

Business community builds pressure for corrections

CAPPS strategies for reduced prison spending gain wide support

The conversation about prison spending has changed dramatically. It is no longer focused on *whether* to reduce the corrections budget but *how*.

As the state's fiscal woes deepen, support for population reduction strategies long advocated by CAPPS is growing rapidly. Key business leaders are joining editorial writers and columnists to urge the adoption of sentencing reforms, restoration of "good time" credits and substantially more paroles.

While there will undoubtedly be debate about the details of various proposals and the cost savings they would actually generate, agreement is becoming apparent on a number of points.

- Michigan taxpayers want to spend less on corrections.
- Significant savings will only be realized by reducing the size of the prisoner population.
- Prison expansion had multiple causes and will require multiple solutions.

The public wants to take the politics out of criminal justice decision-making and utilize the judgments of experts. It is more interested in hav-

ing its system of punishment be cost-effective than it is in looking tough. There is substantial support for reducing or eliminating the use of prison for nonviolent offenders and for ensuring that people have access to programs that will help them to function in the community.

It currently appears that an unexpected decline in the number of new commitments is causing the prisoner population to dip slightly. However, nearly 30 percent remain eligible for parole. Nearly 10,000 have served beyond their minimum sentences without being released; 4,000 have been returned as technical parole violators; about 850 are parolable lifers.

Detroit Chamber of Commerce issues seven-point plan

The influential Detroit Regional Chamber of Commerce is anxious to reduce or eliminate the Michigan Business Tax surcharge. To that end, it "has set an ambitious goal of reducing corrections spending in Michigan by \$500 million." A report released by the Chamber on Oct. 23rd summarized the causes and costs of Michigan's prison growth, then made seven recommendations, accompanied by estimated cost savings:

1. Make the parole board a body of professional civil servants replacing the current board of political appointees. The new board should be charged with enforcing MDOC's parole guidelines. (\$120 million)
2. Re-create a "good time" system that replaces disciplinary credits with credits for accomplishments that increase the likelihood of success upon release. (\$100 million)

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3. Create a re-configured Michigan Sentencing Commission, with the charge to examine the appropriateness of sentencing guidelines and make recommendations to maximize effective use of technology and community-based sentencing. (\$400 million)
4. Fully implement the Michigan Prisoner Re-Entry Initiative to increase parole success rate 10%. Further, limit the amount of time that technical violators of parole can be incarcerated without being re-paroled. (\$68 million)
5. Open food service to competition by allowing competitive bidding from the private sector. (\$39 million)
6. Reduce administrative expenses by 10% and reduce top heavy management within individual facilities. (\$82.6 million)
7. Open services not requiring corrections officers to competition and partner with other public institutions to deliver services. (Estimated savings unknown)

Detroit Renaissance urges legislative action

Detroit Renaissance, a private nonprofit organization of business leaders that seeks to boost economic growth, commissioned a statewide survey of registered voters that was conducted in July. Respondents were asked about a dozen potential budget reforms, including five that involved corrections. These propositions and the level of support they garnered were:

- Punish nonviolent offenders by other means than prison 79.3%
- Release some nonviolent offenders before parole 58.8%
- Reduce length of mandatory prison sentences 47.6%
- Privatize some corrections services 41.9%
- Reduce pay and benefits for corrections employees 20.9%

Detroit Renaissance followed up its poll by releasing a Sept. 17th report called *Budget Action Plan: Restructuring Options to the State Legislature for Transforming Michigan's Budget*.

In the area of corrections, the report stated that Michigan must change incarceration policies to reduce both the *number* of prisoners in the correction system and prisoners' *average length of stay*. Recognizing that legislators are wary of looking soft on crime, the Detroit Renaissance report nonetheless urged them to "demonstrate their commitment to appropriate fiscal practices" by reducing Michigan's prison population to the Great Lakes average. It recommended adjusting sentencing guidelines, reconsidering the total elimination of good time credits, reducing the number of prisoners serving past their earliest release date and precluding prison altogether for nonviolent crimes. Detroit Renaissance also suggested making operational changes in prisoner transportation, mental health service delivery and food service.

Editorial support strengthens

The growing demand for corrections reform is reflected in numerous editorials. A Sept. 21st Detroit News editorial said there was “nothing radical” in the “modest” Detroit Renaissance proposal. Referring to the entire package of recommendations, it continued:

None of the measures are harsh. They shouldn't be difficult for policymakers to swallow. But they are necessary. Michigan can not pretend any longer that it can avoid change.

In an earlier editorial entitled *Cut sentences of inmates who choose rehabilitation* (6/17/08), the Detroit News had suggested that, in combination with the Michigan Prisoner Re-entry Initiative, “Michigan should also consider restoring good-time sentence reductions for certain inmates.” The News said that in considering smarter and less expensive strategies for dealing with crime, one of the best “is to reward inmates who use their time behind bars to change their lives and make sure the programs are available to help them rehabilitate.” The News also recommended restoring the Sentencing Commission.

Booth Newspapers columnist Peter Luke has called for a commission with even broader powers. (*Prisons busting the budget*, mlive.com, June 22, 2008) Analogizing to federal non-partisan expert commissions that insulate Congress from politically difficult decisions to close military bases, Luke proposes an expert commission to recommend specific changes in sentencing guidelines, parole standards and diversion programs. The commission would also recommend which prisons would be closed when the population declines. The recommendations would be sent to the Legislature for an up or down vote.

CAPPS has been making many of these recommendations, among others, for a long time. On March 7, 2003, the CAPPS board of directors adopted a policy statement entitled *Recommendations for Reducing Excessive Incarceration* that includes three underlying principles and 27 specific recommendations in the areas of sentencing, prison programming, parole, re-entry, research and structural

administration. (See *Consensus*, Summer 2003)

The most critical of CAPPS's proposals were subsequently summarized in its *Six Strategies for Right-Sizing Michigan's Prison Population*. The Oakland Press, in a July 13th editorial entitled “*State prisons too expensive, ineffective at reform*,” quoted from *Six Strategies*, spelled out every recommendation and asserted that “the state ought to take a long look at such ideas.” The Press, which has a firmly conservative reputation, began by noting that many think Michigan policymakers are afraid to do what's right when it comes to corrections. It reviewed the facts and concluded:

You would think Michigan, with its top-quality centers of higher education, would be more enlightened when it comes to corrections policy.

This has nothing to do with being a squish-headed liberal or holding any other political philosophy. It has to do with common sense. As things stand, to put it bluntly, Michigan taxpayers are shooting themselves in the foot when it comes to corrections policy.

The frustration demonstrated by the Oakland Press is evidence that not only the substance but the tone of the debate has changed. Several years ago, even papers that advocated “doing something” to rein in corrections spending were cautious about just how far reforms should go. The most moderate proposals were bracketed with disclaimers and sounded almost apologetic for considering cost when discussing public safety. Today, there is widespread agreement that wasting money on policies that do not make us safer cannot be justified by political rhetoric. Fundamental reforms are being demanded.

A June 12th editorial in the Bay City Times (*Michigan's prison system bankrupts state budget*) exemplifies the trend. It concluded:

Michigan's multibillion-dollar experiment in punishing too many crimes with maximum time behind bars has failed.

We are no safer than the rest of the nation. Our

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Business community supports CAPPs strategies

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continued insistence on an unaffordable system of prisons and harsh justice threatens to bankrupt the Great Lakes State.

It cripples almost everything else that the state ought to be doing to rebuild for the future.

Why is it that Minnesota, a sister Great Lakes State, spends just 17 cents on prisons for every dollar spent on colleges and universities?

Michigan leaders should go there, and find out.

Official response not encouraging

Despite the chorus for change, Lansing's response to the Detroit Chamber's report was not enthusiastic. As reported by MIRS (the Michigan Information & Research Service) on Oct. 24th, MDOC spokesperson Russ Marlan was quoted as characterizing the Chamber's numbers as "not achievable." He said the Chamber was unintentionally double-counting when it suggested pushing parole eligibility dates up by awarding "good time" credit for accomplishments in prison, then releasing more people who had reached their first parole dates. Marlan also said that scaling back sentences was a long-term project that would not yield immediate savings, although last year the MDOC proposed sentencing reforms it claimed would save 3,300 prison beds over three years.

MIRS also spoke with Sen. Alan Cropsey (R-DeWitt) and Rep. Alma Wheeler Smith, (D-South Lyon) chairs of the Senate and House appropriations subcommittees on corrections, respectively. While neither disagreed with expanding the Michigan Prisoner Re-entry Initiative (MPRI), they otherwise had sharp differences with each other and with the Detroit Chamber's recommendations. Sen. Cropsey liked the notion of privatizing prison food services and cutting more administrative costs, but

Our continued insistence on an unaffordable system of prisons and harsh justice threatens to bankrupt the Great Lakes State.

--The Bay City Times

would not support any approach that would "put more inmates back on the streets early."

Rep. Smith, on the other hand, said privatizing food services is "ludicrous and a non-starter," pointing to troubles experienced by the state of Florida and the need to preserve jobs for prisoners. She supported awarding good time credit in some circumstances, noting the federal standard allows sentence reductions up to 15%. However, Smith told MIRS, it isn't realistic to make the total package of changes in just a few years and that seven to ten years would be a more likely time-frame. "We can't afford the wholesale layoffs in the state of Michigan at this time," Smith said.

The debate over the corrections budget for Fiscal Year 2009-2010 begins next February. The outcome may well depend on just how loud, unified and determined the chorus for change chooses to be.

All reports, editorials and prior issues of Consensus mentioned in this article are available at the CAPPs website, www.capps-mi.org.

322 cases reviewed

Clemency Council increases commutations

The Executive Clemency Advisory Council (ECAC), created by Gov. Jennifer Granholm on Feb. 16, 2007 in response to the state's high incarceration rate, has reviewed 322 cases for potential executive clemency. While most involved commutations of sentences for current prisoners, several involved requests for pardons.

The council was established to speed the clemency process so the state could reduce the size of its prison population. It was designed to help alleviate time constraints and other burdens imposed upon the parole board relating to the re-



had determined had no merit. Nearly 100 have proceeded through the public hearing stage so far. (See story on increase in public hearings, page 6.)

Referrals to ECAC have

come from numerous sources: individual prisoners, their families and friends; a list of prisoners who have high medical costs, treating physicians, a list of those who would be deported if released, a list of elderly prisoners, MDOC wardens, and a list of prisoners serving mandatory life without parole.

Here's how the process works.

The MDOC clemency administrator -- former parole board member Marianne Samper-- re-

views the cases to determine if there is a basis for exclusion, such as a high security level, designation as a member of a security threat group (gang) or designation as an assaultive or sexual offender with only a short time served (unless terminally ill.) Requests for commutations for terminally ill prisoners are expedited.

The parole board chair then meets with Samper and determines whether to refer the screened cases to ECAC, close them, review them again in six months, request additional information or request a medical or housing unit report.

The council meets twice monthly and takes up about 20 cases per meeting. Members receive

CAPPS had addressed the fiscal and human costs of continuing to incarcerate people who are seriously ill or elderly in the Fall 2006 issue of *Consensus*. Executive director Barbara Levine said then: "Michigan must examine the costs and benefits of keeping critically ill and incapacitated people in prison when they are no longer risks to the public. Changes in policy and law could save the state many millions of dollars in medical care and custody costs." (See "CAPPS urges community oversight for very ill, elderly," *Consensus*, Fall 2006, pg. 8.)

view of applications for executive clemency.

The council is made up of seven, uncompensated citizens appointed by the governor. It was hoped that the commutations might generate as much as \$10 million in savings in the MDOC's budget for 2008.

The council was designed as an advisory body to the Michigan parole board; it receives cases to review for "merit" or "no merit." All cases found to have merit are referred to the parole board for a final decision on whether to proceed with a public hearing and ultimately recommend commutation to the governor. As of Aug. 8, 2008, ECAC had recommended possible commutation in 235 cases and the board had decided to proceed on 110 of them. The board proceeded with another 13 cases that ECAC

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Public hearings increase by 600 percent

Parole board busy considering elderly, ill, women & drug offenders

The Michigan parole board must conduct a public hearing before it can release either a person serving a parolable life sentence or someone being considered for a sentence commutation from the governor. Commutation is required for release when the person is not eligible for parole, either because the sentence is a non-parolable life term for first-degree murder or the minimum term of an indeterminate sentence has not yet been served.

For decades, lifer paroles and commutations in first-degree murder cases were routine. Both declined dramatically starting in the late 1980's. In all of 2005 and 2006, the parole board conducted only 26 public hearings. Just six commutations were granted. None were for murder 1; all were for medical reasons. In the same period, 18 lifers were paroled. Of these, 10 were "650 drug lifers", who had become parole-eligible after the law was amended in 1998. Three of the eight non-drug lifers were terminally ill.

With the advent of the Executive Clemency Advisory Council in 2007, the number of commutations has increased substantially. (See story, page 5). Many commutations involve people who are elderly or very ill. In the 21.5 months from Jan. 1, 2007-Oct. 15, 2008, public hearings were held in 99 commutation cases and 10 more were scheduled. Of these, 39 have resulted in release, with decisions still pending in most of the rest. Drug cases accounted for 27 of the hearings held so far and nine of the releases.

The number of lifer paroles also increased. During the same 21.5 months, 52 public hearings were held and 39 lifers were released. Of these, drug lifers accounted for 23 of the hearings and 18 of the releases. Among the non-drug lifers, seven of those released were seriously ill.

In addition to the elderly, ill and those convicted of drug offenses, the board has been paying

particular attention to women. Although they comprise about 4% of the prisoner population, women accounted for 18% of the public hearings in com-



mutation cases. While this may reflect, in part, a belief that women present less risk to the public, it undoubtedly also reflects the need to quickly reduce the female population. The Scott Facility is scheduled to close in May 2009 and the women will all be moved to what is currently Huron Valley Men's Facility, which has a capacity of several hundred fewer beds.

In sum, during the 21.5 month period, the parole board conducted 151 public hearings. Of these, 50 (33.1%) involved drug offenses, 72 (47.7%) involved commutations in non-drug cases, and 29 (19.2%) were for non-drug parolable lifers, *i.e.*, the plaintiffs in the *Foster-Bey* litigation. (See story, page 8).

The chart on the next page contains more details. It is based on all information available to CAPPs as of Oct. 15th. Deaths and medical cases may be undercounted. Additional cases may be scheduled for release in the near future. The figures for parolable lifers do not reflect cases where the board intended to conduct a public hearing but the sentencing court objected to the person's release.

Summary of public hearings: 1/1/05-10/15/08

Parolable Lifers		Commutations	
Hearing/Released		Hearing/Released	
2007 Total	27/26	2007 Total	23/19
Drug	13/13	M1	8/7 (1 died)
Non-drug medical	5/5 (1 died)	Drug	2/2
Non-drug	9/8	Other	13/10 (4 died)
2008 Total (through 10/15)		2008 Total (through 8/31)	
Drug	10/5	M1	26/6
Non-drug medical	3/2 (1 died)	Drug	25/7
Non-drug	12/6	Other	25/7
Total Sched. (10/16 - 10/23)	3	Total Sched. (10/16 - 11/13)	10
Drug	2	M1	3
Non-drug medical	1	Drug	2
Non-drug	0	Other	5

Clemency Council increases commutations

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case summaries in advance. During the meetings, MDOC staff are present to provide additional information.

Cases in which ECAC finds merit are taken up by the parole board, which orders a Parole Eligibility Report (PER) and an interview. Parole guidelines scores are prepared on non-lifers.

After the interviews, cases are scheduled for consideration at executive session and a preliminary vote. If there is interest at this point, the lifer coordinator orders psychological and medical evaluations. If there is no interest, the case is closed and the application is forwarded to the governor's office without a recommendation.

In cases with interest, results of the evaluations go to parole board members. If there continues to be interest, the board proceeds to a public hearing. Notices are sent to judges and prosecutors. After the hearing, the parole board votes on whether to recommend commutation. If the board decides the prisoner's sentence should be commuted, it makes that recommendation to the governor's office.

Progress slow in Foster-Bey case

Remedy ordered for unconstitutional treatment of lifers

On Oct. 23, 2007, U.S. District Judge Marianne O. Battani found in the case of *Foster-Bey et al v. Sampson et al* that the Michigan parole board's treatment of parolable lifers who committed their crimes before October 1992 violated the *ex post facto* clause of the United States Constitution. (See "Parolable lifers win class action lawsuit," *Consensus*, Winter 2008, pg. 10.)

Unlike the "old" civil service board, which was replaced by appointees in 1992, the "new" board treated parolable lifers much like people serving mandatory life without parole, effectively implementing a policy of "life means life." As a consequence, the annual parole grant rate for lifers, which had ranged from 5-15% for decades, declined to 0.15%. On average, fewer than two of the nearly 1,000 eligible lifers were paroled each year.*

The Court concluded that the new board failed to exercise its discretion by looking only at the seriousness of the offense and refusing to assess each lifer's current risk based on post-sentencing factors. The parties were ordered to brief the issue of how the constitutional violation should be remedied.

On Feb. 7, 2008, the Court entered a remedial order setting forth in detail what the defendants had to do in the ensuing six months. First the board had to list all the class members in order of how long they have served. After deleting people who had security classifications above Level III or who had other sentences that would prevent their release, the board had to interview everyone in the first quarter of the list by July 7th, regardless of when they had last been reviewed.

In making decisions about parole, the board is required, to the extent possible, to "apply the parole laws, policies, procedures, and standards that were applied by the old parole board in the decades before 1992." Specifically, the board must consider the variety of factors listed in statute, administrative rule and policy directive that are taken into account when reviewing people serving long indeterminate sentences for similar crimes. The board must also consider pre-1992 release guidelines and any as-

essment made of the case by the old board. If the board decides to deny parole, it must give written reasons tailored to the specific case. Absent extraordinary circumstances, the nature and seriousness of the offense cannot be the sole basis for denying release.

Because of the "serious ongoing harm" to a large class of plaintiffs, the District Court declined to stay the effectiveness of its order pending appeal. The defendants' request for a stay from the Sixth Circuit Court of Appeals was denied on Oct. 30, 2008 because the defendants had failed to show they would suffer irreparable harm from complying with the District Court's order.

The defendants immediately filed a supplement to their earlier motion for stay and asked the Court of Appeals to consider their allegations of newly discovered irreparable harm. Defendants claimed that work on *Foster-Bey* cases was interfering with the board's ability to process commutations, to screen 400 non-lifer cases per week, and to reconsider people they had previously decided not to parole. Defendants pointed out that delays had been caused by staff sick leaves and the need to replace three of ten board members. The defendants have also filed a notice of appeal, but briefs have not yet been filed.

The District Court conducted a review hearing on Sept. 4, 2008. The defendants reported that the board had interviewed 208 of the longest serving class members. One had served 56 years; 47 had served more than 35 years; all had served at least 32. Of these, 113 had been denied parole. The remaining 95 cases were still pending.

Another review hearing is scheduled for Nov. 19. The parties have now filed briefs debating the adequacy of the reasons given for denial and of the progress being made in deciding the remaining first quartile cases.



Plaintiffs alleged that the continuing unconstitutionality of the defendants' decisions is evident from the sheer number of denials. Given the length of time these prisoners have now served, Plaintiffs maintained very few would still have been in prison under the old board's practices. Plaintiffs also attacked the boilerplate nature of the denials, most of which contained some combination of "lack of remorse", "lack of empathy" and "lack of insight." Plaintiffs also asserted that the board is unconstitutionally penalizing people who maintain their innocence and is incorrectly interpreting the impact of consecutive sentences on parolable life terms.

Finally, the plaintiffs maintained that the number of public hearings being held for commutation and drug lifer cases, compared to the number being held for class members, is evidence that the board is giving low priority to consideration of class members despite the Court's remedial order. (See articles on Executive Clemency Council, page 5 and public hearing data, page 6.)

The defendants asserted that they have complied with the Court's order by conducting the interviews within the required time period. They

urged the Court not to review individual decisions on the merits. The defendants recited the statutory standard ("A prisoner shall not be given liberty on parole until the board has reasonable assurance... that the prisoner will not become a menace to society or to the public safety)", then said that no specific number of decisions granting parole could be expected because the standard is "highly subjective" and "what constitutes reasonable assurance for one Parole Board member may not constitute "reasonable assurance" for another." Defendants maintained that "minimization", defined as lack of remorse or empathy, is an appropriate consideration because it is "a strong indicator of possible recidivism."

Finally, defendants asserted that the parole board has worked hard to comply with the Court's order and denied that it was giving precedence to commutation cases over class members.

* The class in *Foster-Bey* does not include "650 drug lifers" because they were sentenced to life without parole and did not become eligible for parole consideration until after the law was amended in 1998. Thereafter, drug lifers were released regularly.

New parole board member named; three vacancies exist

Dr. Anthony King, an associate professor of social work at Wayne State University, has been appointed to a four-year term on the Michigan parole board beginning Oct. 1, 2008. He succeeds Enid Livingston who filled the post for more than three years before leaving in early October.

Members of the board are appointed by the director of the Michigan Department of Corrections.

King was one of three professors from Wayne State's School of Social Work who conducted a study in 2005 showing that 95 percent of Michigan citizens oppose sentencing juveniles to life without parole. King also designed a program for prisoner re-entry while at Wayne State.

Three vacancies exist on the 10-member board. Sharee Booker left at the same time as Livingston and John Schlinker departed in the summer of 2008. Both had been appointed in 2006. James J. Quinlan, who was first appointed in 2003 and reappointed in 2007, resigned in October 2008. Department Director Patricia Caruso is working now to fill the posts.

Miguel Berrios, Stephen DeBoer and Artina Tinsley-Hardman, whose terms ended on Oct. 1, 2008, were re-appointed to four-year terms, expiring on Oct. 1, 2012.

Other board members are: Laurin' Thomas, James Atterberry and Barbara S. Sampson, who is chairperson.

David Kleinhardt, a parole board manager, has served as an acting parole board member since Schlinker left.



Puzzling decisions

Parole denials often hard to fathom

Over the years, CAPPS has profiled dozens of people who have been denied release to illustrate concerns about the parole process. What we have asked repeatedly is whether the public is safer because this person remains in prison or whether taxpayer money is being wasted on incarcerating someone who has served his time and deserves a second chance.

In many cases, after a thorough review of the person's offense and institutional history, the parole board's reasons have been difficult to understand. Decades of maturation and accomplishment in prison are given no credit and the evaluations of institutional psychologists are ignored. Denials are often based on the conclusions of a single board member drawn from an interview that was not recorded.

Parole denials are especially hard to fathom when virtually identical co-defendants are treated differently, when people who clearly pose no threat are continued for years because they deny guilt and when even support from victims, their family members and sentencing judges is ignored. We present examples of such cases so that readers may draw their own conclusions about the consistency, objectivity and fairness of parole decision-making.

Same facts, different outcomes



Aldo Gallina, then 15, and his friend Eric Rode, then 16, were involved in an incident in which another 15-year-old boy was shot and killed. Gallina and Rode were riding in a car with older boys. They started racing and exchanging words with the passengers in a second car. Gallina pulled a gun from the glove compartment and shot it out the window to scare the passengers in the second car and impress his friends. He then gave the gun to Rode who actually shot the victim. Gallina was charged as an aider and abettor. Both received 15 to 30 year sentences for second-degree murder.



The young men remained in the community during the lengthy appeal process. Gallina went to college and worked full-time. In prison, the boys adjusted well and were housed in low security facilities. Both had good family support, a limited prior record, excellent staff and work reports and good parole plans. In interviewing the two, the board noted that the crime was out of character for both and that both had spent half their lives in prison and had matured. The pair were required to complete assaultive offender therapy. Rode did so before they reached their first parole date and was released in November of 2005. Because Gallina was not able to enter the program in time, the board denied him release.

Later Gallina completed assaultive offender therapy with glowing reports that cited evidence of his empathy and remorse. Yet, when the board considered him a second time, it said it was still not assured that his risk was diminished and denied release again.

In August 2008, the board considered Gallina a third time. It denied parole again, this time because he was unable to explain "the rage" that the board member said must have compelled him to fire the gun.

Eric Rode was discharged from supervision in November 2007.

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Robert Weisenauer and Michael Pratt were convicted in 1977 of forcing sexual activity on a young woman who had been abducted and brought to a motorcycle gang's clubhouse. The ringleader was never caught and the judge noted that he would have given that man a tougher sentence than the others if he had been convicted.

The prosecution claimed that the victim had been forced to perform fellatio on Weisenauer. Although present at the clubhouse, Weisenauer has always denied the charge, noting that he believes the victim mistook him for another man. Weisenauer,

Pratt and a third man, who has since died, were given life sentences for first-degree criminal sexual conduct. The other two men were given shorter sentences and have since been released.

The judge told Weisenauer at sentencing that the life term would “not last too many years.”

While in prison, Weisenauer obtained a GED, was trained as a welder, has been a volunteer mentor for young prisoners and has garnered praise from staff, including officers. A psychological evaluation of him in 1992 said he “should be able to be a productive citizen if given the chance to go back to society.”

Although the “old” parole board had voted to give Weisenauer a public hearing, it never got that far. The “new” board has shown no interest. He has not been interviewed in person for 16 years.

In 2003, the sentencing judge wrote the board urging a personal interview and said he hoped the board would “lean toward lenience in considering parole.” The board did not respond to that request.

Pratt, who admitted the crime, was paroled in September of 2007. After 34 years, Weisenauer is the only one of the five co-defendants left in prison. The only apparent reason is his refusal to admit guilt.

Claiming innocence means no parole



Not admitting guilt has also resulted in continuous parole denials for a German citizen who has been in Michigan prisons for eight years beyond his earliest parole date.

Gabriel Christ, a chef on a cruise ship who was at sea for six months a year, had been married to his American wife for nine years. The marriage deteriorated and the spouses accused each other of infidelity.

Christ admits that during a heated dispute, he beat his wife and threatened to pour gasoline on her and set her on fire. She says he forced her into intercourse. He said the sex was consensual. He received a 1 to 10 year sentence for assault and 2 to 15 years for criminal sexual conduct, third degree.

Christ will be deported as soon as he is released from prison. He had no previous criminal record nor prior complaints of domestic violence. In scoring his parole guidelines, it was noted that the crime was situational and unlikely to recur. Now in his 60s, Christ has never received a misconduct.

Nonetheless, the board has denied him parole six times citing his refusal to admit guilt.

Victim support doesn't sway board



Ross Hayes was 16 when he stabbed and killed an elderly woman after breaking into her house with a 14-year-old cousin. Hayes was high on LSD, marijuana and alcohol. The victim, Katherine Thomas, surprised the boys when she returned home.

Although a psychologist concluded he was an emotionally disturbed adolescent, Hayes was tried as an adult. He pled guilty to second-degree murder in the belief that a parolable life sentence could bring release after 10 years.

Now 50, Hayes has been in prison for more than 33 years. He earned his GED and two associates' degrees. He completed group therapy and substance abuse treatment. His work and living unit reports are excellent. In 1998, he got married.

Since 2001, Hayes has had the support of Dale Daverman, the victim's great-nephew. After spending many hours visiting together, Daverman believes Hayes is sincerely remorseful. In 2004, Daverman traveled from New Mexico to appear at Hayes' parole interview.

Daverman attended Hayes' parole interview in 2008, as well, and was bitterly disappointed. Daverman reports that the interviewing board member was interested only in discussing the facts of the crime, repeatedly asking Hayes “what he was thinking” when he stabbed Ms. Thomas. When Hayes attributed his behavior to his age and drug use, the board member was clearly dissatisfied. Showing no interest in Hayes' accomplishments during more than three decades in prison, he cut Hayes off repeatedly. The interviewer made no response when Daverman noted that with a wife, home, job offers and Daverman's own support, Hayes had excellent prospects for success on parole. Daverman is frustrated by an interview he felt was “unprofessional” and a review process he believes is “unfair.”

In August 2008, the board denied parole again. The reason given was:

P shows no insight whatsoever into the anger and violence he carried at the time of his crime.

Prison conference draws more than 100

Levine addresses causes, consequences of prison growth

It's the state's response to crime rather than crime itself that drives the ever-growing prison population, CAPPs Executive Director Barbara Levine told more than 100 attending a conference at the Plymouth United Church of Christ in Grand Rapids.

The Sept. 20th conference, entitled, "Michigan's Prison System: How Does It Affect You?," was sponsored by the Restorative Justice subcommittee of Plymouth Church's Justice and Peace Task Force.

Levine, who was keynote speaker at the day-long assembly, described Michigan's high incarceration rate, then explained that, "The relationship of crime rates to incarceration rates is simply not very clear. Texas increased its prison population dramatically but saw less of a crime drop than New York, which had much smaller prison growth. Michigan's crime rate has fluctuated even when the prison population was growing steadily. In 1975, when we had about 11,000 people in prison and 1995, when we had 41,000 prisoners, the violent crime rates were identical."

Levine said many factors affect crime rates far more than imprisonment, including demographics, like the number of young men in their crime prone years; economics, like overall levels of prosperity and access to jobs; and changes in policing strategies and in the drug trade.

Levine quoted a *New York Times* article that said one reason why America's incarceration rate is so much higher than the rest of the world's may be democracy. Reporter Adam Liptak explained: "Most state court judges and prosecutors in the United States are elected and are therefore sensitive to a public that is, according to opinion polls, generally in favor of tough crime policies. In the rest of the world, criminal justice professionals tend to be civil servants who are insulated from popular demands for tough sentencing."

In Michigan, Levine said, "Policy after policy has been adopted to lengthen sentences, to make people serve more of their sentences before becoming eligible for parole, and to deny parole once people have become eligible.

The "get tough" approach to crime that

started in the 1970s, Levine said, "may have been as much a reaction to the social upheaval of the 1960's and a means of controlling an increasingly frustrated 'underclass' as it was a rational response to crime.

"...the prison building movement is fueled by emotion. And the dominant emotion is fear – all sorts of fear. The public's fear of crime, the fear of politicians that they won't be re-elected if they look too soft, the fear of parole board members that they will be held accountable for a parolee's high profile crime, the fear of communities that a job-creating prison might be closed. This sort of emotion is extremely hard to combat with rational arguments, no matter how good the evidence in support of those arguments is or how compelling the examples are of injustices caused by get tough policies.

Levine said, "The collateral consequences of our enormous prison growth

are numerous and uniformly negative. Most obvious to the average tax paying citizen is the cost. The corrections budget keeps growing at the direct expense of other state services.

"Other consequences may be less visible, but are nonetheless ominous. Our criminal justice system has become the treatment provider of last resort. Because the money didn't follow the patients into the community when mental hospitals were closed, many mentally ill people have become 'trans-institutionalized,' moving from hospitals into



Barbara Levine

prisons in order to get any sort of care. Similarly, people without insurance cannot get substance abuse treatment unless they commit a crime because most community-based treatment beds are paid for through the criminal justice system and reserved for probationers and parolees.

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

Because of the dramatic rates of imprisonment for young black men, many urban neighborhoods now have a highly skewed ratio of women to men, throwing normal social relationships into chaos. Poor neighborhoods are further impoverished not only by the absence of so many men but by the inability of former prisoners to find jobs when they return home,” Levine said.

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

while their families struggle in their absence,” she said.

Levine said the good news is that “the futility and costliness of the get tough movement is finally becoming apparent to the general public. The



From left: David Moore, Doug Tjapkes, Penny Ryder, Kay Perry and Miriam Aukerman. (Photos by Kelly Loucks Wilson)

war on drugs is being seen for the failure it is and addiction is being increasingly viewed as a medical problem. Under the extraordinarily effective leadership of Laura Sager, from Families Against Mandatory Minimums (FAMM), Michigan has substantially reformed its drug laws and granted early parole

(Continued on page 15 -- See Levine)

“. . . thousands of people in low security facilities, many of whom are eligible for parole, spend their days playing cards or basketball or watching TV while their families struggle in their absence.”

Best risks aren't being released

New CAPPS research examines recidivism

CAPPS is in the process of completing a major research project on recidivism in Michigan. Preliminary findings show that the number of people returned to prison with new sentences is much lower than generally thought.

Based on 60,000 people released for the first time between 1986 and 1999, the research examines the extent to which people returned within four years of being paroled or discharged. Because the analysis is broken down by offense type, it is possible to see how success rates and release rates differ among offense groups, how the old and new boards differed in terms of how long they kept people past their earliest release dates, and what differences in success rates suggest about alternative methods for reducing the prisoner population.

Return rates for homicide and sex offenders, the very people the parole board is least likely to release, are extremely low. Of nearly 2,400 homicide offenders who were paroled during the 14-year period, only 3.2% were returned to prison within four years with a new sentence. Only 6/10ths of one percent came back for a new homicide. Among more than 6,200 sex offenders, only 4.1% came back with a new conviction of any kind; only 2.6% were returned for conviction of a new sex offense. Thus the parole board keeps thousands of people locked up for years longer than their sentencing judges intended with practically no gain to public safety.

These findings correlate with the fact that homicide and sex offenders frequently score as "low risk" on the MDOC's own parole guidelines.

The data also show that increased length of stay does not reduce recidivism and may actually increase it. The Michigan evidence confirms numerous academic studies that found that serving more time in prison does not improve success upon release. On the contrary, in every offense group, serving less time tends to be associated with success, or at least with not re-offending..

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

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

The report should be published by February, in time for consideration during next year's budget hearings.

**Serving more time
in prison does not
improve success
upon release.**

Levine: Failure of 'get tough' approach propels change

(Continued from page 13)

eligibility to people sentenced under the old laws. Drug courts have become commonly available as alternatives to incarceration. A new coalition, Partners in Crisis, is focusing on alternatives to incarceration for the mentally ill and on better treatment for those who do go to prison. The Michigan Prisoner Reentry Initiative, MPRI, has raised public consciousness about how returning prisoners are members of the community who have families and need homes and jobs just like the rest of us."

A driving force behind the conference was David Moore, the founder of Restore Hope, a non-profit organization established to prepare inmates for parole and support them after their release. An ordained minister in the United Church of Christ, Moore served 14 years in prison before being medically paroled due to terminal cancer. In addition

" . . .the prison building movement is fueled by emotion. And the dominant emotion is fear."

to Moore, program participants included Kay Perry of Michigan CURE, Penny Ryder of the American Friends Service Committee's Criminal Justice Program, Miriam Aukerman of the Reentry Law Project at Legal Aid of Western Michigan and Doug Tjapkes of Humanity for Prisoners.

Prisoner benefit funds are generous donors

CAPPS needs support to continue effort

Its grants from foundations have run out and CAPPS's funding is running down. With much work left to do, help from supporters is needed.

Although it is functioning on an austerity budget, CAPPS continues to engage in public education through its website, newsletter, speaking appearances and meetings with various stakeholders. Most importantly, it is completing work on a major research project. (See the story on page 14.)

Completing, printing and distributing a substantial report is expensive, as is maintaining an office, even with minimal staff, and publishing a newsletter. In order to ensure that CAPPS's expertise is heard during the growing debate over how best to reduce corrections spending, we are reaching out to everyone who wants to see Michigan's incarceration rate decline. Donations of \$250 or more will be designated for the recidivism research and acknowledged in the report.

In addition to generous contributions from individual supporters, we have been fortunate to receive donations from the Prisoner Benefit Funds

(PBFs) at ten MDOC facilities. Despite their obvious stake in the issue, prisoners have few ways available to them to affect public policy. As reported in the Spring 2008 issue of *Consensus*, contributions were made by PBFs at Southern Michigan Prison, Mound, Muskegon, Chippewa and Saginaw. Since then, we have received donations from the PBFs at Kinross (\$2,000), Hiawatha (\$100), Pine River (\$500) and Lakeland (\$500). In addition, the National Lifer Association chapters at Mound, the Reformatory, the Thumb facility and Lakeland collected donations from their individual members. Altogether, CAPPS supporters in prison have donated nearly \$6,800 in response to our special appeal.

As we try to develop other resources, we are grateful for the opportunity we were given to address excessive corrections spending for the last eight years. We look forward to continuing the work for as long as possible.

CAPPS
CITIZENS ALLIANCE ON
PRISONS & PUBLIC SPENDING

403 SEYMOUR STREET,
SUITE 200, 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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My tax deductible contribution, payable to "CAPPS," is enclosed.

My membership category is:

- Prisoner — \$10 Student — \$10 Friend (individual/family) — \$25
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