

Corrections trends are cause for concern

Right track or wrong track?

During the recent election campaign, pollsters continuously asked voters if they thought the country is on the right track. It's a question we should also ask about corrections in Michigan. And right now, the indicators don't look good.

- A recent national report puts Michigan first in the country in the length of time prisoners serve – a key driver of prison costs. (See story, pg. 5) Nonetheless, our legislature just adopted a 25-year mandatory minimum sentence for repeat offenders that will further lengthen time served without increasing public safety. (See story, pg. 16)
- The prisoner population, which had dropped dramatically, is increasing again – much faster than projected.
- Prisons are closed, re-opened and re-configured without documentation justifying the choices.
- Despite steep cuts that affect prison operations, MDOC employees and living conditions for prisoners, General Fund spending on corrections declined by just one-half of one percent. The overall budget still exceeds \$2 billion.
- Waiting lists for required treatment programs have gotten longer and include more than 1,500 people who are past their first parole date.
- More than 7,700 prisoners – 18% of the total – are serving beyond their earliest parole eligibility dates. And that doesn't include people who have been granted paroles but not yet been released or hundreds of parolable lifers who have been eligible for decades.
- Reentry spending is being reduced overall; money shifted from community-based reentry services to

the facilities budget does not seem to have resulted in promised new in-prison reentry programs.

A brief look at just three of these trends reveals the need for closer examination.

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Prisoner population growth

From March 2007 to December 2011, Michigan's prison population dropped from 51,554 to 42,904, a decline of 17%. The MDOC's February 2012 Prison Population Projection Report suggested that, without significant new changes in law or policy, the population decline had reached its limit. In fact, the projections assumed, based on very recent trends, that there would be a gradual rise back to 44,623 by Dec. 2016 – a 4% increase over five years. However, the increase is occurring more rapidly than anticipated. By July 2012, the population had grown 2.4% in just seven months. If that trend continues, the population will be back to 48,329 by Dec 2014 – an increase of 9% and 3,700 beds in three years.

The population increase is being fueled in part by a large drop in parole grants. Notably the number of parole denials has remained constant. However, the number of parole decisions deferred to await psychiatric reports will go up by nearly 1,700, an increase of more than 100%.

The change is also being heavily fueled by a crackdown on technical parole violators. The MDOC anticipates that in 2012 the number of technical violators will be 2,913, an increase of 1,018, or 54%, compared to 2011. However, as the MDOC's Fact Sheet for Aug. 2012 explains, the PVTs now include people who are awaiting preliminary determinations of whether formal parole revocation proceedings are warranted. These determinations must be made within ten days and these parolees were formerly housed in county jails. Earlier this year the MDOC began housing them at department facilities. It is unclear how many people are cycling in and out of prison before it is decided that parole revocation is not warranted or to what extent actual revocations for technical parole violations have increased.

What is clear is that the MDOC is taking a much tougher stance on parole violators. In March Gov. Snyder announced that parole agents will be embedded at police stations in Flint, Detroit, Pontiac and Saginaw. In May, Director Heyns announced an eight-point plan for targeting parole violators that includes more collaboration with law enforcement, more GPS tracking, more late night home visits and more prison beds for parolees "at risk of reoffending."

Sensationalized reporting by the Detroit Free Press notwithstanding (see story, pg. 8), the justification for returning more technical violators is questionable. Crime rates have continued to decline, even in our most crime-prone cities. Overall recidivism rates have also declined. And, most telling, new crimes by parolees have gone down. The number of parole violators returned to prison with new sentences declined significantly for the period from May 2011 – April 2012 compared to the same period a year before, with the largest drop occurring for

new assaultive offenses. Despite the heart-wrenching impact of a small number of appalling crimes by parolees, and an arguable need for closer auditing of field agents' caseloads, the data overall simply does not suggest that a steep increase in returns of technical parole violators is warranted.

One other point is worth noting. When counting the number of prisoners, the MDOC does not include parolees housed in its facilities. Roughly 400 people who are technically parolees have been incarcerated in "residential reentry facilities" in Tuscola and Lake County. Surrounded by fences with concertina wire, these facilities are operated like prisons. The parolees either are being required to complete certain programs before release to the community or have violated conditions of supervision but not actually had their parole revoked. In announcing the closing of Tuscola and the "repurposing" of the Ryan Correctional Facility, the MDOC stated that 160 beds at Ryan will be used for residential reentry programs and 400 will be "short-term parole violator secure beds." A Director's Office Memorandum confirms that, although renamed the "Detroit Reentry Center," that facility will operate as a prison. Between Lake County and Detroit, more than 800 institutional beds will be occupied by people who are not counted as prisoners.

Prison closings

From FY 2008 – FY 2011, the MDOC closed eight prisons and another eight camps. Two prisons were opened and another eight were consolidated into four. In FY 2012, the Mound Facility was closed. In FY 2013, Ryan was "repurposed" and Muskegon was reopened. At least six facilities have each had 75 or more beds added to compensate for those lost through prison closings. Still others have had their security classifications changed. More than 200 beds rented from county jails to house state prisoners are euphemistically called "virtual prisons."

While prison closings as a result of population decline are desirable, they cause enormous disruption to staff, prisoners and the families of both. The Auditor General undertook: "To assess the effectiveness of DOC's efforts in developing recommendations for facility closures and consolidations." To achieve this objective, the Auditor Gen-

eral spoke with MDOC staff, examined expenditure data, reviewed MDOC procedures and requested documentation. Stunningly, the Auditor General's October 2012 report found:

DOC had not maintained sufficient documentation to support its basis for identifying and recommending correctional facilities and camps for closure or consolidation. These recommendations involve critical decisions that significantly impact the security of the public, the staffing needs of the facilities, the economy of the local communities, and the operational needs of the State. Without sufficient documentation, the validity of DOC's recommendations could not be verified.

The MDOC simply replied that experienced staff had devoted much time and effort to making the recommendations and had considered a variety of factors, including the age, cost, size and security level of the facility, proximity to other prisons where staff might be employed and the impact on the local community. Notably lacking was any consideration of the impact on prisoners and their families. There was no explanation of why both the facilities in Detroit, which housed more than 2,000 prisoners, were chosen to close while none of the seven UP facilities which house over 9,000 prisoners, was affected. Nor, in general, is there any way for the public to determine who or what may have influenced any particular decision and with what consequences.

Treatment waiting lists

Requiring assaultive and sex offenders to complete treatment or behavioral change programs, then failing to provide the programs before the prisoners become eligible for parole, has been a long-standing problem for the MDOC. Releases have routinely been delayed by months or years while people anxiously try to learn the position of their names on waiting lists. In the Spring 2011 *Consensus*, CAPPS reported that there were 714 people waiting for assaultive offender treatment who were past their earliest release date (ERD) and 2,331 who

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were within 12 months. An additional 736 sex offenders were past or within 12 months of their ERD and still awaiting entry to sex offender treatment.

The situation was supposed to improve greatly with a shift to risk-based decisions about who would be required to complete programs and a change in the nature of the program for assaultive offenders. The FY 2012 budget contained \$2.9 million for 32 “corrections program coordinators” who would be responsible for ensuring that prisoners complete programming.

Yet, to a great extent, things are actually worse. Although the number of wait-listed assaultive offenders who are within a year of their ERD has declined to 797, the number who are already past their ERD has risen to 750. Similarly, 782 sex offenders awaiting entry to treatment are past their ERD and another 646 are within one year. Thus, 1,532 current prisoners have already lost the chance for release after serving their minimum sentence because they couldn’t access required treatment programs; another 1,443 are fast ap-

proaching the same result. For taxpayers, releasing just one-quarter of the total upon serving their minimum equals \$25 million.

Conclusion

Some of the troubling trends are longstanding; others are of more recent origin. But none are inevitable. Sentencing, parole, treatment requirements and re-entry support all involve policy choices to be made by the legislature and implemented by courts and the MDOC. Underlying all these choices is one that is even more fundamental: whether to base decisions about public safety, individual liberty and the allocation of state resources on the evidence of what works or on emotion, media attention and political considerations. Following the evidence, wherever it leads, will put corrections in Michigan on the right track.

Laura Sager joins CAPPS staff

Laura Sager joined CAPPS as associate director in June. She succeeded Richard Stapleton, who is finally enjoying a well-deserved retirement. Sager is working with CAPPS staff members on a variety of efforts, including fundraising, communications and new program initiatives.

From 2007 to 2011, Sager directed the Campaign for Justice, which works to reform Michigan’s public defense delivery system. For the previous 12 years, she served in a number of national and state leadership positions with Families Against Mandatory Minimums (FAMM), a sentencing reform organization.

Among her accomplishments, Sager spearheaded broad-based bipartisan campaigns that won legislation rolling back Michigan’s harshest-in-the-nation mandatory minimum drug laws. The reforms created new sentencing guidelines for drug offenses, permitted earlier parole consideration for hundreds of prisoners serving harsh mandatory prison terms and ended lifetime probation for low-level drug offenders. Sager has also worked for unions and a local community development organization.

A long-time Lansing resident, Sager lives with her husband Tom Burkert and their beloved animal companions.



Sager

Length of Stay Drives Prison Costs

Pew report shows Michigan far above national average

A new analysis by the Pew Center on the States shows that Michigan leads the country in the average amount of time its prisoners serve. The report, *Time Served: The High Cost, Low Return of Longer Prison Terms* (June 2012), examines the data available from 35 states on prisoners who were released from prison between 1990 and 2009. The authors describe the national trend toward harsher sentences, exploding prison populations and crippling corrections spending. They then drill down into the national figures to examine variations among states and identify the steps some have taken to reduce prisoner length of stay and, therefore, prison costs.

The National Perspective

The total population of state prisons spiked more than 700 percent between 1972 and 2011. But the payoff is modest, at best. While crime rates began dropping steadily in the 1990s, the increased use of incarceration is estimated to account for only one-quarter to one-third of the decline. Moreover, there is a margin of diminishing returns. For many offenders, there is little or no evidence that keeping them locked up longer prevents additional crime. During the past decade, all 17 states that cut their imprisonment rates also experienced a decline in crime rates.

Longer prison terms have been a key driver of prison populations and costs. On average, each additional month one prisoner serves costs roughly \$2,600. [In Michigan, it's over \$2,800.] When additional months are multiplied by thousands of prisoners, the impact on state budgets is substantial.

Michigan: Longest in the Nation

Michigan had the longest average time served of any of the states examined. As Table 1 shows, in 2009 Michigan prisoners in general served nearly 17 months longer than the national norm.

Michigan also had the longest average time served when comparing only assaultive offenders. - two to three years more than such reputedly "tough" states as Georgia, Texas, Louisiana, Florida and California. Table 1 shows that Michigan prisoners convicted of assaultive crimes served 30 months, or 50%, longer than the national average

In addition, Michigan exceeded other states in how much it increased length of stay over the 20-year period. While the average increase for all prisoners was 9.6 months (36%), in Michigan it was 22.8 months (79%). For assaultive offenders the difference was even more dramatic. The national average

Table 1. Average Time Served Comparison: Michigan vs. National Average

	All Offenders			Assaultive Offenders		
	1990 Avg Yrs	2009 Avg Yrs	Percent Change	1990 Avg Yrs	2009 Avg Yrs	Percent Change
35 states	2.1	2.9	36%	3.7	5.0	37%
Michigan	2.4	4.3	79%	3.9	7.6	97%

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increased by 15.6 months (37%); for Michigan the increase was 44.4 months (97%).

As the authors stress, this method of calculating length of stay is based only on people whose actual time served is known because they were released. Since it does not include people continuing to serve life and long indeterminate sentences, the average for assaultive offenders tends to be understated. This is undoubtedly true for Michigan, where 5,100 prisoners are serving life terms (parolable and non-parolable) and 2,100 have minimums greater than 25 years.

More time doesn't mean less crime

The authors note that, despite years of effort, researchers cannot make a connection between increased length of stay and less recidivism. While many factors are known to affect whether former prisoners commit new offenses, even recent "more methodologically sophisticated studies still find no significant effect, positive or negative, of longer prison terms on recidivism rates."

Focusing only on non-violent offenders, Pew concluded that 24% of the Michigan prisoners released in 2004 could have served between three months and two years less without jeopardizing public safety. The prison population would have been reduced by 3,280 at a savings of \$92 million. Arrests for violent crimes would have increased by only 0.2%.

Many strategies can reduce time served

The average length of stay can be affected by a wide variety of sentencing and release policies that combine differently in each state. State strategies for reducing length of stay include:

- Reclassifying Offense Types
- Amending Mandatory Minimum Sentencing Laws
- Using Risk-Based Sentencing
- Expanding Earned-Time Opportunities
- Changing Parole Policy and Practice

- Making Administrative Changes to Parole
- Enacting Revocation Caps

Michigan sentences get longer – and longer

The Pew report confirms the findings of earlier Michigan-specific research. (See sidebars at pg. 15) While these researchers attributed much of Michigan's increased length of stay to harsher parole policies, increased sentence lengths also made a substantial contribution to the trend.

The MDOC's annual statistical report contains a table that shows, by offense, the minimum sentences imposed for people committed to prison that year. CAPPS reviewed the reports for 40 years – from 1970-2009. The trends for several of the most common assaultive offenses -- second-degree murder, first-degree criminal sexual conduct and armed robbery -- are particularly revealing.

All three offenses carry a statutory maximum of "life or any term." The sentencing judge may set both the minimum and maximum or impose a sentence of "parolable life." Until 1992, Michigan's "lifer law," MCL 791.234, said that lifers not sentenced for first-degree murder become eligible for parole after serving 10 calendar years. The statute also said that any prisoner who had served 10 calendar years on a long indeterminate sentence could be considered for parole. Thus life terms and long terms of years were treated similarly. In 1992, the eligibility date for lifers was increased to 15 years.

Graph 1 shows a dramatic shift in sentences for second-degree murder. In the 1970s, the single largest group (32%) was of minimum sentences greater than five but not more than 10 years. Another 15% of the minimums were five years or less. While a quarter of those convicted received life terms, fewer than 4% received minimums longer than 20 years.

Across the decades, the proportion of lower minimums steadily shrinks and the proportion of longer minimums steadily grows. By the 2000s,

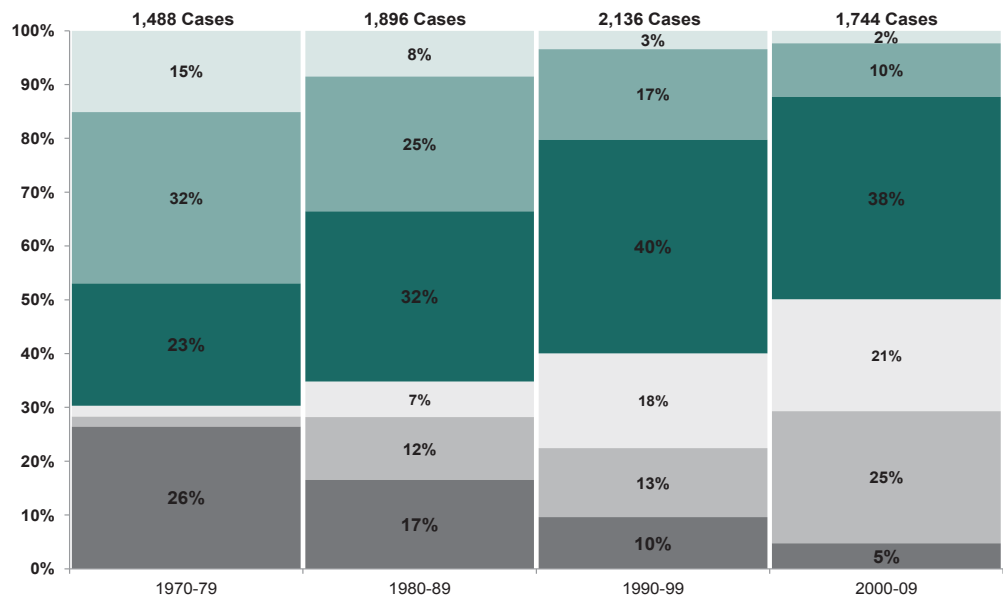
the single largest group (38%) is of sentences greater than 10 but not more than 20 years; the number of people receiving five years or less has dropped to 2% while a quarter are now serving more than 25 years. Notably, the proportion of life terms is one-fifth of what it had been.

Although overall sentence lengths are lower than for murder, Graph 2 shows similar trends for first-degree criminal sexual conduct. In the 1970s, more than half the minimum sentences for CSC 1st were five years or less. In the 2000s, less than one-quarter of the minimums were that low. The proportion of sentences that was greater than 10 years but not more than 20 grew from 13% to 33%. The proportion of life sentences fell by 75%; the proportion of minimums over 20 years quadrupled.

Graph 3 (see page 13) shows that the pattern for armed robbery sentences is a little different and much less extreme. Overall, minimum sentences tended to get shorter in the '80s and '90s before increasing in the 2000s. The single largest group of minimums is five years or less in every decade and a substantial majority never exceeds 10 years. The proportion of long minimums increases and the proportion of life terms declines,

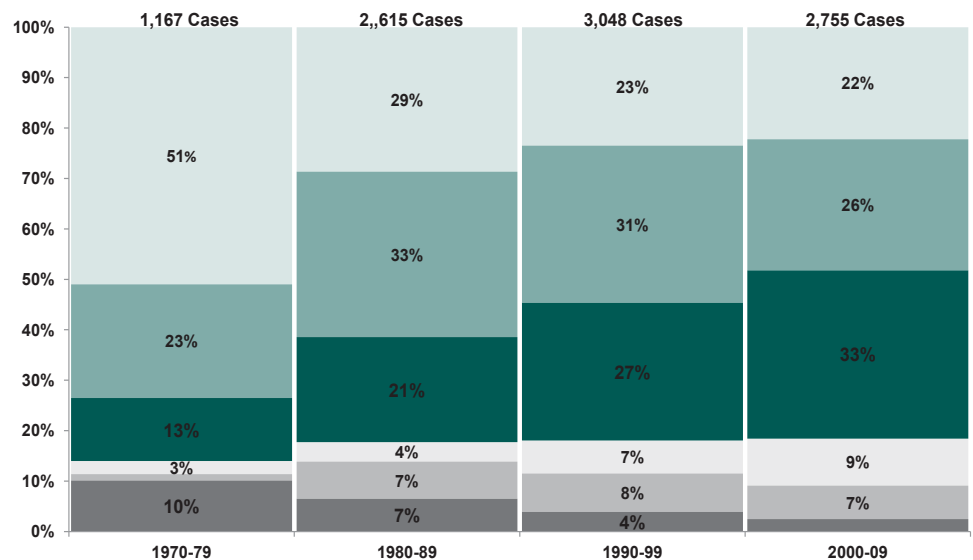
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Graph 1. Murder, 2nd Degree

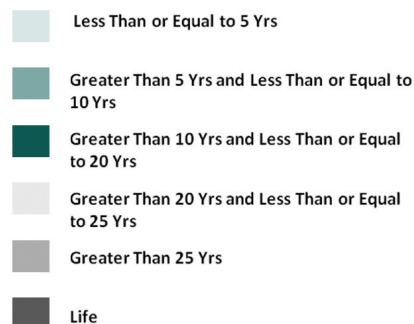


Note: For ease of reading, in most cases where percentages are less than 3%, they are not displayed.

Graph 2. Criminal Sexual Conduct, 1st Degree



Note: For ease of reading, in most cases where percentages are less than 3%, they are not displayed.



Correcting the Record on Probationers & Parolees

Free Press series misleading, harmful to sound policy

The recent Free Press series (9/30-10/2/2012) and its sensational headlines suggest that large numbers of released prisoners are roaming the streets assaulting and murdering citizens at will. Although this image is simply untrue, the MDOC has already slowed the grant of paroles and is returning more technical parole violators to prison.

The series began with a front-page headline blaring “*Lax Controls Leave Ex-Cons Free to Kill.*” The title of the Sunday editorial was “*Prisoner Releases, Dangerously Done.*” Graphic descriptions were provided of particularly heart-wrenching crimes. The thesis throughout was that monitoring failures by the MDOC had permitted a wave of violent crimes by people under its supervision. No functional distinction was made between probationers and parolees.

It does not denigrate the tragedy of individual cases to place them in context. Policies affecting thousands of people and millions of dollars should depend on a realistic assessment of how likely it is that the average citizen will be a victim of a probationer or parolee. A number of questions are critical:

- How much risk are citizens actually at?
- How representative are the cases featured by the Free Press?
- What proportion of people under supervision commits murder?
- To what extent could changes in supervision and parole policies have prevented these crimes?

The Actual Risk to Citizens

The paper relied heavily on a review of Critical Incident Notices (CINs) prepared by probation and parole agents in the Metro Region (Wayne, Oakland, Macomb and Washtenaw Counties) during a 32-month period from Jan. 2010 – Aug. 2012. CAPPS’s own review of the same documents reveals a very different picture.

From the CINs and additional accounts in the Free Press, CAPPS identified 63 cases that involved 70 people under supervision and 72 victim

Risk of Being Killed by a Probationer or Parolee in Southeast Michigan

	Population	Deaths in 32 Months	Average Deaths/Year	Risk to Individual
City of Detroit	706,585	37	13.9	1 in 50,833
Wayne County (outside Detroit)	1,095,511	13	4.9	1 in 223,574
Oakland County	1,210,145	11	4.1	1 in 295,157
Macomb County	842,145	3	1.1	1 in 765,586
Washtenaw County	347,962	1	0.4	1 in 869,905
Metro Region Total	4,202,348	65	24.3	1 in 172,936

Note: Six killings were committed outside the Metro Region by parolees being supervised there and one location could not be determined.

deaths. It is apparent that the risk of any given citizen being killed by a probationer or parolee is exceedingly low.

Of course, the risk of being a crime victim depends on more than geography. Many murders are committed not by strangers but by acquaintances or even family members. That is also true when the perpetrator is on probation or parole. Thus the total cases include gang shootings, drug deals gone bad, family disputes and sudden arguments between men in the street. At least five of the victims were males on probation or parole themselves, including 26-year old Matthew Mathias, a parolee who was killed trying to stop a robbery.

Two other key facts:

- All killings are not murder. For instance, the 18-year old probationer who accidentally killed his 17-year old friend when several teens were playing with a rifle was convicted of manslaughter. The parolee who turned himself in after he struck a woman crossing the street was convicted of leaving the scene of an accident.
- Everyone identified will not ultimately be found guilty, when and if they are charged. The Free Press acknowledged that “a few” it had counted had already been exonerated. CAPPs noted that six were mentioned in the CINs only as “person of interest”; that is, the deaths had not been attributed to them by law enforcement when the CINs were prepared.

A year from now, when all the cases have been resolved and the actual number of murders committed by probationers and parolees can be determined, the actual risk to citizens will undoubtedly appear much smaller.

Distinguishing Probationers from Parolees

Probationers and parolees must be distinguished so that problems can be identified accurately. The Free Press treated them as interchangeable, referring to them all as “ex-cons.” Alleged problems with the release and supervision of parolees were illustrated with stories about crimes by probationers. In fact, of the 70 total offenders, 37 were probationers and 33 were parolees.

People are sentenced to probation by judges for relatively less serious crimes and judges decide how to punish violations of probation conditions. The point of probation is to keep the offender in the community.

Parolees have typically committed more serious crimes or have longer criminal histories. They have been removed from the community for years or decades and have experienced the deterrent effect of incarceration. Decisions to grant and revoke parole are made by the parole board.

A year in prison costs \$34,000 while a year on community supervision averages \$2,100. Beginning in 2009, parole grant rates were increased for assaultive and sex offenders, many of whom had been denied release repeatedly despite assessment scores indicating they were at low risk of reoffending. More paroles, combined with the use of more community-based sanctions for parole violations, have helped reduce the prison population and contain prison spending. However, there have been vocal allegations that public safety was being compromised. The actual impact of these policies and the cost-effectiveness of changing them cannot be measured if the behavior of probationers is attributed to parolees.

The cases suggest that prior record does not accurately predict whether someone will commit a murder. Sixty-two percent of the probationers were known to be on supervision for property or drug offenses while 70% of the parolees had served their time for assaultive offenses. None of the parolees had been serving for murder or manslaughter. The only sex offender in the group killed his own sister. There is nothing about these 33 parolees that suggests a pattern of error in the nearly 50,000 paroles ordered since 2008.

A More Balanced View

The vast majority of crimes, including murders, are not committed by probationers or parolees.

- In 2007, parolees accounted for only 3% of Michigan arrests for so-called “index crimes”, which include murder and rape. Felony probationers accounted for 7%.
- Michigan State Police figures for the counties in the Metro Region show the total number of homicides (murder and manslaughter) in 2010 and 2011 combined was 788. For the same 24 months, the number attributed by the CINs to people under supervision was 48, or 6%.

Conversely, the vast majority of probation-

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Correcting the Record on Probationers & Parolees

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ers and parolees do not commit new crimes, particularly not violent ones.

- MDOC reports show that from May 2010 – April 2011, 53 parolees were returned to prison with new sentences for sex offenses and 487 were returned with new sentences for other assaultive crimes. From May 2011 – April 2012, 39 parolees were returned for new sex offenses and 384 went back for other new assaultive crimes. Since there were roughly 20,000 people on parole during each period, the proportion who received new prison sentences for assaultive crimes was less than 3%.
- Similarly, a 2009 CAPPs report analyzed more than 76,000 Michigan prisoners released between 1986 and 1999. Fewer than one in five were returned to prison within four years for any new crime and only 4.5% went back for new violent or sex offenses. Notably, homicide and sex offenders had the lowest rates of return and rarely repeated their crimes.
- Also noteworthy is the fact that of 110 parolable lifers convicted of violent offenses (most commonly murder) who were released since 2005, only one was returned for a new assaultive crime.

The Potential Impact of Supervision

The thrust of the Free Press series is that these killings could have been prevented if the MDOC had provided better supervision. This premise is largely untenable. While it appears that in a few cases missed opportunities to intervene

allowed tragic events to occur, in many cases more supervision would not have made a difference.

“Supervision” basically means “reporting”. The level of supervision is defined by the frequency of contacts between the probationer or parolee and the field agent. These contacts tend to be brief. They may involve drug testing and a check on where the person resides. But there is simply nothing about supervision that prevents a person from seeing his probation officer on Thursday and committing a crime on Friday. The CINs indicate that at least a dozen people had reported within 10 days or less before the offense. Some continued to report after allegedly committing a murder. Only seven were identified as absconders.

The limits of supervision are also obvious from the facts of the offenses. An outpouring of anger in a domestic situation, a sudden quar-

We can return to the old model of “trail ‘em, nail ‘em and jail ‘em”, but sending more people to prison for technical violations is very expensive, often unfair and an unreliable way to prevent crimes that may or may not occur.

rel between acquaintances, a traffic death – these situations typically cannot be prevented simply by reporting weekly rather than monthly. And regular reporting probably won’t prevent someone desperate for money from robbing a liquor store or breaking into a home.

Moreover, not every violation of a supervision condition is a precursor to crime. People frequently fail to report because of the difficulty of getting transportation to probation and parole offices. They may associate with other felons simply because having a criminal record is so common among people in their families and communities. They may use drugs or alcohol to self-medicate depression without ever hurting someone else.

So what are the options? We can return to the old model of “trail ‘em, nail ‘em and jail ‘em”,

but sending more people to prison for technical violations is very expensive, often unfair and an unreliable way to prevent crimes that may or may not occur.

Having realistic expectations is another. All crime cannot be prevented. The MDOC cannot cure poverty or mental illness or predict all future behavior. While it should be held accountable for those things that are within its capacity, holding the MDOC responsible for every crime committed by someone under supervision is an outlet for frustration, not a basis for developing sound policy.

Finally, we could actually prevent some portion of new crimes by strengthening the coping skills of probationers and prisoners and addressing their individual motivations. Currently, we teach offenders that the people with the power make the rules and that “success” is not getting caught in rule violations. We could instead use entry to the criminal justice system as an opportunity to change behavior, not just monitor it. The initial investment in individuals would be higher, but the payoff in community safety could be incalculable.

Reconciling the numbers

CAPPS could not reconcile its findings with those of the Free Press.

The Free Press reported that as of July 31, there were 50,546 probationers, 18,104 parolees and 1,772 parole absconders. It said that as of Aug 31, a total of 88 parolees and probationers were “suspected, arrested or convicted” in 95 murders – 21 murders in 2010, 38 in 2011 and 36 in 2012.

The first problem with these figures is that the total number of people on supervision is reported for a fixed date, while the number of homicides occurred over a 32-month period. Since people are placed on and discharged from supervision almost daily, the total number of individuals who were on probation and parole during the study period would have been substantially higher.

On the other hand, the figures for total parolees and probationers are statewide, while the critical incident reports examined were only from the Metropolitan Region, which includes Wayne, Oakland, Macomb and Washtenaw Counties. Thus the total number of homicides in the state committed by offenders under supervision was also undoubtedly greater than reported.

The paper itself noted that among the 95 killings it counted, one offender was killed by police, two committed suicide and “a few” were exonerated. CAPPS counted as homicides only those cases where someone other than the perpetrator died, allegedly at the hands of a probationer or parolee. That is, it did not count people under supervision who killed themselves or who were killed by police or by a victim while committing a crime. It did count every case where a probationer or parolee was initially identified as involved in any capacity.

There were eight incidents involving a single offender but multiple deaths and four incidents involving multiple offenders and a single death. Including the four cases the Free Press featured for which there were not critical incident notices, CAPPS identified a total of 63 incidents. CAPPS found 70 offenders, not 88. The number of victim deaths appears as follows:

	Total	2010	2011	2012
Free Press Reported	95	21	38	36
CAPPS Identified	72	19	34	19

Without knowing exactly how the Free Press counted cases, CAPPS cannot account for the discrepancies. Notably, of the 23 fewer homicides counted by CAPPS, 17 were reported by the Free Press as having occurred in 2012 “according to department critical incident reports.”

Correcting the Record on Probationers & Parolees

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The Use of Critical Incident Notices

The MDOC has no means of systematically tracking when offenders under community supervision have been suspected, charged with or even convicted of new crimes. It tracks probation and parole revocations that result in a commitment to prison, either with a new felony sentence or for a “technical” violation of the rules of supervision. Not uncommonly, a parolee suspected of committing a new offense will have parole revoked for a technical violation. If there is subsequently a conviction and a new sentence is imposed, the categorization in the MDOC database will change. Conversely, a probationer or parolee who is jailed without bail pending trial for murder will not go through the formality of having their supervision status changed on technical grounds since they are already in custody on more serious charges.

Critical Incident Notices are completed by probation and parole officers to keep the MDOC administration apprised of events in the field. A key requirement of the CIN is for the reporting employee to state what, if any, media attention there has been.

Field agents are supposed to report unusual events they participated in, witnessed or learned about from other sources, including the media. These events may range from a probationer becoming sick at a field office to an agent losing a gun. They also include information from law enforcement or media websites that an offender has been charged with or is a “person of interest” in a crime, has been killed while committing a crime or has been the victim of a crime. The CINs may or may not get updated, so whether a person who was a suspect ever actually got charged, much less convicted, may not be apparent.

The 549 CINs provided to the Free Press included 339 reporting the involvement of probationers or parolees in committing crimes, 134 reporting other information about people under supervision and 76 that did not concern probationers or parolees at all.

Whether any given event gets reported in a CIN depends on whether, when and how it comes to the agent’s attention and whether that agent decides to prepare a notice. Notably, the numbers above do not include four of the homicide cases featured by the Free Press and at least two others that were mentioned briefly. Thus, CINs cannot be relied on as an accurate source of hard data. They are, however, useful for providing a snapshot of the criminal involvement of people on probation and parole.

Length of Stay Drives Prison Costs

(Continued from page 7)

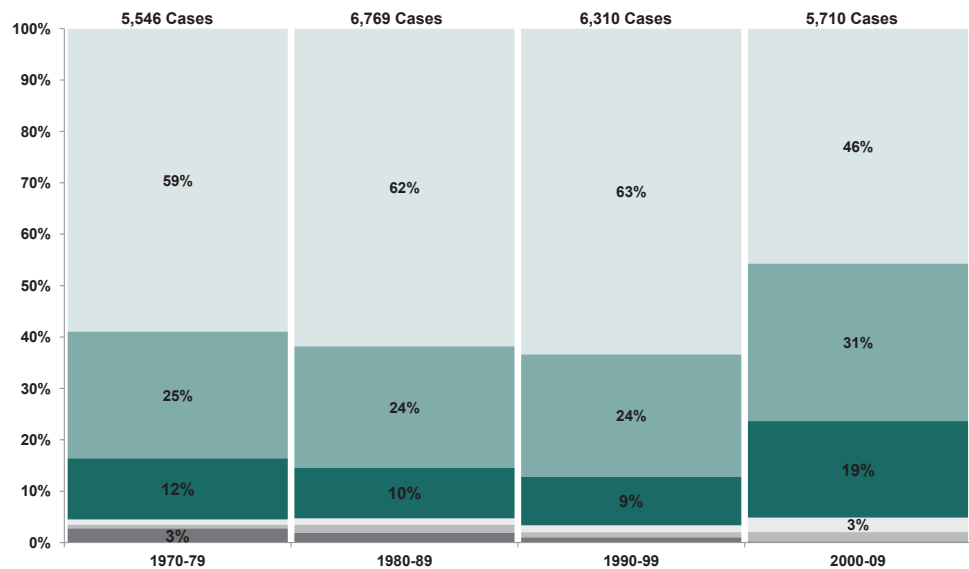
but both these groups are very small in every period. Although it carries the same statutory maximum, on average, armed robbery has never been punished as harshly as murder or CSC.

What 10 years used to mean

Our concept of appropriate punishment has changed remarkably. As Table 2 demonstrates, in the first two decades, 10 years in prison was considered a substantial penalty. In the 1970s, a large majority of everyone sentenced for second-degree murder, first-degree criminal sexual conduct and armed robbery received a sentence that made them eligible for parole in 10 years or less. Fewer than 5% had minimums greater than 20 years. By the 2000s, the percentage eligible for parole after 10 years had declined by 10 points for armed robbery, 36 points for CSC and 61 points for murder. Conversely, the proportion of people required to serve more than 20 years for criminal sexual conduct had quadrupled and the proportion required to serve more than 20 years for second-degree murder had increased ten-fold.

The decline in life sentences is consistent with this trend. In fact and in law, during the first two decades life sentences were meant to be the equivalent of what were then considered to be long indeterminate terms. Ironically, having fewer life sentences now means

Graph 3. Armed Robbery



Note: For ease of reading, in most cases where percentages are less than 3%, they are not displayed.

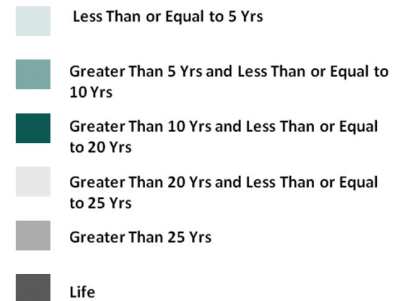


Table 2. Summary of Parole Eligibility Trends over Four Decades

Parole Eligibility	1970-79	1980-89	1990-99	2000-09
Murder, 2nd Degree				
10 yrs or less*	73%	50%	20%	12%
> 20 yrs	4%	19%	31%	46%
Criminal Sexual Conduct, 1st Degree				
10 yrs or less*	84%	69%	54%	48%
> 20 yrs	4%	11%	15%	16%
Armed Robbery				
10 yrs or less*	87%	88%	87%	77%
> 20 yrs	2%	3%	2%	5%

*Includes parolable life terms from 1970 through 1989.

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Length of Stay Drives Prison Costs

(Continued from page 13)

people are having to serve more time before they are eligible for parole.

“Truth in sentencing” lengthens the average

The obvious impact of longer sentences on length of stay is compounded by another critical factor. In 1998, in the name of “truth in sentencing,” Michigan eliminated sentencing credits for good conduct. Everyone sentenced to an indeterminate term after that date has to serve every day of his or her minimum.

Throughout most of the first three decades we’ve examined, the minimum sentence was typi-

ing years or even decades to the time people must actually serve, the impact of truth in sentencing on Michigan’s length of stay has been enormous.

Bringing Michigan in line

Reducing Michigan’s average length of stay would lead to a smaller prison population and lower corrections costs. There is no evidence it would increase recidivism or overall crime rates.

Achieving this goal would take five simple steps:

1. Reinstate the sentencing commission and review the guidelines applicable to all offenses, including the more serious assaultive crimes.
2. Amend “truth in sentencing” to permit prisoners to earn credit for good behavior and program participation.
3. Implement “presumptive parole” so that people are released when they have served their minimum sentences unless they are currently dangerous or have poor institutional conduct.
4. Establish a temporary special board to review the hundreds of low-risk, aging lifers who have been parole-eligible for many years.
5. Limit parole revocations for technical violators to cases where there is a clear risk to public safety.

Any one of these steps could reduce length of stay significantly and save tens of millions of dollars. Collectively, they could bring Michigan into line with national norms and save hundreds of millions.

Reducing Michigan’s average length of stay would lead to a smaller prison population and lower corrections costs. There is no evidence it would increase recidivism or overall crime rates.

cally reduced by good time or disciplinary credits. Actual time served was substantially less than the minimum imposed by the court. In 1975, a judge could impose a 40-year minimum sentence knowing that the progressive application of good time credits could create parole eligibility at 16 years. After 1992, the application of disciplinary credits could reduce a 40-year minimum by nearly 10 years. Today, a 40-year sentence means the person will have to serve at least 40 years. By add-

Citizens Research Council of Michigan, *Growth in Michigan's Corrections System: Historical and Comparative Perspectives* (June 2008)

The average length of stay increased 57 percent from 28 months in 1981 to 44 months in 2005. Controlling for offense type, in 2003 Michigan's length of stay was 1.2 years longer than the national average.

CAUSE: Adoption of sentencing guidelines, elimination of disciplinary credits, declining parole approval rates (especially for assaultive and sex offenders)

EFFECT: If length of stay had been one year shorter starting in 1990, in 2005 Michigan would have:

- Incarcerated roughly 14,000 fewer prisoners
- Spent about \$403 million less
- Employed roughly 4,700 fewer Corrections employees

Justice Center, The Council of State Governments, *Justice Reinvestment in Michigan: Analyses of Crime, Community Corrections and Sentencing Policies* (January 2009)

The overwhelming difference between the lengths of time served nationally and in Michigan appears to be due to the unique level of discretion available to the state's parole board.

- The average Michigan prisoner released in 2007 served 127% of the minimum sentence imposed by the court before they were first paroled.
- More than 1,000 offenders released in 2007 "maxed out", i.e., they served the maximum period of imprisonment allowed by statute and were released without community supervision.

Citizens Alliance on Prisons and Public Spending, *Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy?* (August 2009)

After the composition of the parole board was changed in 1992, time served went from 93% of the minimum to 106%.

- From 1993-1999, the new board's policies required 2,229 more beds per year.
- The increases were dramatically greater for homicide and sex offenders, even though the Michigan data, like that from other states, showed these offenders have the lowest recidivism rates.

Incarcerating people for an extra year or two after their earliest release date had very little impact on returns to prison within four years.

- To avoid increasing returns for new crimes against people from 4.5% to 6.9%, 9,664 assaultive and sex offenders who would not have returned with any new offense were imprisoned for one to four years after they became eligible for parole.
- If everyone denied parole for up to two years had been released when first eligible:
 - It would have saved more than 2,300 beds a year.
 - The rate of parolees returned to prison for new crimes would have increased by 1.7 points.
 - Annual arrests would have increased by less than 0.4%.

Moving backwards in sentencing policy

State enacts 25-year mandatory minimum for fourth offenders

This fall, our legislators pushed through a hot-button crime bill that delivered good sound bites at the expense of sound public policy. Senate Bill 1109 amended MCL 769.13 to require a 25-year mandatory minimum sentence for certain individuals convicted of a fourth felony. The mandatory minimum applies in cases where the fourth felony is one of 17 serious crimes and at least one of the three prior felonies is on a list of over 50 assaultive, drug, property or public order crimes.

SB 1109 was sold by prosecutors and the Attorney General's office as a tool to prevent violent crimes by keeping "career violent offenders" behind bars longer. Legislators passed the new bill without regard for the failure of similar laws in other states or for Michigan's own experience with ineffective, expensive and harsh mandatory minimums. In 2002, Republicans and Democrats united to repeal those laws because of the shockingly unfair sentences created by the mandatory minimum drug laws and the enormous cost to taxpayers.

Proponents of Michigan's new 25-year mandatory minimum provided legislators with unsubstantiated and misleading claims about the need for SB 1109, who it will affect and how effective it will be in preventing crime. As a result, taxpayers will pay millions more to warehouse aging individuals who were never the "violent repeat offenders" claimed by bill proponents, just as the drug mandatory minimum drug laws never narrowly targeted top drug dealers.

Solution in search of a problem

Ironically, SB 1109 was a solution in search of a problem. Michigan statutes have long allowed sentences to be increased for second, third and fourth offenses – without regard to the age of the priors. Fourth offenses that carry maximum sentences of five years or more are already punishable by life or any term of years. Prosecutors decide which individuals to charge as habitual offenders and judges use the guidelines designed especially for habitual offenders to impose sentences.

There is no evidence that the guidelines were not harsh enough or that judges were failing

to impose appropriate sentences for a fourth offense. Moreover, judges could exceed the sentence provided under the guidelines, where warranted, and prosecutors could appeal sentences they believed were too lenient. Thus, a minimum sentence of 25 years or more could already be imposed in an appropriate case without forcing judges to impose them in every case that meets the bill's broad criteria.

Bill casts a wide net

Prosecutors claimed that SB 1109 would only target career criminals who have committed a series of violent crimes. Not true: the 25-year mandatory minimum can be imposed even if the three prior offenses are all property, public order or drug offenses. In fact, any controlled substance offense punishable by more than four years in prison counts, as does carrying a concealed weapon. Thus anyone who has received probation sentences over a period of years for two drug convictions and a CCW would qualify for the mandatory 25-year minimum. This will disproportionately impact African-American and Latino males who are more likely to be arrested for these crimes. And while the fourth offense must be an assaultive crime, that designation can cover a wide range of conduct, including offenses that normally carry a 10 or 15-year maximum, such as assault with intent to commit unarmed robbery and assault with intent to commit great bodily harm less than murder.

Prosecutors and the attorney general's rep-

Case Example

For two decades, the defendant has battled a crack cocaine addiction. In 1985, he is convicted of possessing a small amount of cocaine. He receives probation with no drug treatment requirement. In 1988, he relapses, and is again convicted of possessing a small amount of cocaine. He receives a short jail sentence with some drug treatment. He stays clean for ten years, but relapses in 1998, when he is convicted of delivery of a small amount of cocaine for selling to an undercover

police officer to support his habit. He receives a one-year prison sentence.

In 2012, the defendant again relapses. To support his habit, he bumps hard into a college student, and grabs his backpack. Nobody is injured. He is stopped, arrested, and charged with assault with intent to rob and steal, unarmed. Current habitual offender sentencing guidelines would put the minimum between 12 and 48 months.

Representatives also insisted that the original version of SB 1109 would narrowly target only those repeat offenders who persisted in committing violent crimes despite multiple previous opportunities to reform. Again, not true. Prosecutors frequently charge individuals with multiple felonies for a single crime. Historically, the habitual offender statute was applied so that each prior offense had to be a different incident. A 2008 Michigan Supreme Court ruling, *People v Gardner*, reinterpreted the statute to count each prior felony, even if all of them arise out of one criminal incident. As a result, people can be charged as a fourth habitual offender for their second crime.

CAPPS provided legislators with the correct information and SB 1109 was amended. The reach of *Gardner* was limited so that each prior criminal incident, not each prior felony, will count when determining who is eligible for the 25-year mandatory minimum.

Ineffective, fiscally irresponsible

SB 1109 will shift sentencing discretion from judges to prosecutors. If the prosecutor decides to pursue the fourth offender charge, the judge's hands will be tied. Realistically, prosecutors will mainly use the new mandatory sentence as an enormous hammer to extract harsher plea bargains. Sentences will be lengthened even if the 25-year minimum is not imposed. Prosecutors' charging and plea bargaining decisions cannot be appealed, so even shockingly unfair outcomes typically cannot be challenged through the courts.

Research shows that lengthening sentences has a steeply diminishing return in public safety. There is no evidence that a 25-year sentence deters future behavior more effectively than a 15-year term. Moreover, individuals "age out" of crime. Extremely long sentences turn prisons into expensive warehouses for aging prisoners who are the people

(Continued on page 18 - See 25)

***People v Gardner*: Legislature should restore statute's original intent**

For decades Michigan courts interpreted the fourth habitual offender statute to require three discrete prior criminal incidents separated by an opportunity to reform, regardless of the number of convictions involved in each incident. However, in 2008 the Michigan Supreme Court ruled in *People v Gardner*, 482 Mich. 41 (2008), that each prior conviction counts to determine if someone is a fourth habitual offender. Since the ruling, anyone with three prior convictions arising from a single criminal incident who then commits a second offense can be charged under the fourth habitual offender statute.

People charged as habitual offenders face escalating penalties based on the number of prior offenses. The Supreme Court's decision in *Gardner* greatly expanded the number of people who are exposed to sentences of life or any term of years for a fourth offense. It similarly increased the number of people exposed to longer sentences for third offenses.

Although the Supreme Court purported only to be strictly interpreting the statutory language, not making sentencing policy, the result was to greatly increase prosecutors' leverage in charging and plea bargaining. The *Gardner* decision contributes to Michigan's inordinately long average prison length of stay and undermines the logic of having graduated habitual offender penalties. Legislators should clarify the statute's language so that prior felonies are counted as they always were, with increased penalties applicable only to people who actually repeated their criminal behavior, regardless of whether they are eligible for the new mandatory minimum

Judicial veto bill to be heard next term

HB 5575, sponsored by Rep. Ellen Cogen Lipton (D., Huntington Woods) would eliminate the authority of a successor sentencing judge to prevent the parole board from releasing a parolable lifer. Judges, prosecutors and victims would still be able to have their opposition to release considered by the parole board, but the successor judge would no longer have veto power.

In the last five years, 40 parolable lifers for whom the board had decided to hold a public hearing had their paroles vetoed. Because lifers are an aging population with increasing health problems and they are reviewed only every five years, each objection costs taxpayers about \$200,000.

The bill is supported by the Michigan Judges Association. The objection process puts successor judges in a difficult position. They receive a limited amount of information from the parole board and may be contacted by victims, victims' family members or the prosecutor. But they have no basis for making an independent judgment and may have no way of knowing what the original sentencing judge intended. When it was adopted in 1941, the lifer objection process applied only to the actual sentencing judge. For reasons now unknown, it was extended to successor judges in 1953. It has not been reconsidered in nearly 60 years.

Although the bill has bi-partisan support, including from Rep. Joe Haveman, influential chair of the House Appropriations Subcommittee on Corrections, it will not be taken up this year. There are simply too many bills competing for too little time during the lame duck session. However, Rep. Lipton has stated her intent to reintroduce it early in the next session and is optimistic that it will move smoothly through the House.

Bill to let AG appeal parole grants unlikely to pass

SB 1214, which has passed the Senate, would add the Attorney General to the list of parties who can appeal a decision to grant parole, along with the county prosecutor and the victim. CAPPs strongly opposes the bill as an unnecessary and expensive expansion of likely challenges to parole board discretion. Recent appellate decisions make it clear that few of these challenges would succeed. There is no evidence that prosecutors are failing to appeal parole decisions in appropriate cases. Nonetheless, the bill would allow the AG's office to review whole classes of parole decisions, such as murder or CSC cases, and prevent releases for months or years by initiating the review process.

After CAPPs testified against SB 1214 in the Senate Judiciary Committee, a modified version passed the full Senate. It is unlikely to be taken up in the lame duck session in the House, but could be reintroduced next term. A complete analysis of the bill can be found at the CAPPs website, www.capps-mi.org.

25-year mandatory minimum now law for 4th offenders

(Continued from page 17)

least likely to commit new violent crimes.

SB 1109 will ultimately create the corrections equivalent of a "balloon mortgage" as individuals begin to serve longer sentences than they would have before the bill's enactment. Estimates of the additional cost vary widely. The final tab will be determined by the charging and plea bargaining practices of Michigan's 83 elected county prosecutors.

Brutal crimes will always spur the impulse to enact harsh legislation, in the name of public safety. But enacting bad laws will not help victims or their families. To effectively reduce crime and corrections costs, Michigan needs to invest in the programs proven to address the complex social and economic factors driving crime rates. Unfortunately, SB 1109 not only throws away the key, it throws away millions of dollars needed to build a safer future.



Haveman addresses CAPPs annual meeting

Rep. Joe Haveman, chair of the House Appropriations Subcommittee on Corrections, was the keynote speaker at the CAPPs membership meeting on April 25th. Rep. Haveman spoke about his reasons for supporting corrections reforms that go beyond cost savings, including reinstatement of the sentencing commission and some form of presumptive parole. He then engaged in a lengthy exchange of views with the audience. His candor, deep knowledge of the issues and willingness to consider a wide range of input was greatly appreciated by the roughly 70 attendees.

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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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