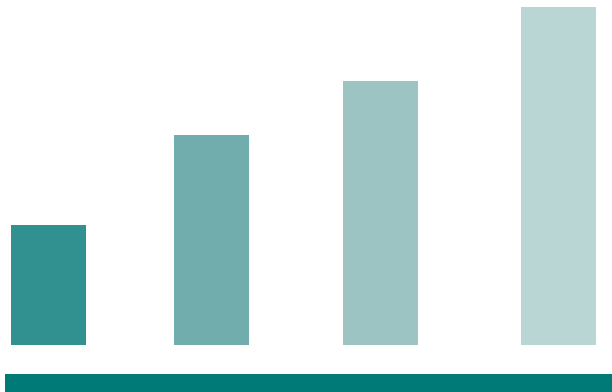



The high cost of denying parole: an analysis of prisoners eligible for release



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November, 2003

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Additional copies of this report may be purchased for \$6, including shipping. The full report is also available on the CAPPS website: www.capps-mi.org

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Acknowledgments

In 2001, the Citizens Alliance on Prisons and Public Spending (CAPPS) sought information from the Michigan Department of Corrections (MDOC), under the Freedom of Information Act, regarding the prisoners who continue to be incarcerated even though, by law, they are eligible for parole. CAPPS was seeking to learn who these prisoners are, on what basis they are currently imprisoned, and what the apparent risk of releasing them would be. The MDOC replied that no such information had been compiled.

CAPPS proceeded to develop this information itself. With a generous grant from the JEHT Foundation, it purchased a copy of the Corrections Management Information System (CMIS) database and arranged to have it analyzed.

Jeffrey Anderson, an employee of the MDOC's Office of Research and Planning, restructured the database. Mr. Anderson's outside employment by CAPPS was approved by MDOC management on the condition that his services were limited to database restructuring.

Terrence H. Murphy, MDOC's Chief of Research and Evaluation for the MDOC from 1986 until his retirement in 2002, conducted the data analysis. Mr. Murphy, who completed extensive doctoral work in deviances, methods and social psychology, conducted substantial research for the MDOC in the areas of evaluation, risk prediction and prisoner classification systems.

Mr. Murphy conducted the initial data analysis according to specifications provided by CAPPS and additional analyses throughout the project as issues became more refined. He also clarified specific technical and historical matters, such as the evolution of fixed date paroles and the impact of length of time served on bedspace.

Barbara R. Levine, Executive Director of CAPPS, authored the report. She is solely responsible for the interpretation and presentation of the results of the data analysis. Ms. Levine, a member of the State Bar of Michigan since 1974, has extensive experience addressing corrections issues in various capacities.

Gail Light, who was employed by the MDOC Office of Public Information for 27 years, designed and produced the report. Ms. Light also provided substantial editorial assistance. Dena Anderson prepared the prisoner profiles and also assisted with editing.

A generous contribution from Mr. A. W. Hemmings greatly assisted in the printing and distribution of this report.

The high cost of denying parole: an analysis of prisoners eligible for release

Prepared by Citizens Alliance on Prisons and Public Spending

November, 2003

Executive Summary

In 1992, Michigan changed from a parole board whose members were corrections professionals to one comprised of political appointees. The current board has adopted numerous policies and practices that lengthen the time prisoners serve.

- Parole grant rates dropped from 68 to 48 percent.
- Far more paroles are revoked for technical violations of parole conditions and the parolees who are returned to prison are kept much longer before being released again.
- Prisoners serving parolable life terms who became eligible for release after serving ten years are being denied parole on the rationale that “life means life.”
- Even prisoners granted parole continue to fill scarce prison beds because the board has fixed a date for their release months into the future.

The result of these policies is that **nearly 35 percent of all Michigan prisoners – 17,129 people – have served the time required by law for their offenses.** Their continued incarceration is the result of discretionary parole board decisions. The annual cost to taxpayers for the entire group is approximately \$497 million.

CAPPS obtained the MDOC’s prisoner database under the Freedom of Information Act. This snapshot of all the prisoners and parolees under MDOC supervision on May 6, 2003 provides substantial insight into who the parole-eligible prisoners are, how many of them might be released without significant risk to the public, and how much money could then be shifted from Corrections to other state services.

A total of 1,428 prisoners have been granted parole but have not yet left prison. Of these, **965 had “fixed-date” paroles that required them to spend an average of four additional months in prison at a cost of over \$7 million.** The prisoners given fixed-date paroles cannot be readily distinguished from those who are released when parole is granted. It is unclear how the public gains any increased safety from delaying the release of prisoners already determined to be suitable for parole.

The high cost of denying parole: an analysis of prisoners eligible for release

Over 20 percent of the parole-eligible prisoners are technical parole violators. Over half of this group were initially convicted of non-assaultive or drug offenses. Although they have not been convicted of any new offenses while on parole, they are returned to prison for an average of 24 months for failing to comply with conditions of supervision. **The annual cost of incarcerating these 3,645 technical violators is over \$81 million.** With a combination of progressive sanctions and increased support services, many of these prisoners could be supervised adequately in the community for a tenth of the cost.

Over 11,000 prisoners have passed their earliest release date (ERD) and been denied parole. Nearly 4,300 are more than three years past their ERD. In about half these cases it appears that the justification for denial may be a history of poor institutional conduct.

The remaining prisoners are older, have fewer prior felony convictions than those who are granted parole, and have good institutional conduct. The majority are housed in minimum security facilities. These prisoners are primarily being denied parole because of their offenses. Most are serving for a variety of sexual or assaultive offenses.

For the parole board to lengthen the time a prisoner must serve based solely on the type of offense is an expensive and questionable practice. The nature of the crime is fully considered when the minimum sentence is set in the first place. The MDOC's own data tends to show that offenders in these categories actually have lower recidivism rates than other offenders. No data indicates that holding aging prisoners long past the completion of their minimum terms increases public safety. If the parole board simply substitutes its judgment for that of the trial court and the legislators who adopted sentencing guidelines, it is effectively engaged not in risk assessment but resentencing.

Paroling just 30 percent of the prisoners who have served their minimum terms and been denied release would save nearly \$69 million.

The 864 parole-eligible lifers are, as a group, much older prisoners with good institutional records. While their median age now is 49, two-thirds were 28 or younger when they committed their offenses. Nearly 30 percent were 20 or younger; 72 were ages 15 to 17. They have served, on the average, 22 years. About half were convicted of second-degree murder; most of the rest were convicted of criminal sexual conduct, armed robbery or other assaultive offenses. Many were sentenced before sentencing guidelines took effect and would not receive life terms today.

Although the judges who imposed these sentences assumed meaningful parole review would occur after 10 years, these lifers are being denied release because they are lifers not because they continue to pose a risk to public safety. The parole board does not even calculate parole guidelines scores for lifers to assess their risk. Based on revised procedures adopted in 1999, the board reviews a lifer's file once every five years and decides whether it wants to even interview the person. If the board decides it has no interest in proceeding toward release, it is not required to give reasons for that decision. The prisoner has no right to appeal.

Each time a lifer is continued for five years, the cost to taxpayers is at least \$112,500. If only 250 of these lifers were placed on parole, the annual savings would be over \$5 million.

The data suggests that Michigan has gone further than is necessary for public safety in refusing to release parole-eligible prisoners. **If 7,200 of these prisoners – fewer than 45 percent – were placed on parole, the savings to taxpayers would be more than \$145 million.**

The report includes numerous recommendations for how the parole decision-making process can be improved so that thousands of prisoners who are not likely to re-offend are not unnecessarily warehoused for years. Some of these recommendations involve statutory changes that would place clear boundaries on the parole board's exercise of its currently unlimited discretion.

Why we should examine our prisoner population

Of all the discretionary funds Michigan has for services ranging from public health to higher education, programs for children and the elderly, the environment, the arts and local revenue sharing, it spends 18 percent — \$1.72 billion — on the Department of Corrections (MDOC). Corrections’ share of the general fund budget has nearly quadrupled since 1983 and now surpasses that of colleges and universities. Corrections accounts for 32 percent of all state employees; Michigan taxpayers spend more than \$3.7 million a day just to pay their salaries.

A portion of the MDOC budget goes to supervising probationers and parolees, but the lion’s share is used to operate 42 prisons and 10 prison camps. Although the exact amount varies depending on the prisoner’s security level, when medical and mental health care costs are included, the average annual cost per prisoner is roughly \$29,000.

Corrections spending has skyrocketed because the prisoner population has grown so rapidly. In December 1990, it was 34,209. On May 6, 2003, when the snapshot analyzed in this report was taken, it was 49,619 – an increase of 45 percent. Although other important factors exist, the single biggest reason for prison growth has been changed parole practices. Far more people who have served their minimum sentences and are, by law, eligible for release, are being denied parole. Far more people who were released but violated a term of their supervision are being kept in prison as “technical parole violators.” Hundreds of people are even granted parole but given release dates months into the future, filling expensive prison beds in the interim.

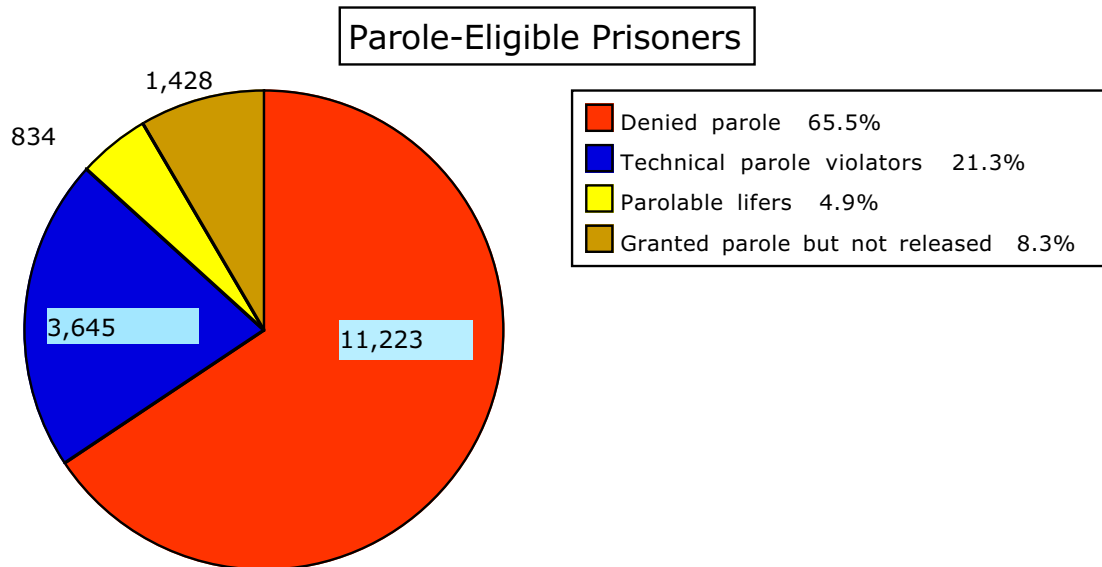
In just 12 years, the number of prisoners eligible for release has nearly tripled and their proportion of the total population has more than doubled.

Increases in parole-eligible prisoners

	<i>Total Population</i>	<i>Eligible for Release</i>	<i>Proportion</i>
1991	36,293	5,992	16.5%
1997	44,771	12,778	28.5%
2003 (May)	49,619	17,129	34.5%

As Michigan faces its worst budget crisis in decades, it must make hard choices about how to cut hundreds of millions of dollars in state spending. While the sheer size of the MDOC budget makes it an obvious place to look, lawmakers tend to believe that Corrections is essentially untouchable because it takes X dollars to house Y prisoners. The assumption is that we are incarcerating the 50,000 most dangerous men and women in the state, and the MDOC budget is the inevitable price of public safety. There has been little effort to examine just who we are paying to keep in prison and whether they actually all must remain there to keep us safe.

The high cost of denying parole: an analysis of prisoners eligible for release



This report focuses on the 17,129 prisoners the parole board has the discretion to release. It divides these prisoners into four groups: granted parole but not yet released (1,428), eligible for parole but denied (11,223), technical parole violators (3,645), and parolable lifers (834). A separate subsection describes each group and examines the reasons for not releasing them that appear from the data. Also addressed are how these prisoners scored on the board's own parole guidelines and how long they have been eligible for release.

The data analysis raises hard questions:

- What are the appropriate roles of the Legislature, the sentencing court and the parole board in determining how long an offender should stay in prison?
- Should we imprison people only to pay for crimes they committed in the past or to prevent crimes they might commit in the future?
- Is it cost-effective to return people to prison who violated the rules of community supervision but did not commit new crimes?
- Is the parole decision-making process sufficiently fair and transparent? Should the board be more accountable?
- Are the human and fiscal costs of harsher parole policies justified by measurable gains in public safety?
- Would we actually enhance public safety by shifting some resources from incarceration to services that prevent crime, such as mental health and substance abuse treatment, pre-school and K-12 education, services to at-risk children and more support for prisoners re-entering the community?
- Instead of just containing prison growth, can we actually reduce the prisoner population and close prisons designed to be temporary more than a decade ago?

This report suggests answers to these questions and offers recommendations for improving the parole process. It also demonstrates how, if fewer than half the prisoners currently eligible were paroled, the MDOC budget could be reduced by more than \$145 million that could then be made available for other state services.

To assess these conclusions and follow the data analysis readily, the reader needs a basic understanding of how sentencing and parole work.

Determining the actual time served

An indeterminate prison sentence is one that sets both a minimum and maximum amount of time a person can serve. In Michigan's system of indeterminate sentencing, each branch of government has a role. The Legislature sets the maximum penalty for each type of offense. The trial judge sets the minimum sentence the particular defendant must serve. And the parole board, a part of the executive branch, decides when a prisoner who has served the minimum sentence will actually be released. While these actions collectively determine how long a person will be incarcerated, beneath the broad definitions lie important details.

The Legislature's role in defining the boundaries

The Legislature has absolute authority to set the penalties for crime. It can delegate some of its power to judges and the parole board, as it typically does. However, the Legislature can also eliminate judicial and executive discretion by mandating specific sentences, such as a flat two years for committing a felony with a gun or mandatory life without parole for first-degree murder. The Legislature can also mandate that a minimum term of at least a certain length be imposed, as it did for most drug offenses until recently. Conversely, the Legislature can give total discretion to courts to set both the minimum and the maximum sentence. Many of the most serious offenses in Michigan carry "life or any term," which allows the sentencing court to impose a parolable life term or any minimum and maximum terms the court chooses.

The Legislature can also choose to put limits on the discretion it delegates. In fact, statutes require the use of sentencing guidelines by judges and parole guidelines by the parole board, though the impact of each is very different.

Sentencing guidelines

In 1998, the Legislature adopted sentencing guidelines developed by a special commission. The guidelines are designed to insure that the punishment is proportional to the crime, and that people with similar prior records, who have committed similar offenses, are similarly treated.

The sentencing guidelines award points according to the seriousness of the offense and the offender's

criminal history. Offense factors include not only the general type of crime, but the offender's role, the extent of actual harm to people or property, the use of a weapon, and the relationship between the offender and victim. Criminal history weighs both the number of adult and juvenile convictions and their severity. Points are also added if the offender was or had recently been on probation or parole. The total number of points determines the sentencing range.

Under the guidelines, less serious offenders are “locked out” of prison and must be sentenced to community-based sanctions. At the other extreme, average prison terms for the most serious offenders were made longer. By statute, a key consideration in setting the sentencing guidelines was the capacity of the state prison system.

The role of the court in setting the minimum

The length of the minimum sentence can be determined in the trial court by two methods. A defendant who pleads guilty may be permitted to negotiate with the prosecutor for a particular sentence. If the judge approves, that is the sentence that will be imposed.

A defendant who pleads guilty gives up the right to a trial in exchange for the benefit of his or her bargain. Sometimes that simply involves reducing the maximum exposure by having charges reduced or dismissed. However, when the bargain is for the minimum sentence, it is the value of the minimum that makes the plea knowing and voluntary. Since roughly 90 percent of all convictions are obtained by plea, the integrity of the plea bargaining system is critical to the operation of the criminal justice system.

Absent a sentence agreement, the judge selects the sentence after reviewing a presentence investigation report (PSI) and calculating the sentencing guidelines. The PSI describes the offense, the offender's background, and the impact of the offense on the victim. Judges must select a minimum sentence within the guidelines range, unless they have a substantial and compelling reason to deviate or depart. Departures cannot be based on factors already counted in the guidelines. Prosecutors may appeal downward departures and defendants may appeal upward departures to a higher court. A large body of judicial decisions defines when judges' reasons meet the “substantial and compelling” test. Defendants may also appeal errors in the guidelines scoring or reliance on inaccurate information.

In the trial court, the minimum sentence represents the bottom line. Defendants and victims know the offender will serve at least that much time. Judges must insure that the minimum reflects adequate punishment for the crime, considering both aggravating and mitigating circumstances and the offender's prior record. Whether through plea negotiations or advocacy at the sentencing hearing, prosecutors and defense attorneys try to insure that the sentence reflects their views of what is fair and proportional. Since the prisoner can be paroled at any time thereafter, the participants at the trial court level treat the expiration of the minimum as the presumptive release date, subject to post-sentencing events. The sentencing guidelines, which were developed specifically to address only the minimum sentence, rest on the same assumption.

The parole board's role

Purpose of parole

Once the prisoner has served the judicially imposed minimum, the parole board obtains jurisdiction. It then has virtually unfettered discretion to grant or deny release, subject to the statutory mandate that the board have reasonable assurance that the prisoner will not become “a menace to society.”

Parole is a conditional release, typically for two years. The parolee must meet the terms of supervision or risk being returned to prison for any period of time up to the maximum sentence. If the board chooses never to grant parole, the prisoner must serve the maximum, at which point he or she must be discharged.

The primary purpose of parole is to protect the public by providing a structured re-entry to society at the proper time for each individual prisoner. Parole can deter re-offending not only through supervision, but by assisting parolees with their needs in the community, such as housing, employment, substance abuse treatment and medical or mental health care. (Keeping prisoners until they serve their maximum sentences is arguably more dangerous to the public, since discharged prisoners go directly into the community without any supervision or assistance.) By basing release partly on in-prison conduct, parole also aids institutional management. By changing rates of movement through the back door, parole also affects the need for prison beds.

The parole board, then and now

Until late 1992, the parole board was comprised of seven experienced corrections professionals who were subject to civil service regulations. In 1992, the membership was changed to ten political appointees. Until late October, 2003, five of the members had law enforcement backgrounds. None had worked as prison management or staff.

While prisoners were never automatically released as soon as they were eligible, historically, prisoners who behaved well and were judged not to be currently dangerous could expect parole. The “old” board released 68 percent of prisoners at their earliest release date (ERD). Prisoners were encouraged to believe they could earn their release. At parole interviews, board members looked for positive signs of growth and change. Holding people to serve the statutory maximum was uncommon.

The “new” board has a much different philosophy. Rather than paroling on the minimum sentence unless there is a clear reason not to, this board tends to revisit the crime and reject minimum sentences with which it disagrees. Thus, in a 1997 report entitled “*Five Years After*,” which highlighted the differences between the prior and current boards, then MDOC Director Kenneth McGinnis stated: “Among the most important differences since the overhaul is a Parole Board that is much less willing to release criminals who complete their minimum sentences – and much less willing to release criminals at all, forcing many to serve their maximum sentences.”

The report stressed the current board's particular unwillingness to release people who committed sex offenses, its tough stance on assaultive offenses, and its quickness to revoke parole "at the first sign of trouble." The report bemoaned the fact that some prisoners the board "would have liked to keep ... locked up longer" had to be discharged after serving their maximum sentences "only because courts and statutes required them to be released."

The new approach achieved its intended consequences. The overall release rate dropped from 68 to 48 percent. For sex offenders, in 2002, it was 10 percent. Also in that year, about 1,500 prisoners (14 percent of the total released) "maxed out." The number of technical parole violators returned to prison climbed from 1,660 in 1992 to 3,293 in 2002.¹ Technical parole violators are also being kept longer before being re-released.

Parole process

Except for parolable lifers, for whom the process is more rigorous, release decisions are made by panels of three board members. A number of months before the prisoner's ERD, the board calculates the person's parole guidelines score. Institutional personnel prepare parole eligibility reports that itemize facts like the prisoner's misconduct history and whether required programs have been completed, but contain very little space for comment and none for recommendations. Depending on the parole guidelines score, the prisoner may be interviewed by one board member. Interviews are typically brief, often as short as 10 minutes. Although a friend or family member may attend the interview, the prisoner has no right to counsel. A second board member reviews the file. If the two members concur on whether parole should be granted, the third need not vote.

The panel decides whether to release the person when the ERD is reached or continue confinement. Continuances (often called "flops") may be for any period up to two years. If release is denied, the prisoner receives a written notice that is supposed to explain what he or she can do to improve the chances for release and when the next review will occur.

Parole guidelines

Like the sentencing guidelines, the parole guidelines are required by statute. However, they are developed solely by the MDOC. They focus on the statistical probability that a prisoner will commit an assaultive offense if released.

Prisoners are awarded either positive or negative points on a series of factors. If the total score is +4 or greater, the person is rated "high probability for parole". A score that is below +4 but above -13 puts the prisoner in the average probability range. A score below -13 is low probability.

Some of the guidelines factors are dynamic ones that change over time, such as institutional conduct,

1. The current MDOC Field Operations Administration is reversing this last trend by directing parole agents to use more community-based alternatives before recommending revocation to the board.

program participation, age and length of time served. However, the static or unchanging factors of offense and prior record are also weighed heavily and repeatedly. For instance, points are given both for “aggravating conditions” of the offense and for prior record. Additional points are given for the prisoner’s “statistical risk”, a series of categories that are, in turn, based largely on offense and prior record. Sex offenders automatically get yet another –5 points under “Mental Health Variables”.

The situation was compounded nearly two years ago when the guidelines were revalidated. The scoring was adjusted so that anyone with more than 6 points for prior record who nonetheless scored high probability of release would automatically be pushed back into the average category.² As a result, the proportion of prisoners with scores in the high probability range dropped from nearly 49 percent to less than 37 percent.

With a high probability score, the board may, in most cases, release the prisoner without an interview. If it denies parole, the board must give “substantial and compelling reasons” for departing from the guidelines recommendation. However, there is no prohibition on using factors already scored. The board frequently cites aspects of the offense or the prisoner’s prior record. It also frequently uses a subjective assessment of the prisoner’s thinking, such as insufficient remorse or minimizing participation in the offense.

If the prisoner scores low probability, the board may deny release without an interview. In these cases it must have substantial and compelling reasons for departing from the guidelines and granting parole.

For people who fall into the average probability category, the board has absolute discretion. While by statute it must articulate reasons for denying parole, these do not have to be substantial and compelling. Prisoners commonly receive notices denying parole with boilerplate language telling them that to improve their chances for release they should do what they have already done, such as keeping a clear conduct record and completing recommended programs.

Unlike the sentencing guidelines that judges must follow, there is no system for reviewing departures from the parole guidelines. In fact, there is virtually no review of board decisions at all, either judicial or administrative.³ Thus the requirement that the board have substantial and compelling reasons for departing from the guidelines is unenforceable, and its exercise of discretion cannot be overturned, even for abuse. Moreover, prison capacity is not a factor the board is required to consider.

2. Revalidation was done in part to insure an assaultive recidivism rate for the high probability group of 5 percent or less. The overall scoring was not revamped, but the score is now considered “preliminary” and subject to adjustment if certain factors exist. In addition to the change noted above, prisoners who score in the average probability range are bumped into the high probability range if several conditions are met. Thus guidelines calculated after December 1, 2001 contain two scores – preliminary and adjusted.

Another change made by the board, independent of the revalidation study, was to add –20 points to the score of anyone housed at a maximum security facility. The purpose was to push all these prisoners into the low probability range so they could be denied release without interviews.

3. In 1999, at the parole board’s urging, the Legislature abolished the right of prisoners to appeal parole denials to the circuit court which had existed under the Corrections Code, although prosecutors and victims retain the right to appeal grants of parole. The right of prisoners to appeal under the statute that governs administrative agency review generally is currently being litigated. However, for all practical purposes, prisoners cannot obtain judicial review of a parole denial.

Summary

The actual amount of time a prisoner will serve is initially determined when the judge imposes the minimum sentence. The Legislature has adopted a detailed system of sentencing guidelines designed to control judicial discretion and insure that sentences are consistent and proportional. Judges are required to follow these guidelines and their decisions are subject to judicial review. However, the minimum sentence does not in any way control the parole board's exercise of its discretion. Although the board has its own guidelines to follow, these confer absolute discretion in the average case. Even when the board is supposed to have "substantial and compelling reasons" for denying release, there is no way to enforce that standard.

Thus, the minimum sentence merely creates the first opportunity for the parole board to act. More than half the time, the action taken is to deny release. How long the prisoner must actually serve thereafter is totally controlled by the board.

The parole-eligible prisoners: analyzing the data

All the prisoners who were, by law, eligible for release on May 6, 2003, were divided into four subgroups: those who had been granted parole, those who were past their earliest release date and had been continued, people who had been returned to prison for technical parole violations, and paroleable lifers. The goal was to describe the people within each group, determine how far they were past their possible release dates, and identify patterns that might help explain why they had not been paroled.

The basic background factors examined were current age, age at offense, race, gender, sentencing county, type of offense, and prior record (including both number of prior felonies and number of prior Michigan prison terms). The median age for all prisoners is 34; 95.5 percent are male; and, although 14 percent of the state's population is African-American, 54 percent of the prison population is African-American. Another 3 percent is Hispanic, Asian or Native American.

Institutional record was examined through two factors — the prisoner's security classification and history of misconducts during the preceding three years. Prisoners are classified at one of six security levels, ranging from Level I (minimum) to Level VI (maximum). Over 70 percent of all prisoners are housed at Levels I and II. While prisoners serving long sentences must start out at Level IV, classification at Levels V and VI must be based on institutional misconduct.

Misconducts are divided into two types — major and minor. Line staff deal with very minor rule infractions summarily by, for instance, assigning a few hours of extra duty or limiting privileges for a few days. Major misconducts may result in more serious consequences, including the loss of disciplinary credits, loss of privileges for an extended period of time, reclassification to a higher security level, and placement in segregation. A record of major misconducts is kept and they are counted in

the parole guidelines score. The prisoner is entitled to a hearing before an MDOC hearings officer before being found guilty of a major misconduct.

Major misconducts are themselves divided into two types. Bondable misconducts are those for which the prisoner need not be kept in segregation while the hearing is pending. By far the most common types of major misconduct are the bondable ones of disobeying a direct order, insolence, and being out of place. Non-bondable misconducts are less common but more serious. They include assault, threatening staff, and escape attempts. While 60 percent of all prisoners are found guilty of at least one major misconduct of any type in a three-year period, only 25 percent are found guilty of at least one non-bondable misconduct.

Finally, parole guidelines scores, which incorporate most of these factors and, in theory, should correlate highly with the actual parole decision, were also examined.

“Fixed-Date” Paroles

When the snapshot under analysis was taken, 1,428 prisoners who were serving past their earliest release dates had already been granted parole. Of these, about a third had received their decisions within the previous 30 days and were in the process of being released.

The other two-thirds – 965 prisoners – had been given “fixed-date” paroles by the board. That is, the decision had been made to parole them, but the actual release date had been set some time in the future. On the average, prisoners with fixed dates have to serve an additional four months beyond the date parole was granted. However, in 115 cases the date fixed was from six months later to more than a year. If the prisoner is found guilty of major misconduct while awaiting release, the parole decision can be rescinded. Thus, it cannot be assumed that everyone given a fixed date parole will actually leave prison on that date.⁴

Apparently, the fixed-date paroles were originally designed by the parole board for use in selected cases when it was felt that a short additional period of incarceration would achieve a particular goal. However, the exception began to consume the rule. According to the former chief of the MDOC Research and Planning Division, the number of fixed-date paroles was examined during 2001-2002 because the MDOC faced a shortage of beds. From January through October 2001, more than 86 percent of all the paroles granted were fixed-date. From November 2001 through September 2002, the proportion of non-fixed-date grants was doubled under emergency conditions, but the fixed-dates were still 72 percent of the total.⁵ The current analysis suggests that the proportion of fixed-date paroles may have declined further.

4. Particularly given the tensions that can arise while a prisoner in this situation is awaiting release, it would be useful to analyze the relationship between fixed-date paroles and actual release.

5. Communication from Terrence Murphy to the author.

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The purpose of fixed-date paroles is difficult to discern from the characteristics of the prisoners who receive them. While over 60 percent of all those granted paroles are serving for non-assaultive and drug offenses, the proportion serving for assaultive and sex offenses is actually a little higher for the non-fixed (38%) than the fixed date group (34%). Nor are there significant differences in prior record. Three-quarters of all those granted parole have at least one prior felony; 56 percent of those in both groups were serving their first Michigan prison terms, and over 79 percent had been to prison no more than once before.

Misconduct histories also fail to distinguish the fixed from the non-fixed date groups. Over 40 percent of the people in each group had no major misconducts in three years; 88 percent in each group had no more than three. About 83 percent in each group had no non-bondable misconducts.

The other important factor that does not distinguish the groups is parole guidelines scores. When the preliminary scores are compared, 53.7 percent of the non-fixed-date group falls in the average range, but so do 51.2 percent of the fixed-date group.

There are two areas in which the fixed-date group does look different. First, although 98 percent of all prisoners granted parole are classified as either Level I or II, 78 percent of the fixed-date group is classified at Level I, compared to 70 percent of the non-fixed. Second, 51 percent of the fixed-date group, as opposed to 42 percent of the non-fixed group, are technical parole violators being granted release again.

All of these factors suggest that the people granted fixed-date paroles are quite similar to those who begin the release process as soon as parole is granted. They are less serious offenders with decent institutional conduct who are overwhelmingly classified as minimum security. All have been reviewed by the board and granted parole. Half had been granted parole once already and were back in prison only as a result of technical parole violations.

So why not simply release them? Perhaps some insight can be gleaned by looking at the prisoners who had not yet finished serving their minimum terms. On the day of the snapshot, 1,400 prisoners who were approaching their ERD had already been reviewed by the board and granted parole. Of these, 94 percent were not fixed dates, meaning the prisoners would be released when they reached their ERD (barring intervening misconduct). Only 84 prisoners granted parole on their first review received fixed dates.

Thus it appears that fixed-date paroles are given primarily to people who have been denied parole already or are back as technical violators. While called parole grant decisions because the prisoner can be released without further action by the board (and counted as grants in board statistics), these cases might be equally well characterized as short-term continuances. For reasons not evident from the data, the board has decided these prisoners are suitable for parole – but not quite yet. What exactly is supposed to make them more suitable in two or four or eight more months is unclear.

Conclusion

On May 6, 2003, a total of 2,847 prisoners had already been granted parole. Half of them had not yet reached their earliest release dates and so could not be permitted to walk out the door. The other half had passed their ERDs and could be released in the board's discretion. Of the total, 37 percent (1,049 prisoners) had been given fixed-date paroles. Those given fixed-dates do not appear to present any higher risk to the community and it is not clear what purpose is served by lengthening their stay.

The use of fixed-date paroles has obvious consequences. Since every month a prisoner spends at a Level I facility costs \$1,844 (including medical but not mental health care), the average fixed-date parole costs taxpayers \$7,376. Thus, all 964 such paroles cost \$7,110,464.

If prisoners with fixed date paroles are routinely released but replaced with others who were also granted fixed-date paroles, there will constantly be 964 prisoners in this position. Notably, 960 is the capacity of each of the seven prisons that were called temporary facilities until they were renamed in 2001. The cost of operating one such facility, Pine River in St. Louis, is budgeted at \$17,032,100 for FY 04, and that does not count medical or mental health costs. Simply eliminating the practice of setting fixed date paroles would permit closing an entire prison – assuming the board would continue to grant the same paroles on a non-fixed date basis. At a minimum, the practice should be applied much more selectively.

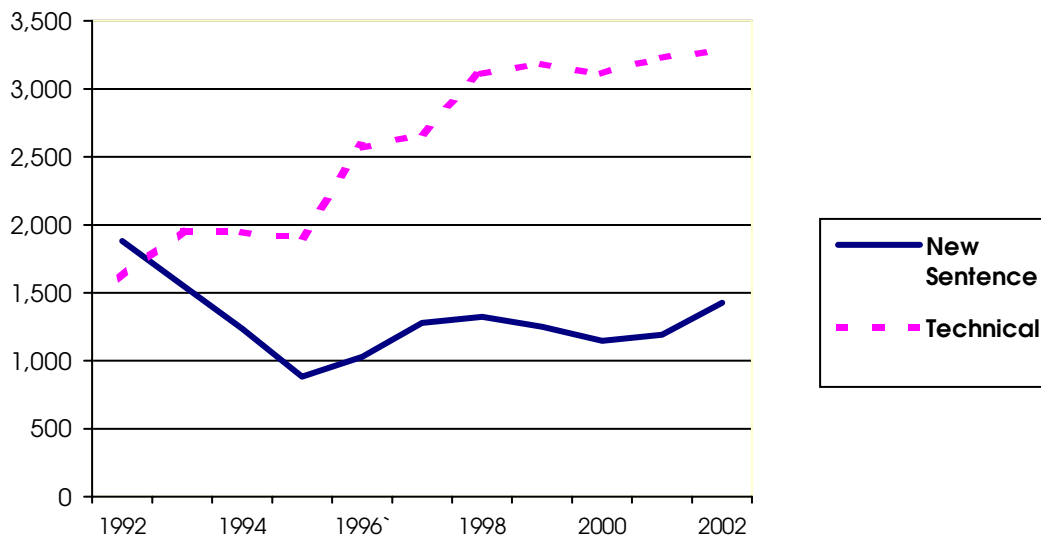
Fixed-date paroles do create a safety valve for prison bedspace needs. If, for instance, commitments are higher than expected, the fixed release dates can be readjusted and hundreds of prisoners can be released, just as they were in December 2001. Viewed from another perspective, however, that means people with fixed-date paroles are effectively serving as placeholders, filling prison beds until they are needed for someone else.

Technical Parole Violators

Parolees are required to meet numerous routine conditions, such as regular reporting, passing drug tests, keeping a curfew, maintaining or seeking employment, and not associating with known felons. Depending on their offenses and individual circumstances they may face additional requirements, such as attending counseling or not being alone with minors. People who do not comply with the conditions of their supervision can be returned to prison as technical parole violators.

From 1992-2002, as the prison population increased by 46 percent,⁶ the number of parolees returned to prison with new sentences for new convictions fluctuated from a high of 1,875 in 1992 to a low of 886 in 1995 and back to 1,429 in 2002, reflecting, in part, fluctuations in the number of paroles granted. But the number of technical violators returned each year climbed steadily, from 1,660 in 1992 to 3,292 in 2002. Thus, even greatly increasing the number of parolees returned to prison for technical violations does not produce a concomitant reduction in the number of parolees convicted of new offenses.

**Parole Violators Returned
1992-2002**



Although the parole board is ultimately responsible for deciding whether to revoke parole, the volume of technical violators returned to prison depends, in the first instance, on whether parole agents recommend revocation. Depending on the nature and number of violations, agents have various options, ranging from warnings to treatment referrals to increased levels of supervision. While an increase in the total number of parolees was partly responsible, the near doubling of revocations for

6. In August 2003, the MDOC reported that, for a combination of reasons, the population actually dropped by 1.2 percent for the first extended period in 19 years.

technical violations was spurred by changes in the decision-making process agents had to follow. The number of technical violators returned from January-July 2003 was reduced by 45 percent compared to the same period in 2002 by permitting parole agents to address more violations with community-based sanctions.

Once technical violators are returned to prison, they can be held to serve their maximum sentences. Re-parole is wholly within the discretion of the board. The same parole guidelines instrument used when the person was first released is scored each time he or she is reconsidered. Even if the score falls in the high probability for release range, the board often finds the parole failure to be a substantial and compelling reason to depart from the guidelines recommendation.

The MDOC commonly explains that some technical violators actually engaged in criminal behavior that was not prosecuted. The suggestion is that these prisoners were in fact guilty of more than non-criminal violations of administrative rules, and thus their return to prison was justified on that basis. While this may well be true in some cases, this explanation presents several difficulties.

1. The MDOC does not differentiate in its data collections between “technical violators – supervision rules only” and “technical violators – new criminal behavior,” so the number of people who actually fall into each category cannot be measured.
2. The seriousness of the alleged criminal behavior also cannot be determined. Is what is being characterized as new criminal behavior a felony, a misdemeanor or a traffic violation? Are people being returned to prison for years based on behavior that, if prosecuted independently, might result in three months in jail or a suspended driver’s license?
3. The strength of the evidence is also unknown. It is clear from the number of parole violators returned with new sentences that when prosecutors have probable cause to believe a parolee has committed a new felony, they seek a new conviction. But parole can be revoked on a lower standard of proof than prosecutors need to convict. Since not engaging in criminal behavior is in itself a condition of parole, a technical violation can be sustained on evidence that would not hold up in court. In addition, where other minor technical violations exist and criminal behavior is suspected, parole can be revoked based on the other violations while the unproven suspicions remain in the person’s file.
4. If many technical violations are actually new crimes and the number of technical violators returned increased sharply over the last eight years at the same time that parole grant rates were dropping, this suggests that neither decreasing the rate of parole grants nor increasing revocations for technical violations prevents criminal behavior, despite the significant cost of each.

On May 6, 2003, over 20 percent of all the prisoners eligible for release – 3,645 people – were technical parole violators who had not yet been granted re-parole. Their median age was 37. Over 50 percent were classified at Level 1; 90 percent were classified at either Level I or II. The data does

The high cost of denying parole: an analysis of prisoners eligible for release

not reveal the nature or frequency of their violations. Presumably this group includes hundreds, at least, who would not have had their paroles revoked under the standards currently being applied at a substantial savings to the public.

Nearly two-thirds (63.6%) of the technical violators had been back in prison for more than a year; nearly a third (1,170 people) had been back for more than two years. More than 20 percent had been back for three years or more, including 311 whose paroles had been revoked more than five years earlier and 25 for whom it had been more than 10 years. The average was 24 months.

When compared to parolees still in the community, the technical violators have somewhat less positive indicators. As the following table demonstrates, the technical violators are a little more likely to have prior felony convictions, less likely to be serving their first prison term, and more likely to be serving for an assaultive or sex offense than parolees generally. Conversely, parolees had higher preliminary parole guidelines scores. Nonetheless, 55 percent of all technical violators are serving for drugs or other non-assaultive offenses; 54 percent are serving their first prison terms. Over 40 percent had preliminary parole guidelines scores that placed them in the high probability for parole range and only one percent scored low probability for release.

Comparing technical violators with parolees

	<i>Technical Violators</i>	<i>Parolees</i>
<u>Prior Felonies</u>		
0	26.3%	31.6%
1	18.5%	18.2%
2	15.6%	15.1%
3+	39.7%	35.1%
<u>Prior Prison Terms</u>		
0	54.1%	63.9%
1	23.8%	21.0%
2+	22.1%	15.1%
<u>Offense Type</u>		
Assaultive	32.0%	26.0%
Sex	13.1%	6.3%
Non-Assaultive	40.0%	43.2%
Drugs	14.8%	24.0%
<u>Guidelines Range (Preliminary)</u>		
High	41.5%	57.0%
Average	57.3%	43.0%
Low	1.3%	0

Conclusion

The purpose of parole is to permit a period of supervised readjustment. There is no dispute that supervision is meaningless unless clear rules are established and significant violations are enforced. However, there is also no doubt that revoking parole for technical violations is expensive for taxpayers, as well as devastating to parolees and their families.

With more than 50 percent of all technical violators classified at Level I, and most of the rest at Level II, the average annual cost per prisoner (including medical but excluding mental health costs) is about \$22,300. Thus the cost of incarcerating all 3,645 technical violators is \$81,283,500.

At an annual cost of \$1,839 per parolee, the cost of parole supervision for this entire group would be \$6,703,155. Even if they were assigned to special caseloads in which the agents had half the number of parolees and the cost for each doubled, the total would be only \$13,412,310 – about \$68 million less than incarceration. If only three-quarters of these technical violators were handled in the community with a large portion on reduced caseloads, the savings would still be more than \$50 million.

The questions that arise involve both the relative cost-effectiveness of parole revocation and the proportionality of extended incarceration to the violations that have occurred.

The fundamental question is to what extent prison should even be used as a sanction for non-criminal conduct. By definition, technical violators have served at least the minimum terms imposed for their offenses and are being re-incarcerated for violating rules that apply to them only because of their parole status. Not surprisingly, the technical violators do not look so markedly different from those parolees still in the community as to suggest they pose a much greater threat to the public. Thus it is important to distinguish cases in which parole revocation is actually necessary for public safety from those in which it is simply punishment for not abiding by the rules. In the latter cases, it is fair to ask whether imprisonment is a logical response. Just because someone has been to prison already does not mean that more prison is the only sanction available.

Other issues are the reasonableness of expectations and the availability of alternatives. It is widely recognized that meeting the terms of parole is difficult for re-entering prisoners who often face daily struggles to find housing, employment, transportation and medical care. Many fail because their needs for substance abuse treatment or mental health care go unmet. Moreover, as a group, prisoners do not have a lot of experience exercising good judgment and assuming responsibility.

The MDOC's long-term Transition from Prison to Community Initiative will be designed to better prepare prisoners for release and to insure continuity of services that address parolees' actual needs. Until the resources are available to help more parolees succeed, the question remains how much flexibility parole agents should have in applying sanctions to prisoners who are not actually harming the community. Where a parolee is working and caring for a family, should the loss to the community and family members if parole is revoked be part of the equation? If punishment and deterrence

are the primary objectives, would less expensive sanctions, such as increased reporting, electronic monitoring or short stints in jail, usually suffice?

Finally, when a return to prison is considered necessary, should the length of stay be open-ended? Is it reasonable, for instance, to release a prisoner after serving 18 months for his offense, then reincarcerate him for four years when he violates parole by missing counseling sessions? Absent prosecution and conviction of a new crime, two limitations on a parole violator's length of stay could be applied. First, progressive amounts of additional prison time could be required, depending on the seriousness of the violation and other aspects of the person's parole history. For some technical violators, a three-month return may be enough to insure future compliance at a substantially lower cost to taxpayers. Second, an absolute maximum amount of time to be served for a technical parole violation could be established. If these limitations reduced the average time spent by technical violators from 24 months to 12, the savings would be over \$37 million.

Returning technical parole violators to prison is a long-standing practice. It is undoubtedly the only alternative in some cases. However, the data suggests that technical violators may be returned to prison more often and for longer periods of time than is necessary for public safety. While the MDOC develops methods over the next several years to help re-entering prisoners succeed in the community, reducing the number of technical violators currently in prison would appear to be a logical place to reduce corrections spending.

Prisoner Profile: Charles Robert Lohn #107894

Offense: Armed Robbery

Paroled: April 1988

Sentence: Parolable life

Parole Revoked: August 1988

Charles Lohn was given a parolable life sentence for armed robbery in 1968. He was released on parole in April 1988. Due to a family crisis, Lohn failed to report to his parole agent for several months, during which time he worked and remained crime-free. He was returned to prison, supposedly for a short time. Fifteen years later he remains incarcerated.



Background and offense

Charles Lohn's mother died when he was nine and he and his five siblings were separated. Lohn was sent to St. Francis Home for Boys in Detroit. He dropped out of school at age 15 and began getting in trouble with the law. At age 24 he committed the armed robbery for which he received a parolable life sentence. In 1981, after he had served 13 years, a psychologist wrote, "It would certainly appear questionable that he could benefit in any way from further incarceration."

Parole board action and conduct on parole

In 1983, the parole board held a public hearing regarding Lohn but took no action to release him. Two years later, due to prison overcrowding, he was sent to the Huron County jail, where he worked in the Community Work Program for 18 months. Sheriff Richard Stokan wrote that Lohn took pride in his work and got along well with staff and fellow inmate-workers.

Finally, in April 1988, Lohn was paroled to Grand Rapids. The night he arrived home he was surprised to learn his wife had been convicted of writing checks on insufficient funds and expected to be sentenced to prison the following morning. Lohn said he couldn't face the possibility of being separated from his wife again, so they fled to Port Huron. As a result, he never reported to his parole agent. Lohn now says, "It was a stupid thing to do, but I let my feelings towards her outweigh what was right."

Three months later, his wife was arrested on the outstanding warrant and taken back to Kent County. Lohn returned to Grand Rapids, where he worked at a variety of jobs under an assumed name. The manager of the motel where he stayed said he kept his rent current and never caused any trouble.

In mid-August 1988, Lohn was located and returned to custody as a technical parole violator. Since he had absconded from supervision for four months, the parole agent recommended that he be returned to prison, but that he get “another try at parole in the not too distant future.” The board member who interviewed him upon his return wrote, “The Board agrees with the recommendation of the parole agent and is ordering a short continuance to impress upon Mr. Lohn that the rules, regulations and conditions of parole must be adhered to...” However, the board delayed making a final decision until June 1989, then it officially continued his incarceration until 1990.

The board took no further action until 1993. Then, although three members favored re-parole, the majority voted to continue his incarceration for five more years.

By 1998, the board had taken the position that “life means life.” It denied Lohn parole for yet another five years.

Lohn has only five misconduct citations in the last 15 years—most for possession of betting slips. He is classified at Level II.

The parole board interviewed Lohn again on October 1, 2003, shortly before his 60th birthday. He is currently awaiting its decision.

Questions

1. Is it a good use of public funds to return technical parole violators to prison when no one perceives them to be a threat to the community?
2. If technical violators are returned to prison, how long should they be kept?
3. Should technical violators have separate parole guidelines that account for the fact that they were released once already?
4. What justifies the parole board's repeated issuance of five-year continuances to a man who was considered safe to release 15 years ago and whose prison record since then argues no differently?

Parole Denied ⁷

Nearly two-thirds of the prisoners currently eligible for release are people who have served their minimum terms and have not been granted parole. The median number of years these prisoners have served past their earliest release dates is two. Nearly 4,300 are more than three years past their ERD; nearly 2,500 are more than five years past and appear to be on their way to discharging on their maximum sentences.

In each of these 11,223 cases, the parole board has decided that it lacks “reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner’s mental and social attitude, that the prisoner will not become a menace to society or to the public safety,” as is required by MCL 791.233.

The statutory standard presents a minefield of difficult issues.

- What kind of information should assure the board? Is satisfactory completion of MDOC treatment programs, such as Assaultive Offender Therapy and Sex Offender Therapy, enough? What else can a prisoner do to provide assurance about his or her future conduct?
- How heavy is the burden of proof? “Reasonable assurance” is certainly something less than proof beyond a reasonable doubt, but how certain must the board be about something as ultimately unpredictable as a person’s future behavior?
- How much weight should be given to risk assessment instruments like parole guidelines scores that indicate statistical probabilities but cannot predict a given individual’s behavior?
- How do you measure such subjective factors as mental and social attitude?
- Exactly what is a “menace to society” and what kind of conduct are we willing to risk? Should property and drug offenders be denied parole when their prior records strongly suggest they will commit more crimes? Should first-time assaultive and sex offenders be perpetually presumed to be a menace based solely on their offenses?
- Should poor institutional behavior be a basis for denying release, whether or not it correlates with the likelihood of future offenses, because parole is a legitimate management tool?

7. The term “parole denied” is used interchangeably with the term “prisoners past their ERD (earliest release date)” to refer only to those parole-eligible prisoners serving indeterminate terms who have not had a parole granted. It does not include parole violators or prisoners granted parole and awaiting release.

It should also be noted that at the time of the snapshot, 2,772 prisoners who had not yet reached their ERD had already been reviewed by the board and denied parole. Time constraints prevented in-depth comparisons between this group and those prisoners who were already past their ERD. Such research in the future might help clarify many of the issues raised in this section.

The role the prisoner's offense should play in the release decision is a controversial subject. Citizens have an understandable fear, heightened by media coverage of isolated cases, that sexual and violent offenders will repeat their crimes. No parole board member wants to feel they could have prevented a horrific crime committed by a parolee. The board is also sensitive to the political consequences of high profile crimes by parolees, no matter how justified the decision to parole may have been. Such concerns make it easy to assert that everyone who committed an assaultive or sexual offense should simply be locked up for as long as possible.

However, at least six points tend to complicate this view.

1. All crimes of a general type are not equal. Assaultive offenses range from bar fights to premeditated murders. Sex offenses include prohibited sex between an 18-year-old male and a willing 15-year-old girl, as well as rape and child molestation.
2. The fact that someone committed a violent act years or decades ago does not logically mean they are violent today. That conclusion would ignore the effects of sheer aging and of any in-prison treatment programs or other rehabilitative influences.
3. While imposing longer sentences in the first instance may have some impact on reducing crime, there is no evidence that further lengthening incarceration by denying parole has any additional value for crime prevention.⁸
4. MDOC research does not support the conclusion that substantially decreased parole rates were necessary to prevent assaultive and sexual offenses by parolees. The *1994 MDOC Statistical Report* contains a four-year follow-up of people paroled in 1990, when the parole grant rate was 68 percent. The total failure rate on parole (including technical violations and new sentences) was 44 percent for property offenders and 36 percent for those who committed offenses against people. Looking only at those who received new sentences, the proportion was 22 percent of property offenders but only 12 percent for those with crimes against people. By either measure, homicide and criminal sexual conduct actually have the lowest recidivism rates of any major crime group.

When the focus is narrowed further to the number of parolees who committed new crimes against people it turns out to be very small:

Of these parolees, more than 93 percent did not commit another assaultive or sexual offense while on

8. One review of the research concludes that prison expansion was responsible for about one-fourth of the rational decline in violent crime during the 1990s. Other factors include lower unemployment rates, changes in policing strategies and decreases in juvenile crime. Spelman, W., "The Limited Importance of Prison Expansion" in Blumstein and Wallman, eds., *The Crime Drop in America*, Cambridge University Press (N.Y., 2000), p. 97. The author notes at page 117 that because burnout sets in near age 40, targeting incarceration at offenders in their late thirties or beyond risks "imprisoning offenders who would have quit committing crimes had they simply been left alone."

Crimes against people by parolees released in 1990

<i>Conviction Offense</i>	<i>Number of Parolees</i>	<i>New Crime Against a Person</i>	
		<i>Number</i>	<i>Percent</i>
Homicide	221	14	6.3
Assault	559	36	6.4
Robbery	734	63	8.6
Criminal Sexual Conduct	485	16	3.3
TOTAL	1,999	129	6.5

parole (typically within two years of their release). Although parole was always granted more cautiously to these offenders, the statistics suggest that denying parole across the board based on offense involves the continued incarceration of many people who will not re-offend.

5. While it is undisputed that offenders guilty of more serious crimes should serve longer sentences, this is already accomplished through the sentencing process. Sentences for assaultive and sexual offenses are typically much longer than those for property and drug offenses. In 2000, the MDOC reported that over 12,000 prisoners had either life sentences or minimum terms longer than 10 years.⁹

6. The nature of the offense is the primary basis of the minimum sentence imposed by the court. Sentencing is intended not only to punish but to deter future behavior. The prisoner who becomes eligible for parole has already served the term determined to be proportional to the specific offense by the sentencing court (now with the aid of legislative guidelines) and, perhaps, by the parties to a plea bargain. If the decision to incarcerate a person further is premised solely on the general nature of the offense (as opposed to unique offense details that might have predictive value), the prisoner is effectively being resentenced by the parole board.

The May 6th snapshot corroborates the parole board’s own assertions that it is particularly disinclined to release offenders convicted of sexual crimes. When those being held past their ERD are compared to prisoners generally and to parolees, it is apparent that sex offenders, who comprise 20.3 percent of the total prisoner population, are greatly over-represented among those denied release (34.7 percent) and greatly under-represented among parolees (6.3 percent). Nearly 39 percent of all sex offenders currently in prison have been denied parole. At the other extreme, drug offenders, who comprise about 10 percent of all prisoners, are over 24 percent of the parolees. The proportion of non-assaultive offenders among parolees is also relatively high.

9. These sentences are not substantially reduced by credit for good behavior. Generous good time provisions were abolished in 1978 and later replaced by disciplinary credits that could not exceed seven days per month. Truth-in-sentencing, adopted in 1998, then eliminated even the award of disciplinary credits on a prisoner’s minimum term.

The high cost of denying parole: an analysis of prisoners eligible for release

The picture of assaultive offenders is somewhat less clear. While they comprise a disproportionately low share of the parolees, they are also a lower proportion of those denied parole than might be expected. The proportion of all prisoners with assaultive offenses who have been denied parole (18.5 percent) is actually a bit lower than the proportion of non-assaultive offenders who have been denied (20.7 percent). The explanation for these apparent anomalies may lie with the number of assaultive offenders who are serving life or very long minimum terms. That is, the numbers may reflect the fact that assaultive offenders are relatively less likely to be parole eligible.

Distribution of offenses by type among prisoner groups

	<i>All Prisoners</i>	<i>Parole Denied</i>	<i>Parolees</i>	<i>Percent past ERD</i>
Assaultive	22,792 45.9%	4,224 37.6%	4,237 26.0%	18.5%
Sex	10,088 20.3%	3,898 34.7%	1,032 6.3%	38.6%
Non-Assaultive	11,875 23.9%	2,462 21.9%	7,027 43.2%	20.7%
Drug	4,831 9.7%	636 5.7%	3,974 24.4%	13.2%

The snapshot also reveals a good deal more about both the prisoners being denied parole and the board's decision-making criteria. The current median age of these prisoners is 35, just as it is for parolees. A third of the continued prisoners are over 40. However the median age at offense for these prisoners was 25, while it was 27 for parolees.

Age at offense correlates strongly with offense type. When looking at the prison population overall, three points are apparent. First, assaultive offenses are very much a youthful behavior. Over a third of all assaultive offenders were less than 21 when they committed their crimes and 72 percent were no older than 30. Second, of all crime categories, sexual offenders tend to be the oldest at the time of offense, with nearly half being older than 30. Third, after the age of 30, every type of crime declines with each passing decade. For assaultive and drug offenses, the sharpest drop is right after 30; non-assaultive and sex offenses drop most sharply after age 40. For every group but sex offenses, fewer than three percent of offenders were older than 50; for sex offenders it was fewer than seven percent.

Age at offense by offense type for parole denials

	<i>Assaultive</i>	<i>Sex</i>	<i>Non-Assaultive</i>	<i>Drug</i>
<21	33.5%	19.1%	24.1%	20.8%
21-30	38.4%	32.2%	34.6%	43.3%
31-40	19.8%	29.1%	27.3%	23.3%
41-50	6.8%	12.9%	11.7%	10.1%
>50	1.6%	6.6%	2.2%	2.6%

The high cost of denying parole: an analysis of prisoners eligible for release

The prisoners being held past their ERDs actually have less extensive criminal records than any other group being examined. Of these prisoners, 36 percent had no prior felonies and 56 percent had no more than one. Among parolees, 50 percent had no more than one prior conviction. Among prisoners granted parole but not yet released, the figure was only 44 percent.

Not surprisingly, prior record also has a strong correlation with offense. Non-assaultive and drug offenders are given more chances before being sent to prison; assaultive and sexual offenders not only receive longer sentences, they are more likely to be given prison terms for a first offense. Thus, while over half of all sex offenders had no prior convictions, less than a quarter of the non-assaultive offenders had none.

Prior felonies by offense type for parole denials

	<i>Assaultive</i>	<i>Sex</i>	<i>Non-Assaultive</i>	<i>Drug</i>
0	40.3%	51.8%	21.9%	28.3%
1	17.6%	20.1%	14.5%	18.9%
2	12.7%	11.6%	14.2%	16.1%
3 or more	29.4%	16.5%	49.4%	36.7%

Like prisoners generally (63 percent) and parolees (64 percent), 61 percent of the prisoners past their ERD were serving their first prison term.

Offense type is not the only determining factor in parole decisions. It appears from the data that behavior while incarcerated may be the parole board's threshold concern. The prisoners being denied

Percentage having misconducts within preceding three years

	<i>All Prisoners</i>	<i>Parole Denied</i>	<i>Technical Violators</i>	<i>Parole Granted</i>
Total Misconducts				
0	40.9	25.0	39.9	42.5
1-2	26.0	22.4	30.5	33.2
3-5	14.9	18.1	13.9	15.0
6 or more	18.3	34.6	15.8	9.3
Non-Bondable Misconducts				
0	75.6	60.0	77.8	83.2
1	16.1	23.0	16.0	14.9
2	5.4	10.6	4.4	1.8
3 or more	2.9	6.4	1.8	.1

release have significantly more misconducts generally than other prisoners and more non-bondable misconducts as well.

As would be expected from their misconduct histories, the prisoners denied parole also tend to have higher security classifications than other groups. About 71 percent are classified at Level I or II, compared to 90 percent of the technical violators and 98 percent of those granted parole but awaiting release. Conversely, 13 percent of those past their ERD are classified as maximum security, compared to 2.9 percent of the technical violators and 0.4 percent of those with parole granted. An additional 12.1 percent of those past their ERD are classified at Level IV.

The prisoners denied parole also have lower parole guidelines scores, again as would be expected. This presumably reflects both their misconduct histories and the fact that a disproportionate number are sex offenders who receive extra negative points in the guidelines scoring. When preliminary parole guidelines scores are compared, nearly 12 percent of those past their ERD fall in the low probability range while only 1.3 percent of the technical violators and none of those with parole granted score low probability. At the other extreme, 48 percent of those granted parole and 41.5 percent of the technical violators fall in the high probability of release range, but only 23.9 percent of those past their ERD score high probability.

To get a clear sense of the effect of offense on parole board decision-making, the parole-denied group was reconstituted to omit those prisoners with the poorest institutional records. Excluding people who had six or more misconducts or were classified at Level IV, V or VI, or scored in the low probability for release parole guidelines range left 5,851 prisoners who presumably were denied parole for reasons other than their institutional behavior.

Focusing on this subgroup reveals the impact of offense type quite starkly. According to the MDOC's *2000 Statistical Report*, about 11 percent of all prison commitments that year were for criminal sexual conduct. Because sex offenders have such a low parole grant rate, they do not leave prison and get replaced by other people with the same offense. Instead, they pile up and their proportion of the total population increases. Thus, in the May 2003 snapshot, sex offenders comprised 20 percent of the total population and 35 percent of those who were denied parole. When people with poor institutional behavior are excluded, the proportion of sex offenders in the subgroup rises to 46.4 percent.

Prisoners denied parole after exclusions for institutional conduct, by offense type

	<i>Number</i>	<i>Percent</i>
Sex	2,715	46.4
Assaultive	1,950	33.3
Non-Assaultive	927	15.8
Drug	258	4.5

The proportion of every other offense category declines, although assaultive offenders are still one-third of the total, or 1,950 prisoners.

The prisoners in the subgroup are substantially older. The median age is 39. Nearly a thousand (957) are more than 50. The median number of months past first release date is 19, but 1,999 of these prisoners are more than three years past their ERD and 1,168 are more than five years past. Their prior criminal histories compare quite favorably to prisoners granted parole but awaiting release. Nearly 40 percent of those denied have no prior felonies; 57 percent (3,331 people) have no more than one. Among the prisoners with parole granted, 44 percent have no more than one prior felony.

The security classification for 78 percent of the subgroup is Level I and nearly all the rest are classified Level II. Over 40 percent had no misconducts during the preceding three years; over three-quarters had no more than two.

Notably, 40 percent of the subgroup has preliminary parole guidelines scores that fall within the high probability for release range. Even when these scores are adjusted as required since the MDOC's revalidation study, 30 percent fall into the high probability range.¹⁰ Thus, for these 1,754 prisoners, the parole board had to articulate substantial and compelling reasons to deny parole. The data does not reveal how often those reasons were the facts of the offense.

Conclusion

The data suggest that thousands more prisoners are being denied parole than is reasonably necessary for public safety. If only 30 percent of the 11,223 prisoners past their earliest release dates were paroled – 3,367 people – the state would save nearly \$69 million.

The group being suggested for release would consist entirely of low security prisoners with little or no recent history of institutional misconduct. They would be older than parolees generally; at least half would be older than 40, well past the age when the vast majority of offenders of every type commit the vast majority of their crimes. Hundreds would be older than 50. At least half would score in the high probability for release range on the board's own guidelines, comparing favorably to those who are granted parole. The majority would have no prior felonies, again comparing favorably to prisoners granted parole. By definition, the entire group would have served beyond the minimum sentence imposed by the court – in some cases, many years beyond.

While 15-20 percent of the suggested group would consist of non-assaultive and drug offenders, most would have committed assaultive or sexual offenses. It is assumed that these prisoners would have satisfactorily completed Assaultive Offender Therapy or Sex Offender Therapy as required by the MDOC. Since releasing a larger share of these particular offenders would require a fundamental shift

10. To offset the effect of missing data among the adjusted scores, a combined guidelines score was created only for this subgroup by using the adjusted score, if available, but using the preliminary score if the adjusted score was missing.

in parole board practices, it is necessary to consider the possible reasons for the current practices.

One reason may be the fear of recidivism, given the high stakes if assaultive or sexual offenses reoccur. The question then is whether this fear is based on evidence or preconception. Absent a data-driven basis for assuming that these prisoners re-offend at significant rates, it is neither fair nor cost-effective to deny parole to them all in order to keep the risk that any one of them will re-offend at zero.

A second reason for low parole grant rates may be a fear the public will perceive the board as too lenient or irresponsible. It is understandable that appointed board members would wish to appear responsive to public concerns. However, this is essentially a political consideration that bears no relationship to whether a given individual or group of individuals actually poses a threat to public safety if released.

A third reason may simply be the personal reaction of parole board members to particular offenses and what they feel to be the appropriateness of the sentences imposed. If parole is denied simply because the board feels the offense warrants more time, no matter how long the prisoner has served or how good a candidate for release he or she is, the board's action can fairly be characterized as resentencing.

Clear data is particularly critical regarding sex offenders, in light of the near blanket denial of parole to this group. Views of sex offenses are especially complicated by the personal nature of the crime, changing social attitudes about sex, the vulnerability of the victims, and a lack of understanding of what causes the offender's behavior. This may lead to a failure to adequately distinguish among types of sex offenses and the amenability to treatment of various offenders. How different, for instance, is incest from pedophilia in terms of both public safety and the ability to change behavior? Does a single rape by a group of young males present different recidivism risks than rape committed by an older man acting alone? How many sexual offenses did not involve penetration? How many involved children and how many did not? How many of the perpetrators had been victims of sexual abuse themselves? Why does the parole board apparently distrust the sex offender treatment provided by the MDOC? Does the protocol lack measurable success or would virtually any treatment be viewed with skepticism? What tools are available to supervise and support sex offenders upon release and why are these presumed to be inadequate? Applying the answers to such questions on a case-by-case basis would yield more accurate individualized assessments and, presumably, more decisions to grant parole.

The parole board's task is a difficult one by any measure. It is also fraught with subjectivity. Thirteen years ago, a different board believed it met the statutory "reasonable assurance" standard by granting parole 68 percent of the time. The current board's 48 percent grant rate suggests a very different interpretation of what assurance is reasonable. Paroling fewer than a third of the more than 11,000 prisoners currently past their earliest release dates would arguably strike a reasonable and cost-effective balance between the two extremes.

Prisoner Profile: Jan Borek No. 228729

Offense: Second-degree murder

Sentence: 5 to 25 years

First possible parole date: November, 1995

Jan Borek is a citizen of the Czech Republic who will be deported as soon as he is paroled. Although he has no prior convictions, his institutional record is exemplary and psychological reports are positive, Borek has been denied parole repeatedly and is nearly eight years past his first release

Background and offense

Jan Borek was born and raised in the Czech Republic. In 1990, when he was 22, his mother married Mr. P., a Slovak-American whom she followed to the United States. At their mother's insistence, Borek and his younger brother, moved with her. For Borek, the move was to be temporary, since he wanted to study economics at Prague's Charles University.



According to Borek and his mother, Mr. P. was an alcoholic who became increasingly abusive to both mother and sons. Borek's mother wanted to return to the Czech Republic, but P. threatened to kill her if she tried to leave.

On February 7, 1991, Mr. P. discovered that his wife and step-children had arranged to flee his house. P., who had been drinking, started an argument with Borek that escalated into a fight. As Borek later explained to the court, P. grabbed a knife and Borek picked up a piece of metal from the fireplace. During the struggle, Borek gained control of the knife and stabbed Mr. P. Realizing that he had killed P., Borek panicked. He placed the body into the back of P.'s truck and, in the middle of the night, drove across the state looking for woods near Pentwater where P. had talked of hunting with friends. Somewhere in that area, he disposed of the body. Several weeks later, Borek told officers who were investigating Mr. P.'s disappearance what had occurred. Although he fully cooperated in efforts to recover Mr. P.'s body, it was never found.

Borek pled guilty to second-degree murder. Although Mr. P.'s family alleged that the killing was about obtaining money, not domestic abuse, there was no evidence to support this allegation. At the time of sentencing, Judge Jessica Cooper acknowledged that only Borek and his mother know for sure what happened, and that the body might never be found. Judge Cooper also observed that while a prison sentence was necessary, she was aware that Borek would be deported when his sentence was served. Believing "that the State of Michigan should [not] have to pay excessive costs" for incarcerating Borek, she imposed a term of 5-25 years.

In-prison conduct

Borek now speaks and writes almost flawless English. By December 1997 he had earned, by correspondence, two associate degrees from Penn State University and a bachelor's degree from the Indiana Institute of Technology. He has worked tutoring other prisoners for almost eight years and has never had a single misconduct citation.

Psychological reports all portray Borek as a non-assaultive person who deeply regrets his part in Mr. P's death. A report done upon his arrival in prison states: "The prognosis upon return to the community is excellent that he will not repeat or be vulnerable for relapsing into crime." Subsequent evaluations describe Borek as "open and honest," remorseful, and accepting of responsibility for his offense. In 1999, the MDOC's Director of Psychological Services advised the Czech Consul that Borek had not been accepted into assaultive offender therapy because he did not need it.

Parole board actions

Borek became eligible for parole in November 1995. He has always scored "high probability of release" on the parole board's own guidelines, requiring the board to have "substantial and compelling reasons" to deny release. Czech officials have repeatedly informed the MDOC that they do not consider Borek a threat, and that they want him freed to return to his home country, where his mother now resides. If released, he would be deported immediately. Nonetheless, Borek has been interviewed by the parole board four times and each time it has continued him in prison for another 24 months.

The board has repeatedly taken the position that Borek is a risk to the community. Contrary to the psychological reports, it says that he avoids being open and honest about the offense, that he minimizes his responsibility, and that he has shown little remorse. The board characterizes the killing as having been "planned and carried out in a secretive manner."

The parole board has also placed substantial weight on the fact that Mr. P's body was never found, thereby hampering the police investigation. In 1998, the board said it: "...questions the necessity of Borek disposing of the body if his claim was in part self defense. The true injuries to the victim will never be known because the body has never been recovered." In 1999, it referred to disposing of the body as "destroying important evidence." In 2001, the board tersely concluded: "Prisoner is not able to say where the victim's body is located. It would be helpful in determining mitigating circumstances."

When Borek sought assistance from the United Nations, his case was thoroughly reviewed by the U. N. Working Group on Arbitrary Detention, which issued a lengthy opinion in 2000. After noting the parole board's "vast discretionary powers to determine the extent of actual sentence required" and the absence of appellate review, the Working Group concluded that Borek's continued

incarceration was arbitrary and in contravention of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It asked the State of Michigan to not only remedy Borek's situation but to consider modifying its legislation governing parole, so as to bring it into conformity with international standards of justice.

Borek is currently undergoing parole board review once again.

Questions

1. Why should Michigan citizens pay for the continued incarceration of someone who would be deported immediately if released?
2. Is it appropriate for the parole board to redetermine the facts of the offense and repeatedly deny release based on information fully considered by the prosecutor and sentencing judge?
3. Where the prisoner has admitted his guilt of second-degree murder, is the parole board taking on the role of police when it focuses on missing evidence and its desire to determine the "true injuries" to the victim?
4. What basis does the parole board have for consistently disagreeing with the assessments of MDOC psychologists about whether a person is remorseful, honest or at risk for re-offending?
5. Why is Jan Borek's exceptional record in prison inadequate to earn his release? Should the parole board be able to make him serve his maximum sentence based on the reasons it has used to deny parole to date?

Parolable Lifers

The snapshot shows that over nine percent of the total prisoner population — 4,572 people — are “lifers.” However, this broad statement masks an important distinction. Of this group, 2,629 are serving life without parole for first-degree murder. These prisoners can only be released if the Governor commutes their sentences or grants a pardon. The remaining lifers are parolable under the terms of MCL 791.234(6), also known as “the lifer law.”

As noted earlier, in Michigan many of the more serious offenses, including second-degree murder, armed robbery, kidnapping, assault with intent to murder, drug possession or delivery of more than 650 grams, and first-degree criminal sexual conduct, carry a penalty of life or any term. This allows the trial judge either to select both a minimum and maximum term or to impose a sentence of life with the possibility of parole. Most parolable lifers who committed their offenses before October 1, 1992 become eligible for parole after serving 10 calendar years. Those whose offenses were committed later must serve 15 years. Special rules apply to drug lifers who were originally sentenced to mandatory life without parole for delivering more than 650 grams and who now, as a result of statutory amendments, must serve at least 15 years and may be required to serve up to 20, depending on specified circumstances. On May 6, 2003, there were 834 lifers who had served the requisite years and who had no additional sentences that would prevent their release.

The parole process for lifers is more rigorous than the norm. If a majority of the entire board has interest in proceeding, the sentencing judge (or that judge’s successor) must be given 30 days to file a written objection. If there is no objection, the board must conduct a public hearing before it can make a final decision to grant parole.

Historically, the parole board first interviewed a lifer well before the 10-year eligibility date and regularly thereafter. Although the details changed several times, until 1992, each change kept increasing the frequency of lifer interviews. The stated purpose according to the MDOC’s *1974 Annual Report* (at p. 101) was “to get acquainted with the individual prior to the service of ten years and to offer any advice or help relative to achieving future parole.” In 1992, the schedule was changed dramatically to require no interview until the lifer had served 10 years and subsequent interviews only every five years thereafter.

In 1999, at the parole board’s urging, the requirement of any personal interview after the first one was eliminated. The board can simply look at an individual’s file and decide whether it thinks a personal interview would be useful. If not, it can send a notice telling the person it will look at the file again in five more years. The board is not required to give reasons for these “no interest” decisions and it does not do so. Thus, after interviewing a lifer once, perhaps five years before the person is even eligible for release, the board can choose never to see the person face-to-face again. The file does not contain a parole guidelines score, since the board has decided the guidelines do not apply to lifers. The new review procedures are applied to all parolable lifers, regardless of when they were sentenced. A lifer has no right to appeal a board decision of “no interest.”

The rate at which lifers within the board's jurisdiction are actually paroled has declined dramatically since the lifer law took effect in 1942. For several decades parolable lifers were released routinely, although the average number per year declined from 13.7 in the 1940s to 11.2 in the '50s, 12.4 in the '60s, 7.4 in the '70s, 4.9 in the '80s and 3.1 in the '90s. Thus in the decade of the 1960s, 124 lifers were paroled while only 31 were paroled in the 1990s.

The 75 percent decline in raw numbers does not tell the whole story. Without knowing how many lifers were actually eligible for parole in any given year, it is impossible to tell what the grant rate actually was. Since the pool of eligible lifers used to be far smaller, the proportion that used to be paroled was relatively much larger than the raw numbers suggest. For example, MDOC data indicates that by December 1973, of the 272 prisoners then serving life, only 18 had served 10 years. In 1974, 18 lifers were released, suggesting that everyone eligible for parole obtained it. They included 14 convicted of second-degree murder who had served an average of 14.5 years. In 1981, the 14 lifers who were released included 10 convicted of second-degree murder who had served an average of 14.3 years. Even commutations of mandatory life sentences for first-degree murder used to be common. In 1973 alone, there were 21.

Sentencing judges were aware of both the lifer law and past parole board practices when they selected life sentences. A report on a survey conducted in January 2002 by the Prisons and Corrections Section of the State Bar, entitled "*What Should 'Parolable Life' Mean? Judges Respond to the Controversy*", analyzes the responses of 95 current and retired judges from around the state.¹¹ The majority of respondents thought that parolable lifers would actually serve 20 years or less. Many believed life was less harsh than a 15-year minimum. Some noted that they gave life sentences, as opposed to very long minimum terms, when they wanted the defendant to receive parole consideration sooner. Two-thirds said that the availability of parole was a factor in their sentencing decisions and that the parole board's current position does not accurately reflect their intentions when they imposed parolable life terms.

The parole board's position is that "life means life." In material quoted in the survey report, the board has stated that the distinction between a mandatory life sentence and a parolable one is who makes the ultimate decision to release – the Governor or the board itself. Lifers face a "higher threshold... due to the nature of their sentence." Therefore "something exceptional must occur" to justify paroling a lifer.

Critics assert that the board's position eliminates what is supposed to be the real distinction between parolable and non-parolable life terms, that is, whether the prisoner receives meaningful individualized consideration for release after serving a set number of years. Critics also say the board's position nullifies the legislative intent underlying the lifer law, the actual intent of sentencing judges who relied on prior board policies, and the value of many plea bargains.

The offenses of the 834 lifers currently eligible for parole appear in the following chart:

11. The full report appears on the CAPPS website: www.capps-mi.org.

Parolable lifers by offense

Second-degree murder	426	51.1%
Criminal sexual conduct	156	18.7%
Armed robbery	107	12.8%
Other assaultive crimes	117	14.0%
Drugs >650 grams	23	2.8%
Non-assaultive (habitual offenders)	5	0.5%
	834	100%

To place these figures in some context, the 2000 *MDOC Statistical Report* shows that of 3,470 people in prison for second-degree murder, 709 had been sentenced to parolable life terms, 545 had minimum terms longer than 25 years, and the remaining two-thirds (2,216 people) had minimum terms of 25 years or less. Over 1,000 had minimum term of 15 years or less. The average minimum term for those not sentenced to life was 21.8 years.

The same report shows that of 4,455 people in prison for armed robbery, 198 had been sentenced to parolable life terms and 164 had minimum terms longer than 25 years. The remaining 92 percent had minimum terms of 25 years or less, with 3,051 serving minimums of 10 years or less. The average for those not sentenced to life was 9.7 years.

These wide disparities in the sentences being served for violation of the same statute raise difficult questions. Did judges impose the life sentences only in the very worst cases or on the very worst offenders? Conversely, did judges impose life terms in the expectation that parole would occur in 12, 14, or 16 years? Or do the life sentences reflect differing approaches to sentencing by individual judges or by the trial courts in different counties? Whatever the sentencing judge's intentions may have been, since these lifers are parole eligible today, could they be safely released? In how many cases would judges prevent parole by lodging objections? What sentences would these lifers receive under today's sentencing guidelines? Statistical data cannot answer these questions fully, but it can shed some useful light.

The parole eligible lifers are much older than the prison population generally. Their median age is 49. Twelve percent (97 people) are more than 60 years old.

The lifers' greater age is related to the years they have served in prison. The average time served by those convicted of non-drug offenses is 22 years. Fifty-eight percent (471 people) have served more than 20 years. Thus well over half were sentenced not only before the current legislative sentencing guidelines took effect but also before the predecessor judicially-devised sentencing guidelines became effective in 1984. One-third (270 people) have served more than 25 years. That is, they were sentenced in the 1970s or earlier, when judges knew that lifers were commonly paroled. By comparison, only 365 people convicted of first-degree murder have served over 25 years to date. Ninety-seven members of the parole eligible group have served more than 30 years.

While the data is missing on 87 cases, it is clear that most of the non-drug lifers were relatively young when they committed their crimes, as tends to be true of assaultive offenders generally. Their median age was 24. Two-thirds were 28 or younger. Most striking is the fact that nearly 30 percent (218 people) were 20 years old or younger; 72 were ages 15 to 17.

The high cost of denying parole: an analysis of prisoners eligible for release

It seems apparent that relatively few of these life terms were imposed because of the prisoner's prior criminal record. Because these prisoners have been incarcerated for so long, the database does not contain sufficient information to analyze their prior felony convictions. However, fully two-thirds are serving their first Michigan prison terms and 86 percent had served no more than one.

It is also apparent that the vast majority of these lifers are not being denied release based on their institutional conduct. By MDOC policy, lifers are not classified at Level I. However, over 87 percent of the currently parole-eligible lifers are classified at Level II. Over 45 percent had not had a single misconduct in the preceding three years; 73 percent had not had more than two, and 83 percent had not had any non-bondable misconducts. Lifers' misconduct histories compare favorably with those of prisoners granted parole and awaiting release.

The parolable lifers have no parole guidelines scores available as a basis for assessing their risk to the community if released. Given how the guidelines are weighted, however, it seems likely that many would score in the high probability for release range. They are, after all, older prisoners with many years served who have few misconduct citations and low security classifications.

A review of the parole eligible lifers by county of conviction also produces interesting results. The following table shows the top 12 counties in order of their contribution to the total prisoner population. It also shows each county's proportion of the eligible lifer population.

Prisoner population			Parole-eligible lifers		
	<i>Rank</i>	<i>Percentage</i>	<i>Rank</i>	<i>Percentage</i>	
Wayne	1	31.8	1	41.0	
Oakland	2	9.8	2	7.0	
Genesee	3	6.3	4	5.1	
Kent	4	6.1	6	4.2	
Macomb	5	3.8	9	2.1	
Muskegon	6	3.3	11	1.7	
Saginaw	6	3.3	3	5.4	
Berrien	7	2.7	5	4.3	
Kalamazoo	8	2.6	7	3.6	
Ingham	9	2.5	10	2.1	
Jackson	10	2.3	15	1.2	
Washtenaw	11	2.2	8	2.6	

Some counties have a substantially different share of the parolable lifers than they do of the prisoner population generally. For instance, while Wayne County has by far the largest share of both groups, it has a much larger proportion of the lifers. The next five counties on the list all have a relatively smaller share of the lifers than they do of prisoners generally. Saginaw and Berrien both have a markedly larger share of the lifers than would be predicted from their proportion of the total population.

These variations may simply reflect differences in the amount of serious crime in each county. However, they may also reflect differences in sentencing practices for similar crimes. If, for instance, in the 1970s, judges in some counties were imposing long minimum sentences for which a lot of good time credit was then available while judges in other counties were imposing life sentences on similarly situated defendants, the people with the long minimums would have been released years ago while the lifers are still incarcerated with no end in sight. To the extent that old disparities are perpetuating the sort of inequities that sentencing guidelines are now designed to prevent, they could be corrected by the board's exercise of individualized discretion.

Conclusion

The data tends to support the view that carefully individualized assessments of parole eligible lifers are more appropriate than an across-the-board presumption that "life means life." The age of the lifers themselves suggests they are long past the time when they are likely to be a danger to the community. The age of their convictions indicates that many sentences were imposed when judges believed that parole in fewer than 20 years was likely, assuming good institutional conduct. The fact that half the parolable lifers are serving for non-homicide offenses, that even most second-degree murder defendants do not receive life terms, and that only first-degree murder is not parolable by law suggest that making many of these people spend the rest of their lives in prison is unduly harsh. The disparities that appear to exist among similarly culpable prisoners sentenced at different times by different judges suggest the need for the parole board to perform a leveling function that only it has the capacity to perform.

Above all, perhaps, the age of the prisoners when they committed their offenses suggests a need for a thorough assessment of their current dangerousness. While there are undoubtedly individual exceptions, it seems unlikely that most judges who sentence youths in their late teens and early twenties to parolable life terms intend these young defendants to die in prison, regardless of how they mature or what they accomplish.

While parolable lifers are not the largest group of prisoners currently eligible for release, they are uniquely expensive. Each time parole is denied for five years, the decision costs taxpayers \$112,515. If these 834 lifers must serve, on the average, another 25 years before they die in prison, the cost to taxpayers will be at least \$469 million. In fact, as they age and develop medical problems, these lifers will become significantly more costly than that.

Warehousing an ever-growing number of lifers who could, by law, be paroled simply to enforce a philosophy that life should mean life, regardless of parole eligibility under the lifer law, has no apparent benefit to public safety. The public hearing and judicial objection procedures provided by statute are the extra safeguards the Legislature has determined to be adequate for reviewing lifers. The parole board's disinterest in applying its own parole guidelines to assess a lifer's actual risk of re-offending is difficult to fathom. Assessing each lifer, once he or she is within the board's jurisdiction, by the same criteria that are applied to similar offenders serving indeterminate terms would seem to be the more cost-effective approach.

Prisoner Profile: Gladys Wilson No. 157538

Offense: Aiding & Abetting Armed Robbery

Sentence: Parolable life

Earliest possible release date: 1988

Gladys Wilson was 31 and a first-time offender in 1978 when she pled guilty to aiding and abetting an armed robbery. At the time she was sentenced to parolable life, the expectation was that she would be released shortly after serving ten years. However, 25 years later, Wilson is still in prison and has just been denied release for another five years.



Background and offense

Gladys Wilson pled guilty to aiding and abetting an armed robbery in 1978. She was the 31-year-old mother of an 11-year-old girl. She had worked at the same company for ten years and had no prior record. Her husband, who is now serving mandatory life without parole, robbed a grocery store and killed the night manager. Wilson left her husband at the store knowing he planned to rob it and returned later that night to pick him up but had no idea he would kill someone. She cooperated with the police in her husband's prosecution.

At the time she pled guilty and received a parolable life sentence, everyone involved assumed she would not serve much more than 10 years. Under today's sentencing guidelines, Wilson's recommended minimum sentence would be between 9 and 15 years.

In-prison conduct

As early as 1983, staff reported Wilson to be cooperative, mature and self-disciplined, and suggested that she should be given "early consideration" for release. A 1985 report stated that she "is well-respected by both prisoners and staff" and that she "has an excellent attitude and has attempted to make the best of a bad situation."

Wilson took full advantage of the programming available to her in prison. She earned 67 college credits with a cumulative grade point of 3.7. She also obtained a paralegal certificate. She has worked as a resident aide in a protective environment for mentally and physically impaired inmates, as a lab technician in the prison clinic, as a teacher's aide, tutor and administrative assistant. For several years, she served as trustee of an inmate trust fund and she volunteered to help set up and run the law library at Camp Gilman.

Today, Wilson is a middle-aged grandmother with many supporters anticipating her release. No one has ever suggested she is a threat to public safety.

Parole board actions

In 1986, the parole board confirmed its intent to release Wilson when she had served 10 years. It requested that she be transferred so she could spend her last year in minimum custody. In February 1987, Wilson was moved to Camp Gilman. A year later the board voted to begin the parole process under the lifer law. Wilson waited, but the board took no further action. When her family contacted the board for information, they were told that the board was overburdened and that lifers had been put “on the back burner.” Finally, in May 1992, the parole board wrote that it would begin actively processing her case in the next few months. Although nothing more was done before the board was reconstituted in October 1992, after reviewing Wilson’s file in 1993, the new board also voted to proceed to a public hearing, the next step toward release.

All consideration stopped when the successor judge objected to Wilson’s parole “until she had served 20 years.” The board notified Wilson that it would not review her again until 1998. Having spent six years in a minimum custody prison camp waiting for release, Wilson was transferred to the secure Crane Correctional Facility because parole was no longer imminent.

In 1998, when Wilson had completed 20 years, the board did not re-contact the sentencing court. It had adopted the position that “life means life” and no longer had any interest in releasing her.

Wilson was interviewed again in April 2003. The successor judge had written to the board strongly urging her release. Wilson believed she might finally be permitted to live in Virginia with her daughter and grandchildren. However, on October 10th, the board notified her that it had no interest in paroling her and would next review her case in 2008. The board gave no reasons for its decision. Wilson has no right to appeal. Besides the immeasurable cost to her and her family, the additional five years will cost taxpayers over \$112,000.

Questions

1. What do Michigan citizens gain by keeping long-term prisoners locked up when they are not a risk to society?
2. Is it sensible to apply across-the-board policies to lifers as a group without regard to individual circumstances? Is it fair to continue people for five years with no explanation?
3. Is it an appropriate exercise of power for the parole board to change the rules, years after all participants at the trial level relied on them?
4. Why not assess a lifer’s risk of re-offending using parole guidelines as is done with other prisoners?
5. Should lifers have access to a special review mechanism that takes into account the intentions of sentencing judges who believed that “parolable life” was, in fact, parolable?

Observations on Race and Gender

The prisoner population reflects dramatic disparities in terms of both race and gender. Only 4.5 percent of the population is female; over 57 percent is non-white. The complex reasons for disparities in crime, conviction and incarceration rates lie beyond the scope of this report. However, the CMIS database does provide some useful insights about those offenders who do go to prison and their chances for being paroled.

Gender

The 2,245 women prisoners tend to be older than the men. The median age for the women is 36, while for the men it is 34. The men are more likely to be 30 or younger.

The difference in current age reflects a substantial difference in the age at time of offense. Nearly 28 percent of the men (13,016 people) were younger than 21 when they committed their offenses compared to about 15 percent of the women (333 people). Women (33.8 percent) are more likely than men (23.4 percent) to have been in their thirties.

The women tend to have fewer prior felonies than the men. About 45 percent of the women but only 36 percent of the men had none. Nearly 76 percent of the women were serving their first Michigan prison term while the comparable figure for men was 62 percent.

The differences between men's and women's offenses is particularly noteworthy. Virtually the same proportion of men (45.9 percent) and women (45.7 percent) committed assaultive offenses.¹² However, only 6.2 percent of the women were convicted of sex offenses, compared to 21 percent of men. A larger portion of women (13.7 percent) than men (9.5 percent) are incarcerated for drug offenses and a much larger portion of women (34.2 percent) than men (23.5 percent) are in prison for non-assaultive offenses, such as retail fraud and uttering and publishing. Relative to their 4.5 percent share of the total prisoner population, women are somewhat under-represented among both parolable (3 percent) and non-parolable (3.9 percent) lifers.

Women also tend to have better institutional records than men. Nearly 49 percent of women, compared to 41 percent of men, had no misconducts in the preceding three years. As for nonbondable misconducts, 80.5 percent of the women and 75.4 percent of the men had none. Nearly two-thirds of the women are classified at Level I, compared to 41 percent of the men. At the other extreme, about 20 percent of the men but only 8 percent of the women are classified at or above Level IV.

The combination of lower security classifications, fewer misconducts, fewer prior felony convictions,

12. The data does not, of course, reveal an offender's role in the offense. Other evidence suggests that women convicted of assaultive offenses were often aiding and abetting male co-defendants.

fewer sex offenses and older age give women far more favorable parole guidelines scores. Preliminary scores show virtually no women (0.3 percent) in the low probability for release range compared to almost 8 percent of the men. Two-thirds of the women fell in the high probability range compared to fewer than one-third (31.5 percent) of the men. Even when guidelines scores are adjusted, pushing more men and women into the average range, nearly 56 percent of women still fall in the high probability range, compared to 22 percent of the men.

All these factors lead to proportionally more women being granted parole. As the following table indicates, women are denied parole less often and brought back as technical violators less often than men. It is safe to assume they also have their parole revoked less often for new criminal convictions.

Percentage of prisoners in each category, by gender

	<i>Total Prisoners</i>	<i>Parolable Lifers</i>	<i>Parole Denied</i>	<i>Technical Violators</i>	<i>Parole Granted</i>	<i>Parolees</i>
Male	95.5	97.0	97.0	96.1	93.1	91.3
Female	4.5	3.0	3.0	3.9	6.9	8.7

Since they are more likely to be paroled and less likely to have their paroles revoked, women’s share of the parolee population is nearly twice their share of the prisoner population.

Race

Although too well-known to be surprising, the extent to which the overall prisoner population is non-white remains disturbing. CMIS separates prisoners into four groups:

Black 54.0%; White 42.6% Mexican 2.3% Other 1.1%.

It is unclear whether “Mexican” includes all Hispanics. “Other” includes, at least, Asians and Native Americans. Because Mexican and Other collectively comprise only 3.4 percent of the total but include a number of diverse ethnic groups. And because African-Americans are in prison at three and one-half times their proportion of the population generally, discussion will focus on comparing white and black prisoners.

Important differences between blacks and whites exist on most of the key factors examined here, although the impact of these differences on actual parole rates for each group is difficult to discern. Certainly the data raises a number of issues that warrant further research.

The critical characteristic that distinguishes racial groups is type of offense. As the following table shows, African-Americans are far more likely than whites to be serving for an assaultive offense, but far less likely to be serving for a sex offense. Blacks and Mexicans are also nearly three times as likely as whites to be incarcerated for drug offenses.

Distribution of offense type by race, all prisoners

	<i>Black</i>	<i>White</i>	<i>Mexican</i>	<i>Other</i>	<i>Total</i>
Assaultive	15,014 56.0%	7,051 33.4%	500 43.3%	227 42.9%	22,792 45.9%
Sex	2,982 11.1%	6,687 31.6%	296 25.6%	123 23.3%	10,088 20.3%
Non-assaultive	5,223 19.5%	6,315 29.9%	191 16.5%	146 27.6%	11,875 23.9%
Drugs	3,560 13.3%	1,071 5.1%	167 14.5%	33 6.2%	4,831 9.7%
Missing data	16	16	1	0	33
Total	26,795	21,140	1,155	529	49,619

Viewed from another perspective, African-Americans constitute 66 percent of all prisoners serving for assaultive offenses and 74 percent of all those serving for drug offenses, while whites constitute 66 percent of the prisoners serving for sex offenses.

Several other disparities between black and white prisoners correlate with the differences in their offense types. As is typical of assaultive offenders, black prisoners tend to have been younger when they committed their offenses. Over 30 percent of blacks but only 23 percent of whites were under age 21; 69.4 percent of blacks compared to 56.5 percent of whites were not older than 30. At the other extreme, a larger proportion of whites (16.4 percent) than blacks (9.2 percent) were over 40 at the time of offense.

The current age of black prisoners also tends to be younger than that of white prisoners, but the disparities are not nearly as great. The proportion of current prisoners younger than 21 is virtually identical for both groups at 4.5 and 4.6 percent; the proportion of prisoners aged 21-30 is 34.5 percent for blacks and 29.0 for whites. The greatest disparity is among those currently older than 40 – 28.3 percent for blacks but 36 percent for whites. This presumably reflects the almost complete denial of parole for sex offenses, but may also reflect disparate life expectancies.

Despite their younger age at the time of offense, African-American prisoners are more likely to have prior felony convictions. The proportion of whites with no prior felonies was nearly 40 percent while for blacks it was not quite 34 percent. Even more noteworthy is the proportion who had not been to prison before – about 68 percent for whites but only 59 percent for blacks.

Still another important distinction is institutional history. While 49 percent of whites had no major misconducts during the preceding three years, only 34 percent of blacks had none. At the other extreme, 22 percent of blacks but only 14 percent of whites had six or more total misconducts. While

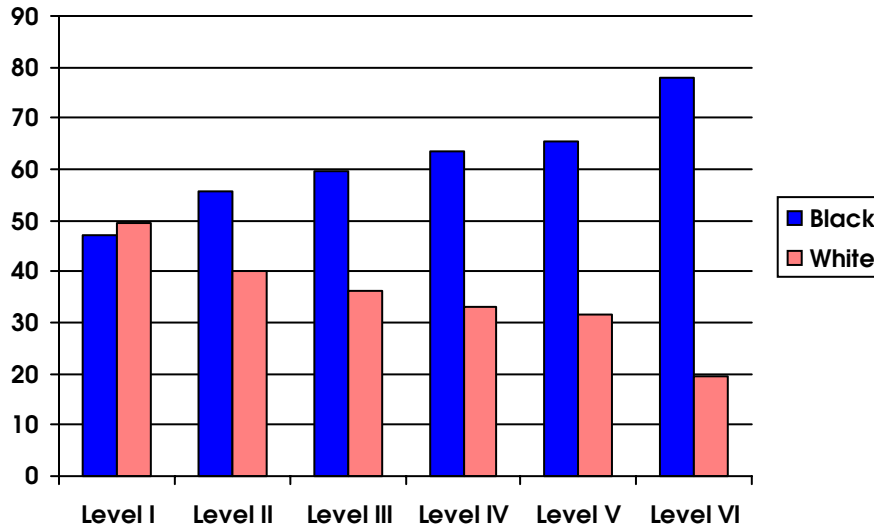
The high cost of denying parole: an analysis of prisoners eligible for release

the differences are not quite as pronounced, whites (80.3 percent) were more likely than blacks (71.9 percent) to have had no non-bondable misconducts.

The disparity in misconducts presumably explains, at least in part, the substantial difference in security classification for blacks and whites.¹³ While 49 percent of whites are classified at Level I, only 37 percent of blacks are at that level. Fewer than five percent of whites are at Level V and VI, but over eight percent of blacks have this maximum security classification.

The differences are even more striking when each classification level is examined by race. Although African-Americans are 54 percent of the total prisoner population, they are only 47 percent of the prisoners classified at Level I. Their proportion increases steadily as security levels increase. Blacks constitute nearly 78 percent of all prisoners classified to Level VI, also known as “supermax”. For whites, the situation is exactly the opposite. Although they constitute less than 43 percent of the total population, whites are nearly 50 percent of the prisoners classified at Level I. Their proportion goes down steadily as security levels increase, with whites comprising less than 20 percent of the population at Level VI.

Percentage of prisoners in each security classification, by race



The reasons for wide racial disparities in misconduct histories and security classification cannot be determined from the data. They may reflect such diverse factors as age, educational levels, cultural behaviors and mental health. Whatever the reason, these differences along with African-Americans’ relatively more extensive criminal records, should produce disparate parole guidelines scores.

13. This can also be affected by other factors, such as length of minimum sentence, since people entering prison with long minimum terms must spend a certain number of years at Level IV.

Notably, although the disparities exist, they do not appear in the low probability range. When adjusted parole guidelines scores are examined, only 6.9 percent of blacks and 6.0 percent of whites score low probability for release. The substantial difference between races appears in the average and high probability ranges. Seventy-five percent of all African-Americans score in the average range compared to 64 percent of whites. Conversely, only 18 percent of blacks score in the high range, compared to 30 percent of whites.

One would imagine that appearing less favorably on several key factors would significantly reduce parole rates for African-American prisoners, but that does not appear to be the case for the parole-eligible prisoners being examined. As the following table shows, blacks are, if anything, slightly over-represented among prisoners granted parole and slightly under-represented among those who are denied parole.

Percentage of prisoners in each category, by race

	<i>Total Prisoners</i>	<i>Parolable Lifers</i>	<i>Parole Denied</i>	<i>Technical Violators</i>	<i>Parole Granted</i>	<i>Parolees</i>
Black	54.0	57.6	51.3	60.6	57.0	53.1
White	42.6	38.3	45.1	37.1	40.6	44.2

The explanation for this apparent anomaly may lie in the mix of offenses for which white and black prisoners are incarcerated. For instance, drug offenders are probably more likely to be paroled with average probability guidelines scores than are sex offenders with scores in the high probability range. A more sophisticated analysis of the data would be required to isolate the precise impact of offense type. Or perhaps differences in institutional conduct have more affect on when prisoners get paroled than on whether they ever do. A preliminary look at prisoners who had not yet reached their ERD but had received parole board decisions indicates blacks may be more likely than whites to be denied release on first consideration. Objective factors not considered here or subjective factors not susceptible to statistical analysis may also be at work.

One last disparity lends itself more readily to speculation about likely causes. While blacks actually get paroled a little more often than might be expected, they have their paroles revoked for technical violations even more frequently. Conversely, whites have parole granted slightly less often than might be expected but have their paroles revoked at an even lower rate. Stated more simply, whites have a substantially better chance of staying out on parole while African-Americans are more likely to be returned as technical violators.

One reason for this may be that some of the same factors that cause fewer African-Americans to obtain high parole guidelines scores also affect their compliance with the rules of parole supervision. Another reason may be a difference in resources available upon re-entry. Black parolees may experience more difficulty finding employment, housing, transportation and health care than their white counterparts. If so, then perhaps this particular instance of racial disparity will be reduced by the MDOC's efforts to provide more effective programming for the transition from prison to the community.

Saving Money Safely

The data suggests that a portion of the prisoners in each category analyzed could be paroled without presenting an unreasonable risk to public safety. Substantial savings to taxpayers would result.

The number of paroles suggested is structured according to the categories of prisoners involved. If 7,220 prisoners were released, 23 percent of the total prisoner population — 9,909 people — would still be incarcerated past their parole eligibility dates.

The potential cost savings is \$145,024,277. The fiscal assumptions underlying this estimate are conservative. They rest on the actual costs for the Level I and Level II prisoners who would be the most likely to be released. For prisoners granted fixed-date paroles, it is assumed they would all be classified at Level I. Lifers are all classified at Level II. For the prisoners in the remaining categories, who might be classified as either Level I or II, a base cost that averages those two levels is used.

Average medical costs for each prisoner are included, but mental health costs have been excluded on the assumption that the people being paroled would be least likely to be receiving mental health care.

All cost savings are offset by the annual cost of parole. No attempt has been made to calculate parole oversight fees paid by parolees, which might actually increase the total savings.

The annual costs for Level I, Level II and parole were drawn from the 2002 MDOC Annual Report and may actually be low for FY 2004. The medical care figure was drawn from the MDOC budget bill for FY 2004.

The figures used in the calculations are as follows:

Base cost per Level I prisoner:	\$18,673
Base cost per Level II prisoner:	\$19,052
Base cost per Level I/II average:	\$18,862
Average medical care per prisoner:	\$ 3,451
Annual cost per parolee	\$ 1,839

The total annual savings per prisoner paroled are calculated as follows:

Level I prisoner:	$\$18,673 + 3,451 - \$1,839 = \$20,285$
Level II prisoner:	$\$19,052 + 3,451 - \$1,839 = \$20,664$
Level I/II averaged:	$\$18,862 + 3,451 - \$1,839 = \$20,461$

**CAPPS estimate of potential savings
from paroling eligible prisoners**

	<i>Total Eligible</i>	<i>Percent to Parole</i>	<i>Number to Parole</i>	<i>Savings/ Prisoner</i>	<i>Total Savings</i>
Fixed-Date	965	90%	869	\$20,285	\$17,627,665
Technical Violators	3,645	40%*	1,458	\$18,635	\$27,169,830
		35%**	1,276	\$20,474	\$26,124,824
Parole Denied	11,223	30%	3,367	\$20,474	\$68,935,958
Lifers	834	30%	250	\$20,664	\$5,166,000
Total	16,666***	43%	7,220		\$145,024,277

* To be assigned to reduced caseloads at cost of \$3,678 per parolee

** To be assigned to regular caseloads.

*** Excludes 463 prisoners granted paroles without fixed dates who were in the process of being released.

CAPPS recommendations

Since it is so costly to prisoners, their families and the public to incarcerate people unnecessarily, all possible steps should be taken to insure the release of every prisoner who, by law, may be released and who does not present an unreasonable risk to public safety. Adopting the following recommendations might better insure that this goal is reached.

A. Parole decision-making criteria generally

1. Establish a clear statutory standard creating a presumption of parole at the judicially imposed minimum unless specified post-sentencing factors exist.
 - Such a standard would guide parole board decision-making and set a benchmark for parole grant rates.
 - By expressly acknowledging the significance of the minimum sentence, it would also preserve the role of the Legislature in establishing sentencing guidelines, the role of the courts in imposing sentences according to those guidelines, and the roles of prosecutors and defense attorneys in plea bargaining under the guidelines.
 - Such a standard would establish a sort of “truth in parole” to complement “truth in sentencing”. While the prisoner is required to serve every day of the minimum, having done so, the prisoner would be entitled to a presumption of release.
2. Develop parole guidelines that complement the sentencing guidelines.
 - Decrease the weight given to static factors already used to set the minimum sentence.
 - Require the parole guidelines to strike a balance between statistical risk assessment and individual factors demonstrating rehabilitation.
 - Eliminate the board's ability to exercise absolute discretion in half the cases.
3. Have similar departure provisions for sentencing and parole guidelines.
 - Do not permit substantial and compelling reasons to include factors already counted in the parole guidelines.
 - Do permit judicial review of parole decisions that depart from the guidelines, or are based on material errors of fact.
4. Prohibit parole denials based on the prisoner's inability to complete programs that were not available.

B. Decision-making procedures generally

1. Change the mixture of experience on the parole board.
 - Reduce the number of members with law enforcement backgrounds and increase the number with corrections backgrounds. Add members with clinical assessment skills, such as social workers and psychologists.
 - Maintain a balance of perspectives. For instance, if prosecutors are added, also include defense attorneys.
2. Assess and increase the training parole board members receive, both in substantive decision-making and such skills as interviewing and report writing. Review current methods of evaluating parole board member performance and adjust as appropriate.
3. Reassess policies that limit the information provided by institutional staff.
4. Re-evaluate forms that leave little room for individualized input about each prisoner.
5. Insure that prisoners have adequate time and opportunity to prepare for parole interviews, including the chance to have copies of documents made and to arrange for advocates to appear with them.
6. Establish protocols for conducting parole interviews.
7. Tape record parole board interviews and require the second voting member to review the tape before voting.
 - This would give the second member more information and might also improve the interviewing process, since board members would effectively be observed by their peers.
 - This would also provide prisoners with the record they need to appeal.
8. Insure that adequate procedures for correcting misinformation are implemented. If information material to a board decision was incorrect, require that a rehearing be conducted promptly.

C. Specific parole-eligible prisoner groups

Fixed-date paroles

1. Establish criteria that limit the use of fixed date paroles.

Technical parole violators

2. Keep reducing the number of technical violators returned to prison through the use of progressive community-based sanctions.
3. For those who are returned to prison:
 - a. Develop separate parole guidelines that recognize that parole violators have already been found suitable for release once and that their current incarceration depends, as a practical matter, on post-parole conduct, not their original offenses.
 - b. Require progressive amounts of additional prison time depending on the seriousness of the violation and other aspects of the person's parole history.
 - c. Establish an absolute maximum amount of time to be served for a technical parole violation.

Parolable lifers

4. Restore routine personal interviews of lifers who have served 10 years at intervals of two years.
5. Use the parole guidelines to assess the risk of releasing parole-eligible lifers as is done with all other prisoners.
6. Treat parole board decisions of “no interest” in proceeding in lifer cases as decisions to deny parole.
 - a. Require that written reasons be given.
 - b. Permit appeals.
7. Establish a separate review body to assess in-depth the 672 parolable lifers who have served more than 15 years and the 365 prisoners who have served over 25 years on mandatory life terms and to make recommendations about whether parole or commutation is appropriate.

Conclusion

Michigan's 1992 change from a professional parole board to one that is politically appointed has caused the pendulum to swing sharply in the direction of releasing fewer prisoners who, by law, could be paroled. With over one-third of the entire prisoner population now eligible for release, the steep drop in parole rates is enormously expensive to taxpayers as well as to prisoners and their families. The question that must be answered 11 years later is whether these costs are justified by substantially decreased risks to public safety.

Parole decision-making is far from an exact science. Few people can predict their own future behavior reliably, much less anyone else's. Parole board members can only be expected to make reasonable decisions, based on the best available evidence, about the likelihood that someone who has served the sentence imposed for a past crime will commit another crime if released. If a substantial risk to public safety is demonstrated, parole can reasonably be denied. However, analysis of the data suggests that thousands of prisoners are being denied release when the evidence of substantial risk is lacking.

Fixed-date paroles raise the most obvious questions. Nearly 1,000 people are being left to fill prison beds for months after parole has been granted. By definition, the determination has been made that these prisoners are not a risk to the public. The cost of requiring them to nonetheless serve two, four, six or eight additional months is \$7,110,464 a year. There is no evidence that this practice enhances public safety in any way.

Technical parole violators have been returned to prison for failing to abide by the conditions of supervision. The MDOC itself is now recognizing that more technical violators can be safely managed with progressive community-based sanctions and support services. However, those who already had their paroles revoked under the more rigid criteria of the past eight years and those who experience revocation in the future face the prospect of lengthy re-incarceration.

Instead of using parole revocation as a wake-up call to reinforce the need to comply with parole conditions, the board tends to apply more of a "one-strike" approach, punishing people who blew their chance by returning them to prison for years. The fact of a parole failure becomes not only the reason for returning them to prison but the justification for denying re-parole, even though the risk of re-offending is low.

Technical violators, by definition, have been found to be sufficiently low risk to justify parole in the first instance. They have not been convicted of new offenses. Over half are non-assaultive and drug offenders; over half are serving their first prison terms; over 40 percent score high probability for release on the board's own parole guidelines. While some have engaged in sufficiently serious behavior to warrant return to prison, there is no evidence that spending \$81,283,500 to keep over 3,600 prisoners for an average of two additional years has any measurable impact on crime rates. Rather, it appears that the board's imposition of substantially more prison time as punishment for technical violations is an expensive and often disproportionate response to the parolee's behavior.

The high cost of denying parole: an analysis of prisoners eligible for release

For thousands more prisoners, the data suggests that parole denial stems primarily from the board's response to the prisoner's offense. When prisoners with poor institutional records are culled from the group of prisoners who have been denied parole, those who remain are older prisoners with minimal misconduct histories who have substantially fewer prior convictions than people who receive parole. Of this 5,841-person subgroup, more than 1,700 had parole guidelines scores in the high probability for release range and the rest scored in the average range.

Nearly half of the subgroup consists of sex offenders and a third have committed assaultive offenses. It is easy to assert that the public does not want these prisoners released. However, that is a political judgment, not one based on risk assessment. In fact, the MDOC's own data tends to show lower rates of recidivism for these offense groups. These offenders are also required to successfully complete the MDOC's own treatment programs before release and can be required to meet a host of special parole conditions to further reduce any risk they may pose.

Assaultive and sex offenders serve proportionately longer sentences than other offenders before they even become eligible for parole. The judges who imposed those sentences were fully aware of all the facts of the offense. The Legislature's sentencing guidelines calculate the details of the offense into the recommended minimum sentence. For the parole board to lengthen the term of incarceration based on its view of the offense simply amounts to rejecting the sentence imposed by the court and effectively imposing the sentence the board thinks is appropriate.

There is no evidence the board's choices actually insure public safety any better than those of the courts and the Legislature. They do, however, require thousands of additional prison beds to simply warehouse prisoners who can do nothing to improve their chances for release. If even 30 percent of the parole denials are based solely on the board's view of what the sentence ought to have been, the annual additional cost to taxpayers is nearly \$69 million.

Perhaps the clearest example of the board substituting its views for those of sentencing judges and the Legislature is its treatment of parole-eligible lifers. Despite the terms of the lifer law that granted parole eligibility in 10 years, and despite the publicly stated views of many judges who believed that life terms would bring meaningful consideration for parole, the board has adopted the position that "life means life."

This reinterpretation of the law has nothing to do with risk assessment. On the contrary, the board declines even to apply its risk assessment instrument to parolable lifers; that is, it does not calculate their parole guidelines scores. Given the factors that predict the risk of re-offending, the majority of parolable lifers would presumably score high probability for release. They are much older than the average prisoner; nearly 60 percent have served at least two decades in prison; two-thirds are serving their first prison terms and most have excellent institutional records.

The decision to apply different review standards to lifers is also a political one. It reflects the nature of their sentence, not the nature of their crimes or who these prisoners, the majority of whom were in their teens or twenties when they committed their crimes, have grown up to be. While the lifer law

always included provisions for insuring public and judicial input before lifers were paroled, the current review process, permitted by statutory changes sought by the board itself in the late '90s, is an aberration from the one followed historically.

Setting aside the human cost, the expense to taxpayers is substantial. At \$22,500 each, the annual cost of incarcerating the 835 lifers who are currently parole-eligible is \$18,765,000. Keeping a 17 year old who might safely have been paroled at age 35 until he dies in prison at age 77 costs at least \$945,000 for the additional 42 years.

Expanding prisons to hold increasing numbers of prisoners who are eligible for parole is a costly investment. The data suggests that Michigan may have passed the point of diminishing returns. At a minimum, further research is warranted to determine what, if any, increase in public safety has resulted from the stringent parole policies of the last 11 years. Absent substantial proof that these expensive policies are worth the resources they consume, it may be time for the pendulum to swing back toward a more moderate position. Additional statutory constraints on the parole decision-making process may be needed to enable a politically appointed board to reach that position.

Methodology

The population examined in this study consisted of all prisoners and parolees under the jurisdiction of the State of Michigan as of May 6, 2003. The variable list was developed based on the original CAPPs proposal and subsequent reviews and discussions of the preliminary analysis. However, the first step in the process was obtaining a restructured database amenable to statistical analysis using a standard software package.

The CMIS (Corrections Management Information System) data is a convoluted and somewhat archaic COBAL data base that has evolved over time. It involves a series of “patches” to account for on-going changes to Michigan’s complex sentencing structure as well as ongoing internal needs. Thus, the complex process of restructuring the database was an essential step to create a database that contained a single record of even length (uniformity) for each offender.

Restructuring Details

The FOIA copy of CMIS spanned 7 data CDs on arrival. These 7 CDs are organized as one continuous database, smallest offender IDs on the first CD and largest offender IDs on the last CD. Each CD is written as a separate data file, so the first step was to concatenate the 7 files (each 600 megabytes) into one large 4 gigabyte database.

An additional complication is that each offender ID is made up of the various CMIS record types required to record the offender’s characteristics and history with MDOC. As a result, not every offender requires all of the record types and those record types that are present may have more or less records than another offender’s. In other words, there is no uniformity to the size and shape of each offender’s information, so the next step was to separate the record types into individual files.

The following individual files each represented a specific record type as provided in the FOIA copy of CMIS: Masters, IDs, Sentences, Parole Board Actions, Transits, Misconducts, Parole Guidelines Entry and Parole Guidelines Score.

- Masters - multiple records for each offender are possible with each new record representing a new commitment event, identified by a prefix letter. Only the information from the most recent prefix was used for each offender. This record type contains a current status value, such as prisoner or parolee, as well as some demographic information about the offender.
- IDs - single record for each offender. This record also contains some demographic information about the offender.
- Sentences - multiple records for each offender are possible with each record representing the judge’s sentence for the conviction offense. Sentences from prior completed incarcerations

are also possible. Only sentences active at the time the copy of CMIS was made were retained for combining. For information that wasn't reasonable to combine, such as the compiled law violated, information from the most severe sentence, typically the sentence that had the largest minimum term, was retained (with the largest maximum term breaking minimum term ties and the last entered sentence as the final tie-breaker.)

- Parole Board Actions (PBAs) - multiple records for each offender are possible with each record representing the Parole Board's decision whether to grant or deny parole. Information from the most recent PBA, the PBA related to the Parole Guidelines Score calculation, and the earliest PBA for the most recent commitment were retained.
- Transits (TRAs) - multiple records for each offender are possible with each record representing the offender's movement amongst MDOC locations. Information from the most recent TRA was retained and used to cross check the Master record's current status. Other specific TRAs since the most recent commitment were also retained, such as, the most recent commitment, the most recent movement to parole, and the most recent parole technical violation (PVT) movement.
- Misconducts - multiple records for each offender are possible. Due to the large volume of misconduct charge types, each charge type was separately totaled for the most recent three years since the offender's most recent commitment.
- Parole Guidelines Entry - multiple records for each offender are possible, however, only the most recent record was included with the copy. Only those records since the most recent commitment were retained. This record has valuable prior history and instant offense information, particularly for offenders who haven't had a parole board hearing yet.
- Parole Guidelines Score - multiple records for each offender are possible, however, only the most recent record was included with the copy. This record has valuable prior history and instant offense information, particularly for offenders who have had a parole board hearing.

Each individual record type had the offender's ID as a common link between them enabling reassembly of the retained record types into an analysis unit of uniform size and shape. The end result was a database of current prisoners and parolees that contained a single record with many, many characteristics for each offender.

Method and analysis

The resulting "rectangular" data file permitted a more straightforward analytical approach using a standard software package for statistical analysis. The analysis for this study was conducted with SPSS: Statistical Package for the Social Sciences. SPSS was used for variable construction, transformations, descriptive statistics, group formations and a variety of between-group comparisons. Be-

cause the analysis used the entire population, the results basically consist of descriptive statistics.

The number of data records and data transformations was time-consuming and somewhat tedious, but a necessary step in creating the dataset and subsequent sub-files that could be more easily manipulated and analyzed to address the issues in the original proposal as well as secondary issues that evolved throughout the analysis. In all cases, subgroups were cross-verified against related variables to ensure they met the defined eligibility or inclusion criteria. For example, the process of identifying prisoners serving on a non-drug life sentence who are currently under Parole Board jurisdiction required a series of steps to determine eligibility. These steps included: 1) Identifying those prisoners serving a life sentence for a non-drug offense that occurred before October 1, 1992; 2) Excluding any prisoners in this subgroup that had a prior parole violation, were also serving on a mandatory life sentence or serving on an additional non-drug life offense that occurred on or after October 1, 1992; 3) Finally, the remaining subgroup was matched against a complex sentence/time sequence that accounted for concurrent, consecutive and gun law sentences to determine eligibility. Eligibility for lifer subgroups was based on offense date and time served to determine Parole Board jurisdiction. The resulting subgroups were the basis for comparisons on key variables.

The original subgroups consisted of:

- > Eligible prisoners serving a life sentence for a nondrug offense(s)
- > Eligible prisoners serving a life sentence for a drug offense(s)
- > Prisoners past their ERD with no prior parole violation and no current PB grant
- > Prisoners past their ERD with a prior parole violation and no current grant
- > Prisoners past their ERD with no prior parole violation and a current PB grant
- > Prisoners past their ERD with a prior parole violation and a current PB grant
- > Prisoners who have not reached their ERD
- > Prisoners serving a life sentence who are not eligible

These subgroups were also combined into:

- > Prisoners serving a life sentence and currently under Parole Board jurisdiction
- > Prisoners past their ERD who do not have a prior parole violation but no current grant
- > Prisoners past their ERD who have a parole violation and no current grant
- > Prisoners past their ERD with a current Parole Board grant
- > Prisoners who have not reached their ERD and lifers not under Parole Board jurisdiction.