

CAPPS Recommendations for Improving and Enforcing Parole Guidelines

The best way to maximize public safety and public dollars is to release prisoners who have served their time and pose little risk to the community. CAPPS' recommendations for making parole decisions fairer, more cost-effective and more transparent will help ensure that only those people who actually pose a continuing threat to the public are incarcerated after they have served their minimum terms. Over time, these suggestions could save taxpayers tens of millions of dollars.

1. Clarify that the purpose of the parole guidelines is to assist the board in making parole decisions that implement the intent of the sentencing judge, to the extent consistent with public safety.
2. Require the guidelines to:
 - a. provide for public protection
 - b. reflect a prisoner's actual current risk for reoffending
 - c. encourage positive institutional conduct and participation in prison programs
 - d. avoid the use of secure prison beds by people who can reasonably return to the community.
3. Apply the guidelines to all prisoners eligible for parole.
4. Validate the statistical relationship to the risk of re-offending of:
 - a. the offense for which the person is incarcerated
 - b. current age
 - c. prior criminal record
 - d. institutional conduct
 - e. other relevant factors that predict re-offense risk.
5. Require the guidelines to also address the person's:
 - a. institutional program performance
 - b. length of time served
 - c. mental health
 - d. physical health
 - e. previous experience with probation or parole.
6. Prohibit basing departures from the guidelines on factors already accounted for by the sentencing or parole guidelines unless the board finds from facts in the record that the factor has been given inadequate or disproportionate weight.
7. Record parole board interviews conducted with people whose guidelines scores indicate a high probability of parole.
8. Permit prisoners, including those eligible for parole under the lifer law, to appeal denials of parole by leave to the sentencing court only on the following grounds:
 - a. the person scored "high probability of release" and the board's reasons for denying parole were not substantial and compelling
 - b. denial resulted from a material mistake in the parole guidelines scoring
 - c. denial resulted from reliance on inaccurate or incomplete information.
9. Notify prisoners denied parole of the scope of their right to appeal and any applicable deadlines.
10. Prohibit continuances of longer than 12 months for prisoners who score high probability of parole on the guidelines and are not serving life sentences.

Enforce Parole Guidelines – It’s fair, sensible and cost-effective

Citizens Alliance on Prisons and Public Spending
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Michigan residents pay much more per capita for prisons than do the residents of Indiana, Illinois, Minnesota, New York, Ohio, Pennsylvania and Wisconsin because of Michigan’s higher rate of incarceration. As the prestigious **Citizens Research Council of Michigan** explains:

Compared with the average of those states’ incarceration rates, Michigan’s rate is over 40 percent higher. The higher rate results from longer stays in prison for a given crime than in neighboring states and the more extensive use of alternative forms of incarceration and supervision for some crimes in the states other than Michigan. The relationship between the higher incarceration rate and crimes rates is not apparent... If Michigan had an incarceration rate equal to the average of these seven neighbors, General Fund spending for corrections programs in the Michigan budget might be reduced by as much as \$500 million – more than 5 percent of total General Fund spending.¹

Our high incarceration rate is due, in part, to the failure of current parole guidelines to adequately guide parole board decisions. Refining and enforcing the parole guidelines will:

- Produce fairer results in individual cases
- Make a critical government process more transparent and accountable
- Reduce corrections spending

Prison growth stems from sentencing and release policies, not crime rates

Michigan’s prisoner population has gone from 15,000 in 1984 to more than 51,000. Changes in parole policies spurred much of this growth.

- After the parole board was changed in 1992 from corrections professionals to political appointees, parole grant rates plummeted, adding thousands of prisoners to the system.
- Although parole grants have crept back up slightly, today more than 16,000 people eligible for release remain incarcerated.

Unlike sentencing guidelines, parole guidelines are not effective

Under Michigan’s indeterminate sentencing scheme, how long a person stays in prison depends on two decisions. The judge’s sentence determines how much time must be served before the person is eligible for release. The parole board determines when the person will actually be released. The purpose of this scheme is to allow the board to continue incarcerating people who have been punished for their offenses but pose a current risk to the community.

Judicial discretion is constrained by sentencing guidelines. The parole board’s discretion is supposed to be similarly constrained by parole guidelines, but it has not worked out that way.

(Footnotes)

¹ Citizens Research Council of Michigan, *State Budget Notes: Michigan’s Budget Crisis and the Prospects for the Future*, www.crcmich.org (March 2006), p. 3,

How the sentencing guidelines work

- Enacted by the Legislature, the guidelines dictate the range within which the judge must select the minimum sentence. They account for the facts of the crime and the defendant's criminal record.
- The guidelines apply to all cases except those, like first-degree murder and felony-firearm, where the statute mandates a specific sentence.
- The Legislature designed the guidelines to protect the public, ensure that sentences are proportional to the offense and offender, reduce disparities and control prison growth.
- The judge can only depart from the guidelines for "substantial and compelling reasons" which must be "objective and verifiable." A body of appellate decisions has developed that defines when departures are permissible.
- If the judge departs from the guidelines, either the prosecutor or the defendant can appeal to a higher court. Errors in scoring the guidelines and judicial reliance on inaccurate information are also grounds for appeal.

Why the parole guidelines don't work

- Developed by the MDOC, the guidelines divide people into three categories – high, low and average probability of release. People in the "high probability" group pose less than a 5 percent risk of committing a new assaultive offense.
- Although the board is required to state "substantial and compelling reasons" for denying parole to someone who scores high probability for release, the standard cannot be enforced because prisoners cannot appeal board decisions.
- The board denies release to more than 40 percent of the people who score high probability of release – roughly 2,500 a year – for as long as 24 months at a time. The denial rate for those in the high probability category has been steadily increasing. In 1996, it was below 20 percent.
- Many people with high probability scores have excellent prison records and have successfully completed available programs.
 - Some are continued even though they have been working daily in the community, or are subject to deportation, or their codefendants have been released.
 - Some are continued for a year or two and then paroled, with no apparent gain to public safety from the extra time served.
- The board routinely denies parole based on its own view of the offense, effectively engaging in resentencing. Also common are subjective assessments of the person's risk based on unrecorded 10-minute interviews.
- The board has decided to not even calculate guidelines scores for more than 800 parolable lifers, many of whom would score very favorably.

A better process will yield better results

- Although the parole board's decisions affect tens of thousands of prisoners and cost taxpayers hundreds of millions of dollars, it is essentially unaccountable. The decisions of political appointees about how long a person will be incarcerated should be as transparent and reviewable as comparable decisions made by elected judges.
- The Legislature directed the adoption of parole guidelines at the same time the composition of the board was changed. Because parole board members are appointees who are expected to be sensitive to the potential political consequences of their decisions, the guidelines were intended to serve as objective external constraints on their discretion.
- When the guidelines were adopted, prisoners had a right to appeal to parole denials. Statutory amendments in 1999 that eliminated that right left the parole guidelines essentially unenforceable.

- Without judicial review, there is no means of correcting unfair results in individual cases or interpreting the “substantial and compelling standard” for departures or developing a body of law to govern parole board decision-making.
- Many states have eliminated indeterminate sentencing altogether to avoid having subjective release decision-making lead to arbitrary and inconsistent results. Michigan should at least enforce meaningful checks against these inevitable risks.
- Research shows that statistical risk assessment instruments are far more accurate than the “gut reactions” of individual parole board members in predicting whether people will re-offend.
- The current guidelines mix factors that do and do not predict risk and should be revalidated. While risk is not the only factor to be considered, the board should have a statistically valid risk assessment available before deciding whether to deny release for some other reason.

Corrections spending drains scarce resources from other services

- At nearly \$1.9 billion, the MDOC accounts for 20 percent of all General Fund spending. Its share of GF dollars has quadrupled in the last 20 years. Despite our need for a better-educated workforce, we now spend more on prisons than we do on universities.
- A 2004 EPIC-MRA poll shows that Michigan citizens would much rather fund K-12 education, public health, revenue sharing, higher ed and the environment.
- Community services that protect children at risk, treat substance abuse and mental illness, and assist people returning from prison are the best ways to prevent crime in the long run.

Enforcing parole guidelines is feasible

- Parole decision-making does not involve “early” release. The only people affected will have served their minimum terms and will have demonstrated that they are worthy candidates.
- Improving and enforcing the parole guidelines would not result in any particular prisoners being immediately released but would increase parole grant rates over time.
- Limiting the grounds for appeal will limit the number of parole appeals and avoid frivolous claims. As a body of law develops, board decisions will conform and fewer appeals will occur.
- Although many people being denied release committed assaultive or sex offenses, their high parole guidelines scores should not be ignored. The nature of the offense was factored into their sentences and scored in the parole guidelines. Moreover, these offenders actually have lower recidivism rates than those who commit less serious crimes.
- Poll results show that the overwhelming majority of Michigan citizens want parole decisions to be fair and subject to review.
- It has been 14 years since the Legislature mandated parole guidelines. It is time to ensure they work as intended.



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