CAPPS
CITIZENS ALLIANCE ON PRISONS & PUBLIC SPENDING
CONSENSUS
Addressing the social and economic costs of prison expansion Spring 2012

Acknowledging Reality:

Budget Proposals Avoid Only Solution to Corrections Spending

The FY 2013 budgets proposed for the MDOC by the Executive, the Senate and the House, although different in significant ways, are all efforts to address the question: Why, with fewer facilities and nearly 8,000 fewer prisoners, do we still have a budget of $2 billion? It is not that reducing the population doesn't save money. Closing nine prisons and eight camps since Jan. 2007 yielded net savings of at least $275 million, despite the opening of two other facilities. The problem is these savings have been offset by increases in other costs, primarily employee wages, employee and retiree benefits and prisoner health care.

Today's MDOC budget is the legacy of decades of "get tough" policies. In the seven years from 1978-1984, before the first big wave of prison expansion, our prisoner population averaged 14,904, going up and down each year by only a few hundred prisoners. The number of MDOC employees averaged 5,497. Today, those numbers have nearly tripled – with 43,661 prisoners and 13,728 employees. In between, the prisoner population spiked to roughly 51,000 and the number of employees reached nearly 19,000.

The population trends and the costs they have generated have been well documented in MDOC budget presentations, in background briefings by the House Fiscal Agency and in analyses by the Citizens Research Council of Michigan. The policy choices that have driven this growth – harsher sentencing, the elimination of sentencing credits and community transition programs, widely fluctuating parole rates, closing mental health facilities – all of which lead Michigan prisoners to have inordinately long lengths of stay, are also well-known.

What is missing is the acceptance of two fundamental premises. First, to undo the growth in prison spending, we must undo the policies that caused it. All three budget proposals assume the prisoner population will remain roughly the same. They look for ways to reduce the cost per prisoner, by such mechanisms as "operating efficiencies", wage and benefit reductions, staffing cuts and privatization. Yet all the costs of operating

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Budget Proposals Avoid Only Solution to Corrections Spending

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institutions are a direct function of how many people are incarcerated. The least expensive prisoner is the one who isn't there.

Just as you can't cure a disease by treating the symptoms, we can't fundamentally change the cost of corrections by addressing only the consequences of prison expansion. Unless the policies that caused all this growth are reversed, we are doomed to perpetual efforts to contain spending by shaving a few million from this or that budget line. "Efficiencies" like reducing the amount of food and clothing prisoners receive, employee pay concessions and higher staffing ratios all have natural limits. Past those, prison conditions deteriorate to levels that are unsafe, inhumane and counterproductive. And even if, in some imaginary universe, we privatized every prison in the system and saved 10%, we would save only $150 million.

The VERA Institute of Justice reached the same conclusions in its Jan. 2012 report, *The Price of Prisons: What Incarceration Costs Taxpayers*. (See story, pg. 19) It said, "The only way for states to decrease their prison budgets substantially is to reduce the inmate population and then reduce the operating capacity and related costs." The authors also observed that while virtually every state is taking measures to cut operating costs and increase efficiency, "few if any states will be able to reduce costs enough through these methods to reach their budget goals."

The other premise we must accept is that, even if we do begin to unravel the policies that brought us here, the long-term impact of decades of expansion will not go away overnight. Hiring so many personnel means pension and retiree health care costs for decades to come. Incentives brought a rash of MDOC retirements in 2010 and the ranks of the retired will continue to swell. Because of all the prisons opened in the late 1980s, there are currently more than 2,200 corrections officers eligible for retirement. A change in the state's funding method for retiree health care required the addition of $77.9 to the MDOC's FY 12 budget, after it was enacted. That amount is now built into the base budget for FY 13.

Although changes to the state's pension system in 1997 and the elimination of retiree health care benefits for those hired after Jan. 2012 will all save money over the long haul, the changes will be gradual. In addition, the recent increases in health care premiums for both employees and retirees will only help offset the apparently inevitable yearly increases in health insurance costs. While the long-term retirement costs of employees hired before 1997 can only be

modestly impacted, and the health care costs for current employees are beyond the MDOC's control, one obvious strategy is to avoid replacing retiring personnel with new employees. The least expensive staff is the one who is never hired.

Expansion has also driven prisoner health care costs in ways that go beyond the sheer number of prisoners. The average age of Michigan prisoners went from 31 in 1989 to 38 in 2010, with more than 17% of prisoners now over age 50. Increasing length of stay and the failure to address our large number of lifers means an aging prisoner population with higher health care costs. And with 20% of the population diagnosed as mentally ill, prisoner mental health care costs alone may be as much as $62 million in FY 13.

Still another cost that will have to be faced is the aging of the prisons themselves. Thousands of prisoners are living in pole barns designed to be temporary housing when they were built 25 years ago. Even the permanent facilities have experienced far more wear than ever expected because they are at double their intended capacity. Repairs and remodeling will inevitably become more expensive. Here, too, the cheapest prison to maintain is the one that isn't open.

Prosecutors keep reciting the mantra that we don't have too many prisoners, we just spend too much keeping them. Without any evidence of why 44,000 is the "right" number, this is political rhetoric, not principled public policy. While no one disputes that incarceration is appropriate for serious assaultive and sex offenses, all the research shows that keeping people a few extra months or years has little relationship to crime. To insist on retaining costly policies that have no proven value is to abdicate fiscal responsibility.

We could readily reduce the population by another 8,000, with its associated savings in staff, health care and facility maintenance, and save another $275 million. By implementing population reduction measures that would have virtually no impact on public safety, we could bring the population to 36,000, where it was in 1991, before the second wave of prison growth. Over time, this would also impact the retirement costs that must be funded in advance.

Measures like restoring the sentencing commission, restoring disciplinary credits and community transition programs, establishing a presumption of parole at the minimum for prisoners who are not at high risk for reoffending and establishing a special review board for people serving life terms largely require statutory changes. The appropriations committees cannot responsibly structure the corrections budget on the hope these changes will occur. So they produce budget proposals like those described on page 16 – proposals that attempt to wring every last dollar from prison operations in an uphill battle against rising costs that are largely beyond the MDOC's control.

In recent remarks to the Detroit Free Press, MDOC Director Daniel Heyns characterized proposals for population reduction as "contentious, hot-button issues" and "a more long-term question" that will have to play out while he focuses on fixing "more urgent problems." If policymakers don't acknowledge the reality that reducing the population is the only realistic way to bring down corrections costs in both the short and long-run, Director Heyns' urgent problems will include deteriorating conditions, less programming, declining staff morale and increased prisoner frustration.

By implementing population reduction measures that would have virtually no impact on public safety, we could bring the population to 36,000, where it was in 1991, before the second

Bridge News and Analysis from The Center for Michigan

Guest column: Cut prison costs the smart way

March 20, 2012

By Barbara R. Levine/Citizens Alliance on Prisons and Public Spending

Legislators agree we should spend less on corrections, but are reluctant to make the fundamental choices – like reinstating the sentencing commission, reforming parole practices and restoring sentencing credits — that could safely reduce the prisoner population by thousands and reduce spending by the hundreds of millions. So, to contain its $2 billion budget, the Michigan Department of Corrections has taken steps that are not only hard on prisoners and their families, but are ultimately counterproductive.


Levine

Research shows that family contact reduces recidivism, yet family ties have a low priority when cost-cutting decisions are made. Visiting hours statewide have been reduced by more than 20 percent to lessen the need for visiting room staff. The Mound facility in Detroit was chosen for closing, although it meant more than 1,000 prisoners, the majority of them from the greater Detroit area, were dispersed to facilities all over the state, making it far more difficult for their families to see them.

In a similar vein, the rates for prisoner telephone calls were increased by roughly 80 percent to create a "special equipment fund." For FY 2013, the MDOC plans to spend $19.7 million from phone surcharges on security equipment. For some unexplained reason, another $8.4 million from the surcharge will go to the vendor. When rates go up, the number of calls that prisoner families can afford goes down.

Living conditions inside the prisons have deteriorated. Overcrowding is the norm, with eight people squeezed into space meant for four. Prisoners must buy their own hygiene supplies and over the counter medications. Toilet paper is strictly rationed. In the name of "operating efficiencies," the quantity and quality of food have been cut substantially. This leaves people hungry or drives them to buy chips and candy at the prison store – hardly desirable in a system trying to save money on health care. Recent notices advise that salt and pepper will no longer be served in the chow halls.

Institutional programming has also declined. Despite the proven connection between increased education and reduced recidivism, the state funds no post-secondary education and relatively little vocational training. The proportion of prisoners taking vocational programs has dropped from 10 percent in 1985 to 4 percent in 2011. Prisoners have few opportunities to demonstrate responsibility, learn skills or develop confidence in their ability to achieve something positive. While some have jobs or prepare for GED exams, idleness is rampant.

The issue of clothing epitomizes why purported efficiencies should be closely examined. Until 1998, prisoners could wear their personal clothing. It allowed them to retain some measure of individuality and was safer for staff. If there's a fight, it's easier to identify the guy in the red shirt than the guy in the blue uniform.

Allowing lower security prisoners to again wear personal clothes could save nearly $4 million.

Eliminating the $575 annual dry cleaning allowance for roughly 7,000 custody personnel would save another $4 million a year. This allowance is essentially a bonus since officers' uniforms are machine-washable.

So, instead of this potential total savings of $8 million, the MDOC has cut each prisoner's uniforms from three to two. The department estimates this will save about $1.1 million.

The constant squeezing of prisoners and their families causes resentment and cynicism. We talk about preparing people to re-enter the wider community, but we don't encourage them to be productive members of the prison community or to maintain connections with the free world. We are moving toward the human equivalent of factory farming, where the only concern is how to contain the maximum number of people as cheaply as possible while meeting the minimum legal requirements for food, space and health care.

Guest column: Real truth in sentencing could save really big prison dollars

March 29, 2012

By Richard Stapleton/Citizens Alliance on Prisons and Public Spending

Ultimately, the least expensive prisoner is one who isn't there. While the prison population has dropped by about 8,000 over the last five years, the Michigan Department of Corrections' projections anticipate no further decline. But the projections assume the status quo on policies.

Stapleton

Those assumptions can be changed.

One big step would be to adopt "presumptive parole," a statutory requirement that people who have good institutional records and are not currently dangerous be paroled when they have served their minimum sentences. The Citizens Alliance on Prisons and Public Spending estimates the annual cost savings would be $236 million.

The size of the prisoner population depends on how many people go to prison and how long they stay. In 2005, the Citizens Research Council of Michigan found that, for the period from 1990-2005, Michigan's average length of stay was 16 months longer than the average of other Great Lakes states. In 2009, the Council of State Governments explained that Michigan prisoners stay longer because our parole board has uniquely broad discretion.

In most cases, Michigan courts impose a minimum sentence while a statute sets the maximum. The parole board cannot release someone before the minimum expires, but it can keep the person until the maximum — for any reason it chooses.

Parole guidelines measure a person's risk of reoffending. When someone scores "high probability of release" on those guidelines, the parole board is not supposed to deny release without "substantial and compelling reasons." Yet even people with favorable parole scores are

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Real truth in sentencing could save really big prison dollars

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routinely kept for an extra year or two or, in many cases, much longer.

Today, nearly 5,500 people have served their minimums and never been granted a parole. Within that group, 1,555 (29 percent) scored high probability of release on the parole guidelines. They were, on average, 2.6 years past their first release date. Another 2,576 (47 percent) scored average probability of release and were 2.8 years past their earliest release date.

Another 550 prisoners have been granted a parole, but not been released. This group is evenly divided between people with high and average parole guidelines scores. On average, they are 1.3 years beyond their first release date.

Research shows there is no relationship between sheer length of time served and success on release. Research also shows that incarcerating people for an additional year or two after they have served their minimum has very little impact on success rates. When thousands of people routinely serve an extra 12, 24 or 36 months, the costs are huge, while the benefits are very small.

Presumptive parole would change the statutory standard so the parole board must grant parole to someone who has served the minimum sentence unless the person has a serious history of institutional misconduct or there is objective, verifiable evidence that the person poses a current threat to the community. Such evidence might be scoring as high risk on a validated assessment instrument or something unique to the person, such as threatening the victim.

Presumptive parole has advantages beyond saving money. It would give real meaning to the minimum sentence, which has been imposed by a judge in accordance with legislative sentencing guidelines. Yet it would preserve the parole board's role in identifying people who are truly too dangerous to release.

By conditionally guaranteeing release after an appropriate term of punishment, presumptive parole would create transparency and certainty for both defendants and victims. It is the ultimate form of truth in sentencing.

Presumptive parole would help depoliticize the parole process. Despite public pressure, the board could rely on its mandate to reach a certain outcome unless specified criteria are met.

Presumptive parole would not conflict with current laws on "truth in sentencing." Because it just involves enforcing existing minimum sentences, not changing them in any way, it can begin having an effect immediately.

Guest column: Parolable lifers are safe to release; expensive to keep

April 10, 2012

By Paul D. Reingold/University of Michigan Law School

In the public debate over how to save money in corrections, one group is consistently overlooked — the roughly 850 "parolable lifers" who are eligible for release. Paroling just half of them could save about $16 million a year.

And the risk to the public would be almost zero.

In Michigan, serious offenses short of first-degree murder are punishable by parolable life or a term of years — whichever the sentencing judge chooses. By statute, parolable lifers have to serve a minimum of either 10 or 15 years, depending on when they committed the crime.

As a practical matter, for decades lifers who behaved well in prison would be released in about 15 years. Judges, Michigan Department of Corrections administrators and parole board members expected lifers to be evaluated just like people who committed similar crimes, but received sentences of 15-30 or 20-40 years. As Frank Buchko, a parole board member from 1962-1974, said: "The fact that someone was a lifer … had no bearing on the case. The only question was whether or not the person would be a threat to society if released."

Parole policies changed dramatically in 1992, after the board changed from civil service to political appointees. From 1992 to 2005, the board followed the mantra that "life means life." It released almost no lifers.

Then its policies loosened up some. Since mid-2005, the board has released 101 parolable lifers (not counting lifers imprisoned for drug crimes). Of the 101 paroled, just two have been returned to prison for technical violations, and one has been returned for committing retail fraud. This recidivism rate of 3 percent is consistent with the historical data.

Parole-eligible lifers tend to share a number of characteristics.

They are much older than the average prisoner. Although nearly 100 were younger than 18 when they committed their offenses, and more than 200 were under 21, their median age is now around 55. The 700 or so who became eligible for parole after 10 years (because of the date when they committed their crime) have now served, on average, about 30 years.

The parolable lifers are not "the worst of the worst." Although their crimes were serious, many were situational. About half the lifers are serving their first prison term. Most have excellent institutional records. The fact that they have served far longer than thousands of people who committed comparable offenses, but who were given term-of-years sentences, is often not what their sentencing judges intended.

Paul D. Reingold is a clinical professor of law at the University of Michigan Law School and was lead counsel in the case of Foster-Bey v. Booker, challenging the post-1992 drop in lifer paroles as a violation of the ex post facto clause.

It appears that the parole board has once again lost interest in releasing more than a handful of non-drug parolable lifers. From April 2011 – March 2012, it has chosen to proceed in just nine cases.

The board's lack of urgency is not the only hurdle parolable lifers face. Since 1992, the board only has to review lifers every five years. No interview is required: a single board member can peruse the file and indicate "no interest" in proceeding.

When the board does decide to proceed, the sentencing judge or that judge's successor can stop the process with a written objection. The judge does not have to state any reason for objecting and the decision cannot be appealed. In the last five years, 39 lifers have had their paroles vetoed — 38 by successor judges who had no involvement in the original case.

The parolable lifers are a unique population that has been whipsawed by changes in policy, practice, and personnel. No matter how much they have earned a second chance, constant turnover on the parole board makes it difficult for them to get consistent consideration. As they age and develop health issues, they are becoming increasingly costly to house. Each decision to continue a lifer for five years costs taxpayers about $200,000. Fairness, good sense, and economics all suggest that paroling more lifers is a sound strategy for reducing prison spending

OPINION **Lansing State Journal**

Levine: Private prison bill has many flaws; Questions include cost savings, accountability

Feb. 27, 2012 |

To reduce the $2 billion budget of the Department of Corrections, the Legislature is considering whether to allow prisons operated by private contractors. Michigan's only private prison was the Michigan Youth Correctional Facility in Baldwin. It opened in 1998 but closed in 2005 because its costs were too high. GEO Corp., the owner of the Baldwin facility, has expanded it from 480 beds to roughly 2,400 — all apparently on speculation. GEO hoped to house prisoners from California, but that contract fell through.

Prison contractors say they can incarcerate people as effectively as government for substantially less money.

Opponents say that incarceration is a governmental function that should not be delegated to an industry responsible primarily to stockholders. They question whether private prisons actually save money, since contractors "cherry pick" the least expensive prisoners, leaving the state to pay for those with medical problems or mental illness and those at higher security levels. Opponents also question whether private prisons cut corners on security, safety, living conditions and programming.

House Bill 5174 would let the state contract with any private provider for the housing and management of Michigan inmates "if the contract will result in an annual cost savings of at least 10 percent." The bill presents multiple issues.

HB 5174 doesn't specify the basis for calculating the 10 percent savings. Per diem costs vary greatly by security level. While a Level I prisoner can be housed for a low of $60 per day, high security prisoners cost a great deal more. The average for all prisoners is more than $90 per day.

If it costs a private contractor $56 per day to house a Level I prisoner, it could not save 10 percent of the MDOC's costs for the same prisoner. But if it only must save 10 percent of the average cost for all prisoners, it could charge $81 and make an enormous profit.

. . .the terms of HB 5174 suggest that serious questions about cost savings, transparency and accountability would be present from the start.

Second, the bill prohibits placing at a private facility any prisoner who has ever been housed above Level IV. This insulates the contractor from the prisoners with the most potential behavioral problems, many of whom are mentally ill.

Third, the bill does not allow the same public oversight of private contractors that applies to the MDOC. The public could not obtain information about prison operations under the Freedom of Information Act. The Legislative Corrections Ombudsman would have no access to a private facility.

Fourth, the bill states that the MDOC is not responsible for oversight of the private facility and the state is not liable for damages arising out of the facility's operation.

The state could turn a blind eye to abuses at a private prison it chose and be free of liability for any resulting harm to the prisoners it failed to protect.

The actual cost and operation of any private prison would depend on the terms of the contract and the state's commitment to enforcing them. However the terms of HB 5174 suggest that serious questions about cost savings, transparency and accountability would be present from the start.

Bill to reform judicial veto process for lifers due soon

Legislation to address the exercise by judges of objections to lifer paroles will be introduced soon. Rep. Ellen Cogen Lipton (D., Huntington Woods) is pulling together stakeholders to discuss the details of a bill to amend MCL 79.234(8)(c), the "lifer law."

Under current law, when the parole board has interest in releasing a parolable lifer, it must conduct a public hearing at which anyone who supports or opposes the release may appear. It must also notify the sentencing court and the prosecutor. If the sentencing judge or that judge's successor in office objects in writing within 30 days, the parole board loses jurisdiction to grant release and the scheduled hearing is canceled. The judge is not required to give any reasons and the objection is not subject to appeal.

"Changes to this process could have significant consequences for the hundreds of parolable lifers who are now eligible for release, as well as for the parole board's ability to make release decisions in cases it has carefully reviewed," said Barbara Levine, CAPPS executive director. "Because lifers are an aging population with increasing health problems and they are considered only every five years, each veto decision costs taxpayers about $200,000," Levine noted.

Although the parole board has been willing to release more lifers in recent years, a substantial number have been stopped by judicial objections. Of the 156 public hearings scheduled for non-drug lifers from January 2007 through December 2011, 39 (25%), were cancelled because of judicial objections. Of these, 14 objections were based solely on the offense or its effect on the victim; only 13 were based, even in part, on current information about the prisoner; 12 gave no reason at all. Five of the objections were in cases where the board's interest in proceeding was based on medical problems that left the prisoner wholly incapacitated. All but one objection was by a successor judge.

Levine observed that the objection process puts successor judges in a difficult position. They receive a limited amount of information from the parole board and may be contacted by victims, victims' family members or the prosecutor. But they have no basis for making an independent judgment and may have no way of knowing what the original sentencing judge intended. Although the effect is to lengthen the prisoner's sentence, there are none of the procedural protections that are part of the sentencing process.

I object!

When the parole board conducts a public hearing, it examines the prisoner closely and allows those who support and oppose release to present their positions under oath. "Ironically," said Levine, "judges who have never seen the prisoner or heard a balanced presentation of the facts are allowed to circumvent this fair and open process without providing a rationale that addresses the prisoner's current threat to public safety or, in some cases, any rationale at all."

. . . the lifer objection process applied only to the actual sentencing judge when it was adopted in 1941 . . . . it was extended to successor judges in 1953 and has not been reconsidered in more than 60 years.

The lifer objection process applied only to the actual sentencing judge when it was adopted in 1941. For reasons now unknown, it was extended to successor judges in 1953 and has

not been reconsidered in nearly 60 years. Levine observed that there were relatively few parolable lifers in the early fifties and that they served for fewer years. No one could have anticipated the consequences the veto power is having now. "Unexplained and unreviewable decisions made without any opportunity for the affected party to be heard are totally out of sync with current notions of due process in judicial decision-making," she said. "They foster a lack of uniformity in punishment, causing people with similar histories, similar crimes and similar institutional records to serve disparate prison terms."

Eliminating the unfettered exercise of lifer objections would not dictate the result of any particular case. Successor judges, prosecutors and victims would still be able to have their opposition to release considered by the parole board.

Following are examples of lifers who have had their public hearings cancelled because of objections from successor judges.

Derek Lee Foster

Although the sentencing judge supports parole, Derek Foster, who has an exceptional prison record, remains incarcerated after 32 years because the successor judge objected, giving no rationale. Foster pled guilty to second-degree murder after he killed a gas station attendant during an armed robbery. He was 23 at the time. After earning a GED, Foster went on to complete associate's and bachelor's degrees. Among his prison accomplishments are tutoring in literacy programs and conducting group counseling sessions. He has received praise and recognition from his sentencing judge who said Foster " has used his incarceration in the most positive and productive ways possible." In 2009 the parole board took an interest in Foster's case and scheduled him for a public hearing. However, the successor judge sent a handwritten note, saying: "I object to parole consideration for Mr. Foster" without further insight or reasoning.

Leroy Brady

Leroy Brady is 75-years-old and hospitalized in a prison medical facility following a stroke that crippled him in 2009. He is wholly dependent on medical staff for his activities of daily living. He has served 37 years for an armed robbery and rape. If paroled, he could receive SSI benefits and be placed in a nursing home. However, when the parole board decided to consider him for release in 2009, the successor judge objected, citing only the nature and circumstances of the crime.

David Arthur Bunker

David Bunker, who was 19 at the time, has served 45 years for killing a gas station attendant during an armed robbery. Though his institutional record has been outstanding and he has garnered excellent psychological reports, Bunker cannot gain parole because the successor judge objected citing the nature of the crime. During his incarceration, Bunker earned a GED and associate's and bachelor's degrees. He received recognition for helping staff extinguish fires during riots. Psychological evaluations indicate that he has matured into a resourceful and responsible adult who has above-average intelligence and no psychological problems.

Frank Lewis Robinson Jr.

Even though the judge and prosecutor at the time of his trial have supported parole for Frank Robinson Jr., an objection from the successor judge prevents it. It has been 35 years since Robinson pled guilty to second-degree murder in the shooting death of a homeowner who exchanged gunfire with Robinson during a burglary. While in prison, Robinson completed vocational training. He received excellent reports from various work details and letters of commendation from staff. In 2009 the parole board took an interest in his case and notified the successor judge, who objected in a handwritten note without providing any reasons.

To comment on this proposed legislation, contact Rep. Ellen Cogen Lipton, Michigan House of Representatives, P.O. Box 30014, Lansing, MI 48909, 517-373-0478, e-mail: Ellen Lipton@house.mi.gov Watch the CAPPS website for information about the bill's progress.

Seven jails to house those serving flat 2-year sentences

Jail placement for Level I prisoners means few programs, privileges

The MDOC announced in February that it has contracted with seven county jails throughout the State to house prisoners who are within two years of their discharge date. Up to 205 prisoners will be placed at Clare (75), Jackson (35), Lenawee (20), Mason (20), Osceola (20), Roscommon (20), and Van Buren (15) counties. As of April 1, all but 26 of the allotted beds were filled.

Directors Office Memorandum(DOM) 2012-24 provides that prisoners who are transferred to the jails must be true security level I and may not be serving for a sex offense. Criteria for placement also include a requirement that prisoners be medically clear. Prisoners who develop medical conditions requiring health care beyond routine treatment after transfer to a jail will be returned to an MDOC facility. A prisoner cannot request a transfer to or from a county jail nor can they avoid it if chosen.

While housed in the county jails, MDOC prisoners will be . . . afforded only the rights, privileges, and programming that county jail inmates are afforded. These are very different from those afforded prisoners in state facilities.

Although not stated in the DOM or on the website, the department has explained they will use the county jails to place only offenders who are serving flat 2-year sentences under the felony-firearm law. State law prohibits housing prisoners who are serving the minimum of an indeterminate sentence outside of a secure correctional facility [MCL 791.265(2)]. The felony-firearm cases are the only determinate sentences in Michigan prisons.

The "County Jail Contract" has been described by the MDOC as a "distribution of funds into local communities" as well as a cost savings effort that will allow for more bed space within the prisons. The Legislature appropriated $10 million in the FY 2011-12 budget "to support contracts between the MDOC and counties to utilize available county jail bed space to house state prisoners." This did not appear in the House or Senate versions of the budget bill and was apparently added at conference. There was no public discussion of the proposal. The MDOC will spend just over $2.6 million to house 205 prisoners for one year in county jails at $35 a day per prisoner.

While in the county jails, MDOC prisoners will be required to abide by the individual jail's policies. They will be afforded only the rights, privileges, and programming that county jail inmates are afforded. These are very different from those afforded prisoners in state facilities.

Jails have few amenities for people incarcerated there, since they are not confined for long periods of time. Although some inmates may serve jail sentences of up to one year, many pre-trial detainees remain in the jail for much shorter periods. The courts have generally held that a county jail is therefore required to provide only the basic necessities of housing, food, and safety.

As MDOC Director Heyns noted in a recent interview with the Detroit Free Press, inmates in county jails "come and go, and you don't have to

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Jail placement for Level I prisoners means few programs, privileges

(Continued from page 13)

spend a lot of time reflecting on whether people are going to change their lives." Heyns explained his days as a county sheriff as being "in the business of arresting bad guys and holding them for a short period -- usually 30 to 45 days." In 2010, the average minimum sentence for MDOC prisoners was 8.6 years.

The prisoners selected for county jail placement will experience far fewer privileges and programming opportunities than they would have had they remained to complete their sentences at an MDOC Level I facility. Some have worked their way down to Level I through demonstration of good behavior and have earned the extra privileges that are afforded at MDOC's lower security levels. Their reward is a transfer to a far more restrictive level of confinement offering additional isolation from their families and far less to do while they are incarcerated. They will not be rewarded with County Administrative Time (good time) that is available to jail inmates. Nor will they be allowed to participate in the jail's work release or furlough programs.

Visiting policies in the county jails vary depending on the rules imposed by the sheriffs. However, they are consistent in providing far fewer opportunities for visiting with family and loved ones than are available at a prison facility. Typically, visits in the jails are limited to only once a week and 20 minutes or less for each visit. Level I prisoners in a state prison, unless restricted for disciplinary reasons, are allowed up to 8 visits a month in an open visiting setting.

Jail visits are non-contact, through glass with a telephone on each side, and are subject to audio recording. Most jails allow children who are the immediate family of the inmate visit. In Mason County, inmates may provide up to five names for an approved visitors list. At the Jackson County Jail, an inmate's children must be at least 48 inches tall to visit. Babies are not permitted at all. There are no age or height restrictions for a prisoner's own children to visit an MDOC facility.

It places a tremendous burden on family members to travel long distances to visit a prison or a county jail. It is especially troubling when the visit can last for only 15 or 20 minutes. The MDOC has expressed no intent to place prisoners selected for the "County Jail Contract" in a jail nearest the prisoner's home community.

The policies for mail and telephone privileges also vary significantly between the jails and from the MDOC's practice. In the prisons, general population prisoners are permitted to send and receive uncensored mail to or from any person or organization unless the mail violates policy or administrative rules. In the jails, inmates are often restricted to using only postcards for mail that is sent or received. Telephone access is, of course, controlled by various jail rules and costs may be different. There is no single vendor providing phone services for county jails. Prisoners can place outgoing collect calls from any of the jails.

According to DOM 2012-24, Level I prisoners housed in county jails are allowed only the property permitted by jail rules. Prisoners are therefore not allowed the same property that they were permitted to purchase and possess while in

Visiting policies in the county jails vary . . . however, they are consistent in providing far fewer opportunities for visiting with family and loved ones than are available at a prison facility.

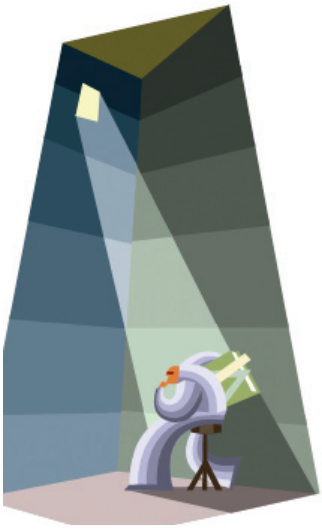
an MDOC facility. Because of the very short time jail inmates are confined, county rules strictly limit the personal property an inmate can possess. Televisions, MP3 players, books, hobbycraft supplies, and board games will be stored while the prisoner serves out the prison sentence in the jail.

County jails have always offered far fewer programming opportunities than are available for prisoners within the state prison system. Most inmates are not there long enough to complete a program. The programs that are available for inmates are generally limited to GED classes and substance abuse (AA and NA).

In MDOC facilities, prisoners are afforded the ability to attend school and training programs, work on prison job assignments, enroll in therapeutic programming, and participate in outdoor recreation. It remains to be seen whether the county sheriffs will at least include the MDOC's prisoners in whatever programs they offer in the jail. In any case, it can be expected that MDOC prisoners who transfer to the county jails will spend a great deal more of their time confined in their cells and allowed access to outdoor recreation far less than what it is routinely available for prisoners at their true Level I security classification.

In many county jails, inmates are confined to a single building, and often to only a small dayroom area of the jail. Prisoners serving time in lower security levels in state prisons are able to move about within the facilities between their own housing unit and school buildings, dining room, library, and outside yard.

The MDOC has stated that selected prisoners will not be transferred for county jail placement until they have completed all programming "requirements" at an MDOC facility. Because people serving only a determinate sentence for a violation of the felony-firearm law are not eligible for parole, they do not face consideration for release and enforcement of program "requirements" by the parole board. They are also not subject to the statutory requirement that a prisoner have a GED before being granted a parole.



Felony-firearm offenders are assessed the same as any prisoner when they arrive at the reception center and given program recommendations, including school for GED, work assignments, and therapeutic programs. They may have high needs for programming to address specific risks they will face upon their discharge to the community. Yet, it is not clear what criteria the MDOC will apply in deciding whether felony-firearm prisoners have sufficiently completed "required" programming to permit transfer to a jail.

Prisoner grievances concerning programming, visiting, access to a law library, special religious diets, and any other issue that comes up during their jail stay will not be addressed by the MDOC. DOM 2012-24 limits their right to use the MDOC's grievance process to issues that are under the control of the department. Prisoners must use the jail's grievance process for all issues arising at the jail facility.

The "County Jail Contract" may ultimately lead to an increase in litigation against the MDOC as prisoners transferred to county jails sue regarding the conditions of their confinement. The issue will be whether the rights and privileges accorded people convicted of felonies and placed in state custody disappear because the state chooses to change their physical location.

Freep.com

Jeff Gerritt: Unlock the debate on good time and other sentencing reforms

April 6, 2012

Michigan's prosecuting attorneys have squashed a needed debate on prison sentencing policies that cost state taxpayers tens of millions of dollars a year. That may be why, in Gov. Rick Snyder's otherwise comprehensive message last month on public safety, you didn't hear a peep about restoring good time, reforming sentencing guidelines or enacting a presumptive parole law.

Refusing to talk about an idea -- especially one that works elsewhere -- is silly and self-defeating. Muzzling people is no way to decide major policy questions.

Even steely Daniel Heyns, director of the Michigan Department of Corrections, feels prosecutorial pressure.

During an hour-long conversation with me last week, Heyns blew off questions about sentencing policies. "Those are contentious, hot-button issues," he said. "...That's a more long-term question and debate that's going to play out in a different arena."

In other words, he's no longer talking about it.

Nine months ago, however, Heyns, in another interview with me, did talk. Responding to a question, he told me that good time -- a prisoner's chance to shave limited time off his sentence with good behavior -- worked well for county sheriffs and provided a tool for controlling jail conduct. He did not endorse good time but said it ought to be part of the broader debate on public safety and corrections costs.

Heyns could not have been more cautious. Still, prosecutors lit him up for even broaching the subject.

"Prosecutors are one of those groups that, for some reason, we don't think we can tread on their turf," said state Rep. Joseph Haveman, R-Holland, chairman of the legislative subcommittee on corrections appropriations. "I think, though, the time is right to open up a lot of conversations and look at new ways of doing things."

"Prosecutors are one of those groups that, for some reason, we don't think we can tread on their turf," said state Rep. Joseph Haveman, R-Holland, chairman of the legislative subcommittee on corrections appropriations. "I think, though, the time is right to open up a lot of conversations and look at new ways of doing things."

Haveman's correct. Shouldn't a governor who intends to "reinvent Michigan" put everything on the table, especially ideas that work elsewhere?

Michigan spends more on prisons than higher education. It has one of the nation's highest incarceration rates -- not because it sends more people to prison but because it keeps them there far longer than other states. Michigan prisoners serve, on average, 127% of their court-ordered minimum sentence, even though studies show no correlation between a prisoner's length of stay and his chances of success after release.

Eaton County Prosecuting Attorney Jeffrey Sauter, past president of the Prosecuting Attorneys Association of Michigan, told me Thursday that the effectiveness of lengthy sentences -- or lack of it -- isn't the issue. Good time, he said, violates Michigan's truth-in-sentencing law and leads to greater uncertainty about how long prisoners will serve.

"People are still suspicious," Sauter said. "They don't believe that whatever the judge imposes is the amount of time that person will have to serve. It's a huge issue for crime victims and their families. ...

"We talked to him (Heyns) and we talked to the governor's office. We did make clear what our priorities are."

Still, other states have found a way to make good time work. Michigan is one of only a handful of states that have not adopted federal standards for truth in sentencing that make inmates with good behavior eligible for parole after serving 85% of their sentence. Under a conservative Republican governor, Mississippi even enacted good-time credits of up to 75% for nonviolent offenders.

Restoring good time would safely reduce the state's prison population by the thousands. Business groups such as the Detroit Regional Chamber have backed good-time plans, understanding that the state can no longer afford to shell out $2 billion a year from the general fund for Corrections, or to ignore a reform that could save $100 million a year.

Prosecutors understandably want certainty in sentencing. That should be an easy fix. Courts could, during sentencing, calculate the maximum amount of good-time credits and announce the earliest release date. At any rate, Sauter told me prosecutors would be open to adopting some kind of determinate sentencing, similar to the federal system. That's encouraging and a starting point for a real debate.

Sentencing reforms are ideas that legislators, policy makers and other leaders should at least talk about. With Corrections devouring nearly 25% of the state's general fund, Michigan cannot afford to muzzle another debate on policies that drive its growing prison population.

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Ban the Box campaign to improve ex-offenders' chances for jobs

A Lansing organization, The Fair Chance Coalition is leading a statewide effort to reduce barriers to employment for those with prior felony and misdemeanor convictions or arrests.

The goal of the "Ban the Box" campaign is to prohibit employers from requiring job applicants to check "yes" or "no" in response to questions about their criminal history. Past convictions or arrests would be disclosed only if the applicant had been considered and interviewed for the position.

Monica Jahner of Advocacy, Reentry, Resources, Outreach (ARRO) directs the project. ARRO is part of the Northwest Initiative in Lansing and works to help ex-offenders and their families qualify for services that will ease transition back to the community.

Jahner said Rep. Fred Durhal (D – Detroit) will be introducing legislation to require potential employers to remove the box on job applications that asks: "Have you ever been convicted of a crime"?

"We just want to give ex-offenders a fair chance to get an interview and sell themselves so the employer can see their qualifications and give them a real opportunity to get hired," said Jahner.
Now, Jahner said, many employers automatically disqualify individuals from consideration once they see that the box has been checked "yes".

"Studies have shown that people with prior convictions stand a much better chance of getting hired if they reach the interview stage," said Jahner.

Five states have passed similar laws. Detroit, Saginaw and Kalamazoo have passed "ban the box" ordinances and other Michigan cities are considering the move.

"If this legislation is passed it will help taxpayers, communities and families by giving those with former convictions the opportunity to become self-supporting," Jahner said.

For more information, call 517-999-2894 and ask for Ban the Box, email BantheBoxin2012@gmail.com or visit the project on Facebook.

Corrections budget proposals for FY 2013

As *Consensus* goes to press, there are three distinct proposals for corrections spending in FY 2013, originated by the Executive, the House and the Senate. Their fundamental similarity can be seen in the broad outlines.

	Executive	Senate	House
Gross Appropriation	$2,064,497,900	$1,997,171,200	$2,025,246,200
General Fund (GF) Appropriation	$1,982,185,600	$1,914,858,900	$1,945,453,900
Prisoners	43,663	43,105	43,609
Employees	14,879	14,320	14,437

Since General Fund spending for FY 2012 is $1,950,939,100, the Executive proposal would be a 1.6% increase, the Senate would be a 1.8 % decrease and the House would be a 0.3 % decrease.

The old expression about the devil being in the details applies doubly to any analysis of the three proposals. First, there are significant substantive differences in the way the appropriation totals are reached. Second, each budget contains unique movements among line items that can be devilishly hard to follow, with a negative amount here being used to offset an amount added there. What follows is an attempt to explain the highlights based on documents prepared by the MDOC and the House and Senate Fiscal agencies.

Personnel and Other Economic Costs

Personnel costs, in the form of salaries, overtime, fringe benefits, retirement, and FICA/ Medicare, account for the majority of the MDOC budget yet many of them are outside the MDOC's control. For instance, as noted above, the manner in which state agencies are charged for OPEB costs (Other Post-Employment Benefits) has been changed from a "pay as you go" system that covers the current year's cost of retiree health benefits to a "prefunding" system that anticipates future costs. This required the addition of $77.9 million to the FY 12 budget after it was adopted. That was on top of $58.3 million in economic adjustments that had already been added for FY 12.

Building from there, an additional $34 million must be added to the FY 13 budget to cover economic increases to salaries and wages. Another $3.3 million must be added for other economic adjustments, such as price increases for food, fuel and building occupancy. Thus, in just two years, economic adjustments to the base corrections budget totaled $173.5 million.

Finally, $13.2 million must be added in FY 13 to cover a lump sum wage payment to employees. This is a one-time appropriation that will not appear in the budget for FY 14.

Personnel Adjustments

To offset the increased costs per employee, all the proposed budgets include cuts to the number of employees. The FY 12 budget had expressly eliminated 81 lieutenant positions – one from every shift at each facility. It also eliminated 103 positions that were left unfilled after 434 MDOC employees took early retirement. The MDOC then eliminated all assistant deputy wardens, which had numbered two to three per prison, and reduced the number of resident unit managers from one per housing unit to one or two per facility. These changes are recognized as saving $815,800 in the FY 13 proposals.

The FY 13 proposals also all include a

savings of $13.2 million by eliminating the alert response vehicles used to patrol the perimeters of 22 facilities. This eliminates 114 custody positions. Another $10 million is to be saved by eliminating 115 positions in field operations based on a decline in parole and probation caseloads.

The Executive and the House would also eliminate 33 miscellaneous positions within facilities and regional administrative offices for a savings of $2.4 million. The Senate would go a great deal farther. It proposes eliminating 580 non-custody positions, including all assistant resident unit supervisors (ARUS's), as well as secretaries, word processing assistants and library staff, to save $58.8 million.

The Senate proposal seems to assume that "non-custody" means "non-essential." While it may well be that some tightening in the ranks of facility management staff was warranted or, at the least, could be absorbed without undue impact on daily operations, it is hard to imagine how facilities will function with much more drastic reductions.

While it may well be that some tightening in the ranks of facility management staff was warranted or . . . could be absorbed without undue impact . . . , it is hard to imagine how facilities will function with much more drastic reductions.

Prisons run on recordkeeping. The documentation necessary not only to operate a network of 31 small cities but to track the activities of all their inhabitants is enormous. Reducing the number of secretaries and word processors will slow down this flow or make it less accurate. Eliminating library staff will affect prisoners' access not only to educational and leisure reading materials but to the courts through the law libraries.

There is an ARUS in each housing unit who is responsible for preparing risk assessment instruments and parole eligibility reports, maintaining prisoner files, attending parole interviews, responding to grievances, requisitioning supplies, obtaining maintenance for physical plant breakdowns and resolving prisoner problems with visiting, telephones and enrollment in programs. Prisoners, who are so limited in what they are permitted to do for themselves, are wholly dependent on the ARUS to accomplish both routine small tasks and those that are crucial to their futures.

The proposals all assume a savings of $2.2 million in officer pay by using trained prisoners to monitor prisoners who are at risk for suicide or self-injury. Not explicit in the proposals is another savings that recently took effect. The position of Resident Unit Officer, which paid an extra $1.46 an hour to officers who work in the housing units, was abolished. While the same number of officers will work in those positions, the change in pay category will save about $8 million a year in salary and $4 million in benefits.

Since the assumption is that there will be no further decline in the prisoner population, retiring officers must be replaced. The FY 12 budget included $4.3 million to train about 200 new officers. The FY 13 Executive and Senate proposals include $4.5 million to train another 210. The House would include $3.0 million.

Other Operating Adjustments

All the proposals assume more than $32 million in full-year savings from the closure of the Mound facility. However a major point of difference arises from the need for increased bedspace at other facilities the Mound closure created. The Executive and House would both add $5.4 million

(Continued on page 18 -- See Corrections)

Corrections budget proposals for FY 2013

(Continued from page 17)

for 558 beds that had to be re-opened at four facilities. The Senate is rejecting this adjustment.

Another potential major cut is the House proposal to reduce every facility's line by 2% for a total of $20.1 million. The MDOC would have to identify additional staff reductions or operating efficiencies to achieve these savings.

Unlike the Executive and House, the Senate is declining to add back $3.5 million that was reduced from the Central Office line in FY 12. The savings that were to be achieved through staffing reductions there have not been realized.

The proposals all include a presumed savings of $1.1 million by furnishing prisoners with only two sets of clothing instead of three.

Anticipated Savings from Privatization

The FY 12 budget assumed various savings from privatization that have not materialized to date. All the proposals for FY 13 assume that $1.3 million will be saved by privatizing Woodland Center, the facility for prisoners who are seriously mentally ill, that $7.3 million will be saved by fully privatizing prisoner medical care and $2.5 million will be saved by privatizing prisoner mental health services. They all have boilerplate language requiring the competitive bidding of prisoner stores, food service and 1,750 beds by Oct. 1, 2012. The Executive and House proposals assume that the Special Alternative Incarceration (SAI) facility at Cassidy Lake will not be privatized.

The House proposal actually budgets $35.1 million for a private prison at a cost of $75 per prisoner per day. The House would close the Michigan Reformatory, which currently houses 1,284 Level II and IV prisoners at a total cost of $42.3 million. Thus the estimated net savings would be $7.2 million.

Community-based Expenditures/Re-entry

The House Fiscal Agency reports that in FY 12, over $80 million was appropriated for community programs. About $42 million of that amount was for payments directly to counties (see, e.g., story at pg. 11 on leased jail beds). For the most part, these amounts stay constant in the FY 13 proposals.

The counties could see additional allocations under new initiatives. Gov. Snyder has proposed adding $4.5 million to the corrections budget to assist distressed communities, particularly the City of Flint, in purchasing jail bedspace from nearby counties. The Senate concurred and the House added $250,000 to that amount.

The Senate proposes to add $5 million to the corrections budget for transfer to the judiciary so that local courts can operate a program called "Swift and Sure Sanctions." This is designed to address the behavior of probation violators at the county level before probation is revoked and they are sent to prison.

All three proposals include a $2 million reduction in payments for residential beds operated in the community by contractors. They primarily provide substance abuse and other treatment to probationers but serve some parolees as well.

Funding for MPRI in FY 12 was $54.9 million. For 2013, the House and Executive would reduce that to $52.4 million; the Senate would reduce it to $51.0 million. Currently, about half of MPRI funding goes to communities for implementing their comprehensive service plans. The rest is used by the MDOC for a variety of other projects, including services for parolees with special needs, primarily mental health care.

In a recent interview, MDOC Director Daniel Heyns said that as much as one-third of re-entry dollars will be re-directed to institutional programs. It is not clear whether additional re-entry

preparation programs will be provided or whether the money will simply be used to fund programs currently required for assaultive and sex offenders. It is also unclear what the impact will be on the direct support available to people when they return to the community.

Miscellaneous Other Costs

A number of other cost increases for FY 13 are noteworthy. Maintaining closed prisons and camps will take $3.5 million. The $100 million *Neal* settlement agreement with women prisoners who were sexually assaulted or harassed requires a payment of $20 million. Information technology maintenance and development will be increased by $2.4 million to total of $24.4 million. This line includes $1.8 million for additional contractual programming services related to offender assessment tools.

Prisoner Telephone Surcharge Expenditures

Notably, the budget bills continue to contain boilerplate language that requires contracts for prisoner telephone services to use the same rates as calls placed from outside of correctional facilities, except for surcharges "necessary to meet special equipment costs." However, there are now additional provisions in both the House and Senate versions that define what "special equipment" can be purchased with the restricted revenues in the special equipment fund (SEF) generated by the surcharges added to prisoner phone calls last year.

All the proposals assume the availability of $19.7 million in SEF revenues generated since Feb. 2011. The Executive proposed using $11.4 million to begin replacing staff personal protection equipment, $5.8 million in security equipment such as tasers, ballistic vests and contraband detection equipment, and $2.4 million for new security cameras in cellblocks at the Reformatory. The House would delete the cameras because it proposes closing the Reformatory. The Senate proposes spending less on equipment and using $3.5 million to cover post-closure maintenance costs.

Michigan's Actual Cost per Prisoner is Lower than Most Great Lakes States

VERA Institute of Justice Puts Michigan Prison Costs in Context

Comparison is often made between Michigan's per prisoner costs and those of neighboring states. The exercise is tricky because state budgets are all built differently. Some expenses that are included in the MDOC budget do not appear in the corrections budgets in other states.

The VERA Institute of Justice undertook an apples-to-apples comparison by surveying states about all the costs they paid in Fiscal Year 2010 for prisons, regardless of whether such items as employee benefits, retiree pension and health care contributions or capital costs appeared in agency budgets other than that of their department of corrections. VERA's January 2012 report, *The Price of Prisons: What Incarceration Costs Taxpayers*, shows that Michigan's total per prisoner costs are actually lower than most other Great Lakes states:

Illinois	$38,268
Indiana	14,823
Michigan	28,117
Minnesota	41,364
New York	60,076
Ohio	25,814
Pennsylvania	42,339
Wisconsin	37,994

In fact, of the 40 states that responded to VERA, 22 had higher costs than Michigan – often much higher. And while Michigan had 5.5% of its incarceration costs not included in the MDOC budget, 22 states had a larger proportion – often much larger. Thus, it may be that Michigan has appeared to have higher per prisoner costs than comparable states because its budgeting process is more transparent.

To see the report go to: http://www.vera.org/pubs/price-prisons

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