

## Everyone's talking about:

# Right-sizing Michigan's Prison Population

The \$1.9 billion Michigan spends on corrections is getting plenty of attention these days as the state faces deficits totaling more than \$3 billion. An \$850 million shortfall in the current fiscal year alone is leading legislators, civic leaders and editorial writers to question why Michigan's incarceration rate (the number of prisoners per 100,000 residents) is so out of sync with the rates of other states.

According to Dec. 2005 U.S. Justice Department figures, Michigan's rate of 489 is much higher than that of the other Great Lakes states: Illinois – 351 Indiana – 388 Minnesota – 180 New York – 326 Ohio – 400 Pennsylvania – 340 Wisconsin – 380.

Tom Clay, Director of State Affairs for the influential Citizens Research Council of Michigan, explains:

*“Compared with the average of those states' incarceration rates, Michigan's rate is over 40 percent higher. The higher rate results from*

*longer stays in prison for a given crime than in neighboring states and the more extensive use of alternative forms of incarceration and supervision for some crime in the states other than Michigan. The relationship between the higher incarceration rate and crimes rates is not apparent . . . If Michigan had an incarceration rate equal to the average of these seven neighbors, General Fund spending for corrections programs in the Michigan budget might be reduced by as much as \$500 million -- more than 5 percent of total General Fund spending.”*

Instead, Michigan has the 11<sup>th</sup> highest rate in the country, behind only Louisiana, Texas, Mississippi, Oklahoma, Alabama, Georgia, Missouri, South Carolina, Arizona and Florida.

And things are getting worse. Michigan added 2,077 people in 2006 for an all-time high of 51,570 prisoners. (See Michigan prisons bulging at page 8).

If Michigan reduced its population to 42,000, the size in 1996, its incarceration rate would be roughly 421 – still higher than the other Great Lakes states. The state could then close 8-9 minimum to medium security facilities at a savings of more than \$236 million.

Michigan opinion leaders are getting the message. At a recent town hall meeting sponsored by the Center for Michigan and Michigan State University, 250 civic and business leaders were asked where the state budget could be cut. They responded that corrections should be reduced by \$100 to \$500 million. And their views are shared by many others.

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*Executive Director*  
LeAnn Voigtritter  
*Administrative Assistant*  
Gail Light  
*Communications Specialist*  
Dena Anderson  
*Case Researcher*

115 W. Allegan St.,  
Suite 401  
Lansing, Michigan 48933  
Phone: (517) 482-7753  
Fax: (517) 482-7754  
capps@capps-mi.org  
www.capps-mi.org

## Right-sizing Michigan's Prison Population

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- “Why is it that Michigan, compared to other states, puts more people in prison for longer periods of time for no difference in crime rates or recidivism?” Rich Studley, vice president of Michigan Chamber of Commerce, *Gongwer*, Dec. 21, 2006.
- “Begin the conversation on fixing the corrections system. We continue to incarcerate a larger share of our population than surrounding states, at great cost to families and to the taxpayer. The system needs to be fixed for both financial and human reasons.” Patrick Anderson, CEO, Anderson Economic Group, *Detroit Free Press*, Jan. 18, 2007.
- “Incarceration rates here are among the highest in the nation at a time when the state is strapped for cash. And Michigan’s prison population, now a record 51,044, is on the rise again, increasing 3% so far this year. The state added nearly 1,700 additional inmates in the first 10 months of 2006.  
  
“Before Michigan’s prison costs balloon beyond \$1.9 billion a year, before the state considers opening two more prisons, at a cost of \$35 million to \$40 million apiece, lawmakers must find ways to stop that growth, which is easily attainable without compromising public safety. Every dollar spent on corrections takes resources from health care, higher education, roads and other vital services.” *Detroit Free Press* editorial, Dec. 10, 2006.
- “Why hasn’t (Gov. Granholm) done something to contain the exploding cost of the prison system? No one wants to release dangerous criminals, but not all inmates fall into that category. Why hasn’t she ordered a comprehensive review?” *Detroit News* editorial, Dec. 24, 2006.
- “We have been focused on the punitive side of corrections for a number of years. In the process, we’ve forgotten about the rehabilitation side. And, in many cases, by incarcerating as many people as we have and by going with some of the mandatory guidelines in sentencing, we’ve put ourselves in an awful position. As time goes on, we will re-evaluate those sentencing guidelines.” Senate Majority Leader Mike Bishop, addressing Lansing Economic Club, as reported by MIRS, Jan. 24, 2007.

● “Michigan no longer can afford to ignore the costs - budgetary and human - of its prison policies. What Michigan has done lately is pretty simple: Lock people up for as long as possible. No doubt that has prevented some crimes by repeat offenders. But this policy is imposing huge costs on the state, costs that are hurting Michigan.

“Out of the state’s major general fund accounts, only Corrections offers any real possibility for significant savings to fund investments elsewhere - and only if Granholm and the Legislature move beyond the politics of “imprisonment first and last.” *Lansing State Journal* editorial, Dec. 19, 2006.

The Department of Corrections agrees that a re-examination of current policies is needed. A Jan. 20, 2007 *Associated Press* article quotes MDOC spokesperson Russ Marlan: “We’re definitely going in the wrong direction. We’re not seeing communities that are much safer. What are we getting for (higher spending)? That’s what we need to look at. Maybe we need to be a little smarter on crime.”

And in a Jan. 24, 2007 article in *MIRS*, Marlan pointed to the unanticipated consequences of sentencing guidelines and the return to prison of parole violators as factors contributing to Michigan’s high incarceration rate. Marlan echoed Tom Clay by noting, “If we had incarceration rates similar to other states we would be talking about \$500 million a year in savings.”

## Six ways to reduce Michigan’s incarceration rate

1. Reassess the impact of sentencing guidelines to ensure that drug and property offenders are not incarcerated unnecessarily and that sentences for crimes against persons are proportionate to the offense.
2. Reinstate disciplinary credits in conformity with national norms so that prisoners with good institutional conduct can earn modest amounts.
3. Enforce parole guidelines to increase paroles of low-risk offenders who have completed their minimum terms.
4. Limit prison returns for technical parole violators with no new criminal conduct to one year or less.
5. Apply the “lifer law” as intended when more than 800 hundred parole-eligible lifers were sentenced.
6. Fully implement the Michigan Prisoner Re-Entry Initiative.

To make release decisions more cost-effective, fair

## CAPPS says improve, enforce parole guidelines

Thousands more low-risk prisoners could be released if parole guidelines were adjusted slightly and if the parole board was actually required to follow them. Overcrowding in the state's prisons could be reduced and tens of millions of dollars could be shifted from corrections to other urgently needed state services.

CAPPS has a series of proposals for improving and enforcing the parole guidelines. Executive Director Barbara Levine says, "The CAPPS proposals would simply require the board to use the guidelines as the legislature intended. They would not require the immediate release of any particular prisoner."

Parole guidelines divide prisoners who are eligible for parole into three categories – high, average and low probability of release – according to their statistical risk for re-offending. Those who score high probability for release must, by administrative rule, pose no more than a five percent chance of committing a new assaultive crime.

The statute creates a presumption that people scoring high probability will be released unless the parole board has "substantial and compelling reasons" to depart from the guidelines. However, the percentage of high probability cases in which parole is actually granted has been steadily declining. In 1996, the grant rate for this group was 81 percent; from Jan.-Oct. 2006, it was 53 percent.

How many beds and how much money could be saved by increasing the release rate for low-risk prisoners depends on two factors – where the breakpoint is set for determining who is in the high probability range and what proportion of those people actually get paroled. If the breakpoint was set at a 6.5 percent risk of re-offending and the parole grant rate for high probability individuals was 80 percent, CAPPS estimates more than 4,600 people now past their earliest release dates would be paroled at a savings of more than \$114 million.

If an additional 450 parolable lifers scored high probability and were released, the savings would increase by \$11 million.

The guidelines were mandated by statute in 1992, at the same time the parole board membership was changed from corrections professionals to political appointees. The intention was to make the parole guidelines work like the sentencing guidelines do, as objective constraints on the decision-maker's discretion.

Like the parole board, sentencing judges must state "substantial and compelling reasons" for

**"Enforcing the parole guidelines could produce fairer results in individual cases, make a critical government process more transparent and accountable, and reduce corrections spending."**

departing from their guidelines. However, judicial departures cannot be premised on factors that have already been adequately scored in the sentencing guidelines. And both prosecutors and defendants can appeal judicial departures to a higher court, as well as errors in the scoring process. Thus, unfair or inaccurate decisions in individual cases can be corrected and a body of law defining the "substantial and compelling standard" has evolved.

"Because the right for prisoners to appeal parole denials was abolished in 1999, there is no way to correct unfair results in individual cases or to interpret the 'substantial and compelling standard' for parole board departures," Levine explains.

Cooley Law School Professor Ron Bretz, president of the CAPPS board of directors, notes, "The current situation is pretty one-sided. Prosecutors and victims can appeal grants of parole, but prisoners cannot appeal parole denials."

Prisoner appeals were eliminated because the Attorney General's Office complained that it took \$330,000 a year and substantial staff time

to handle the cases. Few were actually successful. Under the CAPPs proposal, appeals would be restricted to three grounds: unjustified departure from the parole guidelines for people scoring high probability of release, errors in the guidelines scoring and misinformation in the prisoner's file. In the latter situations, the prisoners would be required to exhaust internal MDOC procedures before they could appeal.

CAPPs also proposes that, except for parolable lifers, continuances in high probability cases be limited to 12 months. Currently, they may be as long as 24 months. Combined with the narrow grounds for review and the fact that there is no right to appointed counsel, this limit on the length of parole "flops" would minimize the number of appeals.

CAPPs estimates that if there were as many as 400 appeals, the cost to the Attorney General's office would be \$180,000. "It would only take seven reversed parole board decisions, a success rate of merely 1.7 percent, for the state to offset that amount," Levine observes. "And once a body of law has been established, the number of appeals should drop."

The push to enforce parole guidelines is needed because the parole board denies release in about half the high probability cases, often based on its own view of the offense.

"Although the parole board's decisions affect tens of thousands of people and cost

taxpayers hundreds of millions of dollars, it is essentially unaccountable," Levine notes. "Enforcing the parole guidelines could produce fairer results in individual cases, make a critical government process more transparent and accountable and reduce corrections spending."

Many people with high probability scores have excellent prison records and have successfully completed available programs. Some are continued even though they have been working daily in the community or are subject to deportation or their

*(Continued on page 6)*

## How the guidelines work

The Michigan Department of Correction developed parole guidelines in 1984 to "reduce the potential for disparity in parole decisions and to explicitly define the bases upon which rational and equitable parole release decisions should be made," according to an MDOC report. That is, they were initially conceived to make decisions more objective and consistent, not to statistically assess risk.

The ability of the instrument, as a whole, to predict an individual's risk of re-offending was validated in 1992, 1993 and 2001. However, the predictive value of each individual factor scored in the guidelines has not been established. That is, the instrument as a whole successfully separates prospective parolees into categories based on their likelihood of committing either an assaultive felony or any felony at all, but the actual impact of most specific factors is unclear.

All prisoners receive a parole guidelines score before they are considered for release except those serving parolable life sentences. (CAPPs recommends calculating scores for parolable lifers before their five-year reviews so that their actual risk for re-offending is taken into account.) The score is determined by counting the numbers, either positive or negative, assigned to variables in seven categories: offense, prior record, institutional program performance, institutional conduct, statistical risk, age and mental status.

MCL 791.233e(7) says, "The parole board may depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines or by granting parole to a prisoner who has a low probability of parole as determined under the parole guidelines. A departure under this subsection shall be for substantial and compelling reasons stated in writing."

People who score high probability of release can be paroled without an interview unless the crime involved a sexual offense or a death. Those who score low probability can be denied parole without an interview.

## CAPPS says improve, enforce parole guidelines

(Continued from page 5)

codefendants have been paroled. The “substantial and compelling reason” given is often a board member’s impression at a brief interview, such as, “Prisoner shows inadequate remorse.” Since interviews are not recorded, the basis for this impression cannot be determined. CAPPS recommends that interviews of people with high probability scores be recorded.

Sometimes, in the face of overwhelmingly positive factors, the board’s substantial and compelling reason is simply the assertion that the “prisoner is deemed to be an unwarranted risk to public safety,” without reference to any specific facts. (See, for example, profile of Aldo Gallina on page 14.) Frequently, people are continued for a year or two and then paroled, with no apparent gain to public safety from the extra time served.

The parole board stresses that many people denied parole despite high probability scores committed assaultive or sexual offenses. However, Bretz

stresses, the issue is whether they are at risk for re-offending today. “Not only do these broad labels cover a wide variety of actual conduct, but the facts of the offense were taken into account when the judge set the minimum sentence. In many cases we are talking about first offenders who have served a lot of time and done well in prison,” Bretz explains. “People who have been punished according to sentencing guidelines and pose a demonstrably low risk of re-offending should be paroled with appropriate conditions of supervision.”

CAPPS suggests that the parole guidelines be structured so that individual factors are weighted according to their actual predictive value. This would inhibit the board from effectively resentencing someone in reaction to the crime when the person’s likelihood of committing another offense is extremely low. “Research shows that statistical risk assessment instruments are more accurate than the ‘gut reactions’ of individual parole members in predicting whether people will re-offend,” Levine says.

## In Memoriam – Norris J. Thomas, Jr.

CAPPS lost a staunch supporter when Norris Thomas died on Jan. 12, 2007, after a brief illness, at the age of 63. Chief Deputy Defender at the State Appellate Defender Office (SADO), Norris was also a member of the original small group that founded CAPPS in the late 1990s. He spent his entire legal career, first as a legal aid attorney and then as counsel assigned to appeal felony convictions, giving the highest quality representation to those who could not afford to retain a lawyer. He worked through various organizations to improve the state’s criminal justice system and, in particular, to create a statewide public defender system.

Norris was well known for his creative intelligence, his commitment to principle and for never giving up on even the hardest cases. He cared deeply about the impact that lack of opportunity has on individuals and the community. We will miss his wise counsel but will try to emulate his values as we work for a just society that treats all its children well.



### **CAPPS Recommendations for Improving and Enforcing Parole Guidelines**

*The best way to maximize public safety and public dollars is to release prisoners who have served their time and pose little risk to the community. CAPPS' recommendations for making parole decisions fairer, more cost-effective and more transparent will help ensure that only those people who actually pose a continuing threat to the public are incarcerated after they have served their minimum terms. Over time, these suggestions could save taxpayers tens of millions of dollars.*

1. Clarify that the purpose of the parole guidelines is to assist the board in making parole decisions that implement the intent of the sentencing judge, to the extent consistent with public safety.
2. Require the guidelines to:
  - a. provide for public protection
  - b. reflect a prisoner's actual current risk for reoffending
  - c. encourage positive institutional conduct and participation in prison programs
  - d. avoid the use of secure prison beds by people who can reasonably return to the community.
3. Apply the guidelines to all prisoners eligible for parole.
4. Validate the statistical relationship to the risk of re-offending of:
  - a. the offense for which the person is incarcerated
  - b. current age
  - c. prior criminal record
  - d. institutional conduct
  - e. other relevant factors that predict re-offense risk.
5. Require the guidelines to also address the person's:
  - a. institutional program performance
  - b. length of time served
  - c. mental health
  - d. physical health
  - e. previous experience with probation or parole.
6. Prohibit basing departures from the guidelines on factors already accounted for by the sentencing or parole guidelines unless the board finds from facts in the record that the factor has been given inadequate or disproportionate weight.
7. Record parole board interviews conducted with people whose guidelines scores indicate a high probability of parole.
8. Permit prisoners, including those eligible for parole under the lifer law, to appeal denials of parole by leave to the sentencing court only on the following grounds:
  - a. the person scored "high probability of release" and the board's reasons for denying parole were not substantial and compelling
  - b. denial resulted from a material mistake in the parole guidelines scoring
  - c. denial resulted from reliance on inaccurate or incomplete information.
9. Notify prisoners denied parole of the scope of their right to appeal and any applicable deadlines.
10. Prohibit continuances of longer than 12 months for prisoners who score high probability of parole on the guidelines and are not serving life sentences.



## Michigan prisons bulging

Wednesday, January 17, 2007

By Judy Putnam

Lansing Bureau

LANSING -- Michigan's prisons are packed to the gills with a record high number of inmates, driven by a parolee's murder spree last year, state officials said.

Michigan ended 2006 with 51,570 inmates, up from 49,493 in 2005, according to the Michigan Department of Corrections. The previous high was 50,591 at the end of 2002.

The unexpected 2,077-inmate jump last year was more than enough to fill a new prison, but officials instead squeezed inmates into the state's existing 50 facilities.



TV rooms, weight rooms, and office and storage space were cleared for beds, and lower-security prisons with six-bed dormitory-style rooms had a seventh bed shoehorned in.

The growth is straining a state budget that is already under severe pressure, with revenues falling \$850 million short of projections this year, according to Senate Fiscal Agency estimates.

Plans to fill 212 corrections officers positions have been put on hold, said Russ Marlan, Corrections spokesman. The department had planned to hire 700 officers this fiscal year to fill vacancies, but stopped at 488, he said.

Prison officials say the February slayings of three people by Patrick Selepak, a parolee returned to prison for violating parole and then released without a required hearing, helped drive up the prison commitment rate, drop the parole rate and increase the number of parolees returned to prison for violating parole.

"We've seen some substantial jumps and, for us, it's all bad because it means more people in prison beds," Marlan said.

Parole rates, for example, dropped immediately after the slayings from 54.4 percent in February to 48 percent in March. The overall decline for the year was enough to keep 725 inmates behind bars. Parolees returned to prison for technical violations also jumped 12 percent to 3,191, Marlan said.

Barbara Levine, executive director of the Michigan Citizens Alliance on Prisons and Public Spending, said the reaction to the Selepak case means the state is spending more to hold thousands of low-risk inmates.

“It just diverts tens of millions of dollars that could go to many urgent needs, including child protection, revenue sharing for local police and other crime preventive services,” she said.

Union leader Mel Grieshaber, executive director of the Michigan Corrections Organization, said he worries that short staffing could lead to safety concerns. He said all of the 700 new corrections officers are needed.

“When they start taking money out of the budget, the corrections officers start sweating,” he said.

Although the state has hired 1,342 officers over the past four years, plus the 700 planned this year, that hasn’t been enough to keep up with turnover. MCO has 9,000 officers, down from the peak of 10,000 officers in 2001, Grieshaber said.

Grieshaber said the union is constantly arguing for more staff, especially at some of the minimum- and medium-security prisons in pole-barn structures, where sometimes just three officers guard about 280 inmates at night. Those inmates are not locked into cells, Grieshaber said.

Marlan contends that staffing has been kept at adequate levels.

A recent report by the U.S. Department of Justice found Michigan’s incarceration rates second-highest in the 12-state Midwest region, second only to Missouri’s. Michigan’s rate, 489 inmates per 100,000 residents in 2005, is the 11th highest in the country.

Tom Clay, of the independent policy group Citizens Research Council, said if Michigan would lower its incarceration rate to that of other Great Lakes states, it would save \$500 million a year. He said Michigan’s incarceration rate is 40 percent higher than those other states, due to longer sentences.

“It is the one place in the state budget that really stands out from being different from states where we typically compare ourselves,” Clay said.

Michigan spends \$1.9 billion annually on its prisons, more than the \$1.6 billion spent on public universities.

State officials say they hope the 2-year-old Michigan Prisoner Re-Entry Program, which focuses on helping parolees find jobs and decent housing, will eventually help control the prison population.

Of the 4,634 prisoners released through the program since 2005, 402 have returned to prison. That’s 104 fewer than would be expected without the program, according to a department study.

-- Contact Judy Putnam at (517) 487-8888 x232 or e-mail her at [jputnam@boothnewspapers.com](mailto:jputnam@boothnewspapers.com).

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## Michigan children hit hard in dismal economy

### Spending trends show commitment wavering to most vulnerable

State funding for services to aid children and families has, in most cases, dropped in recent years – at a time when families need help the most, according to Michigan’s Children, a state-wide, non-partisan, multi-issue child advocacy organization.

An analysis of state spending released in December 2006 shows that despite some increases from 2006 to 2007, overall funding since 2001 for many child and family services has been cut or eliminated, or hasn’t kept pace with inflation, rising costs and rising need. In only a few cases has funding been increased.

“Too many children in Michigan are hurting, and their pain is deepening as fewer services are available to help them and the revenue base to support those services continues to erode,” said Sharon Claytor Peters, President & CEO of Michigan’s Children. Peters is also a past member of the CAPPs board of directors.

A few highlights from the report:

- Funding for most major child abuse and neglect prevention programs has been cut as much as 15 percent despite a 5 percent increase in the number of child abuse and neglect victims.

- While the percentage of children living in poverty has jumped 31 percent, monthly welfare grants to most families have remained unchanged since 1993, dropping their purchasing power by over one third.

- Lawmakers for the first time since 2000, increased funding in the 2007 budget for early education. Still, overall funding has dropped 34 percent since 2001.

- As more parents take on second and third jobs to help make ends meet, they’re getting less help with child care. Eligibility dropped from 185 percent of poverty to 150 percent, and the number of child care hours eligible for subsidies dropped from 140 to 100 in a two-week period.

“We all know that children are our future

and we must provide them with the best start possible,” Peters said.

Additional facts at a glance:

- One in five Michigan children under the age of 5 lives in poverty.

- Three out of five low-income Michigan children whose care is supported by a subsidy are in unregulated child care settings.

- Half of all Michigan children under the age of one are insured by Medicaid.

- One in five Michigan children is born to a mother who had inadequate prenatal care.

- Nearly 1,000 Michigan babies die each year before their first birthday.

**Too many children in Michigan are hurting, and their pain is deepening as fewer services are available to help them and the revenue base to support those services continues to erode.**

A copy of the full report is available at [www.michiganschildren.org](http://www.michiganschildren.org).

National research has demonstrated that early childhood intervention is the best way to reduce special education and welfare costs, increase school performance and high school graduation rates, strengthen earnings and tax contributions and prevent future crime.

A report released by *Fight Crime: Invest in Kids Michigan* says, “Law enforcement leaders recognize that among the most powerful weapons to prevent crime and violence are preschool programs that help kids get the right start in life.” Cited are reductions in behavioral problems, aggressive acts and poor temper control in children and adolescents resulting from high quality early interventions as well as reduction in juvenile delinquency, drug and violent crime arrests in later life.

CAPPs advocates shifting state resources from excessive incarceration to programs, like those for children and youth, that prevent crime.

Caution that timing, fear of parole mistakes key

**Legislators say state budget problems may impact parole**

Two state legislators talked about the tension in making decisions that might save money for the state and treat people more fairly and the fear of allowing the parole of someone who might commit new crime, as they addressed CAPPS' annual membership meeting in Lansing late last year.

Sen. Michael N. Switalski (D, Roseville) and Valde Garcia (R, Howell), both served on the Senate Subcommittee on Corrections Appropriations in the session that ended in December. Both will be members of the overall Senate appropriations committee this term, with Switalski serving as minority vice chair.

Garcia, a senator since 2000 and the son of migrant farmers, is the state's first Hispanic senator. He told the nearly 60 attendees that he believes the number one priority of government is to protect people. He said issues should be brought to his attention – "the squeaky wheel gets the grease" – but that he would be reluctant to pass laws he believed would endanger the public



Sen. Garcia

or encumber the process, such as allowing appeal of parole decisions. Garcia continued, "What if just 2 percent turn out to be bad actors and do what was done in Macomb County? We can't afford to be wrong," Garcia said.

Garcia said the general public thinks that people in prison have done something wrong so they should stay there forever. "We know that's not always the case, and sometimes people who

are in prison shouldn't be there because judges aren't perfect."

Switalski said the Macomb County killings "had a negative effect on the parole board; (the members) became very reluctant to parole cases they would have paroled before. They're so afraid of being criticized if they make a mistake."

He said he believes that fear is behind the current rise in the state's prison population which reached 51,000 late last fall.

In discussing the release of parolable lifers, Switalski, elected to the senate in 2002 and sponsor of bills designed to improve the review process for parolable lifers, said: "The board's afraid that



Sen. Switalski

if they're paroling someone with the word 'lifer' attached to the sentence, that they'll be criticized if something ever happens. 'A lifer? You let a lifer out!'"

About the legislation he has sponsored requiring in-person interviews with lifers at five-year intervals: "Is it too much to ask that a board member sit down face-to-face with a lifer once every five years? I think not. They need to give a person an opportunity to present their case."

Switalski also said he believes there is no reason not to calculate guidelines scores for parolable lifers. "I think they will demonstrate that a lot of these prisoners are good risks. If they're scoring high on the guidelines there's a reason to assume they're a good risk."

One of his proposed laws would create a special board to review the cases of those who have served at least 30 years.

"Parolable life doesn't mean never paroled. There's a reason for the word parolable; we have

*(Continued on page12)*



Among those attending the annual meeting were, Sandy Girard (left hand picture) and, Dena Anderson, El-len Hoekstra, Noah Smith, Ron Bretz and Jacque McDaniel.

## Legislators discuss parole board, framing legislative approaches

to treat them differently (than mandatory lifers). When they were sentenced to parolable life, there was an assumption that there would be an opportunity for parole,” he said.

Both Garcia and Switalski told the audience they support restoring funding for the Corrections Ombudsman’s Office. Both also agreed that making it easier for parolees to succeed through a re-entry program, now being run by the department of corrections, is important.

“Once (prisoners) have served their sentences we want them to go out and have a fighting chance to be productive citizens,” said Garcia. “We hope (the re-entry program) will work. We want it to work.”

Both expressed reluctance to allowing judicial review of parole denials if that resulted in a large number of appeals.

The legislators were also asked how to frame issues to get legislative action.

Switalski told the group that showing how money saved by increased paroles could be shifted to something that has proven results would be helpful.

Said CAPPS President Ron Bretz: “We need money to pay for really important programs that are proven to prevent crime such as early child care. For those legislators who are afraid to vote for anything that will make them look soft on crime, can they look tough on saving money?”

Garcia said that, “Saving money gets our attention, but again you’re dealing with human

lives. We’re back to the number one function of government – to protect its citizens.” He said that although some proposals have merit, timing of legislation is important in dealing with controversial issues.

In discussing the parole of people who are terminally ill, Penny Ryder, executive director of the American Friends Service Committee and a CAPPS board member, told the legislators that “People who are terminally ill and could be paroled aren’t being processed at the rate they could be. The process is cloudy as to who is supposed to start it and where it’s supposed to go. Every one of these dying prisoners is costing the state money. They should be returned home or there should be nursing homes set up for those with nowhere else to go.” She said the costs could be picked up by the Veterans Administration, Medicaid or private health insurance but the money wouldn’t come out of state revenues and wouldn’t include custody costs.

Switalski said he agreed health care treatment would be cheaper in the community. “If they’re not a risk we should pay special attention to them,” he said. Garcia said the issue was one that the governor could handle.

Also during the meeting, members re-elected seven incumbents to the board of directors for three-year terms. They are: Gary Ashby, Robert Henning, Rose Homa, Ronald Jimmerson, Sr., Penny Ryder, Laura Sager and William Tregoe.

## Briefs filed in parolable lifer suit

Briefs have been submitted to the court in the class action lawsuit (*Kenneth Foster-Bey, et al., vs. John S. Rubitschun, et. al.*) filed on behalf of all parolable lifers who committed their crimes before Oct. 1, 1992.

The lawsuit was filed in 2005 in the U.S. District Court, Eastern District, by Attorney Paul D. Reingold and law students from the Michigan Clinical Law Program at the University of Michigan.

The plaintiffs are asking the court to order new parole hearings

for them using the standards and procedures in effect when they committed their offenses. They allege that changes in the law, including the reconstitution of the parole board in 1992

and subsequent changes in the process for reviewing lifers, have “created a different parole regime in violation of the ex post facto clause of the United States Constitution.” The current parole board has adopted the philosophy that “life means life” and releases very few lifers other than those convicted of drug offenses. More than 800 parolable lifers, all of whom became eligible for parole after serving 10 years, are affected. Many have now served more than 25 years.

Both the plaintiffs and the defendants have requested summary judgment (a decision without a trial). Oral arguments are scheduled before Judge Marianne O. Battani in February 2007. Both parties are likely to appeal a grant of summary judgment to the other side. If summary judgment is not granted, a date will be set for trial.

The brief relies in part on CAPPS’ historical research on parole grant rates. The Sept. 2006 report entitled: “*When ‘life’ did not mean life: A Historical Analysis of Life Sentences Imposed in Michigan Since 1900,*” is at the CAPPS website: [www.capps-mi.org](http://www.capps-mi.org). The research showed that:

- Overall, nearly 73% of the people sentenced to life terms during the first seven decades of the century for crimes other than first-degree

murder were released after serving an average of fewer than 16 years.

- Only 8.2% of people similarly sentenced from 1970-1985 have been released to date.
- For non-drug lifers convicted before 1980, the chance of being paroled was more than 43 times greater when they committed their offenses than it is today.

Plaintiffs’ counsel obtained declarations from many former Michigan Department of Corrections officials and parole board members, including Perry Johnson, MDOC director, 1972-1984; William Kime, research director, 1969-1991; William Hudson, parole board chair, 1980-1985; Robert Brown Jr., MDOC director, 1984-1991; and Gary Gabry, parole board chair, 1992-1996.

The general consensus of the declarations was that the pre-1992 board treated parolable lifers and people serving long indeterminate sentences similarly. While lifers were required by statute to go through a more complex process, the board applied the same standard in evaluating everyone who served a long time for a serious offense, once he or she became eligible for parole.

Lifers were interviewed regularly and advised about what they needed to do to earn release. File notes were kept so that members’ views about when parole would be appropriate could be tracked from year to year. While some parolable lifers were never released, the assumption was that most would be paroled in fewer than 20 years. “Life means life” only applied to people serving for first-degree murder.

An editorial in the Jan. 17, 2007 Detroit Free Press urged the parole board and the legislature not to wait for the outcome of the suit. Noting the state’s budget shortfall and the fact that hundreds of middle-aged lifers could be safely released, the editorial concluded: “The Parole Board ought to review these cases as they do other inmates with parole eligibility, even if that requires a special panel to handle the backlog.”



## 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

#### Aldo Gallina, No. 205962

*Aldo Gallina, who has no prior offenses and spent two years attending community college while on bond pending appeal, has a fine institutional record, an excellent therapy report and unshakable family support. While his co-defendant, with a similar history, was released in 2005, Gallina has been denied parole for a second time.*

On July 2, 1989, when Aldo Gallina was 15, he was out riding in Dearborn with other teenagers. They became involved in a confrontation with boys in another car that ended with the shooting death of 15-year-old Charles Schramek. While Gallina and his 16-year-old co-defendant, Eric Rode, both admitted firing the gun that Gallina pulled from the glove compartment, each denied having fired the fatal shot. The prosecution charged Gallina as an aider and abettor on the theory that Rode was the shooter. Gallina and Rode were tried together as adults and convicted of second-degree murder. Both were sentenced to serve 15-30 years in prison, plus an additional two for felony firearm.

Gallina, the second of six children, was raised in a stable, supportive family environment. He was an average student who played junior varsity football and had no juvenile record or discipline problems. The presentence investigator described him as "somewhat mild-mannered" and "soft-spoken."

During the lengthy appeal process, Gallina and Rode both spent two years on bond in the community. Gallina lived with his family, worked full-time, and earned 33 credits with a major in Fire Science Technology at Henry Ford Community College. He was under no court supervision and had no police contact.

Gallina has also done well in prison, earning good work reports and few misconduct citations; his last "ticket" was in 1997 for being out of place. He served on work crews in the com-

munity and resides in a minimum-security prison camp. His family has visited him every two weeks throughout his incarceration, even while he was in a Virginia prison during a period of extreme prison overcrowding in Michigan.

Gallina was unable to gain entry into required assaultive offender therapy until August 2005, just two months before he completed his minimum sentence. Because Gallina scores "high probability for parole" on the parole board's own guidelines, indicating he is a low risk for re-offending, the board must give "substantial and compelling reasons" for not releasing him. In September 2005, when it continued him for a year, it said:

*Although P[risoner] has done well at work, programs & behavior & expresses remorse, he needs to complete the Assaultive Offender Therapy he is just beginning. P needs to gain greater insight into his behavior/understanding & empathy re the harm he has caused*

Gallina completed the therapy, known as AOT, in June 2006. The therapist wrote: "He displayed full and complete acceptance of responsibility for his criminal behavior with significant evidence of remorse and empathy." The therapist characterized Gallina's support plan as "formidable" and found "significant evidence of the internalization of change." He said that Gallina's relapse prevention plan demonstrates "an outline/map for success." Gallina wrote to his family:

*I worked very hard the last 44 weeks and it shows in this report...I did everything I could do, so no matter what, I can say that.*

In October 2006, the parole board continued Gallina for a second year. It gave as its substantial and compelling reason:

*(Continued on the next page -- see Galina)*

(Continued from page 9)

## Gallina

*Despite completion of recommended therapy, the Parole Board is not assured that his risk of re-offending has been diminished. Prisoner is deemed an unwarranted risk to public safety. Unwilling to parole at this time.*

Gallina, now 33, and his family were stunned. Eric Rode, who had been able to complete AOT on time, had been paroled when he first

became eligible in November 2005. Ironically, the board's notes regarding Rode are equally true of Gallina: good family support, good AOT, limited prior record, excellent staff and work reports, in community for two years on bond pending appeal, good parole plans, crime out of character, spent more than half his life in prison, has matured much in last 16 years.

Gallina's next parole re-consideration date will be in October 2007, about the same time Eric Rode will discharge from parole supervision.

## More pictures from the 2006 annual membership meeting



### We've moved . . . just a little

Please note that CAPPs has moved its offices from the eighth floor to the fourth floor in the same office building. The new address is: CAPPs, 115 W. Allegan St., Suite 401, Lansing, MI 48933

**CAPPS**  
CITIZENS ALLIANCE ON  
PRISONS & PUBLIC SPENDING

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

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

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

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

My membership category is:

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

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

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

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

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