

No. 903

September 27, 1978

1978 STATE BALLOT ISSUES

CRIMINAL JUSTICE PROPOSALS

The November ballot will contain two proposals dealing with criminal justices. Proposal "B" would place limits on current parole provisions. Proposal "K" would permit bail to be denied in certain cases.

PAROLE LIMITATION

Proposal "B," placed on the November ballot by initiative petition, would amend Act 232, Public Acts of 1953 (the basic state corrections statute) to require that parole not be granted to prisoners sentenced for certain crimes until the minimum sentence imposed by the court has been served. It would prohibit reduction in the length of the minimum sentence for these prisoners as a result of the operation of "good time, special good time, or special parole."

Current Provisions

Michigan law requires the sentencing judge in a felony case to set a minimum as well as a maximum term. The maximum is fixed by statute. The minimum is fixed by the court and may not exceed two-thirds the length of the maximum. Prisoners become eligible for parole (supervised release) after they have served the minimum sentence.

Good Time and Special Parole. Eligibility for parole ordinarily occurs earlier than the date set by the minimum sentence because of the application of "good time" allowances under Act No. 105, P.A. 1953, which provides that all inmates of Michigan prisons are entitled to reductions in their sentences unless they violate specific prison rules. The reduction in sentence may be as much as 50 percent greater if the prisoner has "achieved a decided reformation," has "good work record," or has exhibited "exemplary conduct." This additional reduction in sentence is called "special good time."

Good time is credited on the basis of a sliding scale ranging from 5 to 15 days reduction in sentence per month served depending on the number of years served. The reduction in sentence achieved through this provision can be substantial as indicated by the examples in the table below:

<u>On the minimum of an indeterminate sentence of:</u>	<u>An inmate will serve:</u>	<u>Which may be reduced by special good time to:</u>
One year	10 months	9 months
Two years	1 yr., 8 months	1 yrs., 6 months
Five years	4 yrs., 12 days	3 yrs., 6 months, 18 days
Ten years	7 yrs., 6 months, 24 days	6 yrs., 4 months, 6 days
Fifteen years	10 yrs., 10 months	8 yrs., 9 months
Twenty years	13 yrs., 8 months, 24 days	10 yrs., 7 months, 6 days

SOURCE: Michigan Department of Corrections

Good time is awarded by the prisons, not the parole board. In practice, unless they violate prison rules, prisoners are automatically credited with both regular and special good time, thus providing the earliest possible date for parole board decision on release. Moreover, most prisoners are actually paroled at the time determined by the special good time provision.

Special parole is a device by which the parole board may, with the approval of the sentencing judge or his successor, release a prisoner even before the minimum as reduced by good time provided the prisoner appears to be an exceptionally good risk.

What the Ballot Proposal Would Do

The ballot proposal would, if approved, amend the basic parole provisions of Michigan law to prohibit the parole board from granting parole to any prisoner before the expiration of his minimum sentence if he has been convicted of any of approximately 80 crimes listed in the petition. The proposed statute would explicitly eliminate good time, special good time, and special parole provisions as they apply to the minimum sentence imposed upon those prisoners. The statute would not amend the good time law, however; nor would it apply to those provisions as they affect maximum sentences. The parole board would retain the authority to require a prisoner to serve time beyond the minimum sentence.

Covered Crimes. The crimes exempted from coverage by the good time statute under Proposal "B" were selected on the basis of two criteria. First, they are crimes generally involving violence or the potential of violence. Second, they have maximum sentences five years or more. The following is a condensed list of crimes to which good time would no longer apply:

- Murder
- Manslaughter
- Assault
- Kidnapping
- Rape
- Treason
- Poisoning
- Placing harmful objects in food
- Robbery
- Bombing
- Breaking and entering
- Larceny from the person
- Extortion
- Arson
- Malicious destruction
- Setting fire to mines or mining equipment
- Mayhem
- Sabotage
- Riot
- Controlled substance violations
- Child abandonment or torture
- Carrying a concealed weapon
- Possession of burglar's tools
- Possession of illegal firearms
- Illegal abortion
- Incest
- Sodomy
- Mutilation of corpses
- Dueling
- Breaking out of the Detroit House of Corrections
- Breaking out of a county work farm

Costs

Accurate determination of the cost of adopting the proposed statute is not possible because the reaction of judges cannot be predicted. If judges modify their sentencing practices to account for the mandatory minimum sentences, there might be no necessity for constructing new prison facilities. On the other hand, the Michigan Department of Corrections has estimated that if prisoners actually do serve longer sentences, some 3,900 prisoners might ultimately be added to the correctional system resulting in capital construction costs of \$195 million and operating costs of \$23 million per year (1977 estimates). Supporters of the proposal argue that this would be a good investment. The Department of Corrections believes that it would be an expense not justified by the number of prevented crimes, which is expected to be small.

Clearly at issue is the role of the seven-member Michigan Parole Board. Critics of the Board argue that it is largely incapable of determining which prisoners will be successful parolees in

the sense that they will not commit further crimes. The proponents of Proposal “B” also argue that the Board’s decisions serve to counteract the value of the sentence imposed at the time of trial. Finally, by assuring that at least the minimum sentence is served, crimes would be prevented in two ways: 1) any crime that would have been committed by a parolee between the time he was released on the basis of good time and his actual minimum would be prevented; and 2) since crime rates are lower in older age groups, convicts would be less likely to commit crimes if they were held in prison longer, being released when older.

Opponents argue that the proposed change is an inefficient way to prevent crime because, according to the Department of Corrections statistics, fewer than one-third of parolees violate the terms of their paroles within five years and only about one-eighth actually commit new offenses. Further, it is contended that the parole board should have the option of releasing a prisoner before the minimum sentencing expires as an incentive for rehabilitation, to facilitate the control of prisoners, and to help control the size of the prison population which rose from 7,168 in 1967 to 13,872 in 1977. Finally, it is argued that limiting good time and special parole would hinder the board in modifying unjust sentences.

DENIAL OF BAIL

Proposal “K” was placed on the ballot by vote of the legislature. If adopted by the voters, it would amend Article I, Section 15, of the Michigan Constitution to permit bail to be denied to a person with a prior record of violent felonies or who is charged with a violent felony while on bail, parole, or probation for such a crime or who is charged with murder, treason, rape, armed robbery, or kidnapping. The amendment would go into effect on May 1, 1979.

Description of the Proposal

Under Article I, Section 15, of the Michigan Constitution, anyone accused of a crime is entitled to bail unless that person is charged with murder or treason “when the proof is evident or the presumption is great.” In setting the amount of bail, the court is to consider three factors: (a) the seriousness of the alleged offense; (b) the prior criminal record of the defendant; and, (c) the probability that the defendant will appear at trial. Proposal “K” would amend the constitution to give judges broader discretion in denying bail, although the criteria of evident proof or great presumption would still be applicable. There is little case law to define these criteria. Bail could be refused to a person who:

- A. Has been convicted within the preceding 15 years, in Michigan or elsewhere, of two or more violent felonies arising from separate incidents;
- B. Is indicted or arraigned on a warrant charging:
 1. Murder or treason;
 2. Rape, armed robbery, or kidnapping unless the court finds clear evidence that the person is not likely to flee or to present a danger to other people;
 3. A violent felony alleged to have been committed while the defendant was (a) on bail pending the disposition of a prior violent felony charge, or (b) on probation or parole as a result of a prior conviction for a violent felony.

A “violent felony” is described in the proposal as “a felony, an element of which involves a violent act or threat of a violent act against other person,” a definition which is likely to be subject to judicial interpretation. If bail is denied, the trial must begin within 90 days; if it

does not, and the delay is not attributable to the defense, bail must be set immediately. Some additional cost to the counties would probably result from denial of bail since it could be expected that jail populations would rise by some as yet undermined amount.

Arguments for Proposal K

Proponents of Proposal K argue that greater restrictions on bail are justified on the following arguments:

1. The present bail system almost automatically places criminals back on the streets. Proposal K would confine those considered habitual, violent criminals thereby preventing crimes that would have occurred during the period of bail.
2. Since courts impose concurrent sentences, there is presently little risk to the criminal of incurring additional punishment for new offenses committed while on bail.
3. Judges often set bail at high levels to keep people they consider dangerous in jail. This sets up money, not conduct, as the criterion for bail and discriminates against the poor.

Arguments Against Proposal K

Opponents of the proposal argue that:

1. The proposal would permit preventive detention of suspects and impose pretrial punishment. A warrant or arraignment is not a conviction. A person is presumed innocent and generally entitled to freedom until proved guilty. Holding a suspect in jail because the police or a judge believes a crime might be committed is contrary to the presumption of innocence.
2. The bail system, which permits the accused to be free pending trial, enables him to support himself and his family during this period and relieves the county of the cost of maintaining him in jail.
3. Persons who are free on bail awaiting trial are more likely to receive a fair trial because they can actively participate in preparing their defense.

The bail question is examined more comprehensively in Research Council Memorandum 233, *Preconviction Release*. Copies are available on request.