CAPPS
CITIZENS ALLIANCE ON PRISONS & PUBLIC SPENDING

Senate Committee on Michigan Competitiveness
May 31, 2016

Criminal Justice Reform Bills
SB 932

Good morning, once again, Sen. Shirkey and members of the Committee. Thank you for this last opportunity to speak with you about this important package of bills. You have our chart laying out recommendations regarding some of the proposals. I'd be happy to answer questions about any of those. But I would like to focus my time today on SB 932, the Parole Sanction Certainty Act. This is the piece of the package that most directly addresses our concerns about not keeping people incarcerated longer than necessary for public safety. And it has, we believe, the greatest chance to significantly reduce the prisoner population.

If someone commits a new felony while on parole and gets a new prison sentence for that, there is no decision to be made. He or she is going back to prison and the new sentence will be added to the one on which parole was granted. In 2014 , 1,267 parolees were returned with new sentences. But there is a great variety of parole violations that are all considered "technical" because they don't involve a new prison sentence. They include four broad groups:

- Conduct that could be prosecuted as a felony but was not, perhaps for lack of evidence
- Conviction of a misdemeanor and, perhaps, service of a short jail sentence
- Conduct that could be prosecuted as misdemeanor but was not
- Noncriminal conduct that violated a condition of supervision, such as:
    - failing to report,
    - changing a residence without permission,
    - failing a drug test
    - failing to complete a treatment program,
    - having contact with a prohibited person,
    - possessing a facsimile of a firearm, or
    - violating a requirement of the sex offender registry, like reporting an e-mail address or updating vehicle information.

For technical violations, the parole board exercises absolute discretion as to whether to revoke parole. In 2014, 1,304 parolees were returned to prison for technical violations. We don't know how these revocations break down in terms of underlying conduct. We are actually beginning a research project that will examine a sample of revocations to determine just that.

Revocation is not the only sanction available to parole agents and the parole board. Parole conditions can be added or the length of parole can be extended. People can also be incarcerated without their parole being revoked. At any given time, hundreds of technical parole violators are in custody at the Detroit Reentry Center, the Lake County Residential Reentry Program or the Ingham County Jail for periods ranging from 30 to 180 days. These people have not had their paroles formally revoked. They are not counted in revocation

statistics or as part of the prisoner population. They are ostensibly being returned to custody for a "refresher course" in lieu of revocation and an even longer period of re-incarceration.

Offender success is not just about changing parolee behavior. It's about reconsidering our definitions. We need to have realistic expectations of how parolees can and should behave, in light of the challenges they face, the resources they lack and the burdens that numerous parole conditions place upon them. We have to ask ourselves why people should be returned to prison, possibly for years, for conduct that is not criminal or that does not warrant more than 30 days in jail for anyone else. We need to look closely at the increasingly blurred boundaries between parole revocation and incarceration that is called re-entry. Are these practices fair? Are they the best use of our resources? Are they keeping us any safer?

We also have to ask whether using prison to enforce treatment participation makes sense. People are routinely convicted of drug possession because they are addicted. They go to prison and eventually get placed in a treatment program. They get released and more treatment is a condition of parole. They fail to abide by some condition of the treatment program and they are returned to prison so the whole cycle can begin again. They ultimately spend years in prison essentially for the condition of being a drug addict. Of course thousands of drug addicts who are not under criminal justice system supervision live among us without entering or succeeding in treatment programs. Are we really accomplishing anything by using parole as a club to bludgeon people into treatment and punishing them with prison when they fail?

SB 932 addresses these questions by placing some constraints on the Department. Despite the similarity in their names, Parole Sanction Certainty is not simply Swift and Sure Probation applied at the back door. They are both intended to reduce the number of people entering prison because of supervision violations, but the methods are quite different.

Swift and Sure is designed to provide intensive oversight and structure to high risk probationers, in particular. Probationers volunteer to participate, knowing that they will be closely watched and that each violation will have consequences. Each circuit court decides for itself whether it wants to conduct the program.

SB 932 does not address the re-offense risk of parolees or the intensity of supervision and there is nothing voluntary about participation. This makes sense because prisoners who want their freedom already have no choice but to sign a notice agreeing to comply with the conditions of their parole and the MDOC already assigns levels of supervision according to the parolee's risk.

What SB 932 does is set parameters for when revocation is appropriate and guidelines for how supervision violations should be addressed. It requires the development of a schedule of progressive sanctions that are keyed to the seriousness and frequency of violations in the context of the offender's background. It requires a review process for departures from the schedule. It places a 30-day limit on the use of incarceration as a sanction for supervision violations. And it prohibits revocation unless the parolee's conduct poses a significant risk that can't be managed in the community. In sum, it embodies a well-considered re-examination of the purpose of parole supervision and the rational limits of enforcement. Depending on how many technical violators are currently being returned for conduct that would not constitute a new felony, this could have a substantial impact on prison intake.

Our concern about the bill is that it doesn't go far enough. It leaves the MDOC with total discretion to decide who to place under sanctions certainty supervision. For everyone else, it's business as usual. This enormous loophole means the Department can just cherry pick those who are most likely to succeed in any event. It means the Department can decide for itself to what extent it will be subject to limits on its discretion.

Unlike Swift and Sure Probation, this is not a new "program" that requires buy-in from 200+ circuit judges in 83 counties. And unlike probationers who are trying to avoid going to prison for their underlying felony convictions, parolees have served their time. SB 932 is a directive to a single state agency on how far it can go in locking people back up for non-criminal conduct. It is absolutely the right thing to do. It doesn't need to be phased in. It needs to be implemented across the board.

Thank you.