Safe & Just Michigan's Testimony Regarding H.B. 5377

Senate Judiciary Committee, Sept. 5, 2018

Good morning. My name is John Cooper;[1] I am the Associate Director of Policy & Research at Safe & Just Michigan, a criminal justice research and advocacy organization based in Lansing. I appreciate the opportunity to provide testimony today in support of H.B. 5377, which would make needed clarifications to the statutory standard as to when the Parole Board can depart from the Parole Guidelines to deny parole to a low-risk prisoner.

I strongly encourage the Legislature to pass this bill, which will make parole decisions more consistent and evidence-based for low-risk prisoners, and will save taxpayers millions over time.

The Problem

Prisoners eligible for parole undergo a rigorous risk-assessment that is incorporated into their parole guidelines score, and the parole board can deny parole to individuals that score "high probability of parole" (i.e. low risk of re-offense) on the parole guidelines only if it has a "substantial and compelling," or, "objective" reason to do so. However, since objective reasons are not defined in law, in practice parole denials of the lowest-risk prisoners have become more *subjective* over time.

The Solution

HB 5377 defines what constitutes a "substantial and compelling" reason to deny parole in a way that eliminates *subjective*—i.e. not "evidence-based"—denials of parole, while preserving the parole board's ability to deny parole of low-risk prisoners based on *legitimate safety concerns*.

Objective Parole Reform assures that the parole guidelines – written in current law – guide the parole board's discretion in the same way the sentencing guidelines guide judges' discretion at sentencing.[2]

What H.B. 5377 *doesn't* do:

- It does not guarantee parole of any prisoner, even one with good behavior.

[1] J.D./M.A. University of Virginia, 2008; *Law Clerk*, Hon. Boyce F. Martin, Jr., U.S. Court of Appeals for the 6th Circuit, 2008-09; *Litigation Associate*, Latham & Watkins LLP, 2009-2016; *Super Lawyers* (Washington D.C.), Rising Star in Criminal Defense – 2014, 2015 & 2016.

[2] Courts interpreting the phrase "substantial and compelling" in other contexts make clear that such reasons must be "objective and verifiable," *see People v Babcock*, 469 Mich. 247 (2003), and that this standard can only be satisfied in "exceptional cases." *People v Fields*, 448 Mich. 58 (1995) ("Reasons justifying departure should 'keenly' or 'irresistibly' grab our attention and be 'of considerable worth.' They should exist "only in exceptional cases.'").

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- It does not require the parole board to release any prisoner without adequate assurance that they are not a risk to public safety.
- It does not apply to current prisoners.
- It does not apply to current or future prisoners serving a sentence of life in prison.

What H.B. 5377 *does* do:

- It helps the parole board make evidence-based parole decisions.
- It includes additional safeguards to help ensure that low-risk individuals have invested in their own rehabilitation and do not pose a threat to public safety.
- It gives MDOC more flexibility to deny parole where *objective* evidence of danger to the public exists.
- It ensures that the parole process is consistent, objective, and evidence-based.

Objective reasons to deny parole under H.B. 5377:

- The prisoner exhibits a pattern of ongoing behavior while incarcerated that indicates they would be a substantial risk to public safety (additional convictions, major misconducts, etc.).
- The prisoner refuses to participate in programming ordered by the Department that designed to reduce the prisoner's risk of reoffending.
- Verified, objective evidence of substantial harm to a victim that could not have been available for consideration at the time of sentencing.
- The prisoner has threatened harm to another person upon release.
- Objective evidence of post-sentencing conduct, not already considered in the parole guidelines, that indicates a prisoner would present a high risk to public safety.
- The prisoner is a suspect in an unsolved criminal case that is being actively investigated.
- The prisoner has a pending felony charge.
- The prisoner hasn't yet completed programming, programming is not otherwise available in the community if they are released and ordered to continue programming, and their risk cannot be managed in the community without programming prior to completion.
- The prisoner's release is barred by another law.
- The prisoner has not completed an adequate parole plan.
- A recent psychiatric evaluation shows the prisoner presents a condition that presents a high risk of re-offense.

The Bottom Line

H.B. 5377 is a modest reform that applies only to prisoners in the lowest risk classification of the parole guidelines. Further, the existing parole statute *already requires* that a low-risk prisoner be paroled on their earliest release day unless there is a "substantial and

compelling" reason not to; this bill just defines for this and future parole boards what those "substantial and compelling" reasons are.

H.B 5377 is about evidence-based practices, consistency, and safety – and should be enacted on those merits alone. However, by more accurately sorting prisoners that are ready to rejoin their communities from those that are not, this policy will also result in significant cost savings over time—an estimated $40 million within 5 years. H.B. 5377 shows that it pays to be smart on crime.

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Thank you for the opportunity to testify today. Please do not hesitate to contact me if you have questions.

Sincerely,

/s/
John S. Cooper