House
Legislative
Analysis
Section

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# PAROLE BOARD INTERVIEWS; PAROLE DENIAL APPEALS

**House Bill 4624 as enrolled**
**Public Act 191 of 1999**
**First Analysis (3-21-00)**

**Sponsor: Rep. Scott Shackleton**
**House Committee: Criminal Law and Corrections**
**Senate Committee: Judiciary**

## *THE APPARENT PROBLEM:*

The issue of prison inmate parole has been debated for years, and has been part of a larger ongoing debate over a number of issues, including the explosive growth of prison beds for the past two decades, continued prison overcrowding despite this costly growth in prison costs to the taxpayers, the issue of so-called "truth in sentencing," and the always controversial issue of paroled prisoners who commit crimes while on parole.

Some people believe that the current schedule of parole board interviews of prisoners sentenced to life imprisonment (see BACKGROUND INFORMATION) should be changed yet again. In addition, many people believe that there has been a flood of frivolous prisoner lawsuits in recent years, and that more legislation (see BACKGROUND INFORMATION) is needed to restrict prisoner access to courts in order to reduce what some people see as an unacceptably large number of prisoner lawsuits in court, including prisoner appeals of parole denials.

In his 1999 state of the state message, the governor made abolishing prisoner parole appeals a priority. Legislation has been introduced to do this, as well as to again change the schedule of parole board interviews of prisoners sentenced to life in prison.

## *THE CONTENT OF THE BILL:*

The bill would amend the corrections code, Public Act 232 of 1953, to eliminate the ability of prisoners to appeal parole board decisions to deny parole, while keeping the right of county prosecutors and crime victims to appeal parole board decisions to grant parole. The bill also would eliminate the current requirement that the parole board conduct periodic (every 5 years) interviews of prisoners sentenced to imprisonment for life or for any term of years, and create an expedited parole board interview process.

Eliminate prisoner appeals of parole denials. Under the corrections code, a prisoner's release on parole is discretionary with the parole board, but a parole board's decision to grant or deny parole can be appealed by certain parties listed in the law, including the prisoner, the county prosecutor of the county in which the prisoner was convicted, or the victim of the crime. The bill would continue to allow appeals under the corrections code by prosecutors and crime victims of parole board decisions to grant parole, but would eliminate prisoner appeals under the corrections code of parole board decisions to deny parole.

Eliminate mandatory 5-year interviews. Currently, under the corrections code, a prisoner sentenced to "parolable life" or one sentenced for an indeterminate "term of years" is eligible for parole after serving 10 to 20 years, depending on the date and kind of offense. The law requires that one member of the parole board interview a parolable life prisoner after 10 years' imprisonment, and then every 5 years afterwards until the prisoner is paroled or discharged or dies. A prisoner sentenced for life without the possibility of parole also must be interviewed after the first 10 years' imprisonment by a member of the parole board, and then at least every 5 years afterwards.

The bill would eliminate the requirement that a parole board member interview a "lifer" (whether parolable or not) every 5 years after the initial 10-year imprisonment interview, and instead would allow the parole board to decide whether and, if so, when, to interview lifers. The bill also would delete references to prisoners serving "for a term of years," that is, to prisoners who have been sentenced to indeterminate terms of imprisonment and who are not eligible for parole until they serve their minimum sentence minus any disciplinary credits earned, thereby eliminating the

requirement that the parole board periodically interview these prisoners.

Expedited interview process. The bill would require that a "lifer" prisoner be given written notice of an impending parole board interview at least 30 days before the impending interview. Prisoners could be represented at their interviews by someone of their choice other than another prisoner, but would not be entitled to appointed legal counsel at public expense. The prisoner or his or her representative could present "relevant" evidence in favor of holding a public hearing (such a hearing is required by law for a decision to grant parole).

MCL 791.234 and 791.244

## *BACKGROUND INFORMATION:*

Size of the prison population. As a recent joint House and Senate Fiscal Agencies report indicates, the prison population has continued to increase markedly, rising considerably faster than the state population, while total crime rates have declined. More specifically, the report notes that the prison population "increased 230 [percent] in the past 20 years, rising from 13,330 in December 1979 to 44,191 in July 1999, with the steepest increase occurring during the late 1980s. Over the past five years, while the State's population increased by 3 [percent] and the total crime rate decreased 5 [percent], the prison population has risen by 20 [percent]." ("*FY 1998-99 Boilerplate Report: A Summary of Trends Affecting the Use of Prison*," November 1999)

As the report also points out, prison population is a function of the number of people entering the prison system ("intakes") and the number of people leaving ("exits"). People may enter the prison system in a number of ways, including: (1) "new court commitments," that is, people newly convicted and sentenced for crimes; (2) parolees sentenced for new crimes committed while on parole or sent to prison for technical parole violations; (3) probationers sentenced for new crimes committed while on probation or sent to prison for technical probation violations; (4) escapees returned to prison with new sentences; (5) offenders returned to prison from community placement (halfway houses or electronic tethers) due to technical violations ("community residential program returns"); and (6) for a variety of other reasons, such as "return from court," where a prisoner leaves prison to appear in court as a witness or for court proceedings involving charges against the prisoner. The return to prison is recorded as "return from court," with or without additional sentence. Interestingly, the report further notes that annual intake and returns increased by 1,204 or 6.6 percent from 1993 to 1998. However, this is "*not* the result of rising numbers of new court commitments. Rather, it is admission of parole and probation violators that are driving the intake increases. Between 1993 and 1998, annual intake of probation violators rose from 1,553 to 3,132, an increase of 102 [percent]. In that time period, annual returns of technical violators of parole rose from 1,961 to 3,109, an increase of 58.5 [percent]." (Emphasis in original) Conversely, the ways people leave the prison system generally are through parole (since probationers do not enter prison but are diverted from prison into probation), completion of their sentence, or, more rarely, through release for medical (including mental health) treatment, commutation, or pardon. By far, however, parole is the single largest category of prison "exits," and it is here that the recent declines in parole approvals after the reconstitution of the parole board in 1993 (see below) "have contributed significantly to the burgeoning prison population."

The size of the prison population also is affected by an increase in the number of offenders serving prison terms with a minimum sentence of ten years or more, and it is certain that prison population size will be affected by the extensive changes to sentencing statutes that took effect in 1999 (these include the implementation of legislative sentencing guidelines, "truth-in-sentencing," revisions of the drunk driving statutes, and an increase in the felony threshold for larceny offenses). The joint report notes that the Department of Corrections, in its annual prison population projection issued in January 1999, predicted that the prison population would continue to rise, assuming that recent trends, such as the decline in parole, also continue. Although it currently is impossible to reliably predict future prison populations until the full impact of the 1999 sentencing changes, the report projects a prison population increase to over 50,000 (or an increase of about 7,000 from the July 1999 level) by September of 2003, based on information currently available.

Parole. All adults convicted of felonies for which the statutory minimum sentence is more than one year may be sentenced to the state's prison system, and an imprisoned felon generally is eligible for parole -- that is, release from the prison into community supervision -- after serving a minimum sentence or a minimum sentence less good time or disciplinary credit. The parole board decides whether and when a prisoner is ready for release from prison to the community before the prisoner serves the crime's maximum sentence, and

the parole board must hold a public hearing before granting parole. The parole board's decisions are guided both by statute and by guidelines established by the Department of Corrections according to statute (see "Parole Guidelines" below).

As a recent joint House and Senate Fiscal Agencies report notes, "The parole process includes an *interview* in which parole for the prisoner is considered by the parole board; *grant or denial of parole*, in which the parole board decides whether parole is appropriate; and the *movement to parole*, in which the prisoner actually leaves prison." (Emphasis added. *FY 1998-99 Boilerplate Report: A Summary of Trends Affecting the Use of Prison*," November 1999.) A 1997 Senate Fiscal Agency issue paper further notes that "[i]f the parole board rejects a prisoner's bid for parole, the prisoner can apply again for parole after a given period has elapsed. When the parole board grants parole, the prisoner may not exit prison immediately because parole may be granted to take effect several months later. Parole may be denied if a prisoner misbehaves in the interval. Thus, there are several measures of parole activity: the parole board's decision, paroles granted, and the movement to parole. The number of decisions and the paroles granted are affected by the policies of the parole board, but only movement to parole has an impact on the prison population." ("*Michigan Prison Population and Capacity*".)

As the joint boilerplate report notes, paroles are down, both as a percentage of total parole interviews, and as a percentage of total prison population. These changes have occurred since 1993, after the reformulation of the parole board by Public Act 181 of 1992. Thus, for example, the 1997 Senate Fiscal Agency (SFA) report notes that from 1993 to 1997, the number of parole decisions (that is, decisions to grant or to deny parole) remained relatively constant but the number of paroles granted decreased by 9.3 percent, from over 11,177 to 9,752. The SFA paper also notes that the new parole board has significantly reduced the percentage of positive parole decisions for inmates seeking parole after the first attempt, and presents the following information on "paroles granted by attempt" in chart form:

| Attempt at parole | Historic grant rate | Current grant rate |
|---|---|---|
| 1 | 49.2 percent | 53.7 percent |
| 2 | 41.5 percent | 29.7 percent |
| 3 | 41.4 percent | 20.3 percent |
| 4 | 28.5 percent | 14.8 percent |
| 5 | 20.0 percent | 10.5 percent |

The SFA paper notes, however, that the policies of the parole board may not be entirely responsible for the recent changes in the number of paroles granted, because while the rate of paroles granted has decreased, the number of cases reviewed for parole has remained fairly constant, as the following chart on prison population and parole statistics shows:

| Calendar year | Prison population | Parole decisions | Paroles granted |
|---|---|---|---|
| 1990 | 31,240 | 15,752 | 10,748 |
| 1991 | 33,018 | 15,553 | 10,042 |
| 1992 | 35,131 | 19,407 | 11,854 |
| 1993 | 36,474 | 17,663 | 11,177 |
| 1994 | 38,145 | 17,057 | 9,795 |
| 1995 | 38,854 | 17,601 | 9,678 |
| 1996 | 40,184 | 17,788 | 10,306 |
| 1997 (projected) | 43,980 | 17,906 | 9,752 |
| Percent change | 40.8 percent | 13.6 percent | -9.3 percent |

As the SFA paper notes, however, "Logically, as the prison population increases, the number of cases eligible for parole should also increase, unless prisoners are receiving longer sentences or are ineligible for parole because of the nature of their

crime. Thus, the average minimum sentence and the prison composition are critical to parole and to the size of the prison population." The 1999 joint boilerplate report adds that the "changes in parole trends have been linked to a reluctance to parole assaultive offenders, particularly sex offenders."

Parole guidelines. The corrections code (Section 791.233c) requires the Department of Corrections to develop parole guidelines that are consistent with the code and that govern the exercise of the parole board's discretion under the code as to the release of prisoners on parole. The stated purpose of the parole board guidelines is to make release decisions that enhance the public safety. In developing parole guidelines, the code requires the department to consider a non-exhaustive list of factors, including the offense for which the prisoner was incarcerated, the prisoner's prior criminal record and his or her institutional program performance and conduct. The code also explicitly allows the department to consider the prisoner's age and statistical risk screening when developing parole guidelines.

The policy statement of the Department of Corrections' Policy Directive (06.05.100) on the department's current parole guidelines says that the directive is to establish parole guidelines to assist the parole board in making parole release decisions. The policy directive requires the parole board to "develop and use numerical scored parole guidelines in the parole decision-making process in order to both reduce disparity in parole decisions and to increase parole decision-making efficiency" and explicitly says that the guidelines cannot require either an automatic parole or a denial based solely on a numeric score. Instead the guidelines are to be used as a tool by the parole board to establish "probabilities of decisions."

Agents of the Bureau of Field Services complete a "Parole Guidelines Data Entry" on all offenders receiving an indeterminate sentence. The agents then transmit each prisoner's "Parole Guidelines Data Entry" to the reception center, along with the prisoner's "Presentence Investigation Report." Reception center staff then enter the data into the "Corrections Management Information System" (CMIS).

The guidelines (which went into effect on December 1, 1991) contain seven "factors" that are scored: (1) the "instant offense," which considers the severity of the offense for which the felon is incarcerated, including both aggravating conditions (such as excessive violence, multiple victims, and use of a weapon) and mitigating conditions (whether the offense were a "situational crime" not likely to recur or the prisoner played a "peripheral" or minor role in an offense involving multiple offenders); (2) prior criminal record, which includes assaultive misdemeanors, jail sentences, felony convictions, assaultive felony convictions, prior prison terms, prior probations, delayed sentences, parole failures, and juvenile adjudications); (3) program performance, which includes the adequacy or inadequacy of a prisoner's performance in programs that were recommended or for programs the prisoner participated in, including work, school, or therapeutic programs; (4) institutional conduct, which includes the extent to which a prisoner's behavior during incarceration complied with institutional rules and regulations, including the number of "major misconducts" and security reclassifications resulting from violations of rules, and disruptive behavior; (5) statistical risk, as prescribed in the department's "statistical risk screening" policy directive (05.01.135); (6) age, in conjunction with the length of time served; and (7) "mental status," which includes both indications of improvement in the prisoner's mental state during incarceration as well as whether there was psychiatric hospitalization resulting from criminal activity; "indication that assaultiveness was derived from a compulsive, deviated or psychotic mental state"; or development of a serious psychotic mental state during incarceration. Mental status is not weighed differently for the length of the prison term served.

"Parole Eligibility Reports" (PERs) must include information regarding a prisoner's program completion and participation, mental status, and security reclassifications. This information then is scored and entered into the CMIS by parole board staff. As determined by the parole board, the Data Center is required to provide a printed "Parole Guidelines Summary Sheet" that shows a prisoner's score for each of the guidelines factors. Copies of each factor's scoring sheet and the summary sheet also must be given to the prisoner and placed in the prisoner's Central Office Record file.

Based on the numeric score of each of these seven factors, a "parole guidelines score" is obtained, and the parole board is required to formulate numeric ranges of guideline scores to indicate probabilities of a favorable or unfavorable parole decision. Parole board decisions, including scoring weights and ranges, are not grievable, but prisoners are allowed to challenge the parole guidelines computation, including the inaccuracy of the information used in making the decision.

The guidelines for prisoners serving short term sentences (where the prisoner has served less than 3 years) and medium term sentences (where the prisoner has served from 3 to 7 years) must place a greater weight on prior criminal history than on "institutional variables" (see above). For prisoners serving long term sentences (where the prisoner has served more than 7 years) , the guidelines must give institutional variables greater weight.

The "new" (post-1992) parole board. Since the revamping of the parole board and the parole process under Public Act 314 of 1992, there is evidence indicating a decrease in overall parole approvals and an increase in the number of violent assaultive offenders who are required to serve their maximum, court-imposed sentences. In addition, the annual returns of parolees to prison for violations of parole rules also has increased under the "new" parole board.

A September 1997 Michigan Department of Corrections (MDOC) analysis titled "Five Years After: An analysis of the Michigan Parole Board since 1992" describes the "new" ten-member, non-civil service parole board appointed by the director of the Department of Corrections as being "far more conservative than its predecessor." The report also attributes the "positive trend" taken by the new parole board, "in large part, to the makeup of the new Parole Board – a more conservative Parole Board." The new parole board "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." That is, the new parole board is less likely than the old parole board to grant parole to prisoners on their first eligibility date, which means that more prisoners are imprisoned longer past the minimum sentence imposed by the courts. The department's analysis indicates that only 16.5 percent of prisoners serving in 1991 (that is, under the old parole board) were serving beyond their court-imposed minimum dates, while (under the new parole board), by July 1997, more than 28 percent were serving past their minimum sentences. The report further notes that the new parole board also is making more sex offenders serve longer past their minimum sentences, as well as more violent offenders in general. And the report suggests that the new parole board would like to keep prisoners locked up longer than their maximum sentences, noting that 60 percent of prisoners who served their maximum sentence and got out of prison in 1994 were arrested within three years in connection with a new felony, and concluding that the parole board "would have liked to keep them locked up longer. They got out only because courts and statutes required them to be released."

The new parole board also is less likely than the old parole board to grant parole at all. The report indicates that more prisoners are serving their maximum sentences, as the new parole board has refused to release more offenders to parole at all and instead has required them to serve the entire length of their court-imposed sentences. There also is a similar increase in the number of prisoners who are serving more than ten years for assaultive crimes, with this population increasing by more than 33 percent over a five-year period (to 10,000 by the end of 1996 from 7,500 at the end of 1991).

Finally, the report indicates that the department has shown an "increased willingness . . . to revoke parole at the first sign of trouble," an indicator which the report concludes reflects "the enlightened approach to corrections the department has taken in the past five to six years." By 1997, the department had increased the number of its "field operations staff" -- that is, its probation and parole officers -- to 976, up from 612 in 1991, which is an increase of more than 50 percent. The report notes that by "increasing its field operations staff, the MDOC new has the ability to monitor parolees more closely and return more rule violators before they have a chance to commit a new crime."

Parole appeals. Under the Michigan constitution (Article VI, Section 28), "All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final

decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record."

Someone seeking judicial review of a decision by an administrative agency can do this in one of three ways: (1) the review set forth in a law that applies to the agency in question (in the case of prisoner appeals of parole board decisions, MCL 791.234); (2) the method for review of contested cases set out in the Administrative Procedures Act; or (3) an appeal under Section 631 of the Revised Judiciary Act (MCL 600.631), which reads, in its entirety, "An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in accordance with the rules of the supreme court."

Although parole decisions by the parole board are considered administrative decisions, an appeal of a parole board decision cannot be made under the Administrative Procedures Act because parole board hearings are not contested case hearings. However, there is a specific law allowing appeals of parole board decisions. In 1982, the legislature passed legislation amending the corrections code that allowed prisoners to appeal by leave to the circuit court denials of parole by the parole board. Another amendment to the corrections code in 1992 explicitly extended this right to appeal to county prosecutors and crime victims.

Before enactment of Public Act 314 of 1982, however, the corrections code contained language prohibiting review of parole board decisions regarding parole if the decision were "in compliance with law." Public Act 314 of 1982 amended the corrections code to delete this language and replaced it with language allowing appeals, by leave to the circuit court, of parole board decisions to grant or deny parole, and prisoners began using this statutory provision to appeal denials of parole by the parole board. In the early 1990s, county prosecutors in Macomb and Oakland counties also began to win appeals of parole board decisions to release prisoners on parole. The ability of prosecuting attorneys to appeal parole board decisions on behalf of crime victims was challenged in court, however, and legislation enacted in 1992 (Public Act 181 of 1992), among other things, gave explicit statutory standing to county prosecutors and crime victims to appeal parole board decisions.

The 1995 House Legislative Analysis Section analysis of enrolled House Bill 5434 (Public Act 345 of 1994), which established venue for parole appeals, noted that there were fewer than 200 appeals the year after the 1992 parole reforms, by both prisoners and prosecutors combined , and that the total number of appeals had not greatly increased over those in the previous year. The number of prisoner appeals rose from 122 in 1992 to 161 in 1993 (an increase of about 31 percent), while prosecutor appeals rose from 5 to 11 (an increase of more than 100 percent) during that same time. Department of Corrections statistics for the years 1995 through 1999 indicate a similar pattern, with prosecutor and prisoner parole appeals showing both increases and decreases, though with the percentages (for both increases and decreases) generally greater for prosecutor appeals than for prisoner appeals. For example, although prosecutor appeals increased dramatically from 1995 to 1996 (from 6 in 1995 to 25 in 1996, an almost 420 percent increase), prisoner appeals in that same year increased much more slowly (from 577 to 660, or about 14 percent). However, from 1996 to 1997, prosecutor appeals dropped (from 25 to 17, a 32 percent decrease), while prisoner appeals increased (from 660 to 921, an almost 39 percent increase). From 1997 to 1998, prosecutor appeals continued to decrease (from 17 to 13, or more than 25 percent), while prisoner appeals increased from 921 to 998 (about 8 percent). From 1998 to 1999, prosecutor appeals increased (from 13 to 18, or by almost 40 percent), while prisoner appeals decreased from 998 to 724 (or about 12 percent).

Over the period from 1995 to 1999, there were a total of 3,879 parole board appeals: 79 appeals by prosecutors and 3,800 appeals by prisoners. In terms of percentages, cumulatively over this period, prosecutor appeals increased by over 400 percent while prisoner appeals increased by about 49 percent.

Out of the 3,800 parole board appeals filed by prisoners between 1995 and 1999, only 162 cases (or about 4 percent) were remanded by the circuit court to the parole board for reconsideration. Of these 162

remanded cases, only 24 (about .6 percent of the total 3,880 prisoner appeals, or almost 15 percent of the 162 remanded cases) resulted in parole primarily because of the court-ordered reconsideration. Of the remaining 138 prisoner appeals remanded by the courts for consideration by the parole board, there was no change in parole status in 130 of these cases (a little more than .4 percent of the total 3,800 prisoner appeals, or almost 90 percent of the 162 remanded cases), while, under the department's reckoning, 8 prisoners were paroled through the regular parole process. (According to the department, if the reconsideration and parole order happened within four months of the end of the 12 to 24 month continuance, that prisoner was identified as being paroled as a result of the regular parole process. If the prisoner's parole was reconsidered and ordered paroled more than 4 months before the end of the continuance, that prisoner was considered as being paroled as a result of the court-ordered reconsideration of the parole decision.)

The chart below summarizes the appeals information provided by the Department of Corrections for the years 1995 through 1999 on prisoner appeals of parole denials.

| Year | Appeal of parole denial | Court orders reconsideration | No change in parole board action | Parole board action changed due to time | Parole board action changed due to court ordered reconsideration |
|---|---|---|---|---|---|
| 1995 | 577 | 14 | 8 | 4 | 2 |
| 1996 | 660 | 39 | 33 | 1 | 5 |
| 1997 | 921 | 55 | 45 | 1 | 9 |
| 1998 | 998 | 39 | 33 | 1 | 5* |
| 1999 | 724 | 15 | 11 | 1 | 3 |
| Total | 3,800 | 162 | 130 | 8 | 24 |

* According to the Department of Corrections, two of these five cases were technical parole violators who were ordered released immediately. ("Technical violations" are noncriminal violations of parole conditions, such as failure to show up for a required parole meeting or leaving the state without permission.)

Figures provided by the Department of Corrections indicate that from 1996 through 1999, prosecutor appeals of parole grants have been successful in reversing grants of parole almost 26 percent of the time. (In 1995, there were 6 appeals filed by prosecutors, but no readily available information on outcomes. In the current year, there has been one prosecutor appeal of a parole grant which apparently has not yet been decided.) As the figures indicate, the number of appeals by prosecutors has fluctuated, increasing more than fourfold from 1995 to 1996, then dropping by almost a third from 1996 to 1997, and again dropping by almost a quarter from 1997 to 1998. However, appeals almost doubled from 1998 to 1999.

| Year | Appeals filed | Open | Closed | Parole denied | No change |
|---|---|---|---|---|---|
| 1996 | 26 | 0 | 26 | 4 | 22 |
| 1997 | 17 | 2 | 15 | 6 | 9 |
| 1998 | 13 | 0 | 13 | 5 | 8 |
| 1999 | 25 | 3 | 22 | 6 | 16 |
| Total | 81 | 5 | 76 | 21 | 55 |

Frequency of parole board "lifer" interviews. The corrections code requires the parole board to interview prisoners sentenced to life imprisonment at certain specified times, regardless of whether the prisoner is eligible for parole at that time or ever. Life imprisonment may be either "parolable" or "nonparolable." Currently only two kinds of crimes carry a nonparolable life sentence: murder in the first degree, or violation of the penal code's "bombs and explosives" chapter that results in someone's death. (Public Act 319 of 1998 struck down Michigan's notorious "650 drug lifer" law, thereby eliminating nonparolable life imprisonment for major drug offenses. And Public Acts 206, 208, and 209 of 1998 added, for the first time, nonparolable life imprisonment for penal code violations involving bombs or explosives that result in death.) All other life sentences are "for life or any term of years," and a prisoner so sentenced is eligible for parole after serving a specified minimum number of calendar years in prison (10 years for those sentenced before 1992, 15 years for those sentenced after 1992, and 17 1/2 or 20 years for those sentenced for major drug crimes).

Each prisoner sentenced to imprisonment for life, whether "parolable" or "nonparolable," however, must be interviewed by one member of the parole board after 10 years into their sentences and then every 5 years afterwards, regardless of whether or not the prisoner is eligible for parole at that time (or, in the case of nonparolable lifers, if ever).

The required timing and frequency of "lifer" interviews has been changed legislatively over the years. Before 1982, prisoners sentenced to parolable life were interviewed by the parole board at the beginning of their sentences and were told at that time when they would be eligible for parole under department guidelines.(The passage of Ballot Proposal B in 1978 added a section to the corrections code which forbade reduction of minimum sentences by "good time" for prisoners who had committed certain crimes and prohibited consideration of parole for prisoners serving life sentences for certain crimes.) Public Act 314 of 1982 amended the corrections code to require the parole board to interview "lifers" after they had served 4 years of their sentence, and then every 2 years afterwards. This was again changed in 1992, by Public Act 181 of 1992 (which revamped the parole board and the parole process), which required that all "lifers" sentenced before 1992 be interviewed after 10 (instead of 4) years into their sentences, with subsequent interviews required every 5 (instead of every 2) years thereafter.

## *FISCAL IMPLICATIONS:*

According to the House Fiscal Agency, the bill could lead to cost savings for the state and local units of government, though savings generated under the bill also could be offset by increased costs of incarceration of offenders who otherwise might have been paroled following circuit court review of their cases.

The Department of Attorney General reports that three assistant attorneys general are assigned full-time to parole appeals, and that clerical support occupies most of the time of another two or three clerical positions. The total cost of attorney general staff working on prisoner appeals has been estimated to be about $330,000. Counties could experience savings to the extent that circuit court time and resources were not occupied by prisoner appeals of parole board denials of parole. The Department of Corrections also could experience some minimal savings through relieving parole board members of the requirement for five-year interviews of certain prisoners. (9-20-99)

## *ARGUMENTS:*

### *For:*

Many people believe that prisoners file too many frivolous lawsuits. At least with regard to prisoner appeals of parole denials, the small percentage of appeals sent back by the courts for parole board reconsideration would seem to indicate that most parole appeals are without merit. In the last few years, a number of legislative attempts have been made to curb the incidence of prisoner lawsuits, including requiring prisoners to pay the filing fees and costs for civil actions they initiate (Public Acts 554, 555, and 556 of 1998) and prohibiting the appointment of taxpayer-funded lawyers in certain prisoner appeals (Public Act 200 of 1999). The bill would plug another loophole that prisoners can use to file frivolous lawsuits, namely, prisoner appeals of parole denials. The ability to appeal parole denials under the corrections code was only given to prisoners in a 1982 amendment to the corrections code, and proponents of the bill argue that this statutory authority to appeal parole denials has been abused and has resulted in an enormous expansion in the volume of frivolous prisoner appeals of parole denials and, consequently, in an increased amount of taxpayer money needed to respond to such prisoner lawsuits – money, as the bill's proponents also point out, that could be better spent elsewhere.

That most prisoner appeals of parole board denials are frivolous can be seen from the fact that minuscule

number prisoner appeals of parole denials under the corrections code result in reversals of parole denials. As statistics from the Department of Corrections indicate (see BACKGROUND INFORMATION), this right to appeal under the code hasn't benefitted the vast majority of prisoners who have exercised this right. And yet this expanded ability to appeal parole denials has resulted in an enormous increase in the number of parole appeals and, consequently, an increased burden on the attorney general's office and the Department of Corrections to respond to this expanded volume of prisoner lawsuits. According to the House Fiscal Agency, the attorney general's office assigns three full time attorneys to work on nothing but prisoner appeals of parole denials, as well as occupying the time of another two or three clerical positions. According to House staff, in fact, about half of the attorney general's corrections division's cases consist of these prisoner appeals of parole denials. In addition to the money spent by the state attorney general's office on prisoner appeals, the state Department of Corrections also has to spend substantial amounts of time, energy, and resources in working with the attorney general's office to prepare documents to respond to these prisoner appeals. And, in the few instances when the courts do send cases back to the parole board for reconsideration, the parole board must incur additional expenses to reconsider these cases.

The bill should drastically cut down on the burgeoning number of prisoner appeals of parole denials by eliminating such appeals *under the corrections code*. However, the bill still would leave prisoners recourse to appeal under the Revised Judicature Act (RJA), although the RJA has a higher burden of proof under an "abuse of discretion" standard. That is, the bill would leave intact a prisoner's right to appeal a parole denial under the RJA, but in order for the appeal to be successful, the prisoner would have show competent, material and substantial evidence that the parole board's decision was not supported by the law. Consequently, the bill should cut down on the number of prisoner appeals, make it easier for the courts to dismiss cases that wouldn't meet this higher burden of proof under the RJA, and would make it easier and less expensive for the attorney general's office to respond to such appeals.

***Response:***

Despite the apparent view of some people that prisoner lawsuits, almost by definition, are "frivolous," in fact not all prisoner lawsuits are frivolous. If, moreover, the bill is intended to address the issue of truly frivolous prisoner lawsuits that burden the state (and, therefore, the taxpayers), it should be noted that the bill would eliminate *all* prisoner appeals of parole denials under the corrections code. That is, the bill would eliminate not just the "frivolous" appeals of parole denials but the meritorious ones as well. Frivolous prisoner lawsuits certainly do impose a burden on the court system, the defendant (that is, the Department of Corrections), and the attorney general's office. And frivolous prisoner lawsuits are just as undesirable as frivolous lawsuits filed by non-prisoners. However, the bill does not distinguish between frivolous prisoner appeals of parole denials and meritorious appeals, and it is the meritorious appeals which serve the public good by establishing a body of precedent interpreting the statutory constraints on the parole board's authority. And, opponents of the bill argue, as the courts have begun to understand both parole board procedures and the manner in which the parole board exercises its discretion, the number of successful prisoner appeals of parole denials has increased.

For example, prisoner appeals of parole decisions have exposed a number of procedural problems with the parole process that have resulted in pressure on that process to make parole decisions more fair and accurate. Also, for example, successful prisoner lawsuits reportedly have resulted in requiring the parole board to consider relevant information provided by the prisoner, such as private psychological reports; requiring that the parole board comply with the parole guideline statute; assessing the discriminatory impact on women prisoners of guidelines developed for male prisoners; and, in some cases, even the finding that decisions to deny parole were an abuse of the parole board's discretion because the factual record supported the prisoner's release on parole. By eliminating *all* prisoner appeals of parole denials under the corrections code, it would appear that the bill is not really aimed just at frivolous prisoner lawsuits but is, more generally, aimed at further restricting access to the courts of a politically unpopular population.

Moreover, while frivolous prisoner lawsuits do cost the state money (since the attorney general's office must defend the Department of Corrections against such lawsuits), there are mechanisms already in place to deal with such lawsuits. As figures provided by the Department of Corrections indicate (see BACKGROUND INFORMATION), very few of the prisoner appeals of parole denials are even sent back for reconsideration by the circuit court, with a tiny number actually resulting in any change in the parole board's original decision. So although the state may find it time consuming to respond to such prisoner lawsuits, clearly the courts have overwhelmingly been upholding parole board decisions. Nevertheless, in a few cases, the court's direction to the parole board to

reconsider its parole denials have resulted in the granting of parole (reportedly, a total of 8 cases in the past five years). While extremely small in number compared to the number of prisoner appeals (reportedly a total of 3,800 in the same period), nevertheless, to the eight prisoners involved, surely the ability to appeal and get a parole denial reversed is an extraordinarily important liberty interest, and one that should be protected rather than eliminated.

In addition, surely no one is suggesting that meritorious lawsuits – those which address serious abuses of power which result in injustice – should be discouraged simply because they are brought by prisoners, who, after all, still are citizens. That there are nonfrivolous lawsuits can be seen by looking at a sample of several parole appeal cases provided by the state lawyers association that deals with prisons and corrections. These cases certainly indicate that not all prisoner appeals of parole denials are frivolous, especially in those cases where it is the corrections system and not the prisoner who is at fault when necessary documentation is not made available to the parole board or when a prisoner fails to complete programs required for parole. For example, in one case the parole board denied a prisoner parole based on a parole eligibility report which the Department of Corrections admitted belonged to another prisoner (but which had had the incorrect prisoner's name put accidentally on the report's subject line). In another case, the parole board apparently denied parole to a prisoner based on the board's finding that the prisoner had not demonstrated adequate psychological progress, even though there was a Department of Corrections report showing that the prisoner had made such progress but the report somehow did not make it into the parole board's file on the prisoner. In yet another case, the Department of Corrections reportedly denied a prisoner sex offender therapy and wouldn't let the prisoner meet with a therapist hired by the prisoner's family, and then the prisoner was denied parole based on the prisoner's non-completion of sexual offender therapy. And in another case, apparently the Department of Corrections found that a prisoner should complete a GED as a prerequisite for parole, but refused to consider evidence showing that the prisoner had a 20-year history of learning disabilities. Surely such cases are not frivolous, do not involve the parole board's abuse of its discretion, and yet still should be allowed the right to appeal (which would not be the case should the bill be enacted).

While it is understandable that the state does not want to be sued, sometimes that is the only way to get the state to address abuses of its power. It should be understood that even if a lawsuit is brought against the state by a prison inmate, if the lawsuit is successful it is not just the prisoner but all of the citizens in the state whose rights are protected. After all, it is not the parole appeals that lose that are most important but rather those that win and create a body of precedent to guide decision making in future parole cases. So to deny prisoner appeals is to restrict not just the protection of prisoners' rights but of the rights of all state citizens.

Finally, as opponents of the bill point out, many prisoner appeals are thrown out because they are badly drafted, which is not the same as saying that the appeals are without intrinsic merit. In fact, most prisoners are at a disadvantage from the beginning in trying to litigate their concerns because half of them are functionally illiterate, most are indigent, and very few have access to competent legal advice. In addition, it appears that increasing numbers of mentally ill people are being put in prison because of inadequate provision of mental health services, which only contributes to the number of poorly conceived or drafted prisoner litigation. Because it is so difficult for prisoners to draft acceptable pleadings on their own, even with the minimal resources of prison law libraries, much of the prisoner litigation that appears to be "frivolous" may well raise substantive issues that get dismissed as "frivolous" because of technical drafting flaws. If prisoners had adequate legal counsel or were themselves legally trained, then many of these so-called "frivolous" complaints might well not exist in the first place because they would be competently drafted. Instead of decreasing prisoners' access to the courts, their access to both the courts -- and to adequate legal counsel -- should be increased.

***Reply:***

In the first place, prisoners have no constitutional right to parole, and it is a waste of the taxpayers' money for the attorney general to have to defend the Department of Corrections against routine prisoner challenges of parole board release denials. While the state constitution does provide the right to challenge administrative decisions, parole appeals weren't even allowed under the corrections code until 1982, when Public Act 314 amended the code to allow such appeals. Secondly, the bill would not eliminate all prisoner appeals of parole denials, just their right to do so under the corrections code. But even with the elimination of this right under the corrections code, prisoners still would be able to appeal parole board denials of parole under the Revised Judicature Act. The bill simply would return prisoner parole appeals back to their pre-1982 status, when prisoners appealed parole denials under the Revised Judicature Act.

***For:***

While eliminating prisoner appeals under the corrections code, the bill still would appropriately keep the current provisions in the code (added in 1992) that allow county prosecutors and crime victims to appeal parole board decisions to release prisoners on parole. It is in the best interests of society at large to continue to allow county prosecutors and crime victims to appeal parole board decisions to grant parole to prisoners, as they are most likely to know first hand the potentially terrible actions that the prisoners in question are capable of wreaking on innocent citizens. The state has a duty to protect the public health, safety, and welfare, and the bill would contribute to this goal by ensuring that prosecutors and crime victims could continue to be able to challenge the parole board's decision to release a prisoner to parole if the prosecutor or victim believed that the prisoner should not be released. The bill is a much-needed piece of an overall strategy to appropriately contain populations that have been proven in a court of law to be harmful to society.

***Response:***

The bill would eliminate prisoner appeals of parole denials while continuing to allow county prosecutors and crime victims to appeal decisions to grant paroles. This seems not only grossly unfair (after all, it is the prisoners' lives that are at stake, while often for prosecutors it is more a matter of political motivation) but also possibly an unconstitutional violation of the U.S. Constitution's equal protection clause.

***Reply:***

Allowing appeals by prosecutors and victims under the corrections code, but not appeals by prisoners, would not violate constitutional equal protection requirements, since the public interest in the safety of the community and of the crime victims far outweighs prisoners' hopes for early release into the community under parole. Allowing prosecutors and victims to appeal grants of parole under the corrections code, and not just under the Revised Judicature Act, furthers a legitimate state interest and so is not unconstitutional.

***For:***

The bill would appropriately give the parole board the necessary discretion and flexibility to decide whether and when, if ever, to interview prisoners sentenced to life imprisonment, while at the same time preserving the rights of such prisoners to an initial parole board interview after serving a certain minimum number of calendar years of their sentences. That is, the bill would not prohibit parole board interviews after the initial required interview, but would simply allow the parole board to exercise its best judgment about which prisoners should be interviewed thereafter – and when, if ever – which is the whole point of having a parole board in the first place. Moreover, by potentially reducing the number of parole board hearings, the bill would, to that extent, also further reduce the number of prisoner appeals that could be made of parole board decisions.

Moreover, as the chair of the parole board testified before the House committee, it has been a longstanding philosophy of the parole board that a life sentence means just that, namely, life in prison. While parole may be appropriate under certain circumstances for some lifers, the parole board believes that something exceptional must occur which would cause the board to request a sentencing judge or the governor to set aside a life sentence. That is, "good behavior" in prison is an expectation the board has of prisoners, and is not in and of itself grounds for parole. Also, according to the parole board chair's testimony, the parole board already currently makes decisions to parole or not to parole prisoners without an interview, so the bill would simply implement current parole board practice.

***Response:***

The testimony regarding the parole board's view that a life sentence means a life sentence simply indicates a failure to understand both the nature of indeterminate sentencing and the role of the judiciary in sentencing. Under indeterminate sentencing, the court sentences a prisoner to a range of years rather than a definite number of years, under the assumption that the minimum term of imprisonment defines the lower limit of the appropriate punishment for the offense committed by the prisoner. Consequently, the role of the parole board is not to deny parole because it believes that certain crimes deserve more than the minimum sentence decided by the court. Rather, the parole board's role is to assess the prisoner's eligibility for release on parole, once the prisoner has served the minimum sentence, based on the prisoner's conduct while imprisoned and on factors such as evidence that the prisoner has been rehabilitated and no longer would pose a danger to society (or, conversely, on the existence of certain factors that are positively correlated with the likelihood that releasing the prisoner would threaten public safety). The decline in the number of paroled prisoners since the reconstitution of the parole board in 1992, especially of sexually assaultive prisoners, constitutes a de facto policy of deciding not to parole a prisoner, even when he or she otherwise would be eligible for parole, based on an emotional reaction rather than a rational assessment of the prisoner's suitability for release into parole. The parole board should not deny parole simply on the basis of the board's feelings of revulsion over the crime committed by the prisoner, which past action the

prisoner obviously cannot change, but rather on those factors over which the prisoner can exercise meaningful control, such as his or her behavior once incarcerated. All prisoners eligible for parole should be given fair and meaningful parole consideration by an impartial and fully-informed parole board, and should not have this consideration derailed because such consideration may be politically unpopular.

***Reply:***

While, in the past, implementation of parole guidelines may have been weighted toward consideration of the prisoner's conduct while imprisoned, the current parole guidelines clearly do not favor this approach. In fact, the guidelines explicitly state that for prisoners serving short or medium term sentences, greater weight is to be placed on a prisoner's prior criminal history (including the nature of the crime for which the prisoner currently is incarcerated) than on "institutional variables." Many people feel that it is counterintuitive not to consider the horrendous nature of many crimes when considering whether or not a prisoner should be paroled. It also seems to many people that considering only a prisoner's prison conduct – where the prisoner's incentive to behave well while imprisoned in order to be released on parole may or may not have much predictive power with regard to the prisoner's behavior once he or she no longer was under prison supervision – is shortsighted, if not dangerous. A history of violent behavior – and in particular a history of particularly horrendous behavior – in most cases would seem to be a fairly reliable predictor of future behavior, particularly if there is no evidence of some kind of extraordinary personal transformation in the interim. The behavior of people who are a proven danger to society should be contained and restricted, and such people should not be released on technicalities to wreak further havoc on innocent victims. While not a perfect solution, the bill should, when taken in conjunction with other complementary legislation, make it more difficult for people who are proven to have been dangerous to society to be released before they serve their full sentences.

***For:***

The bill would make a number of changes in the parole board interview process that would save the parole board time (and the taxpayers money) by allowing an "expedited" interviewing process and by letting the parole board to decide when to interview "lifers" (or prisoners sentenced to a long but indeterminate number of years) after a required initial interview.

As the chair of the current parole board testified before the House committee, the parole board currently makes decision to parole (or to continue imprisonment of) prisoners without an interview, basing this decision on the prisoner's parole guideline scores. The proposed "expedited" interview process would allow the parole board to conserve its limited resources, while continuing to make good decisions by allowing it to review a prisoner's file in the office and, by that "file review," decide if the lifer needs to be interviewed.

The bill would eliminate the current wasteful statutory requirement that the parole board interview prisoners serving a sentence for any term of years less than life. Currently, even though many of these prisoners can't be paroled until the end of their mandatory minimum sentences (less any "good time" credit), the law still requires the parole board to interview them. The bill would require the parole board only to interview these prisoners as it saw fit, thereby saving taxpayer money currently spend on these premature interviews.

***Response:***

The bill's proposed elimination of the mandatory periodic interviewing of "lifers" by the parole board has the potential to reverse an important rollback of Michigan's draconian "drug lifer law" last session by Public Act 319 of 1998. Public Act 319 deleted the two-decades-old mandatory life sentence without the possibility of parole for manufacturing or delivering mixtures containing heroin or cocaine weighing 650 grams (about 1.4 pounds), and instead made such crimes subject to imprisonment "for life or any term of years but not less than 20 years." Thus, the so-called "650 drug lifers" would be eligible for parole after serving 20 calendar years in prison. However, by removing the current mandatory 5-year interview schedule for "lifers," the bill could undo what was achieved by Public Act 319 of 1998. Eliminating the requirement that the parole board interview people serving life terms (after the first ten years) may make the distinction between parolable and nonparolable life almost meaningless, since the new conservative parole board could operate on a de facto policy of deciding never to interview "drug lifers" and so never release any of them to parole. Without a mechanism to identify individuals who would be suitable candidates for parole, and without an affirmative obligation to provide a regular, comprehensive review of their records, those intended to benefit from Public Act 319 of 1998 could wind up being left in prison indefinitely, compounding the injustice that Public Act 319 was intended to correct.

***For:***

The bill would make clear the policy shift in the last 15 or 20 years from a conception of prisons as serving a rehabilitative function for incarcerated prisoners to a predominantly retributive conception of the purpose of

the corrections system. Criminals need to know that they will be punished for their crimes, so that that knowledge can act as a possible deterrent to crime.

***Response:***

Depending on one's point of view, shifting the conception of the purpose of the corrections system from that of primarily rehabilitation to that primarily of retribution can equally be seen as undesirable. Many crimes are impulse crimes, where the person committing does not think ahead to what might happen should he or she be caught. So the deterrent values of punitive measures certainly can be, and has been, the subject of considerable debate. Moreover, most incarcerated prisoners will eventually return to society and it is in society's prudential interest to rehabilitate prisoners before they return to the population at large.

***Against:***

Although the number of both prisoner and prosecutor appeals of parole board decisions have increased over the years since the 1992 parole board reforms, the Department of Corrections' own figures indicate that in the most recent period for which data is available (1998 to 1999), prisoner appeals dropped while prosecutor appeals increased. And yet the bill would eliminate prisoner appeals while continuing to allow prosecutor appeals of parole board decisions to grant paroles. Does this make sense? If the goal is to decrease the number of lawsuits against the state, then surely the increasing number of lawsuits by prosecutors also should be eliminated.

***Response:***

As the Department of Corrections figures indicate, the number of prosecutor appeals of grants of parole is less than 100, while prisoner appeals of parole denials number in the thousands. The cost of the small number of prosecutor appeals is hardly comparable to the cost to the state of the thousands of prisoner appeals. Moreover, the bill can be seen as part of a long-term effort on the part of the legislature to reduce frivolous prisoner lawsuits against the state, not all lawsuits.

***Against:***

Despite the claims by proponents of the bill that there are too many prisoner lawsuits, the number of prisoner parole appeals has increased for entirely understandable reasons. For, even as the prison prison population has continued to expand, the "new" parole board has decreased the number of paroles granted. Even if the number of prisoner appeals of parole denials remained proportionately the same with respect to the size of the prison population, as the prison population increases, one should expect the total number of prisoner appeals to increase as well. The question is, have the number of prisoner appeals increased disproportionately to the increase in the prison population?

In addition, however, the reorganization of the parole board in 1992 has brought with it a parole board that has increasingly denied parole to prisoners even when the prisoners have been incarcerated well beyond their earliest legally allowable parole release date. As a recent House and Senate Fiscal Agencies report notes, recent declines in parole approvals have contributed significantly to the burgeoning prison population. With paroles down, both as a percentage of total parole interviews, and as a percentage of the total prison population, it is hardly surprising that prisoner appeals of parole denials have been increasing. The question still remains whether all, or even a majority, of these appeals can fairly be categorized as "frivolous," and thus whether they should be eliminated from the corrections code.

***Response:***

The figures on prisoner parole denial appeals (see BACKGROUND INFORMATION) would appear to indicate that the courts, at least, have not found many prisoner appeals to be meritorious. For, of the 3,800 prisoner appeals filed between 1995 and 1999, the courts ordered reconsideration of only 162 cases (about 4 percent). And of the 162 cases sent back to the circuit court for reconsideration, only 24 resulted in parole because of the court-ordered reconsideration. In other words, less than 1 percent of all prisoner appeals of parole denials resulted in the parole board changing its mind and granting parole. This hardly seems to indicate any serious problems with the current parole process.

***Against:***

The bill would further weaken judicial discretion, and to that extent harm not only the judiciary and prisoners as a whole, but the balance of powers among the three branches of government, and thus all of society. As part of the Department of Corrections, the parole board is an executive agency (appointed by the governor, under the 1992 legislative amendments to the corrections code), and its decisions should be as much subject to judicial review as those of other executive agencies Reportedly, as the courts had become aware of the new parole board procedures and the way in which the parole board has been choosing to exercise its discretion, an increasing number of prisoner parole appeals apparently were being upheld by the courts. While the bill might be seen as a kind of politically popular move against a politically unpopular population (namely, incarcerated prisoners), justice, not political expediency, should govern the way the state addresses corrections problems. And denying prisoners the ability to appeal parole decisions hardly seems to be

the just course of action to take, either for individual prisoners or for society as a whole. However imperfect the judicial system may appear sometimes, one of the major strengths of judicial review is its ability to take issues on a case by case basis and determine in each case, based on the unique circumstances of each case, the most just and desirable course of action. The bill, by removing judicial discretion in yet another area, would, to that extent, lessen the ability of the judiciary to function as the co-equal, independent branch of government that it is.

Further, the bill would undermine an important specific area of judicial action – sentencing discretion – as well as the recently enacted legislative sentencing guidelines (and possibly even the process of plea bargaining, under which many offenders are convicted who otherwise might have to be released because of insufficient evidence to convict on more serious charges).

***Response:***

As proponents of the bill point out, the bill would merely remove prisoner appeals of parole denials from the corrections code. It would do nothing to prohibit such appeals under Section 631 of the Revised Judicature Act, which provides a general recourse to appeal of "any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law". Clearly parole board decisions fall under "state agency decisions," and are, therefore, subject to appeal under this section of the Revised Judicature Act.

***Reply:***

If, as proponents of the bill claim, it is true that prisoners could continue to appeal parole board decisions under the Revised Judicature Act, why not make that same argument with regard to prosecutors and crime victims? Presumably, allowing prosecutors and victims to continue to be able to appeal parole board decisions under the corrections code provisions while restricting prisoners to appeals under the Revised Judicature Act will somehow advantage prosecutors and crime victims in their right to appeal and disadvantage prisoners in their right to appeal, since part of the purpose of the bill is to reduce prisoner lawsuits. Even if this should turn out to be constitutional, is it fair?

***Against:***

One of the major reasons for the debates over parole over the past decade or so have to do not only with parole board "accountability," but with prison overcrowding and the enormous increase in the percentage of the state budget that has gone to the corrections budget. And as the corrections budget has burgeoned, adequate funding of other, preventive or socially more positive programs (such as education) has become less and less feasible. The costs of incarcerating prisoners who, except for politically popular but otherwise unsound reasons, should be paroled is enormously expensive in both financial terms and in terms of human resources lost and suffering incurred. The declining rate of paroles in the past few years has contributed to the need to construct ever more new and expensive prisons without any good evidence that this course of action appreciably increases public safety or welfare. If the point of trying to reduce the number of prisoner lawsuits is in order to save the state money, then surely the costs of prisoner lawsuits – in this case, of prisoner appeals of parole denials – surely is less than the costs of keeping prisoners incarcerated at an average of more than $25,000 per prisoner per year.

***Response:***

According to the 1997 Department of Corrections Report, the decline in parole releases is, at least in part, linked to the new parole board's policy of restricting or even eliminating parole for violent offenders, and in particular, of sex offenders. There has been a two percent increase in the admission and retention of such prisoners in the prison population, which means that the parole board is protecting the public safety even if this de facto parole denial policy means that more violent prisoners will be housed in prison at state taxpayers expense. (A 1997 Senate Fiscal Agency paper indicates that in 1991, about 36 percent of prison admissions were for assaultive crimes and 58 percent of the prison population consisted of assaultive offenders; by 1996, these percentages were 38 and 60 percent respectively. Surely protecting the public safety is worth the money it costs to keep as many violent offenders in prison for as long as possible.)

***Reply:***

The decline in parole approvals has been more than five times greater than the increase in the proportion of assaultive offenders in the prison population (according to one estimate, grants of parole have increased by 11 percent, while the increase in assaultive prisoners has been only 2 percent). No figures have been presented that indicate that parole denials have increased solely -- if at all -- due to the two percent increase in assaultive prisoners in the prison population between 1991 and 1996.

Analyst: S. Ekstrom

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.