

House Judiciary Subcommittee on Corrections Reform

Testimony of Citizens Alliance on Prisons and Public Spending February 23, 2010

Good morning. My name is Barbara Levine and I'm the executive director of CAPPS, the Citizens Alliance on Prisons and Public Spending.

I would like to begin by saying how encouraged we are by the decline in the prisoner population. We know the parole board has been working hard to release more people who are past their earliest release dates. When we first did research on the number of people eligible for parole in 2003, including parolable lifers it was nearly 35% of the population. Now that same figure, excluding people with paroles granted who are just finishing up programs, is apparently down to about 23%. Certainly that is substantial progress.

Nonetheless, we believe more can be done and we have specific recommendations that appear in the 10-Point Plan to Reduce Corrections Spending in 2010 that I have provided you. Before I turn to those recommendations, I would like to create some context by reviewing some of the findings from the research on recidivism that we published last August. The full report was distributed to every legislator. We can get you another copy if you would like. It is also on our website, www.capps-mi.org. For now, I have provided copies of the executive summary, along with several figures and tables to which I will refer.

Our database included every person sentenced to an indeterminate term after 1981 who was released for the first time, whether on parole or by maxing out, from 1986-1999. It excluded lifers. It also excluded parole violators who were being released for a second or third time because we didn't want to count multiple results for the same person.

We had a total of 76,721 cases. Roughly half were released under the old board and roughly half were under the new board. The total included more than 2,500 homicide offenders, nearly 6,700 sex offenders and about 6,500 other assaultive offenders. But 56% of those released were larceny, drug and burglary offenders, which is comparable to these crimes' proportion of total commitments. Success was defined as no return to prison, either with a new sentence or for a technical parole violation, within four years of release.

Other key points about the database are:

- all offenders were sentenced when disciplinary credits were available;
- all were serving when the Community Residential Program was functioning,
- there was no prisoner reentry initiative during this period;
- there were no laws restricting where sex offenders could work and live.

The ultimate question we were asking was whether public safety is improved by keeping people in prison an extra year or two. The short answer is: very, very little. We also learned a number of other important things.

Sixty-one percent of all the prisoners we studied had been released on their earliest release date or ERD; 15% were released after serving one additional year; 14.6% were released after serving two additional years. Thus, in total, 91% were released within two years of first eligibility.

The success rate of people released on their ERD was 66%. The success rate of people released after their ERD was somewhat lower at approximately 58%. While not insignificant, this eight point difference in success rates is not great. That is, if the board's decision to deny release reflected a substantial ability to discriminate between those who are likely to succeed and those who are not, the success rates of those released later would have been much lower. Notably, after the initial drop between those released when first eligible and those held for an additional year, success rates flatten out. That is, whether someone is held for one, two or three years beyond their ERD, the success rate is still, on average, about 58%.

We estimate that if everyone who was released a year or two after their ERD had been released when first eligible, it would have saved more than 2,300 beds a year or nearly 33,000 beds in 14 years. In today's dollars, the cost savings would have been nearly \$74 million a year or more than one billion dollars for the entire period. Yet the decrease in the total success rate, when everyone released on, one or two years after their ERD was combined, would have been 2.9%. That is, the success rate would have gone from 66.1% to 63.2%. The increase in returns with new sentences would have been only 1.7%. The increase in total arrests would have been 0.4%.

It is true, of course, that no amount of crime is "acceptable." And it is always possible to find examples of awful crimes committed by former prisoners, just as it is possible to find examples of people who spent many extra years in prison when they posed no threat to anyone. In making broad policy decisions and designing \$2 billion budgets, we have to be realistic about what we expect the MDOC to accomplish. It cannot deter all crime or predict with certainty which 18 out of 100 released prisoners will return to prison with a new sentence. All we can expect is rational, cost-effective decision-making that minimizes the risk to public safety. We cannot eliminate all risk. We cannot lock up everyone who might commit a crime at some point in their lives. We cannot spend \$4 or 5 billion to reduce the re-offense rate of parolees by another four or five points. We have to decide how to balance re-offense risk against the human and fiscal costs of incarceration.

In striking that balance, there are two other key points that our research demonstrates and a great many other studies we have cited confirm. One is that sheer length of time served bears no relationship to success. We want to incarcerate some people longer than others because they are deserving of more punishment, but more time will not improve success upon release. The average time served for both drug and larceny offenders was 2.2 years but their respective success rates were 69% and 55%. The average time served for sex offenders and robbers was nearly identical, but the success rate of sex offenders was more than 20 points higher.

Even more telling, *within* offense groups there was little or no difference in length of time served among those who succeeded, those who came back as technical violators and those who returned with new sentences. Among released larceny offenders, for instance, those who succeeded had served, on average, 2.2 years, those who came back as technical violators had served an average of 2.0 years and those with new sentences had served 2.2 years. This similarity in time served regardless of outcome was true for every offense group.

Which brings me to the last key finding. While age, prior record and institutional conduct are well known predictors of success on release, another critical factor to consider is offense type. And not in the way you might think. We always consider offense type by assuming that those who committed assaultive and sex offenses are high risk and should be incarcerated for as long as possible. As Fig. 2 shows, the parole board routinely denied release to assaultive and sex offenders

who had favorable parole guidelines scores, based solely on the nature of the offense. But the fact that someone committed a violent crime years ago does not mean they are dangerous today.

On the contrary, the data in Fig. 3 show that homicide, sex and other assaultive offenders have substantially lower failure rates any reason than do financially motivated offenders like those who committed burglary, larceny and robbery. For homicide and sex offenders the success rate exceeds 77%. Moreover, the offenders we fear most rarely return to prison for repeating their crimes. Only 4.5% of all the people released returned for a new crime against a person. Only 3.1% of sex offenders returned for a new sex offense. Only 0.5% of homicide offenders returned for a new homicide. The data on sex offenders in particular, which wholly contradicts public perceptions and the basis of much release decision-making, is similar to that of eight other major studies shown in Table 6. Ironically, releasing more of the people who used to be passed over will, in all likelihood, reduce recidivism rates overall.

The findings suggest three conclusions. First, MPRI does need to be selectively targeted at those who are actually at highest risk for re-offending. Even without MPRI, more than 60% of former prisoners are not coming back. With appropriate support, that number can undoubtedly be increased. But resources should be directed at the people who need them most, such as a continuing focus on education and employment for those whose crimes are financially motivated.

Second, parole conditions should also be selectively tailored to the individual's actual re-offense risk. They should not automatically be more stringent because of the nature of the offense.

Third, we can adopt reforms that decrease length of stay without jeopardizing public safety. Whether it is restoring some amount of sentencing credit, releasing more people who are past their ERD, adopting a presumption of parole at the minimum for all offense groups or narrowing some sentencing guideline ranges, the evidence is there to support reforms that will restore our prison system to a size that is more appropriate for our population and our resources.

Our recommendations are built on these conclusions. Those in our 10-Point Plan that relate specifically to parole are numbers 7-10. I'd like to review each of them briefly. They all go to constraining the exercise of the unusually broad discretion our parole board possesses. To the extent that our recommendations relate to those made by the Council of State Governments, I will address both viewpoints as I go along. Our full analysis of the CSG proposals is in the third handout I've given you this morning.

No. 7. We recommend enactment of a statutory presumption of parole when the person has served his or her minimum sentence. This would be a rebuttable presumption that would not control if the person had a poor institutional record or objective factors demonstrated that the person poses a current threat to society.

Such a statutory presumption would restore the meaning of the minimum sentence. Now, the judge imposes the minimum based on sentencing guidelines devised by the Legislature, but the board is free to hold someone all the way to their maximum, just because the board feels differently about the crime. Now the prosecutor is free to induce a guilty plea by negotiating a certain minimum sentence but then turn to the victim and say: "don't worry, the board will never actually release him then." This is not truth in sentencing. Whatever their minimum sentence, people should be able to rely on being able to earn their way out at that point. As we have seen, there is little or no gain to public safety by not enforcing such a presumption. Parole grant rates have fluctuated dramatically over the last two decades. While the current board is now increasing the grant rate, it

requires a statute to ensure that, no matter who is on the board in the future, the standard for parole is an objective one, not simply what those particular members feel is reasonable.

The Council of State Governments also proposed a presumption of parole, but it had a number of limitations with which we don't agree. Their presumption would be prospective, applying only to people sentenced after it was enacted. This would greatly delay its utility in reducing the prisoner population. There is no explanation of why a presumption should not apply to current prisoners. There is no legal impediment. And if a problem exists, why not correct it sooner rather than later?

The CSG would not apply its presumption to people convicted of offenses carrying a maximum penalty of life or any term. That is about one-third of all prisoners serving indeterminate terms. It wouldn't matter whether a life sentence was actually imposed; the exclusion would be for everyone convicted of all the most serious offenses. As we have seen, these are the very people who have been denied parole in the past and are most in need of a limit on board discretion. They are also the people who are often at lowest risk of re-offending. Their minimum sentences may be longer because of the nature of their crimes, but there is no principled basis for not treating their minimums, once served, like everyone else's. Excluding these offenders from a presumption of parole is not fair, it does not enhance public safety and it is not genuine reform.

The CSG also suggested that even those to whom its presumption of parole would apply could be kept for up to 120% of their minimum sentences in order to complete treatment or because of institutional misconduct. As we explain in our analysis, the use of the 20% mark-up rather than a set number of months allows for very disparate treatment depending on how long a minimum is being served. Twenty percent of a one-year minimum is 2.4 months while 20% of a ten-year minimum is two years. Thus identical misconduct histories or identical needs for treatment could bring very different results. We also have concerns about how much institutional misconduct and what kind of failure to complete required programs would permit the denial of parole.

No. 8. Our recommendations also address the parole process. Historically the board has been able to deny parole to people with favorable parole guidelines scores because prisoners do not have the right to appeal parole decisions. Prosecutors do have that right and have been exercising it with increasing vigor as the board has been granting more paroles. We urge that the prisoner's right to appeal, eliminated in 1999, be restored at least for people who score low risk on the board's assessment instruments. In order to make the right meaningful, parole board interviews should be recorded. And the parole guidelines should be scored for all prisoners, including parolable lifers. Another procedural problem that is not listed in our 10 points is the ability of successor judges to veto the release of parolable lifers without giving any reason or conducting any hearing. These vetoes are also becoming more common and they, too, should be subject to appellate review.

No. 9. We have long advocated the establishment of a separate parole board for those cases that require public hearings, that is, for commutations and lifer paroles. These time-consuming cases tend to be procedurally and substantively more complex than the norm. They are often controversial and usually involve prisoners who have served decades or are seriously ill. For a long time, there were very few lifer paroles or commutations granted. Now that the board is treating these cases much more seriously, it has proven difficult to keep up with them while processing a large volume of routine files. It would be more efficient and more effective to have a smaller, separate board specialize in these difficult but important decisions.

No. 10. Finally, in order to reserve prison for the most serious offenders, we recommend that technical parole revocations be limited to circumstances that clearly demonstrate an actual danger

to the public. The Council of State Governments recommended that first-time returns for technical violations be limited to nine months. Here again, for reasons that are unclear, they would give their proposal only prospective effect. We have taken a different tack by focusing on whether parole should be revoked at all. A parolee who is posing a serious threat to public safety should be returned to prison without an arbitrary limit on how long he or she can be kept. However, if someone's conduct violates supervision rules but does not threaten the public, sanctions other than imprisonment should suffice.

We are also concerned about ensuring that parole conditions are narrowly tailored to fit individual circumstances. The automatic imposition of unnecessarily restrictive conditions that actually impede successful re-entry remains an issue we hope to see the board address.

I appreciate your consideration of these recommendations and hope that the evidence supporting them persuades you of their merit. If there is any way in which we can contribute further to your deliberations, we would be happy to do so.