

Incarceration in the Michigan Department of Corrections

Presented by the

Prisons and Corrections Section
of the State Bar of Michigan

February 10, 2009

With special thanks to the Citizens Research Council
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Michigan Adopted February 2003

Online Resources

A Blueprint for Cost-Effective Criminal Justice in Michigan (2003)

Prisons & Corrections Section, State Bar of Michigan

www.michbar.org/prisons/pdfs/MIBLUEPRINT.pdf

Council of State Governments Justice Center

Reentry Policy Council <http://reentrypolicy.org>

Michigan Reports (2009) <http://justicereinvestment.org/states/michigan/pubmaps-mi>

A Ten-Point Plan to Reduce Corrections Spending in 2010 (2009)

Citizens Alliance on Prisons & Public Spending (CAPPS) www.capps-mi.org

Blueprint for a Safer Michigan (2008)

Michigan Association of Counties, Prosecuting Attorneys Association of Michigan,

Michigan Sheriffs Association, Michigan Association of Chiefs of Police

www.michiganprosecutor.org

Michigan Legislative Corrections Ombudsman

Keith Barber, email: kbarber@legislature.mi.gov

Michigan Department of Corrections

- Offender Tracking Information System (OTIS)

- Facility descriptions, locations, contacts

www.michigan.gov/corrections

Citizens Alliance on Prison & Public Spending

www.capps-mi.org

State Appellate Defenders Office

www.sado.org

Citizens Research Council of Michigan

www.crcmich.org

Prisons and Corrections Section of the State Bar of Michigan

www.michbar.org/prisons

May 2, 2008 Conference Materials, "Balancing Our Priorities:

Can we safely spend less on corrections?" www.balancingourpriorities.org

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Overview

- Introduction
 - Historical & Statistical Perspectives
- Prison Operations and Programming
- Parole
- Parole Revocation
- Population Reduction Strategies

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Introduction

The size and cost of Michigan's prison system will be a major issue facing the legislature this year

- With nearly 50,000 people in 41 prisons and 7 camps,* Michigan operates the 6th largest of all state prison systems
- Efforts to control costs have led to serious overcrowding

* 2 prisons and 1 camp to close by May 2009

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Size

- From 1978-84, the prisoner population was stable at roughly 15,000
- Starting in 1985, the prisoner population grew an average of 1,900 each year for 18 years

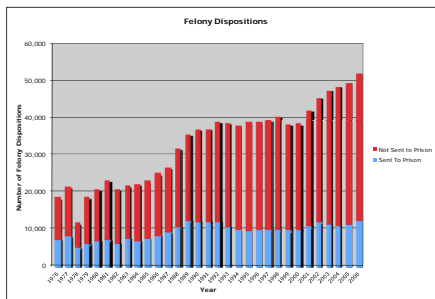
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Cost

- The fiscal impact of this growth was staggering
- The prison system costs nearly \$5 million per day
- Compared to other Great Lakes States, Michigan's cost per prisoner is average, but we spend proportionally more on corrections because our incarceration rate is so high

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Michigan's Prison Population Growth 1973 - 2007



Source: Citizens Research Council (chart), from MDOC Statistical Reports, MDOC 2008 Prison Population Projection Report

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Fiscal Effects of Sustained Prison Population Growth

- Corrections expenditures increased by nearly 5,000 % in the last 34 years from \$38 million to roughly \$2 billion
- Michigan Corrections spending grew from 1.6 % of total GF/GP expenditures in FY1973 to 21.5 % by FY2007
- Since FY2000, Corrections spending has “crowded out” spending on other major GF/GP programs

Source: Citizens Research Council

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Michigan, US, and Great Lakes States Incarceration and Spending Comparisons - 2005

	Incarceration Rate (per 100,000 residents)	Average Corrections Salary	Average Annual Costs Per Prisoner	Total Corrections Spending per Capita	Total Corrections Expenditures as a Percent of Total State Expenditures
U.S.	501	\$41,354	\$23,876	\$143	3.30%
Illinois	351	51,507	21,622	94	2.90%
Indiana	388	33,521	21,531	117	3.40%
Minnesota	180	44,252	29,260	80	1.70%
New York	326	60,713	42,202	151	2.90%
Ohio	400	34,091	23,011	166	3.80%
Pennsylvania	340	45,645	31,029	140	3.40%
Wisconsin	380	41,845	28,932	187	3.30%
Average	338	44,487	28,227	133	3.06%
Michigan	489	53,268	28,740	205	5.10%

*Numbers displayed in red are smaller than Michigan's corresponding number.

Source: Citizens Research Council (table), from Pew Charitable Trusts Public Safety, Public Spending, Forecasting America's Prison Population 2007-2011; Bureau of Labor Statistics, Quarterly Census of Employment and Wages, 2005; National Association of State Budget Officers, 2006 State Expenditure Report

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Efforts to Address Prison Costs Implicate Numerous Interests

Direct Impact

- 50,000 prisoners - 17,000 parolees
Parolees can vote; most prisoners will eventually
- Voters with loved ones in prison
- Nearly 17,000 MDOC employees
30% of all classified state employees
- Communities with MDOC facilities in 26 counties

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Efforts to Address Prison Costs Implicate Numerous Interests

Indirect Impact

- Recipients of and advocates for other state services, including health care, higher education, revenue sharing and assistance to families in need
- Business community
- Taxpayers generally

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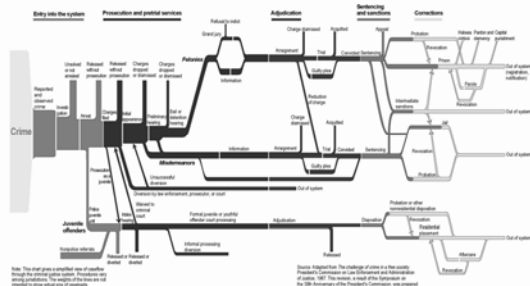
Laws Governing the MDOC

- US and Michigan Constitutions
- Statutes
- Appropriation bill boilerplate
- Administrative Rules
- Policy Directives (PDs and DOMs)
- Operating Procedures (OPs)

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System Flowchart

What is the sequence of events in the criminal justice system?



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Presentence Investigation Report (PSI)

- A critical document, relied on for major MDOC decisions, such as security classification, programs, and parole
- Errors or omissions must be challenged and corrected
- Exceptionally difficult to modify after sentencing
- Michigan Court Rules mandate contents

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Prisoner Intake

Two primary reception areas

- Charles Egeler Reception and Guidance Center in Jackson for men
- Robert Scott Facility in Plymouth for women (to be replaced in May 2009 by Huron Valley)



Egeler Facility



Scott Facility

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Prisoner Intake

- Security Classification
 - Assault and Property Risk screening
- Assessments
 - Educational
 - Physical and limited mental health
- Michigan Prisoner Re-entry Initiative (MPRI) / COMPAS

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Security Classification

- To determine management and confinement levels
- One tool is the PSI
- Levels I, II, III, IV, V (lowest to highest)
- Special Housing
 - Segregation
 - Duane Waters Health Center
 - Medically sheltered, such as C-Unit
 - Mental health

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Program Classification

- Screening to identify needs, interests and abilities for work, school assignments and referrals to programs
- Differs slightly as between men and women

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Education Requirements

- If no high school diploma, ABE/GED required (and if under age 65 and sentence over 2 years), see PD-05.02.112
- No parole without GED (unless waiver)
- Waivers allowed, *e.g.*, learning disabilities, non-English speaking (get documentation supporting waivers to the MDOC as quickly as possible)

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Academic Programs

- Adult Basic Education (ABE)
- General Equivalency Development (GED)
- College programs eliminated
- Vocational

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Treatment Programs

- Sex Offender Program (SOP)
- Assaultive Offender Program (AOP)
- SAI Boot Camp
- Substance Abuse (AA, NA, RSAT)
- Mental Health

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Prisoner Employment

- School, work, or combination of both
- Special security assignments (public works and gate pass)
- Michigan State Industries (MSI)
- Prisoner pay ranges
- Prisoner employment levels

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Deductions from Prison Wages

- Court ordered (victim restitution, forensic lab fee, HIV testing)
- Child support and right to a stay (send in the form!)
- State Correctional Facility Reimbursement Act, MCL § 800.401, *et seq*

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State Correctional Facility Reimbursement Act

MDOC can seek reimbursement for incarceration costs, MCL § 800.401, *et seq*.

- Prisoner completes Offender Financial Status Report Form at Intake (CFJ-140)
- MDOC looks for prisoner assets to seize and litigate to keep
- Exemptions

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Other Operations & Budget

- Each facility is like a small city
- Infrastructure and services include water, sewer, electric, gas
- Functions include maintenance, food service, medical, business & accounting, transportation
- Process between current services baseline, Governor's recommendations, appropriations, and spending plan

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Other Operations & Budget*

- Corrections \$2,040,648,200
2008 PA 245 (SB 1095)
 - FTEs* = 17,087
 - GF/GP** = \$1,975,415,800
(less \$980,000 Governor's veto for Judiciary Intensive Probation)
- Judiciary \$262,884,000
 - FTEs = 491
 - GF/GP = \$159,320,600

* Amounts are Gross Appropriations FY2009
** Full Time Equivalent Positions
*** General Fund/General Purpose

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Other Operations & Budget

- State Police \$530,292,600
2008 PA 249 (HB 5811)
 - FTEs = 2,924
 - GF/GP = \$284,921,60
- Facilities \$20,000,000 - \$50,000,000+
- Boilerplate & Legislative Reporting requirements
- Auditor General's legislative role – evaluation of programs/fiscal/statutory compliance

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Outside Contact

Level of access to outside contact depends on Custody Level

- Visits
- Mail
- Telephone

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Grievances

- MDOC has grievance system for prisoners to seek redress for their complaints
- A 3-step process that must be exhausted to protect subsequent administrative and legal remedies
- Legislative Corrections Ombudsman, Keith Barber

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Parole Board Composition

- Until Oct 1992, there were 7 members, all corrections professionals with civil service protection
- Changed to 10 members, appointed to serve 4-year terms, no civil service protection
- At least 4 must never have been corrections employees

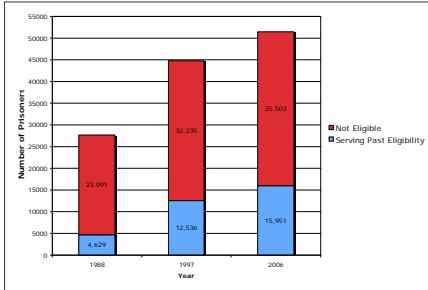
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Parole Board Composition

- After new board appointed, parole grant rates declined sharply and parole revocations for technical violations increased
- Trends are being reversed somewhat, but still have 13,000 people who are currently eligible for parole
 - 9,000 have served their minimum and denied release
 - 3,000 technical rule violators
 - 1,000 parolable lifers

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Prisoners Serving Past Parole Eligibility*: 1988, 1997, and 2006



*Prisoners with parolable life sentences are not included in the 'Serving Past Eligibility' category
 Source: Citizens Research Council, from MDOC MPRI Quarterly Status Report July 2007, DOC Research Section May 1995, DOC Five Years After Report September 1997

Earliest Release Date (ERD)

The Parole Board is granted jurisdiction over a case when a prisoner reaches minimum sentence imposed by the Court

- Must serve minimum (minus any jail time)
- Progressive good time abolished 1978
- Disciplinary credits up to 7 days a month enacted 1982
- "Truth in Sentencing" abolished disciplinary credits 1998

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Parole Eligibility Report (PER)

- Initial step for parole consideration
- Prepared up to 8 months before earliest release date or next consideration date
- Prisoner supposed to receive Notice of Interview and opportunity to review contents of counselor file

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Parole Eligibility Report (PER)

- Contains summary information about prisoner's "active offense(s)", misconducts, program completion and parole plans
- Description of offenses comes from PSI

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Notice of Intent to Conduct a Parole Board Interview

- Three months prior to first release date
- Notice covers issues the Parole Board intends to consider

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Parole Guidelines

Positive and negative points scored in 7 categories:

- Offense characteristics*
- Prior record*
- Prison conduct
- Statistical risk (assault and property)
- Age
- Prison program performance
- Mental health (-5 points for sex)

* Initially scored by Pre-sentence Investigator

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Parole Guidelines

The score (plus or minus) for each variable is computed into a grand total, called the **Preliminary Guidelines Score**

- If management level is V, -20 points
- Scores of -12 through +3 changed to +4 for some with no misconduct points or aged over 45 years
- MDOC scoring guide is available in Policy, PD-06.05.100A (eff 11/01/08)

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Final Parole Guidelines Ranges

- High probability (+3 or higher)
 - By statute can release without interview
 - Board interviews if offense involved death, sex or other violence, weapons, or long criminal history
- Average probability (+2 to -12)
- Low probability (-13 or lower)
 - By statute can continue without interview

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Guideline Departures

- Statute requires written "substantial and compelling reasons" for departures
- Because no prisoner appeals are allowed, standard not defined or enforced
- 45% high probability scores are continued – primarily sex and assaultive offenders

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Guideline Scoring Reviews

- Errors in guideline scoring can be reviewed
- Complaints are referred to Scoring Unit in Lansing
- Parole Board rarely reconsiders decision even after guidelines are corrected

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Victim Input to the Parole Process

- Right to notice of parole process
- Right to submit opposition or support for parole (usually kept confidential)
- Right to a meeting with a Parole Board member in Lansing

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The Parole Interview

- Prisoner, RUM (or equivalent), Prisoner's Representative, and Board Member
- Often held by video link, 10-20 minutes
- Opportunity to explore, collect and confirm information through conversation and questioning of the prisoner
- Final notice of decision mailed to Prisoner 30 to 45 days after the interview

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Parole Decisions (non-lifers)

- 3-member panel
 - 1 interviews
 - 1 votes from file and interviewer's notes
 - 1 breaks tie
- May be deferred for months for completion of therapy if prisoner already enrolled
- May be granted contingent on completion of 2-month re-entry program

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Sex Offenders

- Release rate = 11%
- Completion of therapy nearly always necessary, but generally not sufficient
- Admission of guilt necessary
- Release commonly withheld years past ERD, even when minimum sentence is 1 or 2 years

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Assaultive Offenders

- Release rate = 35%
- Successful completion of Assaultive Offender Program (AOP) improves chance of parole, but no guarantee
- Release commonly withheld years past ERD, even with good institutional record

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Parolable Lifers

- Eligible for parole after 10 years if offense before Oct 1, 1992; 15 calendar years if after
- "650" drug lifers sentenced to mandatory life without parole now eligible at 15, 17.5 or 20 years, depending on cooperation and aggravating circumstances
- An interview is only required at 10 years

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Parolable Lifers

- After an interview, only file reviews required every 5 years thereafter and further interviews in single Board member's discretion
- Parole guidelines not calculated for lifers
- If interviewing board member supports, case is considered in executive session; takes 6 of 10 votes to proceed

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Parolable Lifers

If majority has interest, notice sent to sentencing judge or successor and prosecutor

- Judicial objection within 30 days prevents parole
- Prosecutor can only provide input but opposition may cause board to withdraw interest

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Parolable Lifers

- If no objection, case proceeds to public hearing, then final decision
- Currently nearly 1,000 parolable lifers are eligible
- After 1992, board adopted policy that "life means life"; nearly all lifers released were drug offenders or were seriously ill
- Class action litigation may bring more releases

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Commutation

- Solely within governor's discretion but parole board makes recommendation
- Only method of release when parole not available, either because person hasn't yet served minimum term or is serving mandatory life without parole (usually for first-degree murder)
- Were common until mid-1980's, then rare

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Commutation

- Governor Granholm established the Executive Clemency Advisory Council in 2007 to review commutation requests
- Commutations have increased recently, especially for those who are elderly, gravely ill, or serving long sentences for drug offenses under laws that have since been rewritten

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Parole Appeals

- Request for reconsideration can be made to Board, but rarely granted
- Prisoner appeals to courts of denials eliminated from corrections code in 1999, but prosecutor and victim can still appeal if granted
- Bottom line: Board decisions are not reviewable and generally final

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Michigan Prisoner Reentry Initiative (MPRI)

- Mission and overview
- Implementation
 - Phase I – Getting Ready
 - Phase II – Going Home
 - Phase III – Staying Home
- MPRI in-reach facilities (PD 05.01.140, Attachment H)

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Parole Rescission

- Prior to release, the parole order may be suspended for reasons given in the Notice of Action with interview within 45 days
- After release, parole may be rescinded but must have interview and summary of new information that led to interview

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Placements Tips

- Best to parole where prisoner has significant ties
- Out-of-state placements take longer, better to seek in-state placement, then seek transfer (except for sex offenders)
- Commercial placement is placement of last resort

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Parole Supervision

- Pre-parole investigation is assigned by Parole Release Unit, conducted by supervising parole agent
- Special conditions of parole are assigned by Parole Board
- Supervision is by assigning the offender to the appropriate supervision level (Maximum, Medium, Minimum, Mail Reporting Status)
- Specialized supervision for EMS, GPS, and sex offenders

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Additional Fees and Costs

- Victim Restitution (MCL 791.220h)
- Filing fees and costs in a civil action
- Fees/costs relating to criminal conviction
 - state supervision costs
 - county court cost
 - attorney fee
 - DNA testing fee
 - crime victim's right fund (CVRF)
- Electronic monitoring fees

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Parole Discharge

- Discharge date does not create a liberty interest
- Terms of parole can be extended until last day
- Discharges not binding until delivered
- Small possibility discharges can be retroactively revoked, *see Wayne County Pros v Department of Corrections (On Remand)*

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Parole Revocation

- Not all violations of parole conditions result in revocation
- Revocation started by agent, reviewed by supervisor. The final return decision is made by the Parole Specialist
- Pressure on division heads not to revoke

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Alternatives to Prison Return

- Lake County Residential Re-entry Program (LCRRP)
- Intensive Detention Re-entry Program (IDRP)
- Tuscola Residential Re-entry Program (TRRP)

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Preliminary Parole Violation Hearing

- Counsel only permitted in special circumstances (rarely found)
- Parolee given at least 48 hours written notice of the time, date and place of hearing
- When to ask for different hearing examiner

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Revocation Arraignment

- PV charges are presented
- If parolee pleads not guilty the case is scheduled for a full revocation hearing.
- Parolees may adjourn the full hearing if criminal charges are pending

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Revocation Final Hearing

- Attorneys retained or appointed
- Discovery

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Revocation – Lansing Review

- Final decision made by Board in accordance with Adm Rule 791.7765
- Written findings and reasons for revocation to be provided within 60 days after return

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Factors in Prison Population Size

The size of the prison population depends on

- how many people go to prison
- how long they stay

The number of people is a function of their sentences, determined by

- statutory penalty
- sentencing guidelines

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Factors in Prison Population Size

Length of stay depends on

- whether and how much sentence credit can be earned for in-prison conduct
- whether and when parole is granted
- whether returned to prison as technical rule violators and how long they are kept

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Sentencing

- In 2006, 23.8% of all those convicted of felonies, were sent to prison (12,369 people)

- Of these, 60% had not committed violent offenses

• Assaultive	4,912	39.7%
• Non-assaultive	5,577	45.1%
• Drug	1,880	15.2%

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Sentencing

- Michigan sends a lower proportion of convicted felons to prison than other states

- a pioneer in developing community alternatives to prison
- does not imprison as many low level drug offenders as some states do

- Keeping more non-assaultive offenders in the community could achieve substantial population reductions

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Michigan's Long Length of Stay

- High incarceration rate results from above average length of stay

- Average stay up from 25 months (1985) to 43 months (2005)

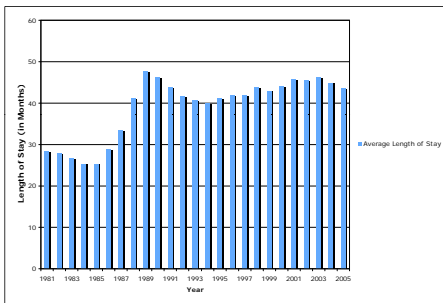
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Michigan's Long Length of Stay

- 16 months longer than national average
- 19 months longer than Great Lakes states average
- The Citizens Research Council estimates that if Michigan's average length of stay had been one year shorter, the impact on the incarceration rate, population size and budget would have been dramatically reduced

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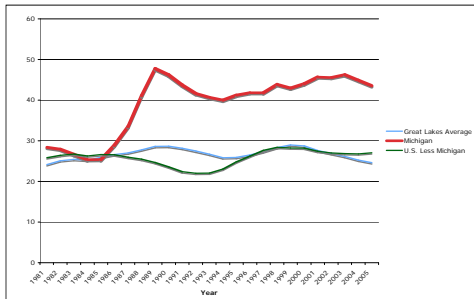
Michigan's Estimated Average Length of Stay: 1981-2005



Source: Citizens Research Council (chart), from CRC Calculations and US Bureau of Justice Statistics Annual Releases Spreadsheet

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Michigan, U.S. and Great Lakes States Estimated Average Length of Stay 1981 - 2005



Source: Citizens Research Council (chart), from U.S. Bureau of Justice Statistics Annual Releases

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What If Michigan's Average Prisoner Length of Stay Was One Year Less Each Year From 1990 to 2005?

- There would have been roughly 14,000 **fewer** Michigan prisoners in 2005
- Michigan's 2005 incarceration rate would **drop** from 489 prisoners per 100,000 residents to 351
- At a cost of \$28,743 per prisoner, Michigan's 2005 Corrections expenditures would **decrease** by \$403 million
- There would have been approximately 4,700 **fewer** Corrections employees in 2005 (assuming the prisoners to employee ratio remained the same)

Source: Citizens Research Council

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Ways to Reduce Length of Stay

- Reduce sentencing guideline ranges for those prison-bound
- Permit modest amounts of credit for participation in academic, vocational and treatment programs, satisfactory work performance and good conduct
- House fewer technical parole violators
- Increase the parole grant rate

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Technical Parole Violators Potential Strategies

- Help more succeed with effective re-entry programs
- Limit circumstances when technical violators can be returned
- Limit return time to 6 months

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Parole Grant Rate Potential Strategies

- Create statutory presumption of parole at the minimum, subject to specified exceptions
- Ensure that parole guidelines accurately weight the risk of reoffending

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Parole Grant Rate Potential Strategies

- Enforce parole guidelines by allowing prisoners to appeal departures
- Establish separate parole board to handle select tasks, like cases requiring public hearings (commutations and parolable lifers), medical paroles and parole revocations

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Proposals for Michigan Criminal Justice Reform

A Blueprint for Cost-Effective Criminal Justice in Michigan (2003), Prisons & Corrections Section, State Bar of Michigan, see www.michbar.org/prisons/pdfs/MIBLUEPRINT.pdf

Report by Justice Center (2009), Council of State Governments

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Proposals for Michigan Criminal Justice Reform

A Ten-Point Plan to Reduce Corrections

Spending in 2010 (2009), Citizens Alliance on Prisons & Public Spending (CAPPS)
See www.capps-mi.org

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See www.michiganprosecutor.org

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Further Information

Michigan Legislative Corrections Ombudsman

Keith Barber, email: kbarber@legislature.mi.gov

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Further Information

Citizens Research Council of Michigan

www.crcmich.org

(Special thanks to the CRC for permission to use their materials in this presentation)

Prisons and Corrections Section of the State Bar of Michigan (P&C Section)

www.michbar.org/prisons

P&C Section May 2, 2008 Conference Materials,

"Balancing Our Priorities: Can we safely spend less on corrections?"

www.balancingourpriorities.org

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Questions ?

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Report on Public Policy Position

Name of section:

Prisons & Corrections Section

Contact Person:

Michael J. Marutiak

E-mail:

mjmarutiak@comcast.net

Regarding:

Medical Paroles

Date position was adopted:

November 17, 2007

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

16

Number who voted in favor and opposed to the position:

11 Voted for position

0 Voted against position

0 Abstained from vote

2 Did not vote

Position:

Statutory interpretation

Explanation of the position, including any recommended amendments:

The Prisons & Corrections Section recognizes the right of the Michigan Parole Board to grant medical paroles pursuant to the authority of MCL 791.235(10).

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

N/A

**STATEMENT OF THE PRISONS AND CORRECTIONS SECTION
REGARDING EXTENDING PAROLE TERMS FOR PAROLEES WHO OWE
RESTITUTION**

Disclosure pursuant to Administrative Order 2004-1: The Prisons and Corrections Section is a voluntary section of the State Bar, not the State Bar itself. The position expressed here is that of the Section. The State Bar has no position on the extension of parole periods for unpaid restitution. The Prisons and Corrections Section has a membership of approximately 145. The Section's governing body, a Council elected by the membership, is composed of 15 voting members. This policy position was adopted, after due notice, at a meeting of the Section's Council on May 19, 2007. The vote was 9 yes, 0 no, 0 abstention.

I. Introduction

The Prisons and Corrections Section of the State Bar of Michigan provides education, information and analysis about issues of concern to its members, who include corrections officials, attorneys involved with the criminal justice system, and others interested in the effective functioning of Michigan prisons. One of the priorities of the Prisons and Corrections Section is to advocate for the efficient use of correctional resources.

It is currently the policy of the Department of Corrections to extend the parole term of all parolees who continue to owe restitution at the end of their standard parole terms. For example, if an individual has a maximum ten year sentence, and is released after two years of incarceration, that individual would typically be discharged after completing a two-year parole term. However, if the individual still owes restitution, the parole term would be extended to the max date, resulting in an eight-year parole term, rather than a two-year parole term.

The Prisons and Corrections Section believes that, in light of the Michigan Prisoner Reentry Initiative (MPRI) and the state's budget crisis, it is time for the Department of Corrections to revisit this policy. MPRI recognizes that parole agents play a critical role in helping released prisoners reintegrate into society, and demands that agents be actively involved in assisting parolees. These heightened responsibilities are difficult to fulfill unless agent caseloads are kept to manageable levels. When individuals are extended on parole due to the inability to pay restitution, rather than because they present a continuing danger to society, this diverts the attention of agents away from parolees who need closer supervision to those who have already successfully completed their regular parole term.

Moreover, because many parolees are returned to prison for technical violations of their parole conditions, rather than for committing new crimes, the longer a person remains on parole, the more likely it is that the individual will be returned to prison for

such a technical violation. Scarce prison beds are then allocated to individuals whose conduct would not have resulted in imprisonment, had they not been continued on parole as a result of unpaid restitution.

Finally, extending parole is a significant burden on the parolee, as the parolee remains subject to supervision, reporting requirements, parole conditions, and the constant possibility of a return to prison for any violation. Just as debtors' prisons are inappropriate, so too is it inappropriate continue parole supervision simply because an individual lacks the resources to pay restitution. Parolees who have successfully completed their regular parole term deserve the opportunity to put their criminal justice involvement behind them, and move on with their lives.

II. The Legal Framework

Although the Department's policy is being applied in practice to extend parole terms whenever restitution remains unpaid, the policy as written does not actually mandate an extension. Rather, the policy states that the agent, in preparing the final review prior to the scheduled parole discharge date,

shall provide the Parole Board with specific information on the parolee's employment status, earning ability, financial resources, the willfulness of the parolee's failure to pay and any other special circumstances that may have a bearing on the parolee's ability to pay. Absent compelling reasons to the contrary, the field agent shall recommend to the Parole Board that it extend the parole period whenever a parolee has *wilfully* failed to pay court-ordered restitution.... The Parole Board may extend the parole period of a parolee who *wilfully* fails to pay court-ordered victim restitution...

DOC Policy Directive 4.02.107 of December 19, 2003 (emphasis added). An individual who does not have the resources to pay is not willfully failing to pay, and therefore should not be extended on parole under the existing policy. Only individuals who have the ability to pay, but fail to do so, may have their parole terms extended.

There is no statutory requirement that the Department extend the parole period when an individual has not paid off the remaining restitution. The statute merely requires that the parole agent review the payment of restitution at least twice a year, as well as not less than 60 days prior to the expiration of the parole period. *See* MCL 791.236(13). The agent is required to report on a parolee's failure to pay, and provide information about why the parolee did not pay. *See id.* The statute does not require an extension of the parole period. Certainly such an extension may be appropriate in cases where an individual has adequate resources to pay restitution, but has failed to do so. But the statute does not mandate an extension in every case. Rather, the statute merely mandates reporting, which allows for individualized consideration of the reasons why payment has not been made.

While the statutory scheme does not speak to the issue of extending parole, it specifically prohibits incarcerating an individual for failure to pay restitution “unless the court or parole board determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so.” MCL 780.766(14). *See also* MCL 769.1a(14) (same). In other words, the legislature was clearly concerned that individuals not be punished merely due to an inability to pay. Similarly, the inability to pay should not be a basis for extending parole.

In sum, neither current Department policy nor state law require parole to be extended in every case where restitution remains owing. Given that agents apparently believe that Department policy does require such extensions, the Department should clarify or amend its policy to make clear that extensions are only appropriate where a parolee has the ability to pay restitution, but refuses to do so.

III. Why Extending Parole Terms for Unpaid Restitution is Ineffective

The justification for extending parole where restitution remains owing is that this encourages parolees to pay restitution. Clearly former offenders should be required to pay any restitution that was ordered. Offenders are responsible for the losses they cause victims, and it is only just that they be required to make their victims whole. However, it is unclear whether, in the majority of cases, extending parole actually encourages parolees to pay restitution. Moreover, the goal of getting former offenders to pay restitution could be achieved more effectively through other means, which do not require limited correctional resources to be spent on supervising individuals simply because they have been unable to pay restitution.

Many released prisoners have little or no income with which to pay restitution. Some are disabled and cannot work, while others are chronically unemployed due to limited job skills and the unwillingness of employers to hire people with criminal records. In many cases, those who are working find that payments towards child support arrearages eat up half or more of their meager earnings, and it is therefore difficult or impossible for them to make substantial payments towards restitution as well. Extending such individuals on parole will simply tie up agent time, while doing very little to encourage the payment of restitution. It makes no sense for taxpayers to bear the heavy cost of parole supervision for individuals who remain on parole only because they are poor or disabled. Supervision costs will often exceed the amount of restitution being collected. Moreover, if these individuals could be removed from parole caseloads, overburdened parole officers might have more time to devote to those parolees who need intensive assistance and supervision.

In some cases, the reason a parolee does not pay restitution is that the amount owed is so large, that it is unlikely that the parolee will ever be able to pay off the full amount, even if the parolee has a decent job. In such cases, an extension of the parole term is unlikely to induce larger payments, since the parolee will be unable to pay off the full amount before the max date in any event. For example, if a parolee owes \$100,000 in restitution, extending parole for a couple of additional years will have little effect,

since the parolee will most likely be unable to pay off that amount in time to get discharged before the max date. Here again, the parole extension has little effect on repayment, but diverts correctional resources from other parolees who need more supervision.

In sum, the extension of parole terms is only likely to motivate those individuals who have a real capacity to pay, and who owe relatively small amounts of restitution. Yet even in those cases, keeping an individual on parole in order to force restitution payments adds to the burden on parole agents, whose time could be better spent supervising higher risk parolees. The question, then, is whether there are ways to ensure victims receive restitution, without using up valuable spots on parole officers' caseloads.

IV. An Alternative Approach To Collecting Restitution

If the goal here is to ensure that victims are made whole, the focus should be on finding the most effective way to collect restitution. As discussed above, extending parole will have little effect on collection rates in many cases. Moreover, as the state has discovered in the context of child support enforcement, and as many judgment creditors know, collection rates increase significantly if one simply takes money owing out of individual's paycheck, rather than asking the individual to make payments affirmatively once he or she has the funds in hand. In other words, wage garnishment is likely to be at least as effective as extending parole in ensuring that restitution is paid.

While restitution has historically been collected by the state, this need not be the case. The statutory scheme specifically allows the victim to collect restitution. Moreover, the victim can collect regardless of whether the payor remains on parole. MCL 780.766(13) provides:

An order of restitution...remains effective until it is satisfied in full. An order of restitution is a judgment and lien against the property of the defendant for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien.

An alternative to extending parole – with all the resulting supervision costs – is to assist victims in collecting restitution. Because a restitution order is a judgment, there are multiple mechanisms for collection, most notably wage garnishment. These mechanisms are quite simple, and are already routinely used by creditors to collect on debts. Victims may not be collecting restitution because they are unaware that they have the right to do so, or because they are unfamiliar with the process. Instead of extending parole terms, parole agents could inform victims about their collection rights.

V. A Proposal To More Efficiently Collect Restitution Without Extending Parole Terms

Ensuring that victims receive restitution is critically important. Unfortunately, in some cases, due to the debtor's disability or indigence, the debt will probably never be paid. In those cases, extending parole is unlikely to result in payment, and only has the effect of over-burdening already overwhelmed parole agents. However, in cases where debtors do have the resources to pay, it should be possible to ensure that victims can obtain payments, without debtors using up valuable slots on a parole agent's caseload.

I. Proposed Legislative Changes

MCL 780.766(14) and MCL 769.1a(14) contain identical language prohibiting the incarceration of individuals who are unable to pay restitution despite a good faith effort to do so. That language should be amended to clarify that a person should also not be extended on parole due to an inability to pay restitution.

Specifically, we propose that these sections be amended as follows:

MCL 780.766(14): Notwithstanding any other provision of this section, a defendant shall not be imprisoned, jailed, ~~or~~ incarcerated, **or have probation or parole extended** for a violation of probation or parole ~~or otherwise based on~~ ~~for~~ failure to pay restitution as ordered under this section unless the court or parole board determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so. **If restitution remains owing at the time of discharge, the court or the Department of Corrections shall contact the party/parties to whom restitution is owed, if known, and shall inform them, on a form provided by the Department, of (a) the amount still owed; (b) the fact that this debt is a collectible judgment; and (c) the methods through which the debt can be collected.**

MCL 769.1a(14): Notwithstanding any other provision of this section, a defendant shall not be imprisoned, jailed, ~~or~~ incarcerated, **or have probation or parole extended** for a violation of probation or parole ~~or otherwise based on~~ ~~for~~ failure to pay restitution as ordered under this section unless the court or parole board determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so. **If restitution remains owing at the time of discharge, the court or the Department of Corrections shall contact the party/parties to whom restitution is owed, if known, and shall inform them, on a form provided by the Department, of (a) the amount still owed; (b) the fact that this debt is a collectible judgment; and (c) the methods through which the debt can be collected.**

In addition, we recommend that the legislature review statutes that impose supervision or other fees on probationers and parolees, and that the legislature prohibit the imprisonment, jailing, incarceration, or extension of probation or parole, in cases where a probationer or parolee is unable to pay those fees.

II. Proposed Policy Changes

We also propose that the Department consider amending its own policies. Such changes are not contingent on any legislative action, since, as discussed above, nothing in the current statutory scheme requires parole extensions where an individual is unable to pay restitution.

Specifically, we propose that paragraph T of Policy Directive 4.02.107 be amended to read as follows:¹

- T. **If the parolee is otherwise eligible for discharge, the field agent shall recommend a discharge from parole, unless there is clear evidence that the parolee has willfully failed to pay court-ordered restitution. A failure to pay is not willful if the parolee lacks the ability to pay. Circumstances where it shall be presumed that the failure to pay is not willful include, but are not limited to: the parolee is disabled, the parolee is receiving public assistance, the parolee has been unemployed throughout the balance of the parole period despite a genuine effort to find employment, or the parolee is employed in a low wage job.** When submitting a report pursuant to paragraph S for a parolee not scheduled to discharge on his/her maximum sentence, the field agent also shall provide the Parole Board with specific information on the parolee's employment status, earning ability, financial resources, the willfulness of the parolee's failure to pay and any other special circumstances that may have a bearing on the parolee's ability to pay. ~~Absent compelling reasons to the contrary, the field agent shall recommend to the Parole Board that it extend the parole period whenever a parolee has willfully failed to pay court-ordered restitution.~~ **If restitution remains owing at the time of discharge, the parole agent shall contact the party/parties to whom restitution is owed, if known, and shall inform them, on a form provided by the Department, of (a) the amount still owed; (b) the fact that this debt is a collectible judgment; and (c) the methods through which the debt can be collected. The parole agent shall also provide written notice to the parolee of his or her right, pursuant to MCL 780.766(12), to petition the sentencing judge to modify the method or amount of payments which are to be made towards the balance owing, if the parolee can demonstrate manifest hardship.**

¹ Deleted text is marked with strike-out. New text is marked in bold.

We believe that these proposed changes would increase collection rates for restitution, while simultaneously freeing up parole agents to focus their attention on those parolees who most need supervision and assistance.

Finally, we recommend that the Department also consider amending paragraph U of Policy Directive 4.02.107 to bring that policy in line with the Department's actual policy of not extending parole terms for unpaid fees or costs. Such fees or costs are typically owed to the state. In most cases, the costs of supervision exceed the sums to be collected. Therefore, as the Department has recognized in practice, it makes little sense to extend parole terms to collect these sums. Accordingly, we recommend that paragraph U be amended to read:

- U. The Parole Board may extend the parole term of a parolee who willfully fails to pay court-ordered victim restitution ~~and/or filing fees or costs owed pursuant to a special condition of parole.~~



The
PRISONS AND CORRECTIONS SECTION
respectfully submits the following position on:

JUVENILE LIFE WITHOUT PAROLE SENTENCES

The Prisons and Corrections Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Prisons and Corrections Section only and is not the position of the State Bar of Michigan. To date, the State Bar does not have a position on this matter.

The total membership of the Prisons and Corrections Section is 145.

The position was adopted at a meeting of the Section's Council. The number of members in the decision-making body is 14. The number who voted in favor to this position was 8. The number who voted opposed to this position was 0. The number who abstained from this position was 0.



Report on Public Policy Position

Name of Section:

Prisons and Corrections Section

Contact Person:

Daniel E. Manville

Email or Phone:

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248-890-4720

Regarding:

Juvenile Life Without Parole Sentences

Date position was adopted:

May 6, 2006

Process used to take the ideological position:

The Policy Statement was presented to the members of the Council and a discussion was held. It was moved that the Policy Statement be adopted and it was.

Number of members in the decision-making body:

14 voting members

Number who voted in favor and opposed to the position:

8 voted yes; zero voted no; zero abstention

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

Arguments for the position:

The law has recognized that children under the age of eighteen are less responsible than adults. Children are presumed to lack the capacity to make decisions related to their education or medical treatment, vote, sign

contracts, use alcohol, or serve on juries.¹ Recent bills in the Michigan House and Senate would require students to be eighteen before being allowed to drop out of school.² For more than one hundred years, states have operated separate juvenile courts, formed on the premise that children are less responsible than adults and more likely to benefit from rehabilitative programs, and that they should be kept separate from adult criminals.

These historic assumptions have been supported by recent scientific research on brain development in adolescence showing that parts of the brain related to “executive functioning,” which includes judgment and decision-making abilities, are still developing throughout the teenage years. There is biological evidence that adolescents are less able to anticipate the effects of their actions and conform their behavior to the law, diminishing their capacity to form *mens rea* and their culpability under the law.³

Last year in Roper v. Simmons⁴ the U.S. Supreme Court ruled that execution of individuals convicted of crimes committed before the age of eighteen is cruel and unusual punishment, in light of the implications of recent findings on brain research and the historic recognition of the differences between children and adults. However, nationwide there are still thousands of individuals who have been sentenced to die in prison, without any consideration of parole, for crimes committed as juveniles.

National reports by the New York Times, Human Rights Watch, and Amnesty International have brought new attention to the number of juveniles sentenced to life without parole, and the inherent injustice in the sentence.⁵ Mandatory transfer and sentencing laws require that juveniles receive the maximum sentence even if they acted as accomplices to adults, and judges are unable to adjust the sentence to account for individual maturity, culpability, and potential for rehabilitation.⁶ Due to immaturity and incomplete brain development, juveniles are less competent to stand trial than adults,⁷ and are more likely to make false confessions or otherwise be wrongfully convicted.⁸ And once sentenced, adolescent defendants are sent to adult prisons, where they are at greater risk of assault, sexual abuse, and suicide.⁹

¹ Human Rights Advocates, “Administration of Justice Agenda Item 13: Life Imprisonment without Possibility of Release for Youth Offenders who were under the age of 18 at the time of committing the offense.” Report to the 60th Session of the UN Commission on Human Rights, citing Victor Streib, Execution and Life in Prison Without Parole for Kids who Kill, (Dec. 2002).

² Michigan HB 4029; SB 4 (2005).

³ Elizabeth Cauffman & Laurence Steinberg, “Immaturity of Judgment in Adolescence: Why Adolescents may be less culpable than adults”, 19 Behav. Sci. Law 741-760 (2000).

⁴ 543 U.S. 551; 125 S. Ct. 1183; 161 L. Ed. 2d 1 (2005).

⁵ See Adam Liptak, “Jailed for Life after Crimes as Teenagers,” The New York Times October 3, 2005; Human Rights Watch, Amnesty International. The Rest of Their Lives: Life without Parole Sentences for Child Offenders in the United States. (October 2005).

⁶ Second Chances: Juveniles Serving Life Without Parole in Michigan, ACLU of Michigan (2004).

⁷ Thomas Grisso, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci, and Robert Schwartz, “Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants.” Law and Human Behavior, 27(4) (2003).

⁸ Steven Drizin & Richard Leo, “The Problem of false confessions in the post-DNA world.” (2004).

Samuel Gross, Kristen Jacoby, Daniel Matheson, Nicholas Montgomery, & Sujata Patel, “Exonerations in the United States 1989 through 2003,” Gideon Project, OSI 2004.

⁹ James Austin, Kelly Johnson, & Maria Gregoriou, “Juveniles in adult prisons and jails: A National Assessment.” U.S. Department of Justice, Bureau of Justice Assistance. (October 2000), citing Community Research Center, “Juvenile Suicides in Adult Jails. Juvenile Transfer Series. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention,” (1980).

Human Rights Watch and Amnesty International report that Michigan has the third-highest number of juveniles serving life without parole, following Louisiana and Pennsylvania.¹⁰ This prevalence is not due to high crime rates, but rather Michigan's particularly harsh laws dealing with juveniles charged with serious crime. In Michigan, children may be sentenced to life without parole for first-degree murder, which includes both premeditated and "felony murder."

Michigan is one of only eleven states that excludes seventeen-year-olds from juvenile court jurisdiction altogether. Seventeen-year-olds are automatically considered to be adults for the purposes of criminal prosecution.¹¹ Roughly half of juvenile lifers in Michigan were seventeen years old at the time of the offense, and were never even considered for juvenile treatment.

Fourteen, fifteen, and sixteen year olds may be charged with first-degree murder in the criminal division of circuit court, or automatically transferred from juvenile to criminal court at the prosecutor's request.¹² This provision, often called the "automatic waiver," is now the predominant method for charging juveniles (under seventeen) with murder. Due to mandatory adult sentencing passed in 1996, once a juvenile is convicted in criminal court, a life without parole sentence is mandatory.¹³ The judge may not impose a juvenile disposition, or any shorter sentence, regardless of the individual's age, maturity, or involvement in the crime.

Children of any age may be charged with first degree murder in juvenile court, and the prosecutor may "designate" the case for adult proceedings. This is the only method for trying children under age fourteen as adults.¹⁴ The case stays before the juvenile court judge, and once convicted, that judge determines whether to sentence the juvenile to life without parole, order a juvenile disposition, or delay imposing any adult sentence while the youth receives a juvenile disposition.¹⁵ The third option is often called a "blended sentence," because a juvenile may be committed to a juvenile facility until age twenty-one, and then be sent to prison. This decision is based on statutory factors, including the seriousness of the offense, the juvenile's culpability, prior record of delinquency and responsiveness to delinquency programming, the dispositional options available, including adequacy of punishment or programming available.¹⁶

In designated cases, judges maintain some discretion to consider the individual juveniles culpability and capacity, and the sentencing decision is made after a trial and fact-finding, an advantage that criminal court judges do not have. So-called "blended" sentences allow the court to delay the decision to sentence a youth even further, providing the opportunity to assess the youth's progress in rehabilitative programming, and keeps young teenagers out of prison until they are more physically and mentally mature. However, juvenile courts are unable to impose a prison term less than life without parole. Once a youth reaches age twenty-one the court must decide whether to impose the adult sentence (life without parole) or to dismiss the case.

¹⁰ Human Rights Watch, Amnesty International. The Rest of Their Lives: Life without Parole Sentences for Child Offenders in the United States, (October 2005).

¹¹ MCL 712A.2.

¹² MCL 712A.2.

¹³ MCL 769.1.

¹⁴ MCL 712A.2d.

¹⁵ MCL 712A.18 (1)(n).

¹⁶ MCL 712A.18 (1)(n) (2006).

Problem 1:

Juvenile life without parole sentences present the same problems as executions with respect to differences in competency and criminal responsibility that are recognized in Roper v. Simmons. However, Michigan law does not recognize the differences between juvenile and adult offenders in imposing life without parole sentences.

Recommendation 1a: Michigan should consider statutory changes that would prospectively eliminate life without parole sentences for juveniles.

Recommendation 1b: Michigan should provide relief, in the form of parole eligibility, for individuals sentenced to life without parole as juveniles.

Problem 2:

Transfer and mandatory sentencing provisions enacted in 1988 and 1996, along with exclusion of seventeen-year-olds from juvenile court jurisdiction, create statutory presumptions that juveniles are equally responsible as adult offenders. The presumption that children are the same as adults for purposes of life without parole sentences is contrary to historic practice, common wisdom, and recent brain research. These provisions also rob the courts of discretion to consider individual juveniles' maturity, culpability or role in the offense, or potential for rehabilitation.

Recommendation 2a: Michigan should consider statutory and rule changes to address the statutory exclusion of seventeen-year-olds from juvenile court jurisdiction.

Recommendation 2b: Michigan should consider statutory and court rule changes that would reduce the transfer of juveniles to adult courts, and restore judicial discretion to impose juvenile or blended sentences.

Problem 3:

In cases tried in juvenile court, the dispositional alternatives are a life without parole sentence, or commitment to a juvenile facility until age 21. For a fifteen- or sixteen-year-old, the choice is between life without parole and a term of five years for a first-degree murder. There is no middle ground for prosecutors or jurists who are reluctant to send a child away forever, but do not want to let that child "get away with murder."

Recommendation 3a: Michigan should amend the current sentencing law, or add new provisions, so that courts may impose a term less than the mandatory adult sentence.

Recommendation 3b: Michigan should adopt changes to the sentencing guidelines to provide fair and reasonable administration of prison terms less than life without parole for youth convicted of first-degree murder.

[Notice having been given, the Prisons and Corrections Section Council adopted this position statement on February 1, 2003 by a vote of 11-0-1. The views expressed are those of the Section and do not necessarily represent the views of the State Bar of Michigan.]

A BLUEPRINT FOR COST-EFFECTIVE CRIMINAL JUSTICE IN MICHIGAN

Modeled on the

ABA Blueprint for Cost-effective Pretrial Detention,
Sentencing, and Corrections Systems

**PREPARED BY:
PRISONS AND CORRECTIONS SECTION,
STATE BAR OF MICHIGAN**

ADOPTED FEBRUARY 2003

Fiscal Accountability

1. Michigan should require the Michigan Sentencing Commission (see Proposal 4) to prepare fiscal and prison/jail bed space impact statements before any legislation is enacted that would create a new criminal offense, change the number of persons subject to a particular criminal sanction, or change the potential sentence length for any criminal offense.

Sentencing and Community Corrections

2. Michigan should create a separate state Department of Community Corrections and Supervision that combines the current functions of the Office of Community Corrections, the parole board, probation supervision and parole supervision. The purpose of the new department would be to promote, manage and fund community-based supervision of adult offenders, to conduct research and training, to coordinate the services necessary for offenders to remain in the community successfully, and to secure and administer grants to local service providers. To insure knowledgeable assessments of prisoners' institutional records when making release decisions, at least 50 percent of parole board members should have significant experience working in a state adult correctional facility. The Department of Corrections would continue to operate prisons. The two departments would work cooperatively regarding community programs for prisoners who have not yet been paroled and pre-release planning.

This separation of functions and the award of department status to community- based oversight of offenders would help insure adequate recognition and funding of community-based supervision. It would also help insure that prisons are treated as a scarce resource and incarceration is treated as a last alternative. And, since incarceration and community supervision involve inherently different skills, knowledge, and objectives, it would allow each department to focus its resources exclusively on its primary mission.

3. Michigan community corrections programs should avoid unnecessary supervision and incarceration, in part by expanding the use of means-based fines, so long as adequate community service opportunities are available to those who are unable to pay.
4. Michigan should establish a sentencing commission with representatives from the prosecution, defense, judiciary, law enforcement, victims' advocates, corrections, community corrections, mental health, substance abuse treatment, and the general public. Legislators, who will ultimately vote on the commission's work product, should not be members of the commission.

The commission should be charged with developing sentencing and parole guidelines that accomplish the following objectives: (a) provide that a community-based sanction is the presumptively appropriate penalty for persons who do not present a substantial danger to the community; and (b) ensure that the populations subject to the jurisdiction's prison, jail or community-sanctioning systems do not exceed each system's rated capacity. In order to accomplish these objectives, the commission should:

- a. Bear primary responsibility for developing and revising sentencing guidelines for all felony offenses, with the Legislature limited to adopting or rejecting the commission's recommendations.
- b. Recommend to the Legislature sentencing guidelines for judges to follow when imposing sentence after revoking a sentence of probation.
- c. Recommend to the Legislature parole guidelines that:
 - i. are coordinated with sentencing guidelines,
 - ii. prevent the parole board from denying parole based solely on the same factors the trial court considered in selecting the minimum sentence,
 - iii. presume release after service of the minimum absent a poor institutional record or objective factors indicating the prisoner is a current threat to public safety, and
 - iv. apply to parolable lifers.
- d. Recommend to the Legislature separate parole guidelines for technical parole violators that account for the nature of the technical violations and the fact that the minimum punishment for the underlying crime has been served.

5. Michigan should review the length of sentences prescribed by law, and sentencing and parole guidelines, to ensure that they accurately reflect current funding priorities, as well as research findings that question the utility of long sentences, whether incarcerative or community-based, for certain kinds of crimes. To accomplish these objectives, the Legislature should:
 - a. Provide the Sentencing Commission with adequate research staff to annually collect and analyze data on the impact of drug courts and other community-based programs, the imposition and revocation of probation, sentencing guidelines, truth in sentencing, and parole guidelines on the length of time served, recidivism rates, and the capacity of state and local correctional facilities and community-sanctioning systems and services.
 - b. Amend current truth in sentencing requirements to reflect national norms regarding the award of disciplinary credits:
 - i. Require violent offenders to serve at least 85% of their minimum sentences
 - ii. Establish credit amounts for non-violent offenders after reviewing the average amount awarded to such prisoners nationally
 - c. Establish a special panel to review in-depth the cases of all prisoners who have served at least 15 years of a parolable term, or 25 years of a mandatory life sentence for first-degree murder, and recommend whether parole or commutation, as appropriate, should be granted. The panel shall consist of the following five members: one former judge, two corrections professionals, and two mental health professionals. Panel recommendations shall be acted upon by the parole board in special executive sessions consisting of the five panel members and five regular parole board members assigned to the special sessions on a rotating basis. Legislation establishing the special panel should be subject to a three-year sunset provision.
6. Michigan should repeal mandatory minimum sentencing laws that unduly limit a judge's discretion to individualize sentences, so that the sentence in each case fairly reflects the gravity of the offense and the degree of culpability of the offender.
7. Michigan should expand the use of drug courts and the availability of comprehensive substance abuse treatment programs, in lieu of incarceration.
8. Michigan prosecutors should regularly examine their policies concerning charging, plea-bargaining, and sentence recommendations, in order to avoid overcharging, and to make greater use of community-based sanctions.

Sentence Modifications

9. The Michigan Department of Community Corrections and Supervision should develop graduated community-based sanctions for non-criminal violations of probation and parole. It should utilize imprisonment for such violations only as a last resort.
10. Michigan should establish a mechanism to apply sentencing reforms, where appropriate, to currently incarcerated inmates.
11. Michigan should require the MDOC Bureau of Health Care Services to prepare a quarterly report to the parole board with information about prisoners who are terminally ill, chronically physically ill or incapacitated, or over age 65. The parole board should then be required to review each prisoner's circumstances to determine whether the prisoner presents a threat of violent behavior and is otherwise a suitable candidate for a recommendation of commutation. The Bureau's report and the parole board's decisions shall be provided to the Office of the Legislative Corrections Ombudsman who shall recommend changes needed to improve the review process and who may recommend the reconsideration of any individual parole board decisions.

Reentry and the Reduction of Recidivism

12. Michigan should adopt a comprehensive plan to reduce return rates to prison and jail that includes the development of reentry plans, procedures, and services to facilitate released inmates' reintegration into the community, and relief from legal obstacles that impede reintegration. Aspects of this plan should include the following:
 - a. Develop cost-effective transition programs for re-entering prisoners, whether on parole or discharging from their maximum sentences.
 - b. Aggressively pursue all available public and private funding for innovative community-based supervision methods and community services needed to decrease recidivism, including drug, re-entry and mental health courts, day reporting centers, substance abuse and mental health treatment, medical care, job training and placement, higher education, parenting classes, and family counseling.
 - c. Reduce the caseloads of probation and parole officers, and define their roles as enabling their clients' successful integration into the community, not merely monitoring compliance with the conditions of supervision.

13. Michigan should implement and fully fund programs within prisons and jails, and within community-based sanctioning programs, to provide educational opportunities, vocational and job training, mental health and substance abuse treatment, counseling, and other programs designed to reduce recidivism.

To avoid extending incarceration longer than necessary, Michigan should:

- a. Require the MDOC to provide prisoners with the opportunity to complete all required programs, such as adult basic education and GED testing, substance abuse treatment, sex offender treatment, and assaultive offender treatment, before their first parole eligibility date and should prohibit the denial of parole based on the prisoner's inability to complete an unavailable program.
- b. Require the MDOC to compile data and publish a report regarding prisoner program completion and the reasons for non-completion, including the number of people who did not complete required programs before their earliest release dates because: 1) they voluntarily opted out, 2) programs were not available at the institutions where they were housed, or 3) their participation in programs was disrupted by transfers to different institutions or returns to court.
- c. Require the MDOC to conduct research on the relationship between program completion and 1) release on parole and 2) recidivism.

Allocation of Jail Space

14. In order to reduce unnecessary detention and save jail space for persons who need to be incarcerated, Michigan should call upon the State Court Administrative Office to sponsor a task force on pretrial services, jail bed space, and the possible establishment of regional facilities, that includes representatives from the Michigan Judges Association, Michigan District Judges Association, the Michigan Sheriffs Association, the Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan.

Correctional Operations and Facilities

15. In light of the MDOC's share of the general fund budget and the impact of its operations on prisoners and staff, the Legislature should increase the resources and expertise of the Auditor General for conducting fiscal and program audits of the MDOC to independently determine the effectiveness of programs, appropriateness of security classifications, and compliance with statutes, rules and professional standards.

The Department of Community Corrections and Supervision should compile data on the results of community-based supervision programs, and should require grants and contracts with private vendors to include financial incentives for successful outcomes and financial disincentives for unsuccessful outcomes.

16. Michigan should establish a criminal justice coordinating council to engage in the following activities: undertake long range criminal justice planning; recommend resource allocation; facilitate data sharing among existing agencies; commission research; apply for federal and private grants; develop strategic partnerships with colleges & universities, other state agencies, professional organizations and community groups.

The membership of the council should include: the directors of the State Court Administrative Office, Michigan Department of Corrections, Michigan Department of Community Corrections and Supervision, Michigan State Police, Family Independence Agency, and the Office of Drug Control Policy; representatives from the Michigan Judges Association, Prosecuting Attorneys Association of Michigan, Criminal Defense Attorneys of Michigan, Michigan Association of Community Corrections Boards, Michigan Sheriffs Association, Michigan Association of Chiefs of Police; the Legislative Corrections Ombudsman, the Prisons and Corrections Section of the State Bar, the Collaborative on Juvenile Justice Reform, the Citizens Alliances on Prisons and Public Spending; a mental health professional; a substance abuse treatment professional; a victim's advocate, a prisoner advocate, an academician with expertise in criminal justice, and an ex-offender.

17. Michigan should amend current truth in sentencing requirements to permit low security prisoners to participate in community residential programs before reaching their earliest release dates.
18. Michigan correctional officials should establish linkages with universities, colleges, and community colleges through which research and service learning can be better utilized to reduce correctional costs.
19. The decision to close correctional facilities for budgetary reasons should be subject to the following requirements: (a) the selection of the facilities to be closed should be informed by and based on input from correctional officials regarding which facility (or facilities) it would be most advisable to close from a fiscal and correctional-management perspective; (b) the closing of a correctional facility should not result in the transfer of inmates to any facility already operating at or above its rated capacity; and (c) the selection of the facilities to be closed should take into account the desirability of permitting appropriate visitation by family members, in order to facilitate inmates' eventual reintegration into the community.