

Sentencing and parole: the Michigan system

In Michigan's system of indeterminate sentencing, each branch of government has a role.

- The Legislature sets the maximum penalty for each type of offense.
- The trial judge sets the minimum sentence the particular defendant must serve.
- The parole board decides when a prisoner who has served the minimum sentence will actually be released.

Sentencing guidelines

In 1998 the Legislature adopted sentencing guidelines, developed by a special commission, that limit how judges can exercise their discretion. The guidelines are designed to ensure that the punishment is proportional to the crime, and that people with similar prior records, who have committed similar offenses, are similarly treated.

The guidelines award points according to the seriousness of the offense and the offender's criminal history. The total number of points determines the sentencing range.

Judges must select a minimum sentence within the guidelines range, unless they have a substantial and compelling reason to depart.

Departures, which cannot be based on factors already counted in the guidelines, may be appealed to a higher court.

Under the guidelines, less serious offenders are "locked out" of prison and must be sentenced to community-based sanctions. At the other extreme, prison terms for the most serious offenders increased. And some defendants fall in "straddle cells" that allow the judge to decide whether a prison term or alternative sanction is appropriate.

In deciding who should stay in prison, for how long, the Legislature considered the capacity of the state prison system.

The sentencing commission was supposed to review the guidelines periodically and recommend any needed revisions. However, the Commission was abolished in 2002 and no systematic assessment has been done of how the guidelines are actually working.

Life sentences

For many serious offenses, Michigan allows a sentence of "life or any term". For these offenses, the judge picks both the minimum and maximum, or imposes a parolable life term. The Legislature has determined that these lifers are eligible for parole after serving either 10 or 15 years, depending on the offense date, and may be released unless the sentencing judge objects.

"Truth in sentencing"

Also in 1998, the Legislature adopted "truth in sentencing" provisions that require prisoners sentenced after the effective date to serve every day of the judicially imposed minimum term in a secure facility. The purpose was to ensure that victims and the general public feel confident a minimum prison term is what it appears to be.

"Truth in sentencing" had two major consequences. It prohibited awarding any form of credit for good behavior or program participation. This increased the average length of stay for prisoners who are behaving properly. Second, it caused the eventual demise of the Community Residential Program (CRP) which had allowed carefully screened prisoners nearing their first parole eligibility date to re-enter the community under close supervision at corrections centers or on electronic monitoring. At its height, there were 3,500 prisoners in CRP.

The purpose of parole

Parole is a conditional release. During a period that can range from one to four years, the parolee must meet the terms of supervision or risk being returned to prison for any period of time, up to the maximum sentence.

- The primary purpose of parole is to protect the public by providing a structured re-entry to society at the proper time for each individual prisoner.
- Parole can deter crime not only through supervision, but by assisting parolees with the services they need to succeed in the community, such as finding housing and employment, and obtaining substance abuse or mental health treatment.
- By basing release partly on in-prison conduct, parole also aids institutional management.
- The parole grant rate also affects the need for prison bed space.

Keeping prisoners who could be safely released long past their minimum terms is not only expensive, it diminishes the likelihood of successful re-entry when release finally occurs. As prisoners simply mark time and grow older, they become less employable and their community support systems erode.

Keeping prisoners until they serve their maximum sentences and have to be released is especially dangerous to the public. These prisoners go directly into the community without any supervision on parole or assistance in readjusting.

Current Parole Practices

Prisoners come within the parole board's jurisdiction when they have served the minimum time their sentences require. It is the parole board's job to distinguish between those prisoners within their jurisdiction who are high risks for re-offending and those who are not. The current statutory standard prohibits the board from granting parole if it lacks "reasonable assurance" that the person will not become "a menace to society."

Parole board members used to be experienced corrections professionals who had civil service protection. Since 1992, the board has been composed of appointees whose

criminal justice experience varied widely. Rather than paroling on the minimum sentence unless there is a clear reason not to, some board members tend to revisit the crime and reject minimum sentences with which they disagree.

The parole board has release guidelines designed to predict the risk that a prisoner will re-offend. The guidelines award points for such factors as offense, prior record, age, institutional record, and mental health status. However, they do not effectively constrain parole board decision-making for several reasons.

- There is no system for reviewing departures from the guidelines.
- In a great many cases the guidelines are designed to give the board total discretion.
- The board does not even use the guidelines in reviewing parolable lifers.

The result is:

The proportion of paroles granted declined from 68% in 1990 to 48% in 2002. In 2010, it was 56%. At the end of 2010, a total of 9,322 prisoners were past their earliest release date. Nearly 1,200 people were required to "max out."

Roughly 850 parolable lifers are also within the board's jurisdiction.

Paroling a prisoner who has completed the minimum sentence is not an "early out".

Speaking as if the maximum is the "real" sentence, and service of anything less is "early release" simply ignores the whole concept of parole.

The minimum is the term the judge, with legislative guidance, has determined to be appropriate punishment for that offender.

The minimum is also the basis on which most plea agreements are negotiated.

While prisoners were never automatically released as soon as they were eligible, historically prisoners who behaved well and were not currently dangerous could expect parole. Few people were held to the statutory maximum, and parolable lifers were often released after serving 12-14 years.

Parole revocation

Parolees may be returned to prison either for committing a new crime or for violating the conditions of their supervision. The most common violations are failing to report to a parole officer, not participating in a required program, and substance abuse.

The rate of parolees per 1,000 whose parole was revoked declined from a high of 347 in 1998 to 190 in 2010.

- The revocation rate was 109 for technical parole violators
- The rate for parolees returning with new sentences was 81.

The decline in revocation rates occurred despite the fact that more people were paroled.

For further discussion of issues regarding sentencing and parole, see our other issues, including corrections spending, parole process, presumptive parole, lifers, and special populations.

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