

# CONSENSUS

Vol. II, No. 2

Fall 2002

## MAKE CHANGE HAPPEN

### Attend CAPPs Annual Meeting on November 21<sup>st</sup>

A confluence of factors will make 2003 a uniquely promising year for CAPPs' advocacy efforts. Michigan will have a new governor for the first time in 12 years. Much of the legislature will turn over because of term limits. An enormous budget deficit will require close examination of all state spending and engender public debate about spending priorities.

At \$1.6 billion, the corrections budget competes against higher education, community health, and the Family Independence Agency for 80 percent of all general fund spending. The MDOC accounted for 30 percent of all state employees before an early retirement program led to the drastic downsizing of other state departments. University tuitions are soaring, revenue sharing with local governments is being reduced, and a whole range of human services is being cut. Yet the MDOC is

already saying it will need still more beds. There will finally be no alternative but to reassess how much incarceration this state can afford.

There are hopeful signs that Michigan's single-minded commitment to prisons may be changing. A unique collaboration between Families Against Mandatory Minimums (FAMM) and the Prosecuting Attorneys Association of Michigan (PAAM) is building broad bi-partisan support for changing excessively harsh drug laws. (See page 3) The use of drug and sobriety courts, which focus on treating addiction not just punishing crime, is spreading among Michigan counties. The concept of using judicially supervised, structured rehabilitation programs in other contexts, such as mental health courts and re-

entry courts for parolees, is gaining favor. Editorial writers are beginning to draw attention to the human and fiscal costs of current parole policies.

#### Annual Meeting and Post-Election Strategy Session

Thursday, November 21, 2002  
Cuby Jack's Restaurant  
6527 S. Cedar St., Lansing\*

- 5:30 Dinner (members purchase from menu or buffet)
- 6:00 CAPPs Business Meeting, Election of Board
- 6:20 Darrell Tennis, Capitol Services  
**Analysis of Election Results**
- 6:40 Tom Clay, Citizens Research Council  
**Analysis of Budget Shortfall**
- 7:00 Update on Corrections Issues
- 7:10 Q&A, Suggestions for Promoting Cost-Effective Corrections Policies and Resource Shifting

There is no registration fee. Prospective new CAPPs members are welcome to attend.

\*I-96 to exit #104 - Cedar Street/Holt, turn left at stop light on to Cedar St., the restaurant is on the left across from Courtesy Lincoln-Mercury

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Prisons and Public Safety**

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(See pages 6 - 7). Gubernatorial candidates are talking about making across-the-board cuts in state spending that would apparently include corrections.

These steps are a good beginning, but even they are fraught with risk. For one thing, cuts in the MDOC budget are likely to be applied to eliminating prisoner programs and reducing non-custodial staff before policy changes are adopted that reduce the prison population and result in prisons actually closing. This means that conditions for prisoners, who are already double-bunked and afforded few programs, will probably get worse. Probation and parole caseloads could be increased. There is also the risk that in changing the drug laws, legislators will feel they have done all they need to, or can politically afford to, do in this area, and will be reluctant to address such difficult issues as the impact of "truth-in-sentencing", "get tough" parole board policies, the unfinished work of the now defunct sentencing commission, and the need to build community based programs for probationers and parolees.

This is a critical time for CAPPS to build its coalition, obtain more information about the relative cost-effectiveness of Michigan's corrections practices, propose data-driven solutions to the current fiscal crisis, and bring these solutions to policy-makers and the public. We will lay the groundwork at our annual meeting on November 21<sup>st</sup>. Darrell Tennis, partner in the Lansing lobbying firm Capitol Services, will analyze the election results and anticipate the inclinations of the new legislature. Tom Clay, Senior Research Associate at the Citizens Research Council, will explain the basis for current budget projections and the options available for addressing the shortfall. After a brief update on changes at the MDOC, there will be an opportunity for CAPPS members to ask questions and make suggestions.

**PLEASE ATTEND. BRING A FRIEND.  
HELP MAKE CHANGE HAPPEN!**

# PENDING LEGISLATION WOULD END MANDATORY DRUG LAWS

## Reform Bills Have Broad-Based Support

Two bills currently pending in the House of Representatives, and a third to be introduced as part of a total package, would bring long-awaited reform to Michigan's harsh drug law. HB 5394 (H-2) and HB 5395 (H-1), sponsored by Rep. Bill McConico, were the subject of a hearing before the House Criminal Justice Committee on September 17<sup>th</sup>. They would eliminate mandatory minimum and mandatory consecutive sentences and make all drug offenses subject to sentencing guidelines. The third bill would shorten the time to parole eligibility for those currently serving drug sentences. The hope is that all three bills will pass during the brief "lame duck" session that will occur after the November 5<sup>th</sup> election and before the legislative term ends in December.

There is particular reason for optimism because the bills have bi-partisan sponsorship and broad-based support. The substitute bills reflect extensive discussions between Families Against Mandatory Minimums (FAMM) and the Prosecuting Attorneys Association of Michigan (PAAM). At the committee hearing, groups expressing support included FAMM, PAAM, the Michigan Association of Drug Court Professionals, the Michigan Association of Licensed Substance Abuse Treatment Providers, the Michigan Catholic Conference, and Michigan's Children. There was **no** opposition.

Together, HB 5394 and HB 5395 would change the drug offense definitions and penalties that appear in the public health code, and the details of the sentencing guidelines, which set ranges within which judges select minimum terms. Currently, sentencing guidelines exist for drug offenses but they are superceded by mandatory minimums. Prosecutors, while recognizing that mandatory minimums are often too harsh, feel the current guidelines are too lenient. The compromise includes the following components:

- Eliminate all mandatory minimum sentences and require judges to utilize sentencing guidelines
- Eliminate lifetime probation
  - Substitute probation for five years
  - Permit judges to resentence current lifetime probationers
- Retain current maximum sentences but broaden the quantity ranges to which they are applicable
  - 50-449 grams (now 50-224 grams) = 20 year maximum
  - 450-999 grams (now 225-649 grams) = 30 year maximum
  - 1000 or more grams (now 650 or more) = life or any term of years
- Eliminate mandatory consecutive sentences for multiple drug offenses
  - Permit consecutive sentences for delivery offenses in judge's discretion
  - Prohibit consecutive sentences for possession offenses only
- Raise the sentencing guidelines ranges by increasing points for:
  - Quantities over 50 grams
  - Patterns of criminal activity
  - Sales by adults to minors
  - Deliveries in homes where minors reside

The bill to be introduced would provide retroactive relief to those incarcerated under current law by granting them earlier parole eligibility. The process, which is similar but less complex than that enacted in

1998 to grant parole eligibility to 650 drug lifers, would not guarantee release but would essentially cut the time to parole consideration by up to half. It accounts for the fact that some people received downward departures from the mandatory minimum when they were sentenced.

- Prisoners convicted of 225-649 gram offenses (20 year mandatory minimum) would be parole eligible after serving 10 years or the actual minimum, whichever is less
- Prisoners convicted of 50-224 gram offenses (10 year mandatory minimum) would be parole eligible after serving 5 years or the actual minimum, whichever is less
- Reductions apply to each drug sentence being served consecutively

While still permitting very long sentences for the most serious offenders, these changes would eliminate arbitrary penalties that have caused many people to serve long prison terms that were wholly out of proportion to their crimes. They would allow judges to tailor penalties to reflect the offender's prior record, actual participation in the crime, and the existence or absence of aggravating circumstances. And they would afford relief to prisoners who have been treated most unfairly by the current system. If paroles are actually granted to prisoners who become eligible sooner, there will be a positive impact on prison bed-space in the short-term. If the average number of years served for drug offenses declines with the application of sentencing guidelines, there will be a significant reduction in prison beds needed in the long run.

The pending bills are wholly independent of the proposed constitutional amendment that was kept off the November ballot because of drafting errors. If they do not pass during the lame duck session, FAMM anticipates the bills will be quickly reintroduced next year. **CAPPS members are strongly encouraged to support this legislation by writing, calling or meeting with their legislators.** For more information, sample letters, or to identify your legislators, go to [http://www.famm.org/ac\\_action\\_center.htm](http://www.famm.org/ac_action_center.htm) and click on "action campaigns".

## **MICHIGAN CHOOSES CELLBLOCKS OVER CLASSROOMS**

### **National Report Compares Higher Ed vs Prison Spending and Impact on African American Males**

In August 2002, the Justice Policy Institute issued a report, "*Cellblocks or Classrooms?*", that compares state funding of colleges and universities to state funding of corrections. The report also analyzes data about the number of African American males who are attending college compared to the number who are in prison. The results are sobering.

Nationwide. Like Michigan, most states fund both corrections and higher education from general fund dollars. These are the tax revenues that are available for discretionary spending because they are not restricted to specific purposes, like road construction or K-12 education. As two of the biggest programs drawing on the same pot of money, prisons and universities are in direct competition. It is not surprising then that the prison expansion of the last 15 years has come directly at the expense of higher education. Nationally, state corrections spending grew at six times the rate of higher education. As state and federal support have failed to keep pace with college costs, students and their families have had to bear ever-larger burdens. In 1980, tuition at a four-year public institution equaled 13 percent of the median income of low-income families; by 2000, it was 25 percent.

Even more startling is the impact of the incarceration frenzy on African American males. According to JPI, in 2000, there were approximately 791,600 African American men under the jurisdiction of state and federal prison systems and in local jails, while 603,032 African American men were enrolled in higher education. “Instead of investing in education and other programs”, JPI observes, states and the federal government invested in African American men by adding 460,000 of them to the nation’s penal system over a 20 year period, but only 139,000 to the system of higher education.

Michigan. Unfortunately, Michigan is among the leading states in illustrating these trends. From 1985 to 2000, Michigan increased spending on higher education by 27 percent, while corrections spending grew by 227 percent. That is, corrections spending grew at eight times the rate of higher education spending. In 1985, Michigan spent \$1.6 billion general fund dollars on higher education and \$488 million on corrections. By 2000, the state spent \$2 billion on higher education and \$1.6 billion on corrections.<sup>1</sup> The average tuition at a public four-year institution is \$4,501. The average annual cost of incarcerating one prisoner is \$28,000. Thus the trade-off the state makes over and over is between keeping one prisoner incarcerated for a year and paying the tuition of six students.

Michigan’s total prison population grew from 17,744 in 1985 to 45,715 by year-end 2000.<sup>2</sup> In 2002, 54.5 percent of the prison population was African American, although African Americans comprise only 14.2 percent of the state population as a whole. The African American prison admissions are particularly driven by drug convictions. In 1996, while 10 percent of white admissions to Michigan prisons were for drug offenses, the proportion of African Americans admitted for drug offenses was 29 percent.

JPI estimates that between 1980 and 2000, African American men were added to Michigan’s prisons at 13 times the rate they were added to its colleges. As a result, Michigan is one of 13 states that have more African American men in prison (24,300) than in college (21,454). The prison figure does not include local jails. Thus, it is more realistic for a male African American child to look forward to a future in prison than to aspire to obtain a college degree.

Conclusion. As the JPI report notes, the disparity in state funding between higher education and corrections grew during prosperous times. As state revenues dwindle from tax cuts and a downturn in the economy, the pool of general fund dollars will continue to shrink. The competition between prisons, colleges, welfare and public health will become even fiercer. If states choose not to reassess the policies that cause relentless prison expansion, the JPI authors conclude, “state funding of higher education will continue to be diminished by burgeoning corrections budgets.” That will be hard on every family trying to help a child through college, and every student faced with assuming overwhelming debt. It will be especially hard on the African American community, which can expect to lose even more of its young men to prison, and to see even fewer off to college.

**Cellblocks or Classrooms?: The Funding of Higher Education and Corrections and Its Impact on African American Men,** authored by Jason Ziedenberg and Vincent Schiraldi of the Justice Policy Institute, is available at [www.justicepolicy.org](http://www.justicepolicy.org).

<sup>1</sup> The authors note that since fiscal figures are drawn from national reports and adjusted for inflation, they may vary from state expenditure reports.

<sup>2</sup> The prison population now exceeds 50,000.

JEFF GERRITT

# Parole policy carries harsh price for prisoners, taxpayers



You know state money is tight when prisons start getting squeezed. The Department of Corrections, with a budget that has doubled to \$1.6 billion since Gov. John Engler took office, is the last place politicians look to shake down.

But with the state facing a \$1-billion deficit, Corrections Director William Overton said last week he'll try to cut back spending, even though the department might have to open more beds next year.

"We certainly aren't going to turn any prisoners loose," he said. "Given how the Parole Board has worked, that might not be a bad idea."

In the last 11 years, Michigan's prison population has risen 43 percent, even as violent crime dropped. That's largely because more inmates are serving time while eligible for parole — roughly 21,900, a corrections official said this spring, or 44 percent. In 1991, only 16.5 percent were.

No doubt, getting out of the joint is tougher. Engler changed the makeup of the 10-member board from corrections professionals to appointees, and he made sure some law enforcement

people got on. A 1992 law increased the time a parolable lifer had to serve to 15 years. (Those convicted of 1st-degree murder are not eligible.) The board no longer has to see lifers at all, just review cases every five years.

The Parole Board interviews, or reviews the cases of, 400 to 500 parole-eligible lifers a year. It paroles, on average, only three or four, basically adopting a life-means-life policy.

That might sound good. But judges sentenced many of those offenders, especially before 1992, with an understanding that, legally, life didn't mean life. It meant eligible for parole in 10 or 15 years, though very few got it that soon. Most current and retired judges in a recent survey by the Prison and Corrections Section of the State Bar of Michigan said they had considered parole when making a life sentence.

No one's saying that doing a certain amount of time entitles an inmate to a ticket out. Maybe the offender had a bad prison conduct record or is, legitimately, still considered a threat. Most inmates denied parole probably should have been. But others no longer a threat stay behind the walls long after their parole eligibility — at a cost to taxpayers of \$28,000 a year each.



Phyllis Dempster (left), 79, has served 10 years of a 6- to 15-year sentence for security fraud and obtaining money under false pretenses. Gladys Wilson, 54, has served 24 years of a parolable life sentence for aiding and abetting armed robbery.



## Both deserved prison. But when do the costs of locking them up outweigh the benefits? When is enough enough?

There's 54-year-old Gladys Wilson. She pled guilty to aiding and abetting armed robbery for her part in a 1978 Berrien County grocery store holdup in which her husband killed a 19-year-old night manager. The details are in some dispute, but what's certain is that she drove her husband to and from the crime.

Up to then, Wilson worked steady and had no record. She

cooperated with police in prosecuting her husband, who serves a term of mandatory life without parole for murder one. Wilson has an excellent prison record, tutors other inmates, and has earned 67 college credits. Her daughter, Seevon, is a probation and parole case worker in Virginia.

Under today's sentencing guidelines, Wilson would have gotten a minimum sentence of 9-15 years, and she's already served 24. Even so, under the board's new policies, Wilson may never leave prison.

I visited Wilson at the Western Wayne Correctional Facility in Plymouth, and I also talked to 79-year-old Phyllis Dempster. Dempster was sentenced to 6-15 years for multiple counts of obtaining money under false pretenses and security fraud committed in 1991 and 1992. According to court records, she took tens of thousands of dollars from people who wanted to buy commodities and stocks. Dempster has already served 10 years and was just denied parole for a third time. Coming off a hip replacement operation, she walks with a cane. It's hard to figure why Corrections couldn't safely supervise her in the community for a lot less money.

Both Dempster and Wilson deserved prison. But when do the

costs of locking them up outweigh the benefits? When is enough enough? These are tough questions that neither the Legislature nor gubernatorial candidates Jennifer Granholm or Dick Posthumus have dared to ask.

I know parole can work. In an earlier column, I wrote about my brother-in-law who did a seven-year bid for dealing drugs, got paroled and is now closing in on a college degree. But I also know there are no guarantees. The only way to assure that no one sent to prison goes back is to keep every inmate locked up until he or she is carried out in a box.

Michigan prisons now hold nearly 50,000 people — a population about equal the size of Battle Creek's. Other states have taken a hard look at prison policies, including parole, and safely reduced populations. Michigan can follow suit, or continue down its same road. Maybe someday state prisons will hold more people than Grand Rapids, or Detroit.

I doubt we'll be much safer for all that — just a lot poorer.

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Ms. Wilson and Ms. Dempster were both profiled in the Summer 2002 issue of *Consensus*.

## PAROLE IS FOCUS OF RECENT EDITORIAL

It made news recently that Gov. Engler had commuted the sentences of 14 prisoners serving life terms. Most of these prisoners were drug lifers who would have become eligible for parole within the next few years. One was a woman with extraordinary achievements who had been parole eligible for many years. A few were far too sick to threaten public safety. But the granting of even these commutations was notable because Gov. Engler and (by Blanchard before him had stopped the practice of commuting the mandatory life sentences of many prisoners who had served several decades for first-degree murder. From 1969-1982, Gov. Milliken had awarded commutations in 95 murder cases, continuing the tradition set by his predecessors.

Commutation is the governor's power to show leniency to prisoners not eligible for parole, either because they have not served their minimum terms or are serving life without parole. The vast majority of prisoners do become eligible for parole at some point, but because of current parole board practices, far fewer are being released.

The **Lansing State Journal** used the news about Gov. Engler's commutations as an occasion to call attention to these practices. In an October 16, 2002, editorial entitled "*Prisons: Commutations put light on costly parole backlog*", the **Journal** noted that, although 44 percent of current prisoners are parole eligible, neither of the gubernatorial candidates are discussing the cost-effectiveness of keeping so many people locked up. While acknowledging that some parole denials probably prevented some crimes, the editorial suggested that for many, substance abuse treatment would be just as effective and much less costly. It went on to conclude: "And the longer we hold people in prisons without substantial rehabilitation, the more likely they will struggle — or revert to crime — once they are released. Is this state prepared to slam the door permanently on tens of thousands of its citizens; forswearing any chance for them to contribute to society, while guaranteeing they will drain resources from the rest of us for decades to come?"



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