping people locked up for more and more years. Michigan is well beyond that margin now. 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.