

Multiple, moderate strategies can safely reduce prison population

As this edition of *Consensus* goes to press, the 2007-2008 budgets for each state department are still being worked out. The House and Senate have each passed their own MDOC budget bills which will now go to a conference committee. However, these bills are not that far apart. They are both premised on a prisoner population that exceeds 52,000 and on total MDOC spending that exceeds \$2 billion. It appears that, once again, corrections will consume more than 20% of all General Fund spending and will exceed spending on higher education. While a few prisons will be closed, the prisoners are simply being transferred to other facilities where they will live under increasingly crowded conditions.

If we are ever going to have more money to spend on the services that Michigan citizens need and that make Michigan a desirable place to live, work and do business, we must not merely slow the growth of our prison system, we must reverse it. If

we accept an incarceration rate that is substantially higher than those of other Great Lakes States, we will continue to put substantially more of our scarce resources into prisons.

Former MDOC Director Bob Brown calls our desire to keep people imprisoned an addiction. The definition of an addiction, he says, is to want something so badly that when you can't afford to pay for it, you're willing to steal. Michigan is effectively stealing from other state services to fund the MDOC. As a result, services that actually help prevent crime – early childhood education, support for children at risk, substance abuse and mental health treatment – are consistently underfunded. We rank 47th in growth in higher education funding since 1997. Ironically, while we fill prisons in the name of public safety, reduced revenue sharing payments to our cities have meant 1,600 fewer police on the streets.

No one disagrees that public safety is the first duty of government. The question is whether we can have fewer people in prison without jeopardizing safety. The answer is yes. The key is to address the factors that caused the population to more than triple since 1984. In doing so, we should remember that a large body of research proves two important points.

First, incarceration rates are not related to crime rates. Some states that imprison fewer people per capita than Michigan have lower crime rates and some have higher rates. Crime rates do not inevitably drive incarceration rates – policy choices about who we lock up and how long we keep them do. Thus changing policies will not automatically drive up crime.

Second, the length of time served

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Annual Meeting

Thursday, Nov. 8, 2007, 6 p.m.
Faith United Methodist Church
4301 S. Waverly Rd., Lansing, MI

Speaker:
Rep. Paul Condino, chair
House Judiciary Committee

See flyer inside for reservation form and details



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Multiple, moderate strategies can safely reduce prison population

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does not relate to recidivism rates. That is, keeping people for years longer does not make them more or less likely to re-offend upon release. There is a margin of diminishing returns when continuing to imprison someone just makes it that much more difficult for them to adjust upon release and that much more expensive for taxpayers to keep them. Thus reducing the average time served will also not drive up crime.

The explosion of the prison population did not have a single cause and no single strategy will suffice to reverse it. The number of prison beds needed is a function of who we send to prison, how long their minimum sentences are, whether they earn any time off that minimum through good behavior or program participation, and whether and when they are released on parole. A combination of adjustments to these factors, all moderate in nature, could save several thousand beds and hundreds of millions of dollars.

Sentencing reform. Some sentencing reforms are responses to the consequences of prior decisions. For instance, there is no question that adopting harsh mandatory sentences for drug offenses in 1978 contributed to prison growth and that the drug law reforms of the last nine years have freed up many prison beds.

We also use prisons to institutionalize many people who are mentally ill. They end up in the criminal justice system because we closed state hospitals without putting adequate mental health resources in the community. Over time, the movement to establish mental health courts will help reduce prison commitments, though making treatment available before people commit crimes must still be the goal.

When the legislature adopted sentencing guidelines in 1998, it required the sentencing commission to periodically review their operation. With the abolition of that commission, no systematic assessments occurred. In cases where judges can choose either prison or a community-based alternative, they choose prison twice as often as anticipated.

The governor has proposed substantial sentencing reforms in order to save 3,300 prison beds over three years. The single biggest savings would come from increasing the dollar value at which property crimes go from misdemeanors to felonies. Additional savings would come from reducing other selected felonies to misdemeanors, reducing the penalty for low level drug offenses, and altering the sentencing guidelines to reduce the number of people who receive prison sentences.

Although the MDOC projects that these changes would also save 2,000 jail beds statewide, there has been strong opposition from prosecutors who disagree with aspects of the proposed changes and from sheriffs and county commissioners who fear the impact on county jails and other local resources. Consequently, while there is legislative interest in re-establishing a sentencing commission that could recommend changes, it is

not clear which, if any, of the current proposals will be adopted soon.

Disciplinary credit restoration.

Michigan eliminated very generous awards of “good time” in 1978, then replaced them with much more modest amounts of “disciplinary credit.” In 1998, when it completely eliminated disciplinary credits in the name of “truth in sentencing,” Michigan already met the federal norm of requiring violent offenders to serve 85% of their sentences.

Today, Michigan is one of only two states that don’t award good time in any form to state prisoners. Many states still give substantial amounts, especially for non-violent offenses. And even in Michigan, sheriff’s good time is an important factor in controlling county jail populations. Thus, someone sentenced to a year in jail can earn 52 days off while someone serving 1–4 years in prison for the same offense earns none.

There is no reason to believe that restoring modest amounts of credit would affect public safety. By definition, credit is only awarded to people whose behavior warrants it. While no one would be paroled automatically, thousands would become eligible for parole consideration some number of months sooner.

It is estimated that Michigan could save nearly \$100 million by retroactively restoring disciplinary credits of up to seven days a month. The possibility of earning credits could be truthfully explained at sentencing. However, prosecutors oppose any reconsideration of truth in sentencing and neither the governor nor the legislature is presently proposing it.

Parole reform. With sentencing reform in limbo and the restoration of disciplinary credits not even on the table, the most promising strategies for reducing the prisoner population involve parole. As of Feb. 2007, there were about 51,000 people in prison and about 17,500 of them were eligible for parole. Thus more than one-third of the population was comprised of people who had served the minimum term imposed by the court and could be released at any time. That group broke down roughly like this:

- 1,500 – parole granted, awaiting transfer
- 11,000 – past earliest release date and denied

parole

- 1,000 – parolable lifers eligible for release after serving 10 years
- 4,000 – returned to prison for technical parole violations.

(By September, the population was 50,000 and the total eligible for parole was about 15,000 or 30%, but the MDOC does not have a current breakdown available by subgroup.) These figures suggest several possibilities.

Release. The most obvious issue is why so many people who have been granted parole still occupy prison beds. A review of the procedures that are causing this bottleneck would seem to be a high priority.

The 11,000 people who have served their minimum sentences but are being denied parole also bear close examination. Recently there has been an increase in releases of medically fragile prisoners whose health care costs are very high. But overall parole practices have not changed significantly.

The Criminal Law Section of the State Bar recommends that everyone should be released upon completion of the minimum sentence unless they have failed to cooperate in their rehabilitation or they pose a substantial risk for re-offending. (See story, page 6) This standard would ensure that judicial sentencing decisions and negotiated guilty pleas are actually implemented while protecting the public against those who are currently dangerous. It would also result in far more grants of parole.

People who score high probability of release on the MDOC’s parole guidelines would meet this standard by definition, since those who score high probability have a statistically very low risk of re-offending. By statute, they are supposed to be paroled absent a “substantial and compelling reason.”

The parole board’s grant rate in high probability cases has steadily declined. In 1996, the grant rate was 81%. In 2006 it was 53%. The cutoff point for determining who falls into the high probability range was also changed, decreasing the pool of high probability cases. The statistical risk of committing a new assaultive offense for these prospec-

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Moderate strategies can safely reduce prison population

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tive parolees was 6.5% but is now 4.3%.

If the cutoff point for entry into the high probability range and the former parole grant rate for these prisoners were both restored, 4,626 beds could be saved at a net cost savings (after parole supervision) of more than \$114 million. House Bill 4548 would promote that result by permitting prisoners who score high probability of release to appeal denials of parole.

The roughly 1,000 parolable lifers committed offenses other than first-degree murder before Oct. 1992 and became eligible for parole after serving 10 years. Many have now served 25 years or more. The board only reviews these lifers every five years, often without even seeing them in person.

Most parole-eligible lifers are middle-aged, have excellent institutional records and pose very low risk to the community. They are increasingly expensive to house as they age and develop medical problems. Paroling 500 lifers would save (after supervision costs) more than \$15 million a year.

Revocation. In 2005, more than one-fifth of all admissions to prison were technical parole violators. The number of parolees returned to prison for technical violations of their parole conditions is in large part a function of what conditions the parole board chooses to impose and how it chooses to respond to violations. In fact, the number of technical violators can be seen to rise and fall over time as parole board policies change. Conditions that are too numerous or too restrictive may actually be counterproductive to the goal of safely reintegrating into the community. (See story, page 8) Thus another potential strategy for saving beds is to closely examine the nature and extent of parole revocations.

Once the decision to revoke parole is made, the question is for how long the person will be re-incarcerated. The 4,000 technical parole violators in prison as of Feb. 2007 will serve, on average,

about 18 months before being re-paroled. In Michigan it used to be 10 months; in many states it is as low as six.

The MDOC notes that many technical violators actually engaged in criminal conduct that was not prosecuted. However, even if just 1,000 technical violators were limited to serving 12 months, the savings would be \$13 million. If returns were limited to six months, the savings would be \$26 million.

Re-entry. The Michigan Prisoner Re-Entry Initiative (MPRI) is designed to reduce the return of parolees to prison, for either new crimes or technical violations, by helping them to overcome barriers to employment, housing and family reunification. For the years 2002-2004, an average of 10,686 people were paroled with an average success rate of 53.3%. If MPRI reaches its stated goal of including all prisoners and increasing the success rate by 10%, to 63.3%, an additional 1,068 beds would be saved annually.

“The strategies . . . just require the will to restore more moderate policies abandoned in our rush to get tough.”

The expansion of MPRI, the release of more people who are seriously or terminally ill, the use of more community-based sanctions for technical parole violators – these are all steps in the right direction. But they will not add up to the thousands of beds we must save if we are to bring Michigan’s prison system in line with those of other states and our own resources. The strategies for safely reducing corrections spending exist. They just require the will to restore more moderate policies abandoned in our rush to get tough.

Lansing State Journal
FORUM

9A
Sunday

AUGUST 12, 2007

ISSUE: CORRECTIONS SPENDING

Prevention, not prisons, best serves public safety

Behind bars, no one gets rehabilitated; costs unsustainable

The current debate over prison spending misses a fundamental point. Crime prevention is the best protection for public safety!

Prevention includes pre- and post-natal care, early childhood education, after-school programs, mental health and substance abuse treatment.

Michigan's corrections budget is \$2 billion because our prisoner count has grown to 51,000. To significantly reduce spending, we must reduce the prisoner population. And concerns that sentencing fewer people to prison and releasing more on parole would threaten public safety give prisons too much credit.

The impact of prisons on crime rates is debatable. In 1984, Michigan prisons held fewer than 15,000 people. Our incarceration rate was 158 per 100,000 citizens and our violent crime rate was 760 per

100,000. By 1992, the incarceration rate had climbed to 408 and the population was nearly 39,000. However, the crime rate actually increased to 770.

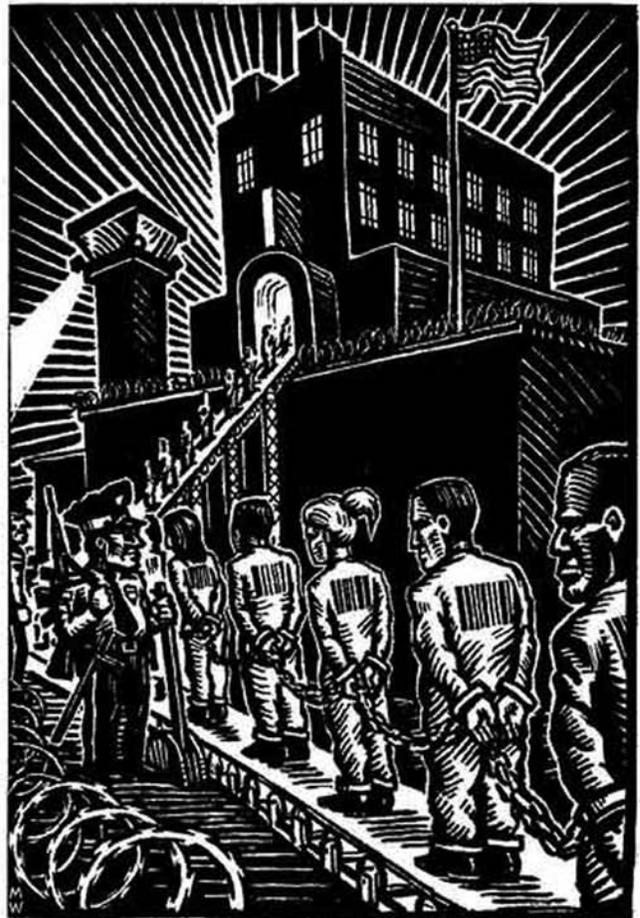
Offenders are sent to prison as punishment and to be segregated from the community. Prisons are not designed to "rehabilitate." Making education, vocational training and treatment available to prisoners is important, but such programs can be delivered much less expensively in the community.

Consider these facts:

Many people who repeatedly commit property or public order offenses have substance abuse or mental health problems — or simply lack the skills to find employment. More punishment will not enable them to function as law-abiding citizens. Addressing their problems before they offend is a much better investment.

Sixty percent of annual prison commitments are probation or parole violators.

To reduce these numbers, the Michigan Department of Corrections is moving away from sheer surveillance of people under community supervision. It is marshaling community resources through the Michigan Prisoner ReEntry Initiative to improve parolees' chances of success.



Los Angeles Times Syndicate

Many prisoners serving long sentences for crimes against people are in prison for the first time and are unlikely to re-offend. They receive no credit for good behavior and are often denied parole. We must demand just punishment and keep in mind research confirms that more time served has no impact on recidivism. Inappropriately, we have made prison stays longer and longer.

Imprisoning fewer people who commit property crimes and other non-assaultive offenses will not threaten public safety. Nor will paroling more people who have finished their minimum terms.

Of people paroled in Michigan in 2000, 16.3 percent were returned to prison for new crimes. Only 2.8 percent were convicted of crimes against persons. Of the 11,000 people paroled in 2003, 70 percent had not returned to prison within two years for any reason.

If we really care about crime prevention, we will stop paying for more prisons than we need. We will invest instead in the universities that make our state great, the services that vulnerable citizens need badly and, above all, the children we can keep from becoming the next generation of prisoners.

Resolution adopted supporting presumptive parole

Criminal Law Section conference at Mackinac Island

The Criminal Law Section of the State Bar, whose members include 2,300 Michigan judges, prosecutors and defense attorneys, recently adopted a policy statement that strongly supports a number of CAPPs' proposals on parole. The statement was developed at the Section's biennial policy conference held at the Grand Hotel on Mackinac Island, June 17-19.

Among the speakers at a conference panel were CAPPs president Ron Bretz, CAPPs president-elect Kathleen Schaefer and Rep. Paul Condino (D., Southfield), chair of the House Judiciary Committee and sponsor of House Bill 4548.

Conferees concluded that for the judge's minimum sentence to be meaningful, there should be a presumption of release when a prisoner first becomes eligible, unless the person has failed to cooperate in his or her rehabilitation or there is a substantial likelihood the person will commit another offense. The policy statement also recommends recording parole interviews, guidelines scoring and regular interviews for parolable lifers, permitting appeals of parole denials, individually tailoring parole conditions to the parolee's circumstances and limiting conditions to those that are reasonably necessary for public safety.

Bretz emphasized the unfairness of denying prisoners the chance to seek judicial review. He compared the way sentencing and parole decisions



Kathleen Schaefer and Rep. Paul Condino

are made. In both situations, the decision-maker must have "substantial and compelling reasons" for departing from statutorily required guidelines.

"The appellate courts have held that to be substantial and compelling, factors relied on by the sentencing judge must be objective and verifiable," Bretz said. "Much experience with this parole board has taught us that the reasons given for parole denials are often

neither objective nor verifiable," he said.

Condino explained that HB 4548 would improve the parole decision-making process by requiring interviews, which often form the basis for denial, to be recorded. It would require the board to calculate parole guidelines scores



CAPPs President Ron Bretz addresses conference attendees

(Continued on Page 15 -- see Resolution)

Criminal Law Section of the State Bar of Michigan Policy Statement on Parole Reform June, 2007

The Criminal Law Section of the State Bar of Michigan promotes and endorses truth in sentencing, transparency and fairness in the parole process, and recommends that the following principles be adopted.

Once a prisoner comes within the jurisdiction of the parole board, the prisoner should be released upon eligibility unless, at a hearing subject to appeal, it is determined that the inmate has failed to cooperate in his rehabilitation, or there is a substantial likelihood that he will commit another crime while on parole

A prisoner serving a sentence pursuant to MCL 971.234(7) shall be entitled to a personal interview with a member of the parole board each time they may be considered for parole.

For all prisoners within the jurisdiction of the parole board, parole guideline scoring shall be prepared. The guidelines shall be based on objective factors predictive of a risk to re-offend and a reviewable written or recorded record of any such hearing shall be made sufficient to be reviewed on appeal consistent with this policy recommendation.

We recognize the difficulty of parole consideration for sex offenders and that separate or additional risk assessments may be necessary for these offenses.

We support the existing standard that departures from the parole guidelines for or against parole shall be based on substantial and compelling reasons.

We fully support the principle that a prisoner who receives a finding of no interest or a denial of parole should be entitled to appeal the decision. The basis for appeal shall include: that the grounds for denial were not substantial and compelling, that the parole guidelines were erroneously calculated, or that the decision rested on material misinformation. For the last two grounds, the prisoner must exhaust administrative remedies prior to any appeal.

Conditions of parole should be limited to those that are reasonably necessary for public safety and shall be individually tailored to the parolee's circumstances.

We further urge state government to provide adequate resources and funding to ensure that the quality and intensity of supervision for offenders is significantly increased. Manageable case-loads for probation and parole officers ensure that sanctions imposed in lieu of incarceration are meaningful, that the likelihood of recidivism will be decreased, and that the chances for successful rehabilitation will be increased.

As a tool to assist in the implementation of a more successful parole system, we fully support the concepts embodied in the Michigan Prisoner Reentry Initiative not specifically in conflict with this policy.

Nothing in this policy recommendation is designed to reduce or eliminate the rights of crime victims as set forth in the Crime Victims Rights Act.

Parole conditions make it hard to succeed

Michigan Administrative Rule 791.7730 says that orders of parole shall contain conditions *that are reasonably necessary to assist a parolee to lead a law-abiding life*. Further, the rule requires there to be *a reasonable relationship between parole conditions and both the prisoner's previous conduct and present capabilities*.

For all parolees, conditions include: reporting to the parole agent immediately after release, not changing residence without permission, not leaving the state without permission, not possessing a firearm, finding a job and staying out of trouble. Also common are requirements for repaying fees, fines and restitution. Some offenders are given special conditions, such as participating in substance abuse or mental health treatment, or avoiding contact with particular individuals.

The most numerous and most onerous conditions are reserved for sex offenders. Regardless of the specific facts of the offense or the offender's history, every parolee convicted of a sex offense faces standard special conditions that prohibit them from: having any contact with people younger than 18, marrying or dating a person who lives with or has custody of a person younger than 18, working or residing within areas defined by state law as school safety zones, being within 1,000 feet of parks, public swimming pools and playgrounds, possessing or using a camera, and using a computer capable of accessing the Internet without written permission from their parole officer. Identical conditions are standard for sex offenders who receive probation. And prohibitions on contact with minors are also applied to non-sex offenders whose crimes even peripherally involved minor victims.

Although there appears to be no national research testing the effectiveness of parole conditions, there are certainly more opportunities to violate parole when the number of conditions are extensive and when they severely restrict living and working choices.

Furthermore, the relationship between parole supervision and deterrence or rehabilitation is also not clear. According to the Urban Institute report *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*, authored by Jeremy Travis, Amy Solomon and Michelle Waul

"We do know that supervision strategies

that simply increase the level of supervision, such as intensive community supervision, increased drug testing, and home confinement, have not been found to reduce re-offending. Rather, enhanced supervision involves increased surveillance that increases the likelihood of detecting technical violations. If noncompliance with technical conditions of release signaled patterns of criminal behavior among individuals, then returning them to incarceration might prevent future crime. However, research on the issue has shown no support for the argument that violating parolees on technical conditions suppresses new criminal arrests. Accordingly, there is no solid evidence to support the conclusion that solely increasing parole supervision will result in fewer crimes."

The authors report that nationally parole violations accounted for one-third of prison admissions in 2001. Of the parole violators returned to prison, nearly one-third were returned for a new conviction and two-thirds for a technical violation.

Michael Jacobson, President of the Vera Institute of Justice, says in his book, *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration*, "... the number of parole violators who reenter the nation's prisons is a major driving force behind our prison systems' enormous size and ongoing expansion." Jacobson writes that one reason more people are being sent back to prison for violating parole is because the focus of correctional agencies has now shifted from rehabilitating to minimizing the risks these offenders seem to pose.

In Michigan, the proportion of prison admissions that were technical rule violators grew from 13.0% in 1992 to 21.8% in 2005. The proportion that were parolees sentenced for new crimes stayed virtually the same at roughly 14.5%. The MDOC is attempting to reduce parole revocations through the Michigan Prisoner Re-Entry Initiative (MPRI), which focuses heavily on connecting parolees to employment, housing and community services. However, the parole board has not eased up on conditions that can make it very difficult to find work and housing.

Some experts believe excessive parole conditions make it harder to succeed. *A Handbook for New Parole Board Members*, published in 2003 by the Association of Paroling Authorities International and

the National Institute of Corrections, was prepared by five authors with extensive experience. The Handbook says conditions “. . . should be realistic and not simply a prescription for failure.” The authors caution against the “first impulse” of many parole board members to “assume that more is better.”

Say the authors: “The notion seems to be that if the board puts every imaginable condition on an offender, he or she will be so well-constrained that there won’t be a danger to the public. Or, at a minimum, if the offender does re-offend, the board will appear to have been vigilant by establishing these extensive conditions.”

They continue: “Current thinking among some parole boards and supervision agencies is . . . that piling on extensive conditions simply sets an offender up to fail. It can become so burdensome to comply with the conditions that many offenders will fail . . . simply because there are too many hurdles.”

The Michigan parole board insists that special conditions are based on an assessment of the offender and the crime. In response to an inquiry from CAPPs, the MDOC said: “The parole board does not feel that all sex offenders should be treated as pedophiles. Special conditions of parole are assigned based on the nature of the crime and the offender. Our primary responsibility is to protect the public, including children.”

However, Kathleen Schaefer, a professional probation and parole consultant and president-elect of CAPPs, says more oversight is needed to ensure that special conditions are related to the circumstances of the offense. Schaefer, an MDOC employee for 26 years, was manager of the Macomb County probation department at the time of her retirement. Her experience includes supervising units that managed adult sex offenders.

Schaefer notes that the parole board keeps increasing the burden on sex offenders, in particular, without any evidence of benefit to public safety. For instance, while state law prohibits sex offenders from living, working or loitering within 1,000 feet of public or private school property, the parole board has expanded the prohibition to include child care centers, parks, public swimming pools, playgrounds, arcades or “other places primarily used by individuals age 17 or under.” One of Schaefer’s clients, convicted of CSC 3rd for having sex with a 15-year old girl when he

was 23, cannot live with his fiancée in the house she bought for them because it is a few blocks from a toy store.

A former special parole condition that prohibited contact with individuals 16 and under has been changed to include individuals 17 and under. Thus, parolees whose offenses had nothing to do with children are barred from jobs that might bring them in contact with 17-year old co-workers.

Schaefer also says more oversight of the discretion given to agents to interpret conditions and more guidance about when to seek waivers is needed.

Two therapists experienced in conducting group counseling for sex offenders agree that parole conditions can be counterproductive.

“The stipulations are so limiting that people on parole are not actually afforded the opportunity to reintegrate back into society,” says John Shanle, Ph.D., a clinical psychologist in the Detroit area.

“Blanket conditions put these people under stress and for many, being under stress is what caused them to act out in the first place. By using excessive conditions, many of which cost the offender a great deal of money, we unconsciously put them back under stress. All the restrictions alienate, isolate them and make it hard to succeed.” Shanle notes that offenders usually do better when they are with their families for support.

Shanle also explains, “Most offenders are not pedophiles; pedophiles will always prefer children and usually don’t get caught. Wasting resources on people who aren’t going to re-offend isn’t the way to go. Sex offenders have very low recidivism rates, but the public doesn’t want to hear that. People don’t want to believe that 90 percent of the sex offenses with children involve someone who the child knows. Families don’t want to hear, ‘Watch out for Uncle Jim.’” He says one of the biggest factors in succeeding while on parole is finding employment.

Dr. Steven Miller, who ran the first sex offender group for Detroit Records Court while with the state forensic facility, says because of all the restrictions, “a sex offender cannot find a normal way to reenter society.”

Numerous examples illustrate the difficulties.

Harvey Reese, whose crime involved sexual relations with a 15-year-old girl when he was 23,

(Continued on next page)

was returned to prison for three and one-half years because he gave a ride to his pregnant cousin and her sons when he ran into her at a fast food restaurant. Paroled again this year, he has 33 parole conditions to meet. Once again, Reese can not have contact with any minor, including his own children, brother, nieces and nephews. Although his fiancée and their three-year-old daughter, born after his return to prison, visited Reese faithfully while he was incarcerated, he can have no contact with the child or marry his fiancée. (See profile in the Spring 2007 issue of *Consensus*. See also the Mitchell Kania profile in this issue, page 14.)

The case of David Randazzo, on probation for fourth-degree CSC for fondling a 13-year-old relative, was described in an Oct. 4th Detroit News article, *Sex offender wants to stay put; Man may be forced to move for 18th time unless judge lets him live within 1,000 feet of park*. Randazzo has been forced to move 17 times to avoid being within 1,000 feet of children in many settings that go beyond the state school zone statute. On probation for four years so far, Randazzo told the News: "I don't go to parks. I don't do anything. I sit at home and watch TV. I'm not a threat to anybody." A circuit court judge later ruled that Randazzo does not have to move because his original probation conditions only required that he not live within 500 feet of a park.

Barbara L. Janoskey, paroled on March 3, 2007, was forced to quit her job at a local McDonalds because it contained a playland. Janoskey, who was addicted to crack at the time, was convicted in 2001 of armed robbery for attempting to steal money at gunpoint from people in a car at an ATM machine. A nine-year-old was in the backseat. Upon release, Janoskey initially lived with her parents. Her prohibition on contact with minors meant that her nieces and nephews could not visit their grandparents.

"I have been home for a little more than six months now," said Janoskey, who finally moved into her own apartment. "It is not fair to my family. My children do not understand why they could visit me and talk to me all the time while I was in prison, and now that I am home, they can't even talk to me on the phone. My parents were not able to have their

grandchildren over until I moved into my own place, because I was living there. It is sad that I worked hard for six years to change who I was, to become the mother, sister, daughter and aunt that I should have been all along, and I still am not permitted to have those family connections that I so badly need," she said.

David Taylor, paroled in February of 2007, was told he could have no contact with his children, including his 17-year-old son.

When he was 18, Taylor shot and killed a man he says shot at him earlier in the day. Because it was dark, Taylor could not see that the man was carrying his small son, who was also injured. The jury convicted Taylor of second-degree murder, but acquitted him of any deliberate attempt to harm the child.

Restrictions on Taylor impacted his ability to get a job. Offers for two positions – one at a fast food restaurant and the other at a nursing home – had to be refused because people 17 and under worked at both places. He has been unable to attend family gatherings because children are usually present.

Judy Putnam of the Lansing Bureau of Booth Newspapers cited the cases of Reese and Janoskey in

"One of the most distinguishing characteristics of U.S. crime policy since the 1980s has been the gradual chipping away of individualized decision-making and its replacement with one-size fits all laws and polices."

-- Joan Petersilia, professor of criminology at the University of California, Irvine, and consultant to the U.S. Department of Justice in her book, *When Prisoners Come Home: Parole and Prisoner Reentry*

her June 24th article, *Get-tough policy helps bloat prison system*. Putnam also quoted Miriam Aukerman, an attorney with Western Michigan Legal Aid who specializes in prisoner re-entry. Noting that the parole board appears to apply conditions broadly, without considering the individual circumstances, Aukerman said: "I would say we have a schizophrenic approach as a state to the release of prisoners. We're making it harder by passing lots of laws and restrictions that undercut the ability of people to do the things we want them to do: Find employment and reintegrate with their families."

*Abuse, neglect can breed violence***Foster care services underfunded, says state report**

Children in foster care are likely to have behavioral and emotional problems, difficulty in school and to be in poor physical or mental health, according to national research. If appropriate services are not provided, the abuse and neglect that brought them to the state-run system can also cause crime, some very violent.

Fight Crime; Invest in Kids, a national, bi-partisan, nonprofit anti-crime organization of more than 3,000 police chiefs, sheriffs, prosecutors, other law enforcement leaders and violence survivors, (www.fightcrime.org) says: "Though most abused or neglected children grow up to be productive adults, research shows these kids are nearly one-third more likely to be arrested for violent crimes later in life."

Preventing child abuse and neglect has been called essential in preventing crime.

"The evidence is compelling that this is where much of the violent crime that plagues us begins, especially the kinds of violence we fear the most," says University of California Professor Elliott Currie, an international authority on crime and punishment and vice chair of the Eisenhower Foundation. In his book, *"Crime and Punishment in America,"* Currie cited a study that showed that the youths who had been abused were arrested almost twice as often, and reported almost twice as many violent offenses, as those without an official record of maltreatment.

Despite the tragic consequences for children and the long-term impact on the community, every aspect of Michigan's foster care system seems inadequate.

Responsible for nearly 19,000 children living with relatives, in foster families and in institutions, the system "appears to be overburdened and under funded," according to the Michigan Foster Care Review Board's 2006 annual report.

Noting the inadequate number of trained and experienced foster care workers, the Review Board concluded that the foster care system has too many clients and not enough caseworkers, that caseworkers

frequently leave their jobs because of emotional exhaustion and low job satisfaction, and they don't have enough resources to help their clients.

"After aging out of foster care, 27 percent of males and 10 percent of females were incarcerated within 12 to 18 months."

-- Adoption.com

The report went on to describe how inadequate pay and excessive caseloads also plague the lawyers appointed by the courts to serve as *guardians ad litem*. Charged with representing the best interests of the child and ensuring the delivery of appropriate services, guardians often fail to meet with their young clients, investigate the facts, monitor compliance with case plans or advocate effectively in court. Fees are simply too low to attract and retain well qualified attorneys while high volume caseloads limit the time available to complete all necessary tasks.

The national organization Children's Rights and the Michigan law firm of Dykema, Gossett filed a federal lawsuit on behalf of the foster children "who continue to be harmed in Michigan's child welfare system."

The suit names Gov. Granholm and the director of the Department of Human Services. It

(Continued on next page)

The number of children taken from their parents and placed in state-supported care averages more than 6,000 a year. At the end of FY 2006, the total abuse/neglect caseload was 18,655.

-- Foster Care Fact Sheet

Michigan Department of Human Services

charges that the state’s foster care system has been plagued by fundamental service and resource shortcomings for years.

Reacting to the board report and the lawsuit, Detroit Free Press Columnist Rochelle Riley said: “The state spends about \$1.9 billion on corrections, more than a fifth of the general fund. It pays about \$30,000 to house a prisoner. Alternatively, it spends about \$240 million in foster care payments and salaries for 706 workers, or about \$9,700 per child. What kind of dope-fiend system is that?”

A report released earlier this month entitled “*Hitting the M.A.R.C. Establishing Foster Care Minimum Adequate Rates for Children*,” by organizations that include Children’s Rights, examined the costs associated with providing basic care to a foster child in the United States and determined adequate payment rates for foster families. The report says Michigan should spend 29 percent more on two-year-old children; 71 percent more on nine-year olds, and 52 percent more on 16-year olds in the foster care system. For two-year olds, Michigan spends about \$5,000 when costs to families are about \$7,700; for nine-year olds,

it is spending about \$5,000 when actual costs are \$8,800; for 16-year olds, Michigan pays \$6,400 and costs are \$9,700.

The Governor’s proposed 2008 budget for the Department of Human Services called

“The state spends about \$1.9 billion on corrections, more than a fifth of the general fund. It pays about \$30,000 to house a prisoner. Alternatively, it spends about \$240 million in foster care payments and salaries for 706 workers, or about \$9,700 per child. What kind of dope-fiend system is that?”

-- Detroit Free Press Columnist Rochelle Riley

**Michigan Children in Foster Care
2007**

White	9,011
African American	9,012
Multi-Racial	782
Other and Unknown	330
Male	9,587
Female	9,551
Ages	
0-6	7,558
7-11	3,878
12 +	7,699

-- Foster Care Fact Sheet
Michigan Department of Human Services

for adding 275 positions focused primarily on finding permanent placements for foster care children, converting relative caregivers to licensed foster parents and conducting background checks on current and prospective foster parents. Funds were also proposed to increase staffing within private child placement agencies and to support additional medical and psychological evaluations for abused and neglected children. It is not known now what the 2008 budget will actually contain for these services, but recent versions of legislation have called for considerably fewer additional staff.

The League for Human Services says budget cuts in child protective services mean caseloads for workers are far above recommendations. Michigan child protective services workers handle 30 cases each – compared to the preferred national average of 17.

CAPPS Board Member Rose Homa of the Michigan Federation for Children and Families adds: “The entire foster care system (public and private) is underfunded, and while reduced caseloads are needed, resources must also be provided to support those lower caseloads.”

Johnson tribute becomes successful challenge grant

Its April 2007 meeting finally gave the CAPPs board of directors the opportunity to thank our most generous individual supporter in person. Annette Johnson and her husband, Cal, came from New York to attend a special luncheon at Lansing's Red Cedar Grill.

Johnson, who had donated \$55,000 since 2004, was praised for her generosity by CAPPs president Ron Bretz. Executive Director Barbara Levine described the contributions made by both Annette and Cal, not only to CAPPs but to thousands of prisoners in New York State, where their special interest is in prisoner education. Annette's tireless efforts with her own nonprofit organization, Prisoner Reading Encouragement Project (PREP) has resulted in the distribution of more than 60,000 books to prison libraries. Cal, a professor of mathematics, has taught both women prisoners and former prisoners preparing for college entrance exams. Both the Johnsons are involved in the effort to restore opportunities for prisoners to obtain college degrees.



Annette and Cal Johnson

Levine then presented a stone mantel clock inscribed:

TO: Annette Johnson

FROM: CAPPs

For giving us the time to make a difference.

In a fashion typical of their enormous grace, the Johnsons responded to this tribute by turning the tables. They pledged yet another contribution, agreeing to match all donations made in the months of May and June, up to a total of \$25,000.

The Johnson challenge grant spurred an extraordinary effort from CAPPs board members and a special campaign to reach CAPPs supporters. In the end, more than 50 contributions totaling nearly \$16,000 were received and then matched by Annette and Cal. This will keep CAPPs secure until spring while we pursue other sources of revenue. We are grateful to everyone who has shown their faith in our work and especially to Annette and Cal Johnson, whose own generosity has inspired so many others.

Detroit Free Press Editorial Writer Jeff Gerritt wins major fellowship

Jeff Gerritt, an editorial writer for the *Detroit Free Press* who has focused on criminal justice and corrections issues over the past several years,



Gerritt

has earned a major journalism fellowship for editorial writing from the Sigma Delta Chi Foundation of the Society of Professional Journalists. The fellowship provides \$75,000 to the recipient

to undertake an in-depth study of an issue they proposed in seeking the award.

Gerritt, who has won several awards for his work on prisoner health care, will examine the problems facing urban America such as crime, poverty and inferior public education and propose solutions. The *Free Press* will publish the series over the first nine months of 2008 with an eye toward shaping election-year debates on the state and national level.

Gerritt has also written many columns and editorials on issues involving parole and sentencing reform. They can be viewed on the CAPPs website -- capps-mi.org -- at the link called Press Room.

Faces behind the figures

Are we safer because they're behind bars?

Another in a series of CAPPs profiles of prisoners currently eligible for parole

Mitchell Kania, No. 370441

Despite parole guidelines scores that indicate Mitchell Kania is at low risk of re-offending and that his crime was "situational, unlikely to recur," the parole board repeatedly denied him release for reasons that lacked credible support. With a parole date finally set for five years after he first became eligible, Kania now faces conditions prohibiting contact with minors that will severely limit where he can live and work, even though he has never offended against a child.

Mitchell Kania was 48-years-old, married and employed as a truck driver, but was on leave from his job for health reasons. His only criminal conviction was for impaired driving in 1980.

Kania and his wife lived in the downstairs flat of a home in Hamtramck; a 19-year-old woman lived upstairs. Mr. and Mrs. Kania both say the woman had visited their apartment on prior occasions. In November 2000, when she came to ask him to reset the circuit breakers, he invited her in. After talking for a while, Kania tried to kiss her. When she went into another room, Kania followed her, then pushed her backward into an adjoining bedroom and onto the bed. Although the victim says she told him several times to stop, he lay on top of her and penetrated her with his finger. She pushed him away and left the apartment. She then called her boyfriend and the police.

In 2001, a jury convicted Kania of third-degree criminal sexual conduct. Since there were no aggravating factors, like serious injury or the use of a weapon, and the victim was an adult who provided no impact statement for sentencing, Kania received a minimum prison term of only 18 months.

When Kania became eligible for parole in November 2002, he had no misconducts, good housing unit reports, a suitable home placement and credible offers of employment. His high parole guidelines score indicated he is at low risk of re-of-

fending and included two positive points for "situational crime, unlikely to recur." However, he had not been able to enter Sex Offender Therapy (SOT) in time to complete it and the parole board denied release for that reason.

Kania completed SOT in May 2003. His therapist wrote:

[Mr. Kania] showed an interest in bringing about change...He reported as what appeared to be remorse and guilt for his actions. He...has shown the ability to use his intellect to gain insight into his past deviant sexual behavior. He did very well and was a group leader...

Nonetheless, later that year the board continued Kania for another 12 months, stating:

[Kania] expressed very little insight into his sexually assaultive behavior during the parole board interview, despite being described as a leader in the therapy program.

In 2004, the board denied release again, this time without stating any specific reason. It simply asserted that it was still not assured that Kania's risk of re-offending had been diminished.

In 2005, the board denied parole for two years – until November 25, 2007. The reason given was that Kania lied during his interview when he denied having non-consensual sex with his wife's adult niece. This alleged incident was not mentioned in the police report or the presentence investigation report. The board would not reveal the source of its information, so Kania had no means of determining who was accusing him or of challenging their veracity. Prior to Kania's 2007 interview, the niece wrote a forceful letter to the board, denying that Kania had ever sexually assaulted her or that she had ever told anyone he did.

The board finally granted parole in August

(Continued on page 15 -- See Kania)

Guidelines bill sponsor Rep. Condino to speak at Nov. 8 annual meeting

Rep. Paul Condino, (D., Southfield) chairperson of the House Judiciary Committee and sponsor of HB 4548, will be the guest speaker at the Nov. 8 annual meeting of CAPPs members.

The meeting will begin with dinner at 6 p.m. at the Faith United Methodist Church, 4301 S. Waverly Rd., Lansing, MI

Before being elected to the legislature, Condino served on the Southfield City Council and was president during his final term. An attorney and former partner in the law firm of Mooney & Condino, P.C., he is a graduate of Wayne State University and the Detroit College of Law. He is currently serving his third term in the House.

HB 4548 would help improve and enforce the parole guidelines.

Condino is also a sponsor of several other bills of interest to CAPPs members. They include: HB 4193 to expedite the process for medical commutations; HB 4964 to recreate the sentencing commission; and HB 4402 to prohibit a sentence of life without parole when the crime was committed by a person less than 18.



Condino

Bar section resolution supports presumptive parole

(Continued from page 6)

for parolable lifers. It would permit appeals to the court by prisoners with high probability scores, including lifers, who are denied release. The bill would also ensure that parole guidelines are based only on factors statistically proven to predict the risk of re-offending.

Kania Profile

(Continued from page 14)

2007, nearly five years after Kania first became eligible. Although he had no more programming to complete, his actual release was delayed until November.

Because he will be a registered sex offender, Kania is automatically barred from living within 1,000 feet of a school. This will keep him from returning to his own home. In addition, his parole conditions – standard for all sex offenders -- prohibit him from having contact with anyone under 18, from being within 1,000 feet of a child care center, park, public swimming pool, playground or arcade without his field agent's permission and from using or being in a residence with a computer without permission. These conditions will apply to any job opportunities Kania, now 55, may find.

Schaefer stressed the need for accurate assessment and adequate treatment early in a person's incarceration, then focused on how unnecessarily restrictive parole conditions "weaken the parolee's motivation, decrease the likelihood of success and strain limited correctional resources." After describing the numerous special conditions routinely placed on sex offenders, regardless of their specific circumstances, Schaefer observed, "Special conditions should be few in number, readily enforceable, supported by research, have a direct relationship to the facts of the crime and be tied to the two goals of reintegration and crime reduction."

Other panelists were Sen. Alan Cropsey (R., DeWitt), John Rubitschun, deputy director of MDOC Field Services Administration and former parole board chair, U-M clinical law professor Kim Thomas and Jorge Montes, chair of the Illinois Prisoner Review Board. Gary Gabry, also a former parole board chair and currently a defense attorney in private practice, was the moderator.

For the full text of the Criminal Law Section policy statement, see page 7.

CAPPS
CITIZENS ALLIANCE ON
PRISONS & PUBLIC SPENDING

115 W. ALLEGAN STREET,
SUITE 401, LANSING, MI 48933

The Citizens Alliance on Prisons and Public Spending, a non-profit public policy organization, is concerned about the social and economic costs of prison expansion. Because policy choices, not crime rates, have caused our prison population to explode, CAPPS advocates re-examining those policies and shifting our resources to public services that prevent crime, rehabilitate offenders, and address the needs of all our citizens in a cost-effective manner.

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Citizens Alliance on Prisons and Public Spending Membership Form

CAPPS, 115 W. Allegan St., Suite 401, Lansing, MI 48933; Phone: (517) 482-7753;
Fax: (517) 482-7754; E-Mail: capps@capps-mi.org; Web site: www.capps-mi.org
My tax deductible contribution, payable to "CAPPS," is enclosed.

My membership category is:

- Prisoner — \$10 Student — \$10 Friend (individual/family) — \$25
 Supporter — \$50 Partner (individual/organization) — \$100
 Patron -- \$250 Benefactor -- \$500

Name: _____ Title: _____

Organization: _____

Address: _____

Phone: _____ Fax: _____ E-Mail: _____