

Testimony regarding HB 4509 and 4510

House Judiciary Committee
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Good morning Chairman Meadows and Members of the Committee. I appreciate the opportunity to speak very briefly regarding these bills.

CAPPS has long advocated increasing the commutation rates of prisoners who are seriously or terminally ill. It is both the compassionate and the cost-effective thing to do. There is simply no point in continuing to incarcerate, at substantial public expense, people who are too incapacitated to be any threat to public safety. Over the last two years, the governor and the parole board have greatly increased their efforts to identify and release appropriate candidates for medical commutations. However, there has been frustration over the delays caused by the multi-step commutation process. Too often, terminally ill people have died in prison while awaiting a public hearing instead of spending their last few weeks or months at home with their families. These bills are a modest, very reasonable step toward reducing that problem and we appreciate their sponsorship by Representatives Meadows and Jones.

I am speaking today only to express our concern that all sex offenders are automatically excluded, in subsection (3), from the provisions that waive the public hearing requirement for terminally ill people who have committed every other kind of offense, from serial murder to child abuse. I understand that there is little chance of any amendment this morning, but I wanted to call your attention to several points. [zaq](#)

I believe this exclusion rests on several false premises. One is that all sex offenders fit some stereotype of a compulsive pedophile who abducts children from schoolyards. Another is that sex offenders can never be punished enough. The third is that all sex offenders are a perpetual danger to the community and should be incarcerated as long as possible.

The term sex offender covers a very wide range of behaviors and circumstances. I have attached profiles of two people whose situational offenses had nothing to do with children or sexual compulsions. I would encourage you to read them when you get the chance and consider whether they have been punished enough and why they should be denied the same compassion as all other prisoners if they should become terminally ill.

As for recidivism, re-offense rates are extremely low for sex offenders even when they are not terminally ill. CAPPS is in the process of completing research on the recidivism rates of people released from prison in Michigan over a 14-year period. Of nearly 6,200 sex offenders, only 3.1% were returned for committing new sex offenses. Only 7.5% were returned to prison for committing a new crime of any kind. The table attached to my

testimony shows that the Michigan results are very similar to studies done by the Bureau of Justice Statistics and by researchers in other states.

We understand the need for compromise and will be glad to see these bills pass even with the exclusion for sex offenders. But you will undoubtedly be dealing with a variety of corrections bills aimed at reducing the prisoner population. Since it would be unfortunate if this sort of exclusion became common, I thought it might be useful to call attention to the issue now.

Thank you.

Sex Offender Recidivism Rates

| | Pop. | New Sex Crime | Any New Offense | Follow-up Period | Recidivism Measure |
|------------------------------|--------|---------------------|-----------------------|---------------------|-----------------------|
| Michigan | 6,673 | 3.1% | 7.5% | 4 years | Return to prison |
| Bureau of Justice Statistics | 9,691 | 3.5% | 24.0% | 3 years | Reconviction* |
| Washington | 4,091 | 2.7% | 13.0% | 5 years | Reconviction |
| California | 3,577 | 3.4% | 7.2% | 10 years | Return to prison |
| California | 4,204 | 3.2% | 7.9% | 5 years | Return to prison |
| Ohio | 879 | 8.0%** | 14.3% | 10 years | Return to prison |
| Minnesota | 3,166 | 5.7% | 25.4% | 3 years | Reconviction* |
| | | 3.2% | 8.6% | 3 years | Return to prison |
| New York | 13,890 | 2.1% | 7.8% | 3 years | Return to prison |

*includes misdemeanors

**also found that 1.4% had parole violations for behavior constituting a sex offense

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Faces behind the Figures

Are we safer because they're behind bars?



Gabriel Christ, No. 285326

Offense: Criminal sexual conduct,
3rd degree

Sentence: 2 - 15 years

Offense: Assault with intent to
commit great bodily
harm less than murder

Sentence: 1 - 10 years

First Possible Release: Nov. 18, 2000

Although his crime has been described as situational by parole board screeners, and he would be deported to Germany upon release, Gabriel Christ has been turned down for parole six times, apparently because he continues to deny the sexual offense while admitting the assault.

Gabriel Christ, a German citizen living in the United States, was 51 years old when, in October 1998, he came home to Detroit from a six-month stint as a chef on a cruise ship. He and his American wife had been married for nine years but, because of his job, they were apart for half of every year.

Christ's convictions arose from a domestic dispute. Each spouse thought the other was being unfaithful. When his wife said she wanted a divorce, Christ began drinking and became abusive. He admittedly beat his wife and threatened to pour gasoline on her and set her on fire. His wife claimed he also forced her to have intercourse. Christ maintains the sex was consensual. He was convicted at a bench trial of assault with intent to commit great bodily harm less than murder, for which he was sentenced to serve 1-10 years in prison, and third-degree criminal sexual conduct, for which he received a 2-15 year term.

Christ has no prior criminal record and no history of substance abuse, nor were there any prior complaints of domestic violence. The MDOC's own parole guidelines note that this was a situational offense, unlikely to recur, and score Christ as having a high probability of release. He has not received a single misconduct citation while in prison, is now 61 years old and would be immediately deported to Germany.

Nevertheless, the parole board has turned Christ down for parole six times -- four times for 12 months, once for 18 and the most recent for 24 months. Board denials have always been premised on Christ's refusal to admit guilt of the sexual assault. Although he has repeatedly attempted to enter recommended sex offender programming, he has been refused admission because he denies committing a sexual assault.

Now, nearly eight years past his first parole eligibility date, Christ says: "These continuances of incarceration . . . are senseless and a waste of taxpayers' money. . . I only wish to be returned to Germany now that I have completed my minimum sentence in the state of Michigan."

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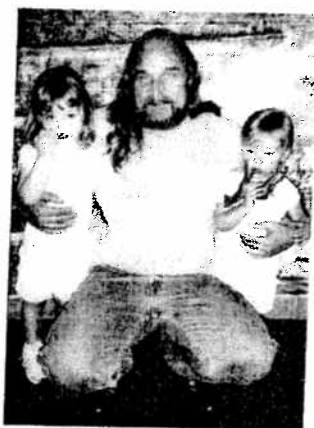
No Way Out: Michigan's parole board redefines the meaning of "life"

Robert Weisenauer, 157085

Parole eligible since 1989

Despite every possible positive indicator, the support of his sentencing judge and interest from the old parole board, the new board has continued Weisenauer until 2013 for an offense that would not bring a life sentence today.

Robert Weisenauer's father died when he was seven. Weisenauer began drinking and taking barbiturates at the age of 12 and went on to develop a serious substance abuse history. He quit school after the ninth grade, spent some time in a juvenile detention facility for truancy and running away, and left home for good at 16. Nonetheless, his only adult criminal convictions were for malicious destruction of property and disorderly conduct — both misdemeanors.



Robert Weisenauer and granddaughters

On December 4, 1977, when Weisenauer was 24, he was at a motorcycle gang clubhouse in Flint where more than 100 people were engaged in loud partying. In the early morning hours, a 24-year-old woman was abducted from her car and brought to the clubhouse. The victim was turned over to a man named Cal who took her to a bedroom and forced her into sexual activities with nine or ten men over a six-hour period. The presentence report says: "After her initial contact with Cal, she was directed to perform fellatio on a male that she believes was . . . Robert Weisenauer."

Weisenauer insisted that he spent that night being sick from two days of hard drinking and had no involvement with the victim. He thought she might have confused him with another club member who strongly resembled him. However, a jury convicted Weisenauer and four co-defendants based on the victim's identification. Cal, the ringleader, was never caught.

Before sentencing Weisenauer to life in prison, Judge Earl Borradaile stated that, given the chance, he would impose on the main perpetrator a sentence "much more severe than what I'm handing out today to these five." In a letter written to Weisenauer in November 2000, Judge Borradaile said:

It seems quite clear that I did say that I was giving you a life term but that unlike first degree murder, it would probably not last too many years.

Weisenauer has used his time in prison effectively. He obtained his GED, then trained as a welder. He received excellent work reports on every job he held. For the last several years he has been a volunteer mentor to young prisoners sentenced under the Holmes Youthful Trainee Act. He has received only three misconducts and has numerous letters in his file indicating that he gets along well with both prisoners and staff. Memos from several officers written in 1988 characterize him as honest, even-tempered and helpful to others.

Weisenauer spent more than six years attending AA and more than two in group psychotherapy. In 1982, psychologist Larry Thornton stated:

In all the time that he participated in group, I never saw him act out what I would consider inappropriate behavior under stressful situations. I personally have a strong admiration for the way this resident was able to demonstrate a strong, friendly manner in a situation which is demeaning at times.

No Way Out: Michigan's parole board redefines the meaning of "life"

Although Weisenauer did not become eligible for parole until 1989, his grid score suggested that he should serve only eight years. The parole board member who interviewed him in 1984 noted: "He presents quite positively." After his 1989 interview, a majority of the board voted to proceed to public hearing. Reports were prepared, but processing was never completed.

In 1992, psychologist Richard Carrill evaluated Weisenauer at the parole board's request. Mr. Carrill concluded:

Mr. Weisenauer's prognosis is very good at this time. He should be able to be a productive citizen if given the chance to go back to society.

In 1993, after the new board took over, Weisenauer was again considered in executive session. The vote was 7-3 against proceeding.

Weisenauer wrote to the board. Despite his actual record and the court's actual intent, he received the following response:

When the Parole Board reviews a life sentence, a number of factors are taken into consideration. They include the nature and circumstances of the offense, any prior criminal history, the prisoner's risk factors for future assaultive behavior and property crimes, and the prisoner's institutional adjustment and program involvement over the years. The fact that the court could have imposed a sentence short of life imprisonment is also a factor. Before the Board could agree to proceed toward a public hearing, there must be a compelling argument to present to the court and to the public that the life sentence should not be carried out.

In 1998, the board interviewed Weisenauer again and again had "no interest."

On February 4, 2003, Judge Borradaile wrote to the parole board chairman:

When I sentenced Mr. Weisenauer, it was my belief that review would be had in ten years and if Mr. Weisenauer showed much progress, he would likely get parole . . . While I realize that the Parole Board is greatly concerned about release of sex offenders, I believe that his activity in straightening himself out shows he would not pose a great danger . . . I would hope that you would let him personally appear before the Parole Board and that your board would lean toward leniency in considering parole.

Nonetheless, that year the board only reviewed Weisenauer's file and notified him that it had no interest in his case.

Five years later, the board merely reviewed Weisenauer's file again. And again, it had no interest in pursuing parole. He will be considered next in 2013. By that time, Weisenauer will not have been seen in person by any board member for 15 years. Under current sentencing guidelines his minimum sentence would be between 9 and 15 years. A co-defendant who was also serving life was paroled in September 2007.

After 34 years, Weisenauer is the only one of the five co-defendants left in prison. The only apparent reason is his refusal to admit guilt.