

CAPPS UPDATE

Addressing the human and fiscal cost of Michigan's over-reliance on incarceration

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More than 60 people attended the June 13 CAPPS Detroit outreach meeting to learn about our latest report, as well as parole and appellate processes.

CAPPS RESEARCH & POLICY ANALYSIS

10,000 fewer Michigan prisoners: Strategies to reach the goal

On June 11, CAPPS released a new research report that examines the key factors that led to a striking increase in Michigan's prison population over the last three decades and makes two dozen recommendations for reversing the trend.

Each recommendation is accompanied by estimated prison bed savings. Collectively they could safely reduce Michigan's prison population by at least 10,000 people over the next five years,

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TAKING ACTION!

We hope you will talk to your legislator, pastors, and other leaders of organizations you belong to about CAPPs, our latest report, and the need for reform.

If you are planning to visit an elected official, please get in touch with CAPPs.

We will provide updated information you can share with legislators or candidates. **Call Dena at (517) 482-7753 or email capps@capps-mi.org.**

ORDERING REPORTS

The entire 96-page report **10,000 fewer Michigan prisoners: Strategies to reach the goal** can be downloaded from the CAPPs website at www.capps-mi.org. If you are a prisoner and have paid membership dues within the last year, you should have received an executive summary of the report in the mail.

A hard copy of the entire report can be purchased from CAPPs by mailing \$12 to CAPPs, 824 N. Capitol Ave., Lansing, MI 48906. Please indicate that you wish to purchase the report. Please encourage others to order reports and join CAPPs, so that they receive future newsletters and updates. 🍷

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closing more than seven prisons and saving a quarter billion dollars annually.

The report recommends changes in sentencing and parole and calls for a modest amount of sentence credit for participation in prison programs. It includes detailed information about special prisoner populations, such as the very young, the very sick, the elderly and those serving life or very long terms.

“There is bipartisan recognition of the need to change course, both nationally and in Michigan,” said Barbara Levine, CAPPs associate director for research and policy. “This report provides a Michigan-specific roadmap that is consistent with the movement for common sense reforms. It can be an important tool for policymakers as they reconsider criminal justice policies that are enormously costly in both fiscal and human terms.”

“We now have the benefit of decades of experience and a wealth of research that tells us which policies are effective and which ones are simply a burden to taxpayers,” added Levine. “Just as we adopted strategies that seemed appropriate in the 1980s and 1990s, we can respond to the changes of the last 35 years and adopt new strategies in 2015.”

CAPPs also called for investing corrections savings in programs to better prepare prisoners for release, in support for high-incarceration communities and in services that would improve public safety by addressing the causes of criminal behavior, such as mental health and substance abuse treatment. Justice reinvestment and helping offenders succeed were also strong themes in the Governor’s message.

The report has received extensive media coverage and both conservative and liberal support (see Page 8).

If you would like to receive information about legislation, research and events, please join CAPPs (see Page 7).

Note: CAPPs attempted to provide the reports to prisoners via the Warden’s Forums. However, wardens were advised that they were not required to share the unsolicited reports. Therefore, please help us spread the word about the report and share it with others. 🍷

We are in the process of scheduling our Annual Membership Meeting.

Another notice will be mailed with dates for that and other fall events.

House Criminal Justice Committee votes 7-1 to approve presumptive parole reforms

CAPPS has long worked to establish a presumption of parole at first eligibility for prisoners who are a low risk to public safety. On June 16, the House Criminal Justice Committee voted 7-1 to report a bill to the House Floor that establishes a statutory presumption of parole under certain circumstances.

HB 4138 (H-4) is a critical step forward in the fight for comprehensive parole reform. The bill:

- States that parole upon service of the minimum sentence is presumed for people who score high probability of release on parole guidelines.
- Defines the specific “substantial and compelling reasons” that permit departing from the presumption.
- Increases the frequency of reviews for people with both high and average probability scores who were denied parole.
- Requires detailed annual reports about parole denials.
- Would save up to 3,200 prison beds and \$75 million within five years of enactment.

The need for presumptive parole

Over time, thousands of people have been incarcerated for years beyond their first parole eligibility date, despite scoring high probability of parole on the Michigan Department of Corrections’ parole guidelines. Currently, there are about 1,900 people who have served their minimum sentences and been denied release despite having high probability scores. This is both extremely unfair and wastes millions of dollars every year.

By definition, people who score high probability of parole present a very low risk to public safety. Current law says the parole board may depart from the parole guidelines for “substantial and compelling reasons.” However, the reasons the board gives for denying paroles are often vague and subjective, such as “inadequate insight,” “lacks empathy,” or “insufficient remorse.”

In fact, parole data show that the board often denies release based on the nature of the offense, with assaultive and sex offenses far more likely to result in denial. Since the nature of the offense was already a major factor in setting the minimum sentence, the parole board is effectively engaging in resentencing, substituting its judgment of how long someone should serve for that of the court. However, prisoners can no longer appeal parole denials and the current parole guidelines cannot be enforced.

All the state and national research shows that people who committed assaultive and sex offenses have extremely low reoffense rates. The research also shows that there is no relationship between how long people are incarcerated and their likelihood of reoffending. Thus, there is no gain to public safety from keeping people incarcerated once they are eligible for parole.

That’s why CAPPS has long advocated amending the statute to enact a presumption of parole after serving the minimum with only specific limited exceptions. Presumptive parole would still require the parole board to make individual release decisions. The board would NOT be required to release any individual who presents a current risk to public safety. **Implementing presumptive parole would enhance objectivity, accountability, and transparency in the parole process for those eligible, while saving taxpayers millions now spent on excessive incarceration.**

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HB 4138 (H-4) was the product of extended negotiations and compromise

Last year legislation to enact presumptive parole was also recommended by the Council of State Governments and sponsored by Rep. Joe Haveman (R-Holland). While that legislation failed, this year House Criminal Justice Committee Chair Rep. Kurt Heise (R-Northville) reintroduced the concept in HB 4138. In May, Governor Snyder voiced his support for presumptive parole legislation in his Special Message on Criminal Justice.

Rep. Heise convened a legislative work group to hammer out a version of presumptive parole that the key stakeholders would accept. Barbara Levine, CAPPs associate director for policy and research, served on that workgroup with representatives from the Attorney General's office, the Prosecuting Attorneys Association of Michigan, the Criminal Defense Attorneys of Michigan, the Michigan Association of Counties, the Michigan Judges Association and the Michigan Sheriffs Association. Data on bed space impact was provided by the Michigan Department of Corrections.

Despite our best efforts, the presumption does not apply to current prisoners. (While current prisoners who score high probability on the parole guidelines must still be given substantial and compelling reasons for denying release, the reasons are not limited to those itemized in the bill.) However, significantly, the length of continuances for current prisoners would be limited.

HB 4138 (H-4) will have a substantial impact on thousands of prisoners going forward. It represents real progress in the fight for parole reform. No one in the negotiations got everything they wanted and the bill is still likely to face stiff opposition. **Most importantly, we must resist any attempt to limit the application of presumptive parole based on the type of offense.**

What HB 4138 (H-4) does:

- Establishes a presumption of parole for people serving terms of years who score high probability of parole on the parole guidelines.
- Limits parole denials for “substantial and compelling reasons” to the following six circumstances:
 - The person has an institutional conduct score lower than -1 on the guidelines.
 - There is objective and verified evidence of substantial harm to a victim that could not have been available for consideration at the time of sentencing, or the prisoner has threatened to harm another person if released.
 - The person has a pending felony charge or detainer.
 - The person has been identified in the federal combined DNA index system (CODIS) and linked to an unsolved criminal violation. The parole board may deny release beyond the service of the minimum for not more than 18 months from the date the prisoner was identified through CODIS.
 - There is objective and verified evidence of post-sentencing conduct, not already scored in the parole guidelines, that demonstrates that the prisoner would present a high risk to public safety if paroled.
 - The prisoner's release is otherwise barred by law.
- Permits the board to defer release upon service of the minimum for no more than four months to allow someone to complete a treatment program that is reasonably necessary to reduce the risk to public safety from the person's release.

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- Requires the parole board to reconsider people serving a term of years who were denied release:
 - Not less than annually, if they scored high or average probability of release.
 - Not less than every two years until a score of average probability is attained, if they scored low probability of release.

NOTE: The above provision includes current prisoners.

- Requires the Michigan Department of Corrections to provide a report to the legislature and the Criminal Justice Policy Commission by March 1 of each year that includes detailed information about the parole board's compliance with each provision of the statute.
- Requires the Michigan Department of Corrections to immediately advise the legislature and the Criminal Justice Policy Commission of any changes in the scoring of the parole guidelines, including the number of points that define "high probability of parole."
- Limits application of the presumption to people whose offenses were committed on or after the effective date of the bill.
- Clarifies that the bill does not apply to people serving life sentences.
- States that there is no entitlement to parole.

Just a few years ago, presumptive parole appeared to be a distant goal.

But, with your support and ongoing outreach and educational efforts, we are close to seeing this important bill become law. 🍀

Prisoner profiles needed for reform advocacy

We are currently developing prisoner case profiles that illustrate the need for presumptive parole reform (see article this issue).

We would like to receive information from **current prisoners who have high probability parole guidelines scores and have been continued for at least a year past their ERD without ever having been released.**

Please send the following information to our case researcher, Dena Anderson, at 824 N. Capitol Ave., Lansing, MI 48906. To begin, we will need **copies** of your:

- Presentence report
- Parole eligibility report
- Parole guidelines score sheet, and
- The notice of action denying parole.

We would also like to hear from **technical parole violators**. Please send copies of documents showing the basis for the violation in **addition** to the above materials.

We cannot provide assistance to individuals in obtaining release. However, it is important that we have a clear understanding of the circumstances that are preventing release in order to advocate for change. We especially need persuasive case examples to share with legislators and the general public.

LEGISLATIVE UPDATE

HB 4419 would eliminate the mandatory 2-year consecutive sentence for a felony firearm offense

On June 16, the House Criminal Justice Committee also voted 7-1 for HB 4419, sponsored by Rep. Kurt Heise (R-Northville). The bill eliminates the mandatory two-year consecutive sentence for the possession of a firearm during the commission of a felony, or “felony firearm” offense. It increases the maximum to three years and gives judges the discretion to select a minimum within the sentencing guidelines. It also gives judges discretion to make the sentence consecutive or concurrent with the sentence for the underlying felony. A companion bill places felony firearm on the “F grid” of the sentencing guidelines.

According to the Michigan Department of Corrections, the bill could save up to 2,500 prison beds within five years of enactment, depending on how judges exercise their new sentencing discretion. Wayne County Chief Judge Robert J. Colombo Jr., and Kent County Circuit Court Judge Christopher P. Yates testified in support of the bill on behalf of the Michigan Judges Association. CAPPs joined several other organizations that also testified in support.

Legislators once believed that mandatory prison terms would deter people from using guns to commit felonies. However, while crime rates declined for every category of offense over the last several decades, there is no evidence that the possession of weapons during the commission of felonies declined any faster than the overall average. Instead, the law has:

- Tied the hands of judges who, based on the facts of a given case, might believe that something less than a mandatory two-year consecutive sentence is warranted.
- Given prosecutors a very big hammer to use in plea negotiations.
- Contributed significantly to prison expansion by causing some people to go to prison who would not otherwise receive a prison sentence and by lengthening the sentences of people who were prison-bound based on their underlying crimes.
- In 2013, there were 1,275 prisoners whose longest minimum sentence was for a felony firearm conviction. That is, for the underlying felony during which the gun was possessed, the person received either probation or a minimum sentence of less than two years. In addition, thousands of people with minimum sentences longer than two years for the underlying felony may have had those sentences lengthened by the two consecutive years for felony firearm.

The felony firearm law is one reason why Michigan’s average prisoner length of stay is far in excess of national norms. Yet there is no reason to believe we are any safer than people in other states. Substantial research has never found a relationship between how long people serve and how likely they are to reoffend. **There is no basis in either experience or evidence for believing that mandating two additional years for felony firearm either deters or corrects. We only know for sure that each felony firearm sentence costs taxpayers roughly \$60,000.**

We have no way of knowing exactly what the impact of the bill will be. Judges could still give minimums of as much as two years and they could still order those sentences to run consecutively. We also don’t know how prosecutors will adjust their strategies for plea negotiations. But we do know that the elimination of mandatory minimum sentences for major controlled substance violations in 2003 helped reduce the proportion of new prison sentences for drug convictions from 23 percent in 1990 to 13.4 percent in 2013.

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CAPPS strongly supports HB 4419, as it was reported out of committee. If HB 4419 is enacted, many people will serve less time or not go to prison at all. This is a good thing for them, for the MDOC and for taxpayers. And there is no reason to believe it is a bad thing for public safety.

Your help going forward will be essential! Watch for more CAPPS updates about how you can make your voice heard as presumptive parole, felony firearm and other legislation moves through the legislative process. 🐶

Gov. Snyder appoints Levine to the new Criminal Justice Policy Commission

In April, Gov. Snyder appointed Barbara Levine, CAPPS founder and associate director for research and policy, to the new Michigan Criminal Justice Policy Commission. Former Senator Bruce Caswell, of Hillsdale, represents the public on the commission and serves as chair.

CAPPS had long advocated for reinstating such a commission. In 2014, Levine gave testimony in support of House Bill 5928, then served on the legislative workgroup that developed the final bill language.

The 17-member commission represents a broad group of stakeholders. It is charged with reviewing current sentencing guidelines, exploring alternatives to incarceration, collecting data and assessing the impact of criminal justice policies on the capacities of prisons and local jails. It may recommend to the legislature modifications to any law, administrative rule or policy that affects sentencing or the use and length of incarceration.

“These appointees have a wide range of professional experience and I thank them for their willingness to serve on this new commission. I am confident they will provide strong suggestions for ways we can work to improve our criminal justice system,” Gov. Snyder said when he announced the initial appointments to the Commission. See www.capps-mi.org for more information.



Your support makes all the difference!

Fixing Michigan's sentencing and parole policies will take the active support of hundreds of people just like you. Our legislative advocacy is funded entirely by membership dues and donations. To help, go to www.capps-mi.org (click the **JOIN** button at the top of the home page), email capps@capps-mi.org, or mail us at CAPPS (see Page 12 for address).

CAPPS IN THE NEWS

William G. Milliken: Time to reverse Michigan's failed, costly imprisonment policies

William G. Milliken was governor of Michigan from 1969 to 1983, making him the longest serving governor in Michigan history. This op ed appeared online on MLIVE.COM and in affiliated newspapers.

By William G. Milliken



Over the years, I have watched the size and cost of the Michigan prison population skyrocket, due to so-called "tough" policies that have not kept us safer and have cost our state billions.

We "threw away the key" and kept people locked up long beyond the time they were safe to release. In fact, the Pew Center on the States found that Michigan had the longest average prison length of stay of any of the 35 states they studied in 2009. After decades of experience and years of research, we now know that simply keeping people longer does not keep us safer.

As governor, I contributed to the problem by supporting extremely harsh mandatory minimum drug

laws in the late 1970s. After it became apparent that the drug laws had not accomplished what either the legislature or I had intended, I then spent years working with organizations to support reforms that were signed into law by Gov. John Engler over a decade ago.

It is long past time for political leaders of both parties to reverse the remaining criminal justice policies that led to a huge increase in our prison population with no payoff in public safety — and that have cost taxpayers around \$2 billion a year.

That's why I was so pleased by Gov. Rick Snyder's leadership on these issues in his May Special Message on Criminal Justice. The governor rightly highlighted the need for smarter use of our jails and prisons, including reforms that would safely reduce our current prison population, such as presumptive parole. He also called for investing more to both prevent crime and address its root causes.

I was also very pleased by the widespread conservative and liberal praise for the June report by the Citizens Alliance on Prisons and Public Spending (CAPPS): *10,000 fewer Michigan prisoners: Strategies to reach the goal*. I have worked with CAPPS for years and I strongly encourage legislators to review their policy recommendations that provide a detailed road map for smart sentencing and parole reforms.

The report examines key factors that have led to a striking increase in the prisoner population over the past three decades and demonstrates that population is driven not by crime rates, but by deliberate policy choices. It examines in detail the sentencing and parole policies that have led to increases in the prison population. It makes detailed policy recommendations that could safely reduce our prison population by at least 10,000 prisoners over five years, at a savings of nearly \$250 million annually.

That kind of savings would make a real difference for our state, where we spend more on prisons every year than we spend on higher education — and keep prisoners behind bars longer than the national norm.

CAPPS IN THE NEWS

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Finally, the 8-1 bipartisan vote by the House Criminal Justice Committee, chaired by Rep. Kurt Heise, R-Plymouth Township, on the presumptive parole reform bill, HB 4138 (H-4)* is another encouraging sign that we are starting to overcome the politics of fear with leadership grounded in evidence.

I have personally corresponded with many prisoners who have been kept years beyond the time they could have safely returned to their families and communities. This bill is an essential, thoughtfully designed, step on the road to reform.

Unfortunately, there are those who still embrace the failed policies of the past. Three decades ago, we adopted a number of misguided policies that seemed an appropriate response to the challenges of the time.

Now it's time to adopt new strategies to meet the challenges of 2015.

Again, I applaud the leadership of Gov. Snyder and Rep. Heise on these issues. I encourage the full House and Senate to provide their support by enacting long overdue, safe and sensible parole reform.

Editorial: Plan offers hope for cutting prison budget

By The Detroit News, June 11, 2015

Nonprofit's reform recommendations complement Snyder initiative and would cut inmate population by 25 percent, saving \$250 million.

The Citizens Alliance on Prisons and Public Spending is releasing a comprehensive report today with the ambitious but achievable goal of reducing Michigan's prison population by 10,000. It deserves a close look by Gov. Rick Snyder and the Legislature.

Examining the key factors that led to the state's ballooning prison population over the past three decades, CAPPS goes into considerable detail explaining how the problem developed and then extensively outlines suggestions on how to improve the costly situation. Many of the recommendations propose policy changes.

"There is bipartisan recognition of the need to change course, both nationally and in Michigan," says Barbara R. Levine, the group's associate director for research and policy. "This report provides a road map that is consistent with Gov. (Rick) Snyder's call for 'smart justice...'"

Snyder recently announced his initiative to improve the state's criminal justice system. The plan includes a section on "Smarter Use of Jails and Prisons" and goes into comprehensive efforts to reduce the prison population through such measures as pretrial reform and diverting people convicted of a crime away from prison and into treatment programs. He also wants to look at sentencing reform, changes in probation and parole policies and revamping the juvenile criminal justice system.

The CAPPS report describes two dozen strategies that it believes will reduce admissions, shorten prison sentences and increase paroles. A nonprofit, nonpartisan policy and advocacy organization, CAPPS works to reduce the social and economic costs of prisons.

It contends that if its plan is fully implemented, the state could shut down seven prisons and save \$250 million a year.

CAPPS IN THE NEWS

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In 1973, the state prisons held less than 7,900 inmates, but today the total is about 44,000, although that is down a bit from a few years ago. Correspondingly, today's Michigan Department of Corrections budget is roughly \$2 billion and represents about 20 percent of the general fund. In the 1970s, the costs were only about 1.6 percent of the general fund. The Pew Center, a national research organization, reports Michigan's current average length of prison stay is far longer than all other states studied.

The growth is attributed not to an increase in crime but rather the state's changes in laws, policy and practices.

Among the many recommendations in the report are reducing minimum sentencing length, increasing paroles and establishing an earned credits system to reduce sentence length. The report also addresses the aging population of the state's prisons with its related increase in health care costs as well as revamping the juvenile justice system to keep young people out of prison, if possible.

The governor and lawmakers should review the CAPPS report and coordinate its recommendations with MDOC policy changes and legislative action that may be warranted in the coming months.

It took years for the criminal justice system's glaring shortcomings to evolve. Improvements won't come overnight but the CAPPS report and the governor's plans are a good start.

COMMUNITY OUTREACH

On June 30, Laura Sager, CAPPS executive director, was the guest speaker of the Huron Valley Correctional Facility Chapter of the National Lifer Association. In addition, community meetings were held in Detroit on June 13 and in East Lansing on July 18 to discuss the report *10,000 fewer prisoners: Strategies to reach the goal* as well as pending reform legislation. The American Friends Service Committee and the State Appellate Defender Office provided workshops on MDOC parole procedures and legal issues. Both meetings were very well attended. We are very grateful to all those individuals and organizations who made these events possible, including:

- Our Detroit host organization, the Detroit Action Center, and Mary Naoum, CAPPS SE Michigan outreach coordinator, who coordinated the Detroit event with the help of Leah Ouelett and MoReno Taylor.
- Our East Lansing host organization, the Unitarian Universalist Church, and Gary Ashby, CAPPS faith relations coordinator, who coordinated the East Lansing event with the help of Lynn Scott.
- Rev. Diane Smalley, sponsor of the National Lifers Association Chapter of HVCF. We especially thank all the officers and members of the NLA who participated in the discussion.
- Pete Martel of the American Friends Service Committee, for conducting a workshop on how to help your loved ones prepare for parole at CAPPS's community meetings.
- Attorneys Marilena David-Martin, Desiree Ferguson and Christopher Smith of the State Appellate Defender Office for their very informative workshops on the appellate process, MDOC policies and commutations.
- Guest presenters: Clark Washington, Mary Naoum, Gary Ashby, Jim Dankovich, as well as MoReno Taylor of Grassroots Midwest.
- Dena Anderson, CAPPS executive assistant, and volunteers Therese Hercher, Leah Ouelett, Ethan Soblosky and Mitchel Kuhlman.
- Our many cosponsors, food donors, and the Jackson Social Action Committee of the Unitarian Universalist Church, who all helped make these events possible.

OCT
27



**JOIN US TO
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SENTENCING
AND PAROLE
REFORMS**



CITIZENS ALLIANCE ON PRISONS AND PUBLIC SPENDING (CAPPS)

LEGISLATIVE DAY

JOIN US IN LANSING OCT. 27!

8:30 - 3:30 PM, Tuesday, Oct. 27
Central United Methodist Church
215 N Capitol Ave, Lansing, MI 48933

Ask about transportation from your area!

Agenda:

- Welcome, introductions**
- Talking points/Training for meetings**
- Appointments with legislators**
- Debriefing and sharing stories**

TO REGISTER
CALL: (517) 482-7753
or EMAIL:
capps@capps-mi.org

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Thank you for your donations and support!

Your gifts and memberships make it possible for CAPPS to continue the fight for sentencing and parole reforms. Your support has made it possible for CAPPS to:

- Move our reform agenda with the help of Noah Smith, our long-time lobbyist, and Grassroots Midwest, a political consulting and communications firm.
- Publish our research report, 10,000 fewer Michigan prisoners: Strategies to make the goal.
- Carry out public education activities across the state to build the reform movement.
- Host a Legislative Day in October.
- Ally with new strategic state and national partners from across the political spectrum.

Prisoner Benefit Fund donations making a difference!

We are especially grateful for donations from Prisoner Benefit Funds to CAPPS. We received donations from the following correctional facilities:

Nov. 2014	Carson City	\$1,000
Dec 2014	Huron Valley Women	\$1,200
Jan. 2015	Chippewa	\$1,000
Apr 2015	Kinross	\$500
Aug 2015	Chippewa	\$1,000

Summer/Fall 2015