

*Addressing the social and economic costs of prison expansion*

January, 2004

## Paroling 3,000 could restore state services

## \$60 million that didn't get saved

As CAPPS research demonstrates, releasing 3,000 prisoners who have served their minimum sentences and been granted parole already would save the State of Michigan roughly \$60 million. Of these prisoners, 900 would be people granted "fixed date" paroles who are

simply waiting to reach the release date the parole board has set. The other 2,100 would be people who were paroled previously and who have served a year or more for technical violations of parole conditions. (See examples, pages 7-8) Supervising these low risk offenders in the community instead of warehousing them in expensive prisons would free up dollars desperately needed for other state and local government services.

Sixty million dollars is only 3.5% of the total MDOC budget, and 3,000 prisoners would just be a 6% reduction in the total prisoner population. Yet this modest shift in spending has not occurred. In fact, although nearly equal to the controversial \$77 million saved by pausing the income tax rollback, the possibility of saving this additional \$60 has not even been on the table. Instead, faced with massive deficits over the last two years, Michigan has largely spared corrections while other programs, including many that impact crime prevention, have been dealt massive blows by the state budget axe.

Revenue shortfalls have essentially caused three rounds of budget cuts in the last year. As soon as she took office, Governor Granholm was forced to issue an Executive Order that reduced spending for Fiscal Year 2003. Appropriations bills for FY 2004 reflected further cuts, but even these were inadequate as revenue projections got worse and worse. Another Executive Order was needed to further reduce spending in FY 2004. The Legislature will make still more adjustments in supplemental budget bills. Ultimately the

The high cost of denying parole:  
an analysis of prisoners  
eligible for release



**CAPPS**  
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### CAPPS analysis sparks debate on wasteful parole practices

*The CAPPS analysis of more than 17,000 parole-eligible prisoners has focused media attention on Michigan's costly parole practices. The Detroit News has done two front-page stories and editorials in several papers have called for re-examining current policies. See the story on media reaction on page 3.*

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# \$60 million that didn't get saved

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budget will have been slashed by \$1.2 billion since January 2003.

The MDOC has come through this process relatively well. Facility operating budgets have been shaved, non-custodial staff vacancies will be left unfilled, and funds for specific programs have been reduced. Some of the program cuts are troublesome, including the elimination of academic programs at Level V facilities, an additional \$2 million cut in other prisoner educational programs, a \$2.2 million reduction in the line for court-approved psychiatric plans, and over \$1.4 million in health care. One reduction is particularly ironic. The MDOC will lose \$198,000 in general fund support to be made up by increasing the charges to local governments that use prisoners in public works projects – the same local governments that will experience a 5% reduction in revenue sharing funds.

As a result of the most recent Executive Order, the MDOC's revised FY 2004 general fund budget of \$1,613,272,300 reflects a reduction of nearly \$19 million, or 1.2% of the original '04 appropriation. Nonetheless, compared to FY 2002, the MDOC's general fund allocation has actually increased by 1.8%. This is a far different reality than other state budgets present. For instance, over the same two-year period, general fund spending for the Family Independence Agency has been cut \$88.6 million, or 7.4%. General fund spending

for the State Police has been cut over \$62 million, or 20.9%. Colleges and universities have been hit especially hard. The average decrease in appropriations was 15% over just the past 12 months, with \$72 million cut in the last Executive Order alone. And, of course, a \$177.9 million deficit in the School Aid Fund will reduce per pupil expenditures in every state school district.

A summary of executive agency budget reductions under the most recent Executive Order was prepared by the Department of Management and Budget. The Department of Corrections segment begins by stating: "Note: No reduction will result in early release of prisoners." This is true, but beside the point. No one is suggesting that any prisoners be released early. The real question is: what could be done if \$60 million were not spent housing 3,000 low risk prisoners who have finished their minimum terms and

*The real question is: what could be done if \$60 million were not spent housing 3,000 low risk prisoners who have finished their minimum terms and already been approved once for parole?*

already been approved once for parole?

The possibilities are infinite. **Here is one example of cuts that could be restored if just 992 of these prisoners were released to community supervision, at a savings of \$20,461 each.**

Department	Service	Costs
Agriculture	8 positions	\$ 545,000
Career Development	Employment & training services for Work First (welfare recipients)	5,000,000
Community Health	Mental health/substance abuse administration	429,500
Family Independence Agency	Juvenile justice operations Field staff salaries Child support operations	3,278,000 2,142,100 328,700 6,000,000
Consumer & Industry Services	6 positions in adult foster care & day care licensing	354,400
Natural Resources	7 positions	527,000
State Police	16 positions	1,692,000
<b>Total</b>		<b>\$20,296,700</b>

The budget cycle starts all over again in February. Still more huge deficits are projected for 2005. Will that be the year we get our priorities straight?

## CAPPS analysis of parolable prisoners sparks debate on wasteful practices

Since CAPPS first talked about its analysis of the state's 17,129 parole-eligible prisoners in the October issue of *Consensus*, the news media have focused attention on the waste of both human resources and taxpayer dollars that current parole practices cause. CAPPS' explanation in "*The high cost of denying parole: an analysis of prisoners eligible for release*" of how paroling thousands of low risk prisoners who have served their minimum terms could save hundreds of millions of dollars has gained widespread news coverage and editorial support.

Even before the full report was released on Nov. 12, 2003, the Detroit News published a page-one story on Sunday, November 9th based on the preliminary figures in the *Consensus* article. Under a headline that said: "**Michigan could free inmates to save cash,**" reporter Gary Heinlein compared past and present parole practices and parole rates, looked at what is happening nationally in the area of parole reform, talked to policy makers on both sides of the issue, and cited case histories of prisoners eligible for parole who remain locked up. Heinlein concluded that the potential savings of paroling some of these prisoners "are compelling." The Associated Press picked up the Heinlein story and many outlets carried versions.

The preliminary figures also brought early editorial support for examining parole policies as budget-cutting priorities are set. An Oct. 17th Lansing State Journal editorial urged lawmakers to review the state's prison population to see if the system is holding more people than necessary. It said such policies as rejecting parole for prisoners based solely upon their original crimes "are costly, costs Michigan might not be willing to bear,

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## What the data show

With a generous grant from the JEHT Foundation, CAPPs was able to purchase the MDOC prisoner database under the Freedom of Information Act and analyze information about all the prisoners who, as of May 6, 2003, had served the time required by law for their offenses and become eligible for parole. These 17,129 people constitute nearly 35 percent of the total prisoner population. Their continuing incarceration costs approximately \$497 million a year.

To determine how many of these prisoners might be released without significant risk to the public, CAPPs examined their offenses, prior records, institutional conduct and parole guidelines scores. It looked at their age, race, gender, security classification and when they had become eligible for release. Based on the following findings, it concluded that 7,220 parole eligible prisoners could be safely paroled at an annual savings of over \$145 million.

- Nearly 1,000 prisoners had been granted parole but their release dates had been fixed at some point months into the future. On the average, "fixed date" paroles added four additional months to these prisoners' incarceration at a cost of \$7 million. The prisoners given fixed-date paroles cannot be readily distinguished from those who are released as soon as parole is granted.
- More than 3,600 prisoners are technical parole violators who were returned to prison for violating the

## Study launches interest in reforming parole practices

*(Continued from page 3)*

especially if it means less money for the health and education of the law-abiding among us."

In a Nov. 11th editorial the Detroit News asked: "Do all of the prisoners (Michigan) is now housing at a cost of \$29,000 each need to be behind bars? That question is vital as the state confronts a \$900 million budget gap and critical services face dramatic cuts." It concluded by saying that ". . . there are opportunities for . . . immediate savings if the state is willing to release prisoners in a careful and judicious way."

After the CAPPs report was released, more editorials called for reviewing the large number of inmates who remain in prison longer than either the law or public safety require. On Nov. 15th, the Detroit Free Press said, "The Department of Corrections should start by expediting the release of inmates already granted parole, some of whom remain in prison for months. It should also reduce the time that parolees committing technical violations, not new crimes, are sent back to work."

"Even more important," said the editorial, "the Legislature must make sure the Parole Board understands that, in general, inmates who have served their sentences, maintained good conduct records and completed recommended programs should be released."

The Free Press concluded: "the state's goal should be to release every inmate who has constructively served his or her sentence and no longer poses a risk to society. The CAPPs report suggests Michigan has a long way to go."

"The parole board needs to loosen up," said a Nov. 16th editorial in the Jackson Citizen Patriot. "Its decisions should be discretionary, based on the facts of the cases under consideration. There should not be an arbitrary policy of no paroles, no matter what. Taxpayers cannot afford so stingy a parole board."

The editorial noted that it took CAPPs' efforts to bring the issue to the attention of the public and government officials.

Peter Luke of Booth Newspapers wrote a Nov. 16th column that assessed the case of 56-year old lifer Gladys Wilson, which was used as an example in the CAPPs report. Wilson, who has been in prison since 1978 for aiding and abetting an armed robbery in which her husband killed a store employee, was

recently given another five-year continuance by the parole board.

Luke said parolable lifers like Wilson fall into a category of inmates whose threat to society doesn't justify the annual cost of keeping them behind bars. "Unless, that is, the purpose is punishment, not public safety," he said.

On Dec. 30th, the Detroit News ran another front-page story, this time under the headline:

**"Michigan pays millions for parole delays."** Citing CAPPS' "first-of-its-kind analysis," reporter Norman Sinclair described the changes in parole policies that have occurred since the board was revamped in 1992 and demonstrated their impact with figures from the CAPPS report.

Sinclair quoted criticisms of board practices by attorneys and judges, as well as CAPPS director Barbara Levine, and responses by MDOC spokesperson Russ Marlan. Notably, Marlan said the Granholm administration has ordered an end to the practice of fixed-date paroles as part of a new approach to releasing prisoners.

Sinclair illustrated wasteful parole practices with profiles of several prisoners being held years longer than public safety requires. He gave particular attention to the plight of parolable lifers caught in the parole board's reinterpretation of the "lifer law."

The Sinclair story resulted in a second Detroit News editorial on Jan. 4, 2004. While suggesting that some tightening of parole practices was justified, the News said: "But it's fair to ask if the pendulum hasn't swung too far in the other direction." It concluded that "millions could be saved by the judicious release of more prisoners who pose less of a risk."

The Sinclair story was also picked up elsewhere. The Lansing State Journal prominently featured a condensed version under the headline: **"Parole board takes hit in report."** It followed up with a Jan. 1, 2004, editorial calling for "sustainable corrections policies" that do not spend one general fund dollar in every five on prisons. The State Journal concluded that "something has got to give" and reconsidering parole board practices is "a good place to start."

These articles and editorials, as well as the CAPPS research report, can be read in full at the CAPPS web site ([www.capps-mi.org](http://www.capps-mi.org)). CAPPS distributed the report to organizational members, the media, legislators and other policy makers. A limited number of copies are available for sale at \$6 each, including shipping and handling.

terms of supervision, not committing new crimes. The annual cost of incarcerating them is over \$81 million. Over half of this group were initially convicted of non-assaultive or drug offenses. Once parole is revoked, they serve an average of 24 more months.

- More than 11,000 prisoners have passed their earliest release date (ERD) and never been paroled. While the median number of years is two, nearly 4,300 are more than three years past their ERD. In about half of all these cases, it appears that parole denial may be justified by poor institutional conduct. The remaining 5,900 prisoners tend to be older, have fewer prior felony convictions than those who are granted parole, and have good institutional conduct. They are primarily serving for assaultive or sex offenses and are being denied release based on their crimes, even though the offense was the primary basis for setting the minimum term already served. Nearly 1,800 scored "high probability of release" on the parole board's own release guidelines.

- Over 860 prisoners are parolable lifers who became eligible for release after serving 10 years. Their median age now is 49 but most were relatively young when they committed their offenses. Nearly thirty percent were 20 or younger. They have served, on the average, 22 years. Most have good institutional records. About half were convicted of second-degree murder; the rest were convicted of such crimes as armed robbery, criminal sexual conduct or other assaultive offenses. Many were sentenced before sentencing guidelines took effect by judges who thought they would be released after serving 12 or 14 years.

# Faces behind the figures

## Are we safer because they're behind bars?

*To explain the large number of parole-eligible prisoners who are still locked up, the MDOC says, "it is keeping the growing population of criminals convicted of violent crimes and sex crimes away from the public." Undoubtedly there are offenders who could not be safely released. Denying them parole is appropriate. But do all 17,000 who, by law, could be paroled pose a significant threat to the public? Or is the population growing because some people are kept much longer than necessary? Consider the following examples.*

### Denied programs, denied parole

A common problem for prisoners is this Catch-22. They are required to complete a specific program, such as the assaultive offender program (AOP), sex offender therapy (SOT) or general education diploma (GED). Program resources inside prisons are overtaxed with long waiting lists and programs are not available at all facilities. Prisoners are often moved to meet MDOC bedspace needs rather than their own treatment needs. When the prisoner is unable to complete the required program before his or her earliest release date, the parole board denies parole, often for longer than is needed to finish the program and even when completing a similar program in the community as a condition of parole would be a reasonable alternative.

#### Kenneth Swanchara, No. 375263

Swanchara was 43 years old, had a long employment history and no prior felony convictions when he was convicted of aggravated stalking and possession of a sawed-off shotgun. Upset when a girlfriend ended their relationship, he had threatened to harm her, her new boyfriend and himself. The shotgun was found in his home. He was sentenced to serve 1½ - 5 years in prison. He participated in a 4-month anger management course while still in the county jail.

Swanchara's earliest release date was Oct. 24, 2002. He was required to complete AOP and was placed in the 11-month program within two months of his sentencing. However, three weeks later he was transferred to an Upper Peninsula camp where AOP was not available. When he expressed concern about being able to complete AOP before seeing the parole board, he was told MDOC policy required him to stay in the UP for a year before being transferred again.

When Swanchara had his first parole interview he had excellent reports on his participation in a community public works program. He had no problems with staff or other prisoners. His parole guidelines score indicated "high probability of release." Nonetheless, the parole board continued his incarceration for 18 additional months because his "failure" to be involved in AOP demonstrated a "need to attain insight into his assualtive behavior" and made him a risk to the public.

Swanchara complained to the (now defunct) office of the Legislative Corrections Ombudsman. That office suggested to the parole board that its decision was "highly unreasonable", since Swanchara had actually been prevented from attending AOP by the MDOC itself. (The Ombudsman also asked if records were kept of people denied parole for not completing therapy or granted parole despite not completing therapy and was told they were not.)

The parole board vacated the decision it had made based on Swanchara's "failure". It interviewed him again, then continued him again for 18 months because, it said, he minimized his actions, thereby showing he does not adequately understand his behavior. His next consideration date is April 24, 2004.

Swanchara completed AOP in May 2003, over six months after his earliest release date but 11 months before he will be considered for parole again. He has asked the board to advance his reconsideration date without success. Consequently, the 1½ year sentence the judge imposed will become at least three.

### **Dan Ray O'Bryan, No. 429329**

O'Bryan, age 35, is serving concurrent sentences of 1-5 and 1-15 years for attempted home invasion and involuntary manslaughter. Married with two children, he has no prior record. A union bricklayer, his annual salary exceeded \$50,000 and the family lived comfortably.

O'Bryan's convictions arose from a confrontation with his sister's ex-boyfriend, who was harassing the sister. O'Bryan pushed his way into the victim's apartment, the two men tussled briefly, and the victim was lying on the floor when O'Bryan left. Unbeknownst to O'Bryan, the victim was asthmatic and died of asphyxiation.

Numerous letters of support characterize O'Bryan as hard-working, helpful and easy-going. The presentence investigator stated that he did not view O'Bryan as a danger to society. The investigating detective wrote a letter to the parole board saying that O'Bryan would not be a threat if released.

O'Bryan entered prison in October 2002 and his earliest release date was October 9, 2003. Because he committed an assaultive offense, he was required to complete AOP. Although he sent eight requests over a period of nearly five months, he could not get in to the program until April 2003, making his anticipated completion date April 2004.

When the parole board saw O'Bryan, he was incarcerated at a minimum security facility, had a gate pass to go outside the fence to work, and had a parole guidelines score indicating "high probability of release." Nonetheless, the parole board continued him for an additional 12 months because he had not completed AOP. It said he needed AOP to "better understand his aggressive tendencies" and that it would "provide the tools to control his temper and reduce his risk." The board declined to consider letting him complete a similar program in the community while on parole.

O'Bryan's next reconsideration date is October 2004. By then he will be a full year past his earliest release date and more than five months past his AOP completion date. In the meantime, his family is receiving food stamps, his daughter gets free lunches at school, and his wife and daughter, both of whom have a serious medical condition, are on Medicaid. Because his parents help with the mortgage, the family has not lost their house.

## **Non-criminal parole violations bring years more in prison**

When parolees fail to comply with conditions of their supervision, the parole board can return them to prison for any amount of time up to the maximum sentence. These technical parole violators can also be left in the community and subjected to various other sanctions, such as increased reporting, referral to treatment, electronic monitoring, or placement in a technical rule violator center for several months. While the MDOC is currently moving towards more use of community-based sanctions for technical parole violators, as these examples show, those that do get returned to prison spend an average of two additional years there and sometimes more.

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# Faces behind the figures

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## Timothy Selepak, No. 253379

After experiencing a series of personal setbacks in 1995, Selepak, who had no prior record, was convicted of two felonies. One was arson, for setting fire to a house belonging to his mother's boyfriend. The other was bank robbery for obtaining money by handing a note demanding cash to a bank manager. Sentenced to two concurrent 3-20 year terms, Selepak was released after serving over four years and placed on parole for 36 months.

Twenty-seven months into his parole, Selepak, who was working, living with a girlfriend and reporting as required, accepted two calls from his former cellmate and sent money to someone he didn't know at the cellmate's request. Although authorities thought the cellmate was involved in drug smuggling, there was no evidence that Selepak had any knowledge of such activities. On Oct. 18, 2002, Selepak's parole was revoked for associating with a known felon.

The administrative law examiner recommended that he be returned to prison for six months, but the board continued him for a year. When it reconsidered him in 2003, the board continued him for another year, despite his favorable parole guidelines score. It reasoned that his behavior while on parole failed to provide "reasonable assurance that the risk to public safety has been reduced." Selepak's next parole consideration date is September 2004.

## Delora Tutewiler, No. 209166

Tutewiler, now age 50, was convicted of first-degree criminal sexual conduct in 1990 for engaging in sexual activity with her 12-year old son and sentenced to serve 10-30 years in prison. She successfully completed sex offender therapy and, in June 2000, was placed on parole for 24 months.

Tutewiler went to live with her girlfriend and the friend's husband. She had become engaged to the friend's brother, who lives in Florida, but her parole officer would not agree to transfer her there, even when the couple got married.

Tutewiler's parole conditions included not living in a residence with a minor 16 years old or younger and not having verbal, written or physical contact with any such minor. In early July, the friend's 16-year stepdaughter moved in. Unsure what to do, Tutewiler resolved the situation by getting a live-in job caring for an elderly couple, beginning on September 1st. She maintained employment, attended counseling sessions, reported regularly, passed drug tests and paid her oversight fees. There were no allegations of inappropriate behavior with the stepdaughter. However, in March 2001, seven months after Tutewiler had moved from her friend's home, her parole officer discovered she had violated the terms of her parole concerning contact with minors and had her picked up.

The administrative law examiner who considered the parole violation charges noted that Tutewiler had done well on parole. He recommended that she be allowed to transfer to Florida and live with her new husband. However, on May 1, 2001, the parole board revoked her parole for a period of twelve months.

Even though she consistently scores "high probability of release" on the parole guidelines, Tutewiler was given two more 12 month continuances. The reasons stated were that she can't be managed in the community, that her unwillingness to comply with requirements

makes her a risk, and that she does not grasp the seriousness of her violation. In late December 2003, Tutewiler was finally given another 24-month parole, effective Jan. 15, 2004. She will have served nearly three full years as a technical violator.

## **Parole board discretion is absolute**

### **Court of Appeals holds that prisoners have no right to appeal parole denials**

Any doubt about whether prisoners can appeal parole board decisions has been eliminated by a Dec. 16, 2003, Michigan Court of Appeals opinion. In *Morales v Michigan Parole Board* and *Meyers v Department of Corrections*, the Court held that, except in the most extreme and unlikely circumstances, prisoners have no means available to seek judicial review of parole denials. The board's discretion to deny release is effectively absolute.

Prisoners, prosecutors and crime victims all used to have the right to appeal board decisions to circuit court. In 1999, the legislature amended the corrections code to eliminate prisoner appeals while continuing to permit those of prosecutors and victims. While the amendment was pending, legislators were assured that prisoners would not be without recourse because they would still be able to appeal under a different statute, the Revised Judicature Act (RJA). This point was made several times in the staff analysis of the bill, which summarizes the arguments for and against pending legislation.

After the amendment passed, the parole board argued that the RJA does not apply to parole decisions and that prisoners have no right to appeal parole denials under any statute. When prisoner Lawrence Meyers tried to appeal his denial, Ingham Circuit Judge Lawrence Glazer agreed with the board. However, when prisoner Rene Morales sought relief, Grand Traverse Circuit Judge Philip Rodgers, Jr. found that prisoners could appeal under the RJA, which set a stricter standard for review than the former corrections code provision. The Court of Appeals considered both cases together.

Morales had served about one and one-half years on his 1-20 year sentence and been paroled. After his parole was revoked in 1998 for missing counseling sessions, he was denied release for four and one-half years, despite his good institutional record. In addition, when scoring his parole guidelines the parole board gave Morales a minus one for kidnapping the victim even though the jury had acquitted him of that charge.

Judge Rodgers noted that if prisoners were denied any review of parole board determinations, "then arbitrary and capricious or unauthorized decisions will have no legal remedy." He found no legislative intent to grant the board total, unconstrained discretion. He stressed that legislators apparently believed that RJA review would be available when it amended the corrections code. He also held that the parole board had scored the parole guidelines incorrectly, since the board had no authority "to make new factual findings regarding the underlying crime where there is a settled trial court record."

The Court of Appeals did not discuss the facts of Mr. Morales' situation or the potential consequences of granting the parole board absolute power. It simply found that parole decisions do not fit the statutory criteria for appeals under the RJA. It rejected the

(Continued on page 18 -- see Court)

# Reforming parole: do the benefits out- weigh the risks?

**Q**

Wouldn't releasing prisoners to reduce the MDOC budget put saving money ahead of public safety?

**A**

The question assumes that all current prisoners would be a threat to the public if released. That is far from the truth. CAPPS does not advocate releasing any prisoner who has not served the minimum time required by law or who currently presents an actual risk to public safety. CAPPS does propose that we stop wasting money on locking up people who pose little or no risk.

**Q**

Doesn't the risk that a parolee will commit a terrible crime justify keeping parole grant rates low?

**A**

Policy choices should be driven by data, not by the emotions of a particularly brutal offense. For instance, of the 55,186 prisoners paroled in Michigan from 1990-96, 159 — three-tenths of one percent — were convicted of homicide while on parole. Viewed from another angle, of the 3,708 offenders who entered prison for homicide crimes during this period, 96 percent were not parolees.

No elected official or appointed parole board member wants to feel responsible for releasing a prisoner who then harms someone badly. But the fact is, the vast majority of parolees will never commit a violent crime, regardless of when they are released. Warehousing thousands of prisoners who do not present any apparent danger to the community creates a false sense of security at enormous human and fiscal cost.

**Q**

Since many prisoners who have served their minimum sentences committed sexual or assaultive offenses, what's wrong with the parole board keeping them locked up as long as possible?

**A**

The minimum sentence is based on the facts of the offense, the defendant's prior record, the public's values as expressed through legislatively adopted sentencing guidelines, the judge's

# Q & A

assessment of the specific offender and, frequently, the position of the prosecutor in plea negotiations. The minimum is society's determination of how lengthy a sentence is necessary to punish, incapacitate and, hopefully, rehabilitate the offender. The parole board's role is to determine whether someone who has completed the judicially imposed minimum can be safely released.

- When the board denies parole to someone whose behavior in prison, response to treatment or current psychological state indicates that he or she is a current threat to society, the board is doing its job of protecting the public.
- When the board decides to routinely deny parole to whole categories of offenders, or refuses to parole a particular prisoner because it thinks the minimum sentence imposed was too short, the board is substituting its judgment for the trial court's and undermining the roles of other criminal justice professionals.
- Research shows that as prisoners age, recidivism goes down, but incarceration costs associated with medical expenses increase. Refusing to parole eligible prisoners "on principle" costs millions of dollars without any appreciable impact on public safety.
- Research also shows that people serving for assaultive and sexual offenses have the lowest rates of recidivism. For instance, a recent Justice Department study of 9,691 male sex offenders released in 15 states (including Michigan) in 1994 showed that only 3.5 percent were convicted of another sex offense within three years.

Two other points are also important. First, broad labels like "assaultive" or "sex offender" cover a very wide range of behaviors. An armed robbery can be committed by pretending a finger in a pocket is a gun. Intercourse between a 15-year-old girl and her 19-year-old boyfriend is a sex offense.

# Q & A      Reforming parole: do the benefits outweigh the risks?

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Second, the fact that someone committed a violent act years ago, perhaps at a very young age, does not mean that he or she is a violent person today. We should not assume that the years served on the minimum sentence failed to have any effect.

**Q** Why shouldn't parole violators who don't comply with conditions of supervision be returned to prison to finish serving their sentences?

**A** It is tempting to justify returning technical parole violators to prison because they were given a chance and "they blew it." But this highly punitive response is very expensive and does not necessarily keep the public safer. Parolees must meet many conditions the rest of us would find onerous, such as curfews, reporting requirements, travel restrictions, prohibitions on who they associate with, and drug and alcohol testing. Following the rules can be especially difficult depending on the parolee's living arrangements and employment. While such parole conditions may be reasonable precautions, violations of them are not crimes that harm the public. And there are many community-based sanctions that are more effective and far less expensive, including treatment programs, electronic monitoring, group home placements and re-entry courts. So the real question is: how much do we want to spend punishing people for non-criminal behavior?

**Q** Aren't people serving life sentences "the worst of the worst," so the parole board is right not to release them?

**A** For most lifers who are now parole-eligible, the judge's choice of sentence in no way suggests that they are irredeemable and should never get out. On the contrary, judges knew these defendants would become eligible for parole after 10 years and often encouraged them to earn their release through education and good conduct. In the 1970s and '80s, many judges thought parolable life was a more lenient sentence than a 20-year minimum. Under today's sentencing guidelines, many current lifers would not get a life term -- proof they are not the worst of the worst by tough contemporary standards. And thousands of people with comparable prior records who committed similar crimes have been paroled. There is simply no basis for making assumptions about the parole suitability of these prisoners from the sheer fact that they were given life instead of a term of years.

**Q** Can simply changing the membership of the parole board change parole practices or is legislation needed?

**A** It is true that parole practices changed dramatically when the board's membership was switched from civil servants to political appointees. In theory, a different group of political appointees could make dramatic changes once again and re-

duce the prison population by thousands. But practically speaking, it is easier to increase the population than to decrease it. Prisons have been built and staffed based on current practices. The public has been led to believe that current parole denial rates are necessary for public safety. Even new board members who are inclined to be less punitive are likely to move slowly. Besides, even the best-intentioned, hardest working public servants should not be handed absolute power over other people's lives. Statutory changes to:

- clarify when parole should be granted,
- set limits on prison terms for technical violators,
- make the basis for parole decisions more visible, and
- hold board members accountable through judicial review

would improve the entire parole decision-making process, regardless of who the individual board members are and which governor appointed them.

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## CAPPS takes over lifer parole project

One group of parole-eligible prisoners is unique. Parolable lifers have more at stake than any other group because they can literally be required to spend their entire lives in prison. They are also the focus of controversy about whether the parole board is correctly interpreting the "lifer law" under which they were sentenced.

Several years ago, the Prisons and Corrections Section of the State Bar initiated its Lifer Parole Project. The goal was two-fold. One was to survey current and former circuit and Recorder's Court judges to determine what their understanding of life terms was when they imposed them in the '60s, '70s and '80s. The results of that survey, which were published in March 2002, strongly indicate that judges felt parole was a meaningful possibility and that most disagree with the current parole board policy that "life means life." That report, "*What Should 'Parolable Life' Mean? Judges Respond to the Controversy*," can be found on the CAPPS web site ([www.capps-mi.org](http://www.capps-mi.org)) under "Related Resources".

The second goal was to prepare a publication that would describe the history and current application of the lifer law but would primarily focus on sympathetic case histories — stories about real people that would break stereotypes and make the problem tangible for readers. The Section collected material from over 150 lifers who wanted to have their cases considered. The intent was to identify 18-20 "poster children" who would represent parolable lifers as a group.

Researching, drafting, printing and distributing such a publication is time-consuming and expensive. The Bar Section lacks the resources to complete the project. It has turned responsibility for the sample case publication over to CAPPS.

CAPPS has been focusing on parole-eligible prisoners generally, including parolable lifers, and using prisoner profiles as an advocacy tool. The hope is that, as a 501(c)(3) non-profit with a small regular staff, CAPPS will be able to find the resources to finish the task. CAPPS is in the process of raising funds specifically for this publication.

# MDOC Director addresses CAPPS members

## New approach to reentry will eventually reduce prison growth

"I tell folks that every dollar we spend on corrections is a dollar taken away from education, health care and other state services. On a purely economic basis, we should be working to control our prison growth."

These were among the remarks made by state Corrections Director Patricia Caruso at the Oct. 30, CAPPS annual meeting in Lansing.

Caruso said that the Michigan Department of Corrections (MDOC) is focusing on preparing prisoners for successful release as a way to reduce the state's use of prisons. "More than 40 percent of those paroled return to prison within four years. This is our failure and we have to own it," she said.

She spoke to about 75 CAPPS members after being introduced by CAPPS Board Member Robert Brown Jr., a former MDOC director.



Caruso said one of her missions as new MDOC director under Gov. Jennifer Granholm is to "get the word out that we need to look at handling transition from prison to the community differently. One of my goals is to speak to people outside the department and engage them in the difficult issues we deal with every day."

She said the MDOC has begun talking to advocacy groups such as CAPPS as part of the department's efforts to build support for a new approach to prisoner reentry.

"It's not business as usual when we reach out to other groups, particularly advocacy organizations. I'm optimistic that there is an answer there."

Telling the audience that the MDOC has the largest work force in state government and is the fifth largest correctional system in the United States, Caruso said the size of the department is "nothing to be proud of. It's a bad reflection on us."

She said prison crowding recently prompted some "bandage approaches," including moving up the release dates of prisoners with fixed-date paroles and mobilizing field staff

to work harder to find alternatives to prison for technical rule violators. Those actions came when bed space was reduced to 200 empty beds in November of 2002. "A year ago we came as close to running out of beds as I've ever seen," she said.

"We need permanent changes to deal with increasing prison population. We have to do a better job of working with people so that when they get out of prison they have the resources and abilities to stay out of prison," she said.

Caruso explained the Michigan Prisoner ReEntry Initiative, which is being funded with two grants — one from the National Institute of Corrections (NIC) and one from the National Governors Association.

Michigan will plan and implement reforms through a multi-agency partnership involving the MDOC, other state agencies, law enforcement, criminal justice departments from state universities, neighborhood organizations, faith-based groups, crime victims and members of the general public.



### At the head table

*At the head table, from left, former MDOC director and CAPPs board member Bob Brown Jr., MDOC Director Patricia Caruso and Barbara Levine, executive director of CAPPs.*

prisoner's needs, including mental health and substance abuse treatment, education and job skills will determine the types of programs needed. She said the process will involve a contract in which the prisoner promises to fulfill requirements and the system promises to provide the services.

The reentry initiative will involve other agencies including the Family Independence Agency and the departments of Community Health and Consumer and Industry Services "to address the causes of parole failure. "We need to get a commitment from a variety of agencies and organizations to put this transition program together," she said.

CAPPs Executive Director Barbara Levine was one of about 150 stakeholders selected to be on an advisory council which met to hear about the project in October.

Caruso said the changes will reduce the size of the state's prison system by cutting recidivism.

"Things will not change overnight, but in the long run, I think we'll win."

Answering questions put to her by CAPPs members, Caruso said:

- There are efforts being made in the area of parenting programming and the MDOC is cooperating with groups that work with children of prisoners.

- College classes were eliminated because state law precludes the MDOC from spending money on college classes for prisoners. In a time of scarce resources it's not

likely that the state will put any money into college education. Prisoners can, however, take classes through correspondence courses they pay for themselves.

The re-entry initiative is designed to reduce Michigan's recidivism rate thorough better intake assessments of prisoners, providing services sooner in the sentence, developing a nationally-validated risk assessment instrument and offering better support to offenders when they leave prison. It has been identified as a long-range solution to heavy use of state prisons.

"We want to begin working to help the offender from the very first day they come to prison, not just the six weeks before they leave," said Caruso.

A thorough assessment of a



*From left: Board Member Rev. Neil Davis, Consultant Joyce Brown, Treasurer Rev. Bob Henning, and President-elect Ron Bretz.*

*(Continued on page 16 -- see Corrections Director)*

# Corrections director explains reentry plan

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- The STEPP program, which advocates college programming for offenders leaving prison, "is consistent with our approach." She said the department is running a pilot vocational education program with Macomb Correctional Facility and Camp Brighton for a small number of prisoners.

- There is a lag in providing school programming (until near the end of the sentence) because of the department's limited resources.

- It is difficult to accommodate requests from families to move prisoners closer to home because of the size of the prison population.

- There are only 166 people 50 and over in special care beds, including Lakeland Correctional Facility and Unit C near the Reception and Guidance Center. A total of 90 percent are serving for sex offenses or murder. The parole board has made a conscious decision not to parole them regardless of whether they remain a threat or not.



Board member Penny Ryder chats with Jane Pogsan prior to the dinner.

- Most elderly prisoners are in general population but there is a short waiting list for special care beds.

- Michigan has not been as active as some other states in the area of restorative justice, but the MDOC has some programs that provide direct or indirect services to the community and crime victims. These include building houses and growing plants for Habitat for Humanity and cognitive restructuring therapy.

Other actions taken at the annual meeting included re-election of those members of the Board of Directors whose terms had expired and of the officers.

Dr. Joyce Brown, an organizational consultant retained by CAPPS through a JEHT Foundation grant, briefly explained how she plans to help CAPPS develop a strategic plan which will position the organization as the definitive voice for policy change in crime prevention, rehabilitation and prison spending.

Brown, principal of Organizational Development Solutions LLC, was regional director for the Kellogg Youth Initiative Partnerships for the W.K. Kellogg Foundation and was president and CEO of the Southwestern Michigan Urban League. She has extensive experience in team



President Bob Grosvenor opening the meeting

building, staff development, fund raising, budget development and monitoring, and evaluation and reporting.

## On the national scene:

### FAMM report describes widespread reforms aimed at reducing state prison populations

State budget shortfalls and the high cost of running large prison systems have prompted states throughout the nation to rethink their policies on incarceration. Many states are revising sentencing laws and prison release and return practices in order to reduce their prison populations.

A November, 2003, report entitled "*Positive Trends in State-Level Sentencing and Corrections Policy*" prepared for Families Against Mandatory Minimums (FAMM) by Judith Greene includes a survey of states taking such steps as:

- ✓ Eliminating mandatory minimum sentencing laws
- ✓ Revising sentencing laws and guidelines to return discretion to judges
- ✓ Rolling back harsh truth-in-sentencing laws and habitual offender statutes
- ✓ Diverting non-violent drug offenders to treatment instead of incarceration
- ✓ Increasing the "earned-time" credits available as positive incentives
- ✓ Revising parole standards for better-informed release decisions
- ✓ Responding more effectively to minor technical violations of probation and parole.

*"Tough-on-crime measures voted in the final quarter of the 20th Century are now haunting state officials as they struggle to reduce state budgets to fit within falling revenue streams."*

-- Judith Greene, FAMM research associate

Greene said: "Tough-on-crime measures voted in the final quarter of the 20th Century are now haunting state officials as they struggle to reduce state budgets to fit within falling revenue streams... With the state budget crisis reaching epidemic proportions this year, the movement toward smarter, less costly sentencing and correctional policies and practices is gaining momentum."

Sixteen states have eased prison population pressures with mechanisms to shorten time served in prison, increase the release rate and handle those who violate release conditions without returning them to prison. For instance:

- Parole reforms in Texas have increased the parole board's approval rate for non-violent offenders. Parole revocations have fallen sharply and the prison population dropped by nearly 8,000 from September 2000 to December 2001.
- In Ohio, structured reforms at the front and back ends worked to stabilize the correctional system and reduce the prison population by 4,000. These included new sentencing guidelines, a switch to flat sentences and the abolition of parole, and revised parole guidelines for "old law" prisoners. Ohio judges retain the power to release prisoners they have sentenced, typically within 18-24 months. They granted nearly 1,700 releases in 2002.

*(Continued on page 18 -- see FAMM report)*

# FAMM report describes widespread reforms

(Continued from page 17)

- Washington legislators enacted an increase in early-release eligibility for non-violent, non-sex offenders, increasing time credits off their sentences from one-third to one-half. The early releases will affect about 550 prisoners and save about \$40 million in two years.
- Colorado legislators provided a community-corrections alternative to returning parolees to prison for technical violations. They also eliminated “post-parole community supervision” — a mechanism that tacked an extra one-year period of supervision on revoked parolees after they served their mandatory parole period in prison. The reforms are projected to save \$27 million by 2008.
- Kentucky policy makers adopted new risk-assessment guidelines to increase the chances of parole-eligible prisoners being granted release and approved a measure that allows non-violent prisoners to work off a portion of their sentences in community service projects. The state has also passed legislation that allows parolees to have their sentences reduced for the time they spend on parole without absconding or being violated.
- Connecticut committed \$7.5 million over two years to provide drug treatment, remedial education and job training to parolees in low-income neighborhoods in order to reduce recidivism and technical parole violator returns. Research indicates that eliminating just 25 percent of parolees’ technical violations would save upwards of \$9 million a year.

Michigan has already begun making changes at both the front and back doors of the criminal justice system, eliminating mandatory drug sentences in 2002 and reducing the number of technical parole violators returned in 2003.

## Court: prisoners have no right to appeal parole denials

(Continued from page 9)

legislative analysis as a basis for inferring the Legislature’s actual intent. It also held that the board can use the presentence report differently than the trial court and so can calculate the parole guidelines in a way that contradicts the sentencing guidelines calculation.

The decision in *Morales* and *Meyers* means that prisoners have no recourse, no matter how arbitrary or unreasonable parole denial may be. It also means that statutes requiring the board to make its decisions in accordance with parole guidelines are unenforceable. A judge must have “substantial and compelling reasons” to depart from sentencing guidelines ranges when imposing a term of imprisonment. The validity of those reasons can be appealed to a higher court. Similarly, the parole board must have “substantial and compelling reasons” to depart from parole guidelines that place a prisoner in the “high probability of release” range. However, the board’s reasons can be unfair, inaccurate or complete gibberish and they can never be appealed. The statutory scheme meant to control the exercise of parole board discretion has been officially rendered meaningless, leaving the parole board accountable to no one.

# Caruso selects new parole board members

MDOC Director Patricia L. Caruso has appointed three members to the Michigan Parole Board, the first changes in the board's composition under the Granholm administration. While the same racial and gender balance has been maintained (three white males, three black males, two black females, one Hispanic male, one white female), the new members will help diversify the board members' backgrounds.

A retired police chief has been replaced by an assistant deputy warden and there is now a representative of the faith-based community.

The new members, who assumed their seats in early December 2003, are:

- James E. Atterberry, a pastor and district superintendent of Brotherhood Church of God in Christ in Benton Harbor. He also is the Berrien County deputy chaplain and a county commissioner.
- James L. Quinlan, an assistant deputy warden and work camp supervisor at Camp Kitwen in the Upper Peninsula. He is a former parole and probation officer and has worked as a substance abuse counselor.
- Barbara S. Sampson, director of the Wayne County Department of Children and Family Services, who has also been a criminal justice instructor at Wayne State University and worked at one time as a corrections officer for the department.

Other members are:

- John S. Rubitschun, chairperson, a former parole/probation agent who served the board as an administrative law examiner and manager of the parole violation and parole release units.
- Miguel A. Berrios, a former MDOC area manager who was in charge of field supervision operations in eight west Michigan counties. He is a former police officer and federal probation officer.
- Charles E. Braddock, a former police officer and homicide detective with the Saginaw Police Department, who also served as president and CEO of First Ward Community Services.
- George R. Lellis, a former commander of the Michigan State Police posts in St. Ignace and Newberry.
- Margie McNutt, a former pretrial services investigator in Ingham County. She is the only board member remaining from the reorganization in 1992.
- Marianne E. Samper, litigation partner and former president of an East Lansing law firm, who also served as an independent hearing officer for the Michigan Department of Civil Rights.
- William A. Slaughter, a former Equal Employment Opportunity Officer for the Michigan State Police, who also worked for the MSP internal affairs and inspection section. He is a former deputy sheriff.

The new members replace those whose terms expired: Adrian Green, a former probation supervisor from Detroit; James Bartholomew, a former chief of police for the City of Whitehall; and Barbara Queen-Johnson, a social worker with expertise in foster care.



# CAPPS

CITIZENS ALLIANCE ON  
PRISONS & PUBLIC SPENDING

115 W. ALLEGAN STREET,  
SUITE 950, 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.*

## Be part of the solution -- Join CAPPS

### Citizens Alliance on Prisons and Public Spending Membership Form

CAPPS, 115 W. Allegan St., Suite 950, Lansing, MI 48933; Phone: (517) 482-7753;  
Fax: (517) 482-7754; E-Mail: [capps\\_mi@ameritech.net](mailto:capps_mi@ameritech.net); web site: [www.capps-mi.org](http://www.capps-mi.org)

My tax deductible contribution, payable to "CAPPS," is enclosed.

My membership category is:  Organizational — \$100  Sustaining — \$100  
 Individual or Family — \$25  Student — \$10  Prisoner — \$10

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_