

Plymouth UCC Conference – 9-20-08

Good morning. I deeply appreciate the chance to be your lead-off speaker today. Not only is this a thoughtfully planned program with very knowledgeable participants, it is the brainchild of David Moore. Getting to know David over this last year and watching him function with dignity, humor, compassion and incredible determination under the most difficult circumstances has been a transforming experience for me. David wanted so much to bring your attention to the costs and failings of our own state's prison system and to the heavy burden borne by 50,000 prisoners, tens of thousands of former prisoners, and their countless family members and loved ones. I am happy to be here to share his dream. [thumbs up]

The conference brochure poses some big questions about our prison system – Is it just? Does it make us safer? Does it work? Before we attempt to answer these questions, let's look for a few minutes at what the system is like and how it got this way.

In 1984, Michigan's prison population was less than 15,000 people. By 2005, it was nearly 50,000. In 20 years, while the state's overall population grew by just nine percent, our prison population more than tripled.

This phenomenon is not unique to Michigan. It is happening all over the United States. America leads the world in the rate at which it incarcerates its own citizens. Our rate, defined as the number of prisoners per 100,000 citizens, is higher than that of Russia, Cuba, and S. Africa and way higher than that of Iran and China. Vivian Stern, a research fellow at the International Center for Prison Studies at King's College London, calls America "a rogue state, a country that has made a decision not to follow what is a normal Western approach" to crime.

But within the U.S., all states are not alike. Michigan is extremely punitive even by American standards. We have the 11th highest incarceration rate of all the states, behind such leaders as Louisiana, Mississippi, and Texas. We have a much higher rate than any other state bordering the Great Lakes. And, to put it in a global perspective again, Michigan has a far higher incarceration rate than Canada, Mexico and every country in Central and S. America and Western Europe.

What has caused this extraordinary growth? Is it the inevitable product of higher crime rates? That is, does more crime cause more incarceration? Or is it a necessary form of social control that must be employed to keep crime rates down? That is, does incarceration reduce crime?

This chicken-egg question of whether crime increases imprisonment or imprisonment reduces crime is complex and controversial. By international standards, the U.S. has a relatively high violent crime rate but actually has comparatively fewer nonviolent crimes. Compared to similar Midwest and northeast states, Michigan has higher rates of both property and violent crimes. Yet if incarceration reduces crime, we should have much less crime than our neighbors, not more.

The relationship of crime rates to incarceration rates is simply not very clear. During the 1990's, crime rates fell steadily but incarceration rates kept ratcheting up. Texas increased its prison

population dramatically but saw less of a crime drop than New York, which had much smaller prison growth. Canada's crime trends have closely paralleled America's for the last forty years, but its imprisonment rate has remained stable. Michigan's crime rate has fluctuated even when the prison population was growing steadily. In 1975, when we had about 11,000 people in prison and 1995, when we had 41,000 prisoners, the violent crime rates were identical.

The fact is, many factors affect crime rates far more than imprisonment. Demographics, like the number of young men in their crime prone years; economics, like overall levels of prosperity and access to jobs; changes in policing strategies and in the drug trade; all these factors and more affect the level of crime. Researchers estimate that increased imprisonment accounted for at most one-quarter of the decline in violent crime during the 1990s, meaning that at least 75% of the decline was attributable to other causes.

So, incarceration has, at best, a modest effect on reducing crime. And conversely, since crime rates have been declining for nearly two decades, they cannot possibly be responsible for pushing the prison population up.

What has caused our prison population to explode is our response to crime. It's all about policy choices made by elected officials. In a compelling New York Times article published in April of this year, reporter Adam Liptak noted that one explanation for America's high incarceration rate may be democracy. Liptak explained: "Most state court judges and prosecutors in the United States are elected and are therefore sensitive to a public that is, according to opinion polls, generally in favor of tough crime policies. In the rest of the world, criminal justice professionals tend to be civil servants who are insulated from popular demands for tough sentencing." He might have added that political appointees, like parole board members, are also sensitive to public opinion. Let's look more closely at how the politics get translated into policy.

The size of a prison population depends on two basic factors – how many people we choose to put in prison and how long we keep them there. Liptak reports that the United States does not actually admit the most people to prison per capita. Rather, he says, "it is the length of sentences that truly distinguishes American prison policy." The same is true of Michigan compared to other states. We actually send a lower proportion of people convicted of felonies to prison than other states do. We adopted a progressive Community Corrections Act in 1988 to encourage the counties to impose community-based sanctions on lower level offenders. The sentencing guidelines adopted in 1998 were also designed to keep less serious offenders out of prison. And in 2002 we reformed our drug laws to reduce the penalties for all but the highest volume drug offenses.

But those people we do send to prison stay there for a long time. This past June, the influential Citizens Research Council published an analysis of Michigan's prison growth over the last 30 years. CRC reports that from 1990-2005, the average length of stay in Michigan was 16 months longer than the average of other Great Lakes states. The disparity is actually increasing. In 2005, the average estimated length of stay was 24.6 months for Great Lakes states, 27.4 months for the United States as a whole and 43.5 months for Michigan. That average is made up, of course, of many people who serve just a year or two and others who served decades.

CRC characterizes the impact of increased length of stay on the growth of Michigan's prison population as "profound." It estimates that if, from 1990-2005, Michigan's annual average length of stay had been one year shorter, by 2005 Michigan would have had roughly 14,000 fewer prisoners, a corrections workforce with 4,700 fewer employees and annual expenditures of \$403 million less.

The really stunning thing about our much greater length of stay is that it is so pointless. One might debate whether putting people in prison reduces crime, but there is virtually no doubt that keeping people in prison longer does not. The empirical evidence from numerous academic studies is overwhelming. Increased length of stay does not reduce recidivism and may actually increase it.

Research CAPPS is currently completing on returns to prison in Michigan confirms these findings. We are looking at more than 60,000 people who were released for the first time between 1986 and 1999. We have categorized their offenses into nine groups. Our analysis makes several points.

First, serving more time in prison does not improve success upon release. On the contrary, in every offense group, serving less time tends to be associated with success, or at least with not re-offending..

Second, there is no magic number of years in prison that will guarantee success, for people in general or for particular groups of offenders. For drug offenders, 2.3 years is the average time served for those who succeed; for weapons offenders it is the average for those who fail.

Third, within offense categories there is not a lot of difference in the amount of time served by those who succeed and those who return to prison, either as technical violators or with new sentences for new crimes.

In short, every extra year we keep someone beyond that which is appropriate for punishment does nothing to keep us safer once that person is released.

So what brought Michigan to this highly punitive length of stay? The underlying cause is the "get tough" "war on crime" mentality that spread throughout the country starting in the 1970's. The war on crime was purportedly a response to an increase in reported crime from 1964 to 1974. More prison was not, of course, the only response possible. The incarceration binge may have been as much a reaction to the social upheaval of the 1960's and a means of controlling an increasingly frustrated "underclass" as it was a rational response to crime. Once law and order became the mantra, it was driven home by conservative politicians, sensational media stories and some well known social scientists who argued that locking up "dangerous thugs", not addressing poverty and racial inequality, was the right way to reduce crime.

However much it may be cloaked in academic terms and bolstered by graphs and statistics, the prison building movement is fueled by emotion. And the dominant emotion is fear – all sorts of fear. The public's fear of crime, the fear of politicians that they won't be re-elected if they look too soft, the fear of parole board members that they will be held accountable for a parolee's high

profile crime, the fear of communities that a job-creating prison might be closed. This sort of emotion is extremely hard to combat with rational arguments, no matter how good the evidence in support of those arguments is or how compelling the examples are of injustices caused by get tough policies. Believe me, I've been making rational arguments for the last eight years. They are always answered by a recounting of a terrible crime which, no matter how unrelated to the point being discussed, decides the issue just like that.

There are other emotions as well. America's emphasis on individual responsibility leaves less room to sympathize with people who were dealt a bad hand. If this is truly the land where any boy or girl who works hard enough can become president, then the only explanation for allowing addiction, mental illness, poverty or developmental disability to influence criminal behavior is a failure of individual will.

And then there is the money. Everyone is familiar with the concept of the prison-industrial complex and the enormous profits to be made by building contractors and vendors of everything from guards' uniforms and concertina wire to televisions and typewriters specially produced for the prison market. Beyond them are the corrections employees – more than 17,000 in Michigan – and the communities that depend on prisons to support their local economies. I once angered an appropriations committee chairman when I said that it would be unconscionable to keep some people locked up so that other people could have jobs. He was morally outraged at the very suggestion. But go and watch a hearing when half a town shows up to urge the legislature to “save our prison.” Then you'll see how much harder it is to close a prison than it is not to open one in the first place.

We understand the motivation for prison expansion, but exactly how does it get accomplished? Policy after policy has been adopted to lengthen sentences, to make people serve more of their sentences before becoming eligible for parole, and to deny parole once people have become eligible. The increased use of habitual offender statutes. The adoption of sentence enhancements for the possession of a gun during the commission of a felony. Stiff new penalties for a whole variety of crimes. The elimination of any time off for good behavior. Changing the membership of the parole board from civil servants to political appointees with a mandate to reduce parole grants and increase parole revocations.

Kay Perry and I will be discussing these policies in more detail at a workshop this afternoon. What is common to many of them is the opportunity for the exercise of enormous discretion in individual cases by prosecutors, judges and parole board members. At the front end of the system, prosecutors have total discretion about who to charge with what crimes and how much they are willing to offer in plea negotiations. How that discretion gets exercised varies widely depending on the philosophy and personality of the elected prosecutor and on the county's local traditions. Prosecutors have worked hard to gain more and more leverage in plea bargaining. Every tool they get that allows them to raise the stakes increases the average prison stay.

Sentencing judges also have enormous discretion. We have adopted sentencing guidelines that put some boundaries on that discretion. But the effect is limited. Guidelines scores here calculated by awarding points based on the details of the crime and the defendant's prior record. Scores are then plotted on a grid that gives the judge a range of months. The minimum sentence

is supposed to fall within that range, unless the judge has “substantial and compelling reasons” for departing. Sentences outside the guidelines can be appealed to a higher court.

The problem is that Michigan never modernized its penal code. Nearly all the most serious offenses – from armed robbery to first-degree criminal sexual conduct to second-degree murder – carry a maximum penalty of life in prison. The guidelines ranges for these crimes are very high and very broad. When a judge is told to pick a minimum sentence between 5 and 25 years, or between 10 years and life, that doesn’t put much of a brake on judicial discretion.

Then, of course, there is the discretion of the parole board. No one even pretends to limit that. Consequently, we have 15,000 people in our prisons – 30% of the total population – who have served their minimum terms and are eligible for release.

The parole board is ostensibly governed by parole guidelines. People who score “high probability of release” because they pose a very low risk of re-offending are supposed to be paroled unless there are substantial and compelling reasons to deny release. But there is no independent review of parole denials. The reasons given are often just boilerplate with no real basis in the facts of the case. Prisoners are not allowed to appeal. Consequently, in 2006, 45% of all the people who scored high probability for release were denied parole. While most drug, drunk driving and property offenders got released, assaultive and sex offenders routinely did not. Among those 2006 decisions, 72% of homicide offenders and 87% of sex offenders who scored high probability for parole were denied.

The terrible irony is that we really are keeping the wrong people. The current CAPPS research, like studies from other states, confirms that, contrary to popular fears, homicide and sex offenders have extremely low re-offense rates. Of nearly 2,300 homicide offenders who were paroled during the 14-year period we are studying, only 3.2% were returned to prison within four years with a new sentence. Only 6/10ths of one percent came back for a new homicide. Among more than 6,200 sex offenders, only 4.1% came back with a new conviction of any kind; only 2.6% were returned for conviction of a new sex offense. Thus the parole board keeps thousands of people locked up for years longer than their sentencing judges intended with practically no gain to public safety. To give you a sense of how this plays out in individual cases, there are several profiles of individual prisoners included in the handout material we’ve made available.

Let me just tell you about one of them. His name is Gabriel Christ. A German citizen, who worked as a chef on a cruise ship six months every year, Christ lived the rest of the year with his American wife to whom he had been married for nine years.

Christ’s convictions arose from a domestic dispute. After returning from a stint on the cruise ship, he and his wife each thought the other was being unfaithful. When his wife said she wanted a divorce, Christ began drinking and became abusive. He admittedly beat his wife and threatened to pour gasoline on her and set her on fire. His wife claimed he also forced her to have intercourse. Christ maintains the sex was consensual. He was convicted at a bench trial of assault with intent to commit great bodily harm less than murder, for which he was sentenced to serve 1-10 years in prison, and third-degree criminal sexual conduct, for which he received a 2-15 year term. Christ had no prior criminal record and no history of substance abuse, nor were

there any prior complaints of domestic violence. The MDOC's own parole guidelines note that this was a situational offense, unlikely to recur, and score Christ as having a high probability of release. He has not received a single misconduct citation while in prison, is now 61 years old and would be immediately deported to Germany.

Nevertheless, the parole board has turned Christ down for parole six times -- four times for 12 months, once for 18 and most recently for 24 months. Board denials have always been premised on Christ's refusal to admit guilt of the sexual assault. Is anyone safer, here or in Germany, because he is still sitting in a Michigan prison at the expense of \$32,000 of housing him each year?

The collateral consequences of our enormous prison growth are numerous and uniformly negative. Most obvious to the average tax paying citizen is the cost. The MDOC budget has hit \$2 billion. Corrections accounts for 20% of all General Fund spending, compared to 5% in 1983. Each and every day we spend nearly \$5 million to operate prisons. The average annual cost of housing a single prisoner has risen to nearly \$35,000, though this varies substantially by security level. The corrections budget keeps growing at the direct expense of other state services. At a time when the state desperately needs a highly trained workforce, Michigan has the dubious distinction of being one of only four states that spends more on prisons than it does on higher education. Repeated cuts to local revenue sharing funds, which cities depend on for police and fire protection, have meant at least 1,600 fewer police officers on the street – an ironic result of spending so much on corrections in the name of public safety.

Other consequences may be less visible, but are nonetheless ominous. Our criminal justice system has become the treatment provider of last resort. Because the money didn't follow the patients into the community when mental hospitals were closed, many mentally ill people have become "trans-institutionalized", moving from hospitals into prisons in order to get any sort of care. Similarly, people without insurance cannot get substance abuse treatment unless they commit a crime because most community-based treatment beds are paid for through the criminal justice system and reserved for probationers and parolees.

Inside our prisons, conditions are deteriorating. Cost containment efforts have led to substantial overcrowding. There are relatively few prisoner jobs of any significance; academic and vocational programs have been reduced as non-custody positions have been cut. Tens of thousands of people in low security facilities, many of whom are eligible for parole, spend their days playing cards or basketball or watching TV while their families struggle in their absence.

The impact on families and communities, particularly African-American families and communities, is profound. 1.5 million American children have a parent in prison. For African-American children, it is 1 in 14. Nationally, as of 2001, one in six black men had been incarcerated at some point in their lives. If current trends continue, one in three black males and one in six Hispanic males born today will serve time in prison. In Michigan, the incarceration rate for African-Americans is 5.5 times the rate for whites, which is about the average ratio nationally. Because of the dramatic rates of imprisonment for young black men, many urban neighborhoods now have a highly skewed ratio of women to men, throwing normal social

relationships into chaos. Poor neighborhoods are further impoverished not only by the absence of so many men but by the inability of former prisoners to find jobs when they return home.

No one suggests that serious crime should go unpunished. Nor can we fail to recognize that people in low income neighborhoods and even prisoners' own family members are often the victims of crime. But when we make policy decisions about how to respond to criminal behavior, we must also recognize these collateral consequences. Otherwise we will end up multiplying harm instead of containing it.

We've come full circle. We know how much incarceration we have, why and how it has occurred and what some of the negative consequences are. But the questions about our prison system still remain.

First, does it do justice? Retribution that is proportionate to the crime is certainly a reasonable goal of sentencing. Victims and the community are entitled to that. But we punish many people with extraordinary harshness, regardless of their circumstance or their efforts to put their lives in order. Some people, particularly sex offenders, we can't seem to punish enough. As with Gabriel Christ, no matter what the actual facts of their crime or the unlikelihood they will ever commit another one, no amount of time in prison is too much for a sex offense. And the stigma of incarceration is the gift that keeps on giving. Once people are released, we make them into pariahs in the community, restricting their opportunities to work, find housing, attend school and generally live the normal lives we say they ought to.

I remember hearing on the radio that the men convicted of the Madrid train bombing that killed scores of people would have to be released in 30 years because that is the maximum allowed under Spanish law. James Percy was finally released from a Michigan prison last year after serving more than 30 years for committing an armed robbery by putting his finger in his pocket and pretending it was a gun. The judge who sentenced him in 1976 figured James would be out in 10 or 12 years, but then the parole board changed. We are basing the incarceration of 50,000 of our citizens on notions of what is "just" punishment that not only astonish the rest of the world, they are totally out of line with what were our own longstanding norms until 30 years ago.

Is all this incarceration making us safer? From what we hear about how half the people released from prison return, it would seem the answer would be a resounding no! The fact is, recidivism rates are not nearly that high. A lot depends on who you count and how. In our data analysis, 75% of people released from prison for the first time did not return to prison within four years. Only about 6% came back with sentences for new crimes. The other 19% were returned as technical parole violators. Revoking someone's parole for failing to comply with the rules of supervision is completely within the parole board's discretion, so that number rises and falls as board policies change.

The data suggests that while some people, most often those convicted of economically motivated crimes like robbery, burglary and larceny, come back to prison repeatedly, the great majority do not. Is that because they have been deterred by the unpleasantness of prison? Perhaps. But it is just as plausible that they would never have repeated their offenses in any event – because they matured, because they felt guilty or ashamed of their own behavior, or because the offense arose

from circumstances that would be very unlikely to reoccur. Imprisonment may serve to discourage some people from re-offending, but we don't really know which people those are. In the meantime, we keep stuffing the prisons with probation and parole violators for whom the prospect of prison seems to be no deterrent at all. What we need to figure out is what would work for those folks. We need to target the most appropriate resources at the people who need them the most. That would really keep us safer.

Are long prison sentences justified by efforts to rehabilitate people? Even setting aside the fact that real rehabilitative programs in our prisons are pretty scarce, we want to be very careful here. Certainly we hope people will leave prison having thought more about the importance of complying with social norms. If they can also leave with fewer problems and more skills than they had when they entered, that is all to the good. Mental health treatment, substance abuse treatment, academic and vocational classes, parenting programs – these should all be available in greater quantity and quality than they are now. We may well want to reward participation in them with sentence reduction credits. But let's never forget that prison is harsh punishment. It makes me nervous to hear talk about how we are going to assess people's "needs" and "fix them" before we let them out. If we want to help people do better, we can help them in the community with a lot less pain and at a lot lower cost. Rehabilitation may be an excellent goal of sentencing, but basing the release of people who have served their minimum sentences on whether they have been rehabilitated adequately is a very slippery slope.

Is there any good news in all this doom and gloom? Actually, there is. The futility and costliness of the get tough movement is finally becoming apparent to the general public. The war on drugs is being seen for the failure it is and addiction is being increasingly viewed as a medical problem. Under the extraordinarily effective leadership of Laura Sager, from Families Against Mandatory Minimums, Michigan has substantially reformed its drug laws and granted early parole eligibility to people sentenced under the old laws. Drug courts have become commonly available as alternatives to incarceration. A new coalition, Partners in Crisis, is focusing on alternatives to incarceration for the mentally ill and on better treatment for those who do go to prison. Public opinion polls show that taxpayers would like to save money in corrections by diverting more non-violent offenders from prison. The Michigan Prisoner ReEntry Initiative, MPRI, has raised public consciousness about how returning prisoners are members of the community who have families and need homes and jobs just like the rest of us.

These are important first steps. Of course, people with substance abuse and mental health problems are the most sympathetic prisoners and people who commit drug and property crimes are the least frightening. It will take a lot more work to persuade the public that someone who committed an assaultive offense decades ago is not necessarily a violent offender today. It will take a lot of work to get past the rhetoric and get people outside of this room to consider the facts about recidivism rates and arbitrary parole decisions and prison conditions and the damage done to families and communities.

But the relentless expenditures on excessive incarceration are finally making people more willing to listen. The MDOC budget has a giant target on its back. The conversation in Lansing is no longer about whether corrections spending should be reduced but how. Importantly, the business community is getting involved. The very powerful Detroit Chamber of Commerce has

decided to make reducing the corrections budget by \$500 million its mission for the next few years. Granted, its motivation is to use the entire savings to repeal the business tax surcharge, but first it has to focus on how to get the money out of corrections. I'm happy to say that many of the proposals they plan to make are lifted directly from CAPPS's *Six Strategies for Right-Sizing Michigan's Prison Population*, which is in your handout materials. So, the revolution has begun. And we need everyone on the front lines. I hope to see you there. Thank you.