

Senator Alan Cropsey questions CAPPS' credibility

CAPPS responds to claims that proposals rest on false assumptions

Sen. Alan Cropsey (R, Dewitt) attacked CAPPS in a series of six statements made on the Senate floor between June 13 and June 29, 2006, claiming that we manipulate facts and figures and tell only one side of the story. The influential chair of both the Senate Judiciary Committee and the Senate Appropriations Subcommittee on Corrections claimed that our "slick booklets" and "soft, warm prisoner biographies" rest on unspoken false assumptions.

The Senator was motivated, he said, by the fact he has "been bombarded with comments and news articles" to the effect that Michigan spends too much money on prisons and doesn't parole enough people. He said his office "is regularly contacted by other offices asking about [CAPPS'] prisoner profiles and the data [we] present to the media."

Lacking access to the Senate floor, CAPPS had no immediate way to refute these allegations. However, such a powerful effort to undermine our credibility cannot be left unanswered. Sen.

Cropsey's remarks fill six pages in the Senate Journal. Without attempting to address every detail, CAPPS responds here to the primary points.

June 13 – Parole data

In his first statement, Sen. Cropsey asserted that his colleagues had "all been visited by prisoner advocacy groups" alleging our parole rate is only about 50 percent, the rate has decreased since a new parole board was instituted in the early '90s, and that we are warehousing thousands of non-violent prisoners who could safely be released." It was clear that he was referring to CAPPS, although he did not mention us by name.

Sen. Cropsey began by saying that the assertion that the parole rate is about 50 percent results from a "misleading focus" on "the number of parole hearings." What is "far more important", he said, is the percentage of all prisoners who are paroled. Referring to a chart showing parole data from 1994-2005, Sen. Cropsey noted that about 25 percent of the total population is granted parole each year. That means, he said: "Every four years we turn over the entire prison population *except for those prisoners deemed too dangerous for public safety.*" (emphasis added) Although there are currently 11,650 people who have served their minimum sentences and never been paroled, Sen. Cropsey maintained this must be placed in the context of 130,000 people who were paroled in the 12-year period. This is a "true parole rate of over 90 percent of eligible prisoners," the Senator said.



Sen. Cropsey

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Cropsey questions CAPPSS' integrity

While it is unclear how this “true parole rate” was calculated, it is focusing on the entire prisoner population that is misleading. The proportion of the total population that is paroled each year is relevant to projecting how many empty beds will be available. It is irrelevant as a measure of parole board performance. The board can release only those people who have served enough time to be parole-eligible. A bar graph the MDOC provided to legislators in 2004, entitled “Factors that drive prison population change,” demonstrates the dramatic decline in grant rates from 68 percent in 1990, under the old parole board, to roughly 50 percent under the current board.

Cumulatively, the figures to say that granting 130,000 paroles in 12 years is like turning the whole population over every four years is also misleading. It ignores the fact that, with a grant rate of 50 percent, another 130,000 paroles were also denied. Moreover, it suggests that 130,000 *different* people were paroled, although the grants include many thousands of technical parole violators who were released, returned to prison and paroled again.

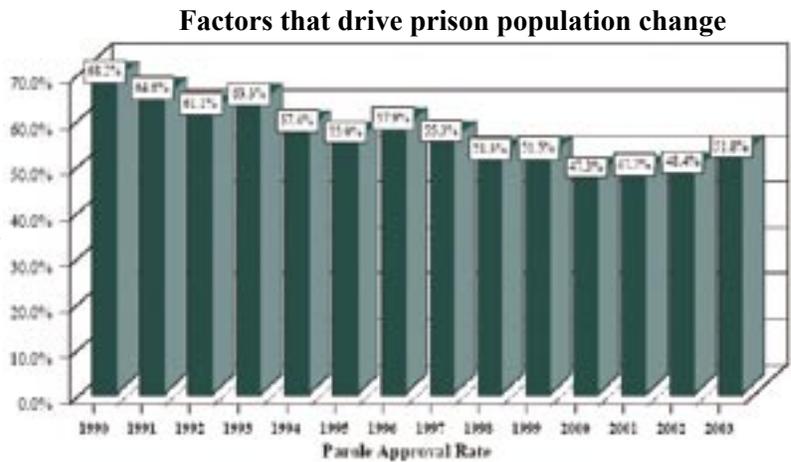
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What the parole data really show is that a quarter of the population – primarily those serving for property and drug offenses and for technical parole violations – keeps turning over while a third is currently eligible for parole but being denied release. In 1991, the last year the old parole board was in office, only 16.5 percent of the population were serving past their first release dates.

Sen. Cropsey’s central position is his assertion that we turn over the entire population “except for those too dangerous to release.” This statement assumes the board’s decisions not to parole are always correct.

The MDOC’s own data and CAPPSS’ case histories have demonstrated that, in fact, the board denies parole to many people who do not appear to be currently dangerous. While we agree that parole is “a very complicated issue that deserves more than ... out of context and downright dangerous platitudes,” Sen. Cropsey is seeking to preempt the policy debate that CAPPSS has initiated.



(Continued on page 4)

Cropsey remarks confirm CAPPS impact

Let me start with some good news: CAPPs is getting a lot of attention in the State Senate. More good news is that the attention is coming from the chair of the Senate Judiciary Committee, Senator Alan Cropsey. On six separate occasions, he has availed himself of his right to make remarks on the Senate floor to speak about parole and its impact on prison growth. If this column could end right here, I would be very happy.

But it can't.

The bad news is all of the attention has been negative. To my dismay, much of the attention was specifically directed towards CAPPs, including criticism of our research and goals. A thoughtful response to many of his particular criticisms precedes this column.

Senator Cropsey, an attorney, is intelligent and well-educated. He holds two positions of great importance to the legal community: Chair of the Senate Judiciary Committee and Chair of the Senate Appropriations Subcommittee on Judiciary and Corrections. I can appreciate that CAPPs and Senator Cropsey might have differences of opinion on public policy issues.

What puzzles me is the choice of venue. Certainly a highly-placed legislator may have access to information that CAPPs does not have. If a legislator has data that CAPPs does not or has reason to believe we have erroneous information, CAPPs welcomes the opportunity to share research in the interest of making our own as complete, as correct, and as up to date as possible. Usually in such instances, legislators seek informal means to reconcile differences or discrepancies.

Alternatively, Senator Cropsey chairs the very committees where parole and incarceration can be discussed. CAPPs has never shrunk from public dialogue on its research and proposals. As a public policy organization, CAPPs takes its role of researching and analyzing data very seriously and is open to frank discussion of both methodology and conclusions. But why in the world use the Senate floor *six times* to take on a non-profit organization with a staff of 2.5?

The answer apparently rests in the impact we are having. Senator Cropsey noted that CAPPs has "visited almost every senator". He is concerned because some senators are listening to what we have to say and raising questions of their own. And well they should. Our board, which includes such diverse and knowledgeable individuals as a former Department of Corrections director, academics, attorneys, service providers, religious and community leaders, and representatives of respected groups that advocate for children and families, is wholly convinced that money could be safely saved from corrections and applied to other human services.

Now—finally—we are back to good news. If we are making that much of an impact with our modest resources, that is good news indeed!



Ron Bretz

(Continued from page 2)

His use of the data only makes sense if one accepts his assumption that the board's decisions should never be questioned.

June 15 – The CAPPs report on foreign nationals

In his second statement, Sen. Cropsey addressed CAPPs' "publications and manipulation of their facts and figures" by using as an example CAPPs' April 2006 report, *Foreign Nationals in Michigan Prisons: an examination of the costs*.

Having attended a Judiciary Committee hearing where Sen. Cropsey asked the MDOC for a list of foreign nationals in Michigan prisons, CAPPs was aware that such a list existed. After repeated requests, CAPPs obtained a copy in Feb. 2006. It was a computer printout entitled: "Foreign Nationals". The list showed each prisoner's "country of citizenship," as well as his or her earliest release date and current parole status. After eliminating people who had in fact been released, CAPPs identified 731 foreign nationals who were still incarcerated. Of these, 138 were past their parole eligibility dates but had been denied release.

Sen. Cropsey's assertions about this report are confusing. He began by stating:

I have a list of foreign nationals, but it is a list of people born in foreign countries. What CAPPs failed to ask are some basic questions about citizenship, and they point out that at least 109 prisoners on the list are American citizens.

Unless he has a different list, what the Senator seems to be suggesting is that the list of foreign nationals provided by the MDOC actually includes people born in foreign countries who are naturalized citizens and therefore not subject to deportation.

The list CAPPs has is not entitled "Prisoners born in foreign countries." It does not on its face indicate that anyone listed is in fact a U.S. citizen; on the contrary, it identifies foreign countries under the heading "country of citizenship." The MDOC provided the list to senators in response to questions

about how many people in Michigan prisons could actually be deported. Thus, it is true, it did not occur to CAPPs to ask the MDOC if the list included U.S. citizens who cannot be deported. Since CAPPs did not point out that 109 people listed are American citizens, the word "they" apparently refers to someone else. No such qualifying statement was made when CAPPs was given the list.

Sen. Cropsey went on to discuss those for-

Sen. Cropsey is seeking to preempt the policy debate that CAPPs has initiated.

foreign nationals who cannot be deported as a practical matter. He quoted CAPPs as saying "44 are from countries where repatriation may not be possible," then said: "The truth is that at least 160, not 44, cannot be deported..." However, the quote the Senator purports to refute was lifted out of context. What CAPPs said was that 44 of the 138 people currently eligible for parole are from countries where repatriation may not be possible.

It also appears that Sen. Cropsey's remarks do not distinguish between people who have served their minimum sentences and are subject to parole and those who have not served their minimums but might be eligible for transfers to prisons in their home countries if appropriate treaties exist. He says, for instance, that prisoners from Lebanon and India cannot be deported. That is not accurate. They cannot be transferred before they are paroled because the U.S. has no transfer treaty with these countries, but they can and are deported once they have served their minimums.

Similarly, the reference to 12 months and much manpower spent getting just two German prisoners deported is misleading. These two had not finished their minimum terms and were transferred under the cumbersome treaty process. People who are paroled with immigration detainers or final deportation orders are simply transferred to the custody of U.S. immigration officials.

Finally, Sen. Cropsey criticizes CAPPs for failing to point out that 13 previously deported

prisoners had returned to Michigan “and victimized us by committing new crimes serious enough to land them in prison again.” This information was not contained in the MDOC’s list. In attempting to learn about these 13 people, CAPPs was advised by Sen. Cropsey’s office that the information was not obtained from the MDOC but resulted from his office’s inquiry to immigration authorities.

It is unclear under what circumstances these 13 individuals returned to Michigan and what new crimes they committed. To date we have been given the identity of only one, a Canadian who was serving a 2-5 year sentence imposed in 2001 for receiving stolen property. Since the MDOC’s Offender Tracking Information System (OTIS) does not reflect any subsequent conviction, it appears that this person was returned to prison as a technical parole violator. CAPPs has not yet learned the basis of the violation or whether this case is typical of the group but would welcome additional information.

June 20th – CAPPs’ failure to count unproven crimes

In his June 20th statement, Sen. Cropsey identified CAPPs’ first false assumption as being that prisoners have committed no crimes except the ones of which they were convicted. The Senator claimed that by ignoring “real-life criminality”, CAPPs presents a distorted view of the prisoners it profiles. He made several points to support this assertion.

First, Sen. Cropsey said that in preparing prisoner profiles, CAPPs downplays or ignores prior convictions that resulted in prison terms and rarely mentions misdemeanors or felony diversions. He concluded that “[s]ince about 80 percent of felons don’t go to prison,” focusing on prison terms “usually ignores a stunningly large number of crimes and convictions.”

Sen. Cropsey did not offer a single example of a CAPPs profile in which the person’s prior record was not accurately summarized. It is true that when talking about people serving long or life prison sentences for serious offenses, CAPPs does not place much weight on old misdemeanors or felony diversions that are not part of an escalating pattern of criminal conduct.

Sen. Cropsey did give one example of a case not involving a prior conviction that was described in the CAPPs report on foreign nationals. Hanna Nasr, a Canadian citizen originally from Lebanon, was convicted of trying to sell a kilo of heroin to an undercover officer along with four co-defendants.

Sen. Cropsey assumed, because of the quantity involved, that although it was Mr. Nasr’s first conviction, it could not have been his first offense. The Senator assumed that Mr. Nasr, then a 32 year old factory worker with no history of felony arrests, misdemeanors or juvenile adjudications, could not possibly have gotten caught the first time he did something greedy and stupid. He assumes that Mr. Nasr could not have been a relatively unsophisticated participant in a conspiracy orchestrated by more experienced drug dealers. The Senator does not indicate what CAPPs should have said, in the context of explaining Mr. Nasr’s immigration status, about prior offenses of which there is no evidence.

Sen. Cropsey correctly points out that CAPPs did not mention a letter from the Macomb County prosecutor objecting to Mr. Nasr’s parole. The prosecutor asserted that Mr. Nasr “was involved in a five-defendant heroin conspiracy that used the profits gleaned by drug sales to finance military operations in certain Middle East factions.” There was no mention of such a motive in the presentence report.

When CAPPs learned that the parole board had first shown, then withdrawn, interest in paroling Mr. Nasr, it attempted to discover the reason. It pursued the matter with the parole board, which did not offer any explanation or disclose the prosecutor’s letter. CAPPs contacted Mr. Nasr’s attorney, who did share the letter and his own conversation with the prosecutor. It appeared the prosecutor was repeating an assertion made by one of Mr. Nasr’s codefendants and that Mr. Nasr had been given no opportunity to respond. CAPPs then contacted Mr. Nasr’s closest relative who insisted that Mr. Nasr was apolitical and had only been seeking easy money for his own use. The issue CAPPs was addressing was the parole board’s decision not to release someone for whom a Final Order of Deportation to Canada had been issued. Since it was not clear how this unsubstantiated triple hearsay was

relevant to that decision, we chose not to repeat it.

Sen. Cropsey next relied on two research studies. One was a Justice Department study that concluded that less than 20 percent of all forcible rapes are reported. While this may be true, it is unclear how CAPPs could determine whether any of the unreported crimes could be attributed to prisoners it profiled.

Sen. Cropsey described the other research as follows: “Based on prisoner self-reporting, the RAND Corporation estimates that the average felon has committed over 100 crimes before being caught.” This statement is not accurate. The critical finding of the study was that most of the prisoners surveyed committed a small number of crimes; a small proportion committed more than 100 crimes a year. These skewed rates actually suggest that a low percentage of offenders accounts for a large share of offenses.

CAPPs maintains its credibility by using only documented facts in drafting prisoner profiles. It is inappropriate to assert that people have committed an unspecified number of unspecified crimes of which there is no evidence or even documented allegations. Our criminal justice system does not rely on unsubstantiated assumptions from arrest to sentencing, and CAPPs believes that parole decisions should not depend on them either.

board’s consideration of the offense, prior record or victim impact to the extent that these factors are relevant to assessing the person’s current risk to the community if released. However, these factors are all considered by the trial judge and the legislatively enacted sentencing guidelines. They are reflected in the minimum sentence the person must serve before becoming eligible for parole. When it decides not to release someone with an excellent post-sentencing record because of its view of the crime, the board effectively engages in resentencing, substituting a longer sentence for the one the judge imposed.

The minimum sentence is the amount of time determined to be appropriate punishment for the crime. The prisoner, unable to change his or her offense and prior record, can only attempt to earn release by serving that sentence and by positive post-sentencing conduct. However, the parole board often denies release to someone who has done everything possible to earn it because the board is looking only at the offense. In doing so,

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June 27 – Focus on post-sentencing factors

In his June 27th remarks, Sen. Cropsey asserted that by focusing on the prisoner CAPPs ignores the victim. The Senator correctly stated that in discussing parole decisions CAPPs focuses on post-sentencing factors, such as institutional conduct, program participation, current age, length of time served, security classification and parole guidelines score. He then stated, incorrectly, that CAPPs “specifically object[s] to looking at the underlying conviction or to the criminal’s prior criminal history.” The Senator stressed that public safety is the first priority and that the parole board is required by law to consider input from victims.

CAPPs does not “object” to the parole

the board takes on the roles of sentencing judges and legislators, negates the value of negotiated guilty pleas, trivializes the role of rehabilitation in corrections, and tells prisoners that their efforts mean nothing to those in power. It also wastes a lot of taxpayer money that could be better used for purposes other than continuing the incarceration of people who do not pose a current risk to public safety. It is to this inappropriate reliance on the offense and prior record that CAPPs objects.

June 28 – Saving money by reducing the prisoner population

In his June 28th remarks, Sen. Cropsey stated:

“The third apparent assumption: if we release more prisoners, we’ll save tens of millions of dollars. That is probably one of the most ludicrous of any assumption that is made.”

Noting a statement by CAPPs that releasing 600 more people would save roughly \$12 million, Sen. Cropsey concluded that by CAPPs’ math, having paroled 130,000 people over the last 12 years saved over \$21 billion.

The Senator’s point is that you don’t save money simply by releasing individual prisoners here and there. You have to close a prison, or at least a whole prison unit. As Sen. Cropsey acknowledged just moments later, CAPPs understands this. Many Michigan prisons have populations of about 1,000 people. Certainly when, in our 2003 report *The high cost of denying parole*, we recommended paroling 7,200 prisoners for a cost-savings of \$145 million, we were not suggesting that the people be released and seven prisons be operated empty.

Sen. Cropsey’s disdain for the proposition that releasing prisoners can save money rests on his view that the MDOC “essentially utilizes a warm bed practice. As soon as a bed is freed up by a parolee, there is a long line of felons waiting to take their place.” What he does not acknowledge is that if a bed is not freed up, one will have to be created. The people waiting do not go away.

Assuming that sentence lengths stay constant, the choices are quite straightforward. 1) Commit the same number of people to prison as you release and maintain the status quo. 2) Parole more people than you commit and reduce the need for beds, allowing you to close a prison and save money. 3) Continue committing people without paroling an adequate number and spend more money to open more prisons.

The “warm bed” image assumes that we have made the first choice. Yet the fact is, the prison population has grown by nearly 12,000 since the new parole board was appointed in 1992 and grant rates declined. The MDOC has projected a need for 4,500 more beds by 2010.

Perhaps Sen. Cropsey does not consider not having to spend money to be a savings. But by his own calculations, had 130,000 prisoners not been paroled, it would have cost the state 21 billion additional general fund dollars to create empty beds

for the people waiting in line. Placing more prisoners on parole could avoid the currently projected growth and the \$90 million annual cost to operate at least four more prisons. How ludicrous is that?

June 29 – Prisoner profiles

In his last statement, Sen. Cropsey focused on what he called the fourth assumption: assume that everything the prisoner says is true, unbiased and complete. Notably, on this occasion, he did not mention CAPPs by name. Although he had earlier said: “We spend a lot of time running down the so-called facts and the soft, warm prisoner biographies,” he apparently could not find one that exemplified the kinds of distortions and omissions in which he claims CAPPs engages. Instead, the Senator spent time describing a case publicized by another organization.

In preparing prisoner profiles, CAPPs does its homework. We always review the presentence report, institutional records and parole board documents. When facts are unexplained, we ask hard questions. We take no one’s statements at face value. While information may not be available to us even through a FOIA or may arise after a profile has been published, neither the news reporters who have relied on them nor the parole board has ever advised us that our case examples are inaccurate.

CAPPs agrees with Sen. Cropsey that “[e]very story has two sides” and that the discussion of parole policy should be balanced. Too often, however, the prisoner is viewed as not having a side at all. When the prisoner is not viewed as a whole person but merely as the embodiment of his or her offense, denying parole based solely on the offense becomes easy. Thorough, thoughtful consideration of who the person is now, perhaps many years later, and what risk he or she realistically presents to the community, can easily become a casualty of assumptions about categories of offenders.

CAPPs’ profiles are designed to broaden the reader’s understanding of the human and fiscal costs of parole board decisions. Contrary to Sen. Cropsey’s assertion, CAPPs does not want anyone to “choose the criminal over the victim.” It simply wants policymakers to consider spending priorities carefully and to choose reason over rhetoric.

New board members bring many specialties to CAPPS



Eugene J. Hamilton

Michigan University. In 1979 he was awarded a doctorate in higher education administration from Wayne State University.

A long-time expert in Michigan higher education and governmental affairs will join the CAPPS board of directors at its July meeting. He is Eugene J. Hamilton, special assistant to the president for government relations at Saginaw Valley State University.

A staff member at the university since it began operation in the late 1960s, Hamilton has served on numerous national, regional and state boards for various higher education issues. He has been working in the area of government affairs since 1990 when he was named to the State Relations Officers Committee of the Presidents Council-State Universities of Michigan. He served a six-year term on the Board of Directors for the Michigan Education Assistance Authority between 1994 and 2000.

Hamilton obtained his bachelor's degree from Western Michigan University. He earned master's and education specialist's degrees from Eastern



Kathleen M. Schaefer

Schaefer holds a master's degree in guidance and counseling and a bachelor's degree in social welfare, both from Eastern Michigan University.

A former manager with MDOC field services, Kathleen M. Schaefer, joined the CAPPS board in April 2006.

Schaefer is currently a professional probation and parole consultant who helps clients prepare for pre-sentence investigations and hearings and for parole board interviews and assists with commutation applications and other criminal justice matters.

When she retired from the MDOC in 2002, Schaefer was manager for the Macomb County Circuit Court Probation Department. Previously, she supervised units managing adult sex offenders, handling specialized supervision, running electronic monitoring and providing community and court services, all in Wayne County. She also worked as a probation and parole officer and a prison counselor. She has served as an auditor for the American Correctional Association and as president of the Michigan Corrections Association.



Jacque McDaniel

Pastor Jacque McDaniel, associate minister of Northwest Unity Baptist Church in Detroit, has been selected for the CAPPS board of directors to succeed Dr. Oscar King III.

McDaniel started an international ministries organization in Mississippi in 1998 and took it to Michigan in 2004. He is president of a group which tutors children in southeastern Michigan for the "No Child Left Behind" program. In Virginia he provides promotional and production expertise for annual worship events. McDaniel also is a public relations practitioner and a sales person for Mays Printing in Detroit. He is a guest minister on WDIV Channel 4 in Detroit.

McDaniel has also served other churches in Detroit, Mississippi and Norfolk, Va. and held the post of media relations director for the Virginia Beach Revival Center. He teaches Bible study at the University of Detroit Mercy and has a bachelor's degree in communications from Michigan State University.

What a CAPPS membership can buy

- \$10** Print 50 brochures containing the CAPPs message about investing in prevention rather than prison **OR** Assemble two information kits for legislators and the media that explain the policies driving prison expansion
- \$25** Meet with one legislator about how parole policies impact public safety and the state's budget **OR** Provide background information to a reporter doing a story on prisoners who could be safely released
- \$50** Present the CAPPs video on parolable lifers to a church or civic group **OR** Testify before a legislative committee on how proposed legislation will impact corrections spending
- \$75** Meet with a newspaper editorial board to discuss CAPPs' recommendations for parole reform
- \$100** Conduct a press conference to release a report on the impact of delayed prison treatment programs on corrections costs
- \$200** Address a statewide conference about how to safely shift scarce resources from the corrections budget to other state services
- \$500** Develop a persuasive profile of a prisoner who could safely be paroled
- \$1,000** Prepare and disseminate a "white paper" on a topic like the continued incarceration of foreign nationals in Michigan's prisons or what \$20,000,000 a year could buy other than a prison
- \$1,500** Print and distribute a 12-page issue of the CAPPs newsletter, *Consensus*
- \$7,500** Retain a reputable firm to conduct statewide public opinion polling on CAPPs' messages
- \$20,000** Conduct comprehensive research on issues such as the impact of parole denials on the state's crime rate or the types of prisoners being denied parole and publish a 50-page report

What follows are the original articles as written by Judy Putnam of Booth Newspapers Inc. Various versions of the pieces have appeared in the Saginaw News, the Muskegon Chronicle, the Flint Journal, the Kalamazoo Gazette and the Ann Arbor News. Pictures of prisoners, which were published with the story, have been deleted to conform with MDOC mail rules.

Rethinking life sentences

By Judy Putnam
Lansing Bureau

Booth
Newspapers Inc.

LANSING -- In 1977, a Saginaw judge sent 21-year-old Reynaldo Rodriguez to prison for life for the shooting death of a teen who had allegedly threatened to kill Rodriguez's younger brother, slapped his sister and shot bullets into his mother's house.

Despite the life sentence for second-degree murder, the judge told Rodriguez -- who was married, working and had no previous criminal record -- there was hope for freedom while he was still young.

"... I want the record to further show that if you're a model prisoner, that I would recommend your release on parole in 10 years. Do you understand?" Saginaw Circuit County Judge Gary McDonald told him.

But a good institutional record, family support and letters of commendation from prison officials -- 16 corrections officers signed a petition for his release in 1994 -- hasn't earned Rodriguez his freedom even three decades later.

Now 50, he spends his days at the Thumb Correctional Facility in Lapeer as a referee in the prison gym, writing letters to his family and researching his case.

Critics of Michigan's criminal justice system say Rodriguez's case illustrates an unjust glitch: Tougher parole policies since 1992 mean that parole for lifers, once commonly granted after a prisoner had served 10 or 20 years, is rare.

"They gave me a promise, and took it back," Rodriguez, who has had only three misconduct violations in nearly 30 years in prison, said in a phone interview last week. "You can't believe

what you're told by the court system anymore. You just have to carry on through here and show you've changed and you're rehabilitated."

A new analysis by the Lansing-based, citizens watchdog group Citizens Alliance on Prisons & Public Spending shows the likelihood of parole for lifers has dropped dramatically. The group examined records of lifers sent to prison between 1945 and 1979.

Of those eligible for parole in the 1970s, about 11.7 percent a year were paroled. Between 1999-2005, of 433 lifers from that era, paroles were given to less than a half-percent a year.

Michigan has 1,722 prisoners serving paroleable life, according to the Michigan Department of Corrections, and about 3,000 serving life with no chance of parole, mainly for first-degree murder.

Of the paroleable lifers, Rodriguez and more than 800 others have served enough time to be considered for parole, according to a CAPPS study.

CAPPS, whose members include prisoner advocates and former corrections officials, argues that housing aged offenders whom judges didn't intend to incarcerate for life is a waste of money.

"Hundreds of middle-aged, very low-risk people who have served decades for their crimes are being left to die in prison for no good reason," said Barbara Levine, executive director of the group. Levine is an attorney married to Martin Vargas, a 51-year-old inmate from Saginaw serving life, who was 17 when he and two others were convicted of raping a teen.



Judy Putnam

In the 1970s, 74 lifers were paroled, dropping to 52 in the 1980s and 32 in the 1990s, even as the population more than doubled over the past 25 years, according to state records.

Since 2000, 50 lifers were paroled. Of those, however, 33 are drug lifers, who became eligible after a legislative change in 1998.

Defenders of the system point out that paroleable lifers - generally in for second-degree murder, armed robbery or first-degree criminal sexual conduct -- are being paroled, but judiciously.

Parole Board Chair John Rubitschun, who answered questions in writing because of a pending federal lawsuit on the issue, said while public safety has always been considered, the parole board has become more wary.

"Assaultive and sex offenders have come under closer scrutiny by the parole board in an effort to better protect the public. Non-assaultive property and drug offenders, with few exceptions, have generally been paroled at a much higher rate," wrote Rubitschun, head of the 10-member board.

But he said the parole board does make a distinction between paroleable life, allowing parole in some cases, and non-paroleable life given to first-degree murderers. Only the governor can commute the sentence or pardon an offender serving non-paroleable life.

Parole is granted to lifers "only after the parole board has the reasonable assurance" that the offender will not pose a risk.

The board's "life means life" policy has been disputed by some of the very judges who handed down those life sentences. A 2002 State Bar of Michigan survey of Michigan judges found that two-thirds of the 95 judges responding said a life sentence didn't truly mean that.

Instead, some judges saw it as a way of motivating inmates to do well in prison and rehabilitate themselves. Long prison sentences, such as 20 to 30 years or 40 to 60 years, were used as harsher punishment.

"For the majority of my time, life did not mean life," said former Muskegon County Circuit Court Judge Ron Pannucci, who served from 1978 to 1996. "If they have gotten more

conservative and they're not letting people out, that's unfair. They're taking away the sentencing prerogative of the judge."

But Saginaw County Prosecutor Mike Thomas, speaking on behalf of the Prosecuting Attorneys Association of Michigan, said the parole board is doing what it should be doing -- letting only low-risk offenders out.

"The bottom line is that's what the parole board is there for -- they're there to determine who gets to stay and who gets to go," he said.

He agrees it was "not uncommon" for a lifer to be paroled at 10 to 15 years in the 1970s.

Critics also say a 1999 change in law that dramatically altered the parole interview schedule for lifers is not working.

Under the old law, lifers got an initial interview at seven years, then every other year. Now, there's an initial interview at 10 years, with subsequent reviews every five years. Those, however, can be done by simply looking at a file.

"I believe in basic fairness," said Bob Brown, the state corrections director from 1984 to 1991, under Gov. James Blanchard. "If they were seeing the folks and talking to them, I wouldn't have any problem (with few paroles.) Right now, they're just saying: 'You've got nothing coming. No interest.'"

Former Parole Board Chairman Gary Gabry, a former prosecutor who served on the board from 1992 to 1996 under GOP Gov. John Engler, agreed.

He said parole board members need to meet with inmates to truly understand if they are a risk.

"I think there's a lot of value in that interaction," he said.

Plus, he added: "It's a lot harder to look at somebody in the eye and tell them, 'You're not going home.'"

Bills introduced last year by Sen. Michael Switalski, D-Roseville, would require the board to conduct in-person interviews again and to score lifers on parole guidelines given to other inmates.

(Continued on the next page)

Booth Newspapers examines parolable life issue

Rodriguez made it closer to parole than many lifers, actually going to a public hearing in 1994.

The old parole board, made up of civil servants, expressed interest in paroling Rodriguez in 1992. But the public hearing took place after legislative changes created a more conservative parole board in 1993.

At the hearing, the new board focused on the raw violence of Rodriguez's murder of 18-year-old Robert Cuellar, who was chased down on a bicycle and shot seven times, the last delivered point blank to his head.

Rodriguez told the parole board that he initially only meant to beat up Cuellar, who had been causing problems for his family. He feared Cuellar would kill his younger brother. Cuellar happened to ride by a park where Rodriguez was with friends. The group got in a car to chase him and during the chase Rodriguez was handed a gun.

"I was fed up. I didn't know how to handle it. I took the law into my own hands. I know better now," Rodriguez said. "I just made a wrong choice. I hurt their family as well as mine. It was something I didn't know how to handle except through violence."

Saginaw County Prosecutor Mike Thomas said Rodriguez could have been convicted of first-degree murder, given the circumstances. He said life in prison is a just sentence.

"Robert Cuellar doesn't get a second chance," Thomas said. "He doesn't get to read a book. He doesn't get to write to his family."

Rodriguez was working as a machine repairman at Pitney Bowes at the time of his arrest. In prison, he held management jobs at the state prison industries, working 18 years as a mechanic and trainer in a sewing factory.

His file is filled with praise for his work ethic and calm demeanor from prison officials. McDonald, his sentencing judge, also wrote letters expressing surprise that Rodriguez had not been released.

Perhaps the biggest irony is that Rodriguez's attorney, James Brisbois, said in an affidavit seeking resentencing

that the judge offered Rodriguez a choice of life with the possibility of parole after 10 years or a term of 15 to 30 years.

Had Rodriguez taken the 15 to 30, he would have been released from prison -- without the parole board's approval -- 14 years ago because of time off for good behavior available then. Even with the poorest of prison records, his sentence would be finished in 2007. He's next up for parole in 2008.

Rodriguez said there are many well-behaving lifers in prison who serve as a stabilizing force in the institutions. But keeping them long after they could be paroled "serves no purpose other than penalizing somebody."

Prisoners say system has unfairly changed

Sunday, May 21, 2006

By Judy Putnam

Lansing Bureau

LANSING -- Robert Weisenauer said he was sick from heavy drinking during a party at a Flint biker club in December 1977.

Although he was at the party, he maintains he was not involved in the sexual assault of a young woman, who had been accosted in her car at a traffic light and forced to drive to the biker hangout.

Nonetheless, Weisenauer was convicted along with four others of first-degree criminal sexual conduct. The victim identified them as the men who came into a room and forced her to perform oral sex.

The ringleader of the attack, however, was never caught.

At Weisenauer's sentencing in 1979, Genesee County Circuit Court Judge Earl Borradaile gave him life, but said he would be more severe in punishing the man the victim said directed the assaults, should he ever be found.

Prisoner advocates say such statements by judges are evidence that the meaning of a life sentence has changed over the years, since Michigan has no death penalty and life in prison is the harshest punishment.

Critics say that the so-called “life means life” policy by the current parole board unfairly extends sentences.

“When I came in, most the guys sentenced to what I was sentenced to were serving 10 to 17 years,” Weisenauer said in a telephone interview from the Thumb Correctional Facility in Lapeer.

Weisenauer, 53, has spent 27 years behind bars. Sex offenders are the least likely inmates to be paroled, meaning he could spend the rest of his life in prison.

State law requires first-degree murderers to serve life with no parole. But prisoners serving life terms can be considered for parole after 10 years for crimes committed prior to 1992, and after 15 years for crimes committed in 1992 or later. Armed robbery, second-degree murder and criminal sexual conduct are the most common crimes punished by paroleable life.

Weisenauer is one of seven inmates named in a class action lawsuit filed in U.S. District Court in Detroit last year on behalf of paroleable lifers by University of Michigan law professor Paul Reingold and students in a law clinic class.

The lawsuit argues that changing parole rules equate to extending sentences after the fact, which is prohibited by the U.S. Constitution. Reingold filed a similar lawsuit on behalf of Edward Hill, 53, who was convicted of taking \$644 in an armed robbery in Ann Arbor in 1976.

Hill was offered a term of 40 to 60 years or life. He chose life, because of parole eligibility at 10 years instead of 16 on the 40-60 year sentence, when time off for good behavior was factored in.

The Michigan Court of Appeals last year, however, rejected arguments that Hill’s punishment was increased retroactively, and the Michigan Supreme Court declined to take the case. The state’s highest court also ruled in 2003 that circuit court judges could not retroactively change the sentence of inmates from life to a number of years.

Some judges argue that years ago, long prison sentences defined in years were considered harsher than life sentences.

Borradaile sent a letter in 2003 to the parole board on Weisenauer’s behalf, explaining it.

“When I sentenced Mr. Weisenauer, it was my belief that review would be had in ten years and if Mr. Weisenauer showed much progress, he would likely get parole,” the retired judge wrote.

Still, the parole board turned down parole later that year. He’ll be up for review again in 2008.

Weisenauer was on track to be paroled in 1992, when the board voted to send him to a public hearing and a prison psychologist recommended it. But that same year, a paroled sex offender, Leslie Allen Williams, was convicted of murdering four young women in Michigan and new state laws revamped the parole board to a politically appointed board that granted far fewer paroles.

In 1993, the new board expressed no interest in paroling Weisenauer, and the public hearing was never held.

Weisenauer says he is a changed man from his biker days. He attended substance abuse programs for years in the prison, trained as a welder He attends church and he has volunteered in the prison, spending two years as a mentor to young offenders entering the system and working in a “scared straight” type of program to warn juvenile offenders.

In 27 years, he’s only had three violations for misconduct, the last a decade ago. He said he’s still hoping for parole, and has strong ties in Ohio, including a girlfriend he knows from childhood, three children and five, soon to be six, grandchildren.

“All I want to do is get on with my life and get to know my kids and grandkids and live out what life I have left,” he said.

-- Contact Judy Putnam at (517) 487-8888 x232 or e-mail her at putnam@boothnewspapers.com.

Faces behind the figures

Are we safer because they're behind bars?

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

Micah Mayhew, No. 254686

Although Micah Mayhew was only 17 at the time of his offense in 1995, has successfully completed all recommended programming, has been in camp since 1998 and has strong family support, the parole board has, so far, continued him in prison for five years beyond his minimum sentence.

Micah Mayhew had always been an honor student while pursuing many interests outside of school, but during his junior year, when he began using marijuana, he lost interest in his classes and was sometimes truant. While still a juvenile, he was arrested for possession of marijuana, delivery of cocaine, and retail fraud. In August 1995, after receiving two speeding tickets during his probationary driving period, his license was suspended. Mayhew worked that summer to pay his tickets and received a clearance, but never attended his reinstatement hearing.

On Nov. 14, 1995, Mayhew took his car for an oil change. The attendant informed him that the bolts holding the sway bar in place were missing, and he cautioned Mayhew not to drive fast or turn suddenly or he could lose control of his vehicle. Mayhew next stopped at the auto repair shop of the local vocational school. He left there with a list of parts he needed. Rushing to get the needed parts and still get his three friends to class on time, Mayhew was traveling well in excess of the speed limit and weaving in and out of traffic. He passed one school bus and swung out to pass another when his vehicle fishtailed out of control and struck an oncoming car. Another car hit his, and flying debris struck a third vehicle.

Mayhew and four others were seriously injured. James Case, a 56-year-old grandfather, died two days later of his injuries. On the way to the hospital, EMS personnel found a packet of marijuana on Mayhew. He was charged with second-degree murder, three counts of felonious

driving, possession of marijuana and driving on a suspended license. Mayhew pled guilty to the latter two charges. A jury convicted him of involuntary manslaughter and three counts of felonious driving.

Mayhew's sentencing guidelines called for a minimum sentence between four and ten years. The judge followed the prosecutor's recommendation, sentencing Mayhew to 7 – 15 years for the offense of involuntary manslaughter and 1 year 3 months for each count of felonious driving. Since all the sentences run concurrently, Mayhew was eligible for parole in December 2001.

After spending a year at the Michigan Reformatory while he completed his GED, Mayhew was transferred to the camp system, where he's been for the last eight years. He's worked on public works crews near Grayling and at the community center in Coldwater where he served meals to senior citizens. Mayhew completed a building trades program in 1998, as well as NA/AA and other substance abuse programming. Studying lessons sent to him by his grandfather, he became an accomplished artist. Mayhew has painted murals on several walls at Camp Branch and plans a career in commercial art after prison.

Mayhew did so well in prison that he was approved to enter the Community Residential Program in September 2001. This program would have allowed him to reside in a halfway house until he was paroled. However, after Oakland County Prosecutor David Gorcyca filed a formal objection, the department changed its decision. It then said that Mayhew's community placement would "undermine public confidence." Notably, Mayhew's victim was the brother of an Oakland County Assistant Prosecutor.

Also in 2001, the parole board continued Mayhew in prison for an additional year. Every year since, his parole interview has resulted in one

(Continued on the next page -- see Mayhew)

Proposed legislation would require equal treatment for parolable lifers

Legislation has been introduced that would require the parole board to evaluate parolable lifers using the same criteria it uses to evaluate all other parole-eligible prisoners.



Sen. Switalski

Sen. Michael Switalski (D, Roseville) is the prime sponsor.

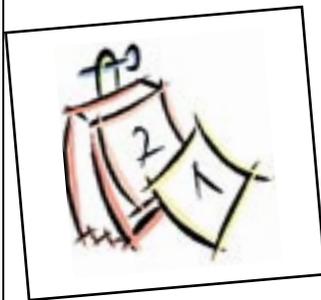
The proposed law -- SB 1207 -- would also require that parole guidelines be calculated for

parolable lifers and that a life sentence, by itself, not negatively affect the guidelines score.

This is the second piece of legislation introduced by Switalski that impacts parolable lifers. SB 155, would require interviews (not just file reviews) every five years for people serving parolable life sentences.

Both bills have been referred to the Senate Judiciary Committee but have not been scheduled for hearings.

Mark your calendar



The CAPPS annual membership meeting will be held Oct. 26 at the Faith United Methodist Church in Lansing. Starting time is 6 p.m.

Correction



The prison number of Delfino Moreno was wrong in the supplement "Foreign Nationals in Michigan prisons: an examination," carried in the Spring 2006 issue of *Consensus*. The prison number should have been 173211. The editor apologizes for the mistake.

Mayhew profile

(Continued from previous page)

more year in prison, with the board stating each time that Mayhew "minimizes his actions" which led to the accident.

In both 2004 and 2005, because Mayhew scored high probability of parole on the board's own guidelines, the board was required to give a substantial and compelling reason for denying him parole.

In 2004, the board wrote:

Prisoner continues to minimize his actions and does not take full responsibility for his actions, which resulted in an accident causing death.

In 2005, it said:

The Parole Board is not assured that P's risk of re-offending has been diminished. Prisoner is deemed an unwarranted risk to public safety.

Unwilling to parole at this time.

Mayhew later wrote:

My interview was four minutes long. I was asked one question that gave me a chance to speak... First thing I said was how I took full responsibility and a little of how I felt and I was cut off and told I'd hear something in four to five weeks. I walked out so fast my head was spinning.

Mayhew's next re-consideration date is in December 2006. Whether in prison or on parole, he will complete his maximum 15-year sentence in July 2008.

CAPPS
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My membership category is:

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