Foreign Nationals in Michigan Prisons:
an examination of the costs

Prepared by Citizens Alliance on Prisons and Public Spending
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Foreign nationals in Michigan prisons – an overview

Michigan prisons currently house hundreds of people who are citizens of other countries at a cost of $30,000 each. While some were in the United States legally and others were not, because of their felony convictions virtually all are now subject to deportation. The question that arises, then, is why Michigan taxpayers are paying to keep them here.

A Department of Corrections list dated February 3, 2006 identifies 731 foreign nationals still in Michigan prisons. Of these, 138 have served their minimum sentences and are being denied parole, most on the rationale that they are considered a risk to the community. Their crimes range from motor vehicle code violations, drugs and larceny to assault, sex offenses and murder. Twenty-nine are currently housed at higher security prisons, indicating they have exhibited behavior problems in prison. However, 75 percent are at lower security facilities. Some don't speak English well enough to participate in group therapy or educational programs or to communicate fluently at parole board interviews. Forty-four are from countries where repatriation may not currently be possible, including Cuba, Iraq, Vietnam, Laos and the former Yugoslavia.

The number of years these foreign nationals are past their earliest release dates ranges from .05 to 14.73. The median is 2.36 years. This group includes several people profiled in this report: Krzysztof Tubisz, who has been parole-eligible on an assault conviction for five years and will be deported to Poland; Chol Kon Kim, who has been parole-eligible on a murder conviction for over four years and will be deported to S. Korea; and Gabriel Christ, a German national who has been refused parole six times because he denies that he sexually assaulted his wife. **Just keeping these three men incarcerated past their minimum terms has so far cost Michigan taxpayers $427,500.**

An additional nine people sentenced to parolable life terms have served the time required by statute and are also eligible for release. These include two profiled here: Ali Sareini, who has been parole-eligible on a second-degree murder conviction for more than seven years and will be deported to Lebanon and Delfino Moreno, a Mexican national who has been eligible for parole on his second-degree murder conviction since 1993. **Just keeping these two men incarcerated since they became parole-eligible has so far cost Michigan taxpayers $620,000.** Another fourteen people who have served at least 15 years for drug delivery may also be eligible for parole, depending on their individual circumstances.

Another 121 foreign nationals will become eligible for parole in 2006. Parole decisions have already been made in 33 of these cases. Parole was granted in 23; it was denied for "risk to community" in 10. Another 86 will become eligible in 2007.

The decision whether to continue the incarceration of foreign nationals is more complex than might first appear. The cost savings of deportation must be balanced against the social value of requiring those who have committed crimes against Michigan citizens to serve their punishment under Michigan law. But how should that value be defined? Numerous questions arise:

- Should some people, such as non-violent offenders, even be required to serve their minimum prison terms or should they be turned directly over to immigration authorities?
- Even for assaultive and sex offenses, where victims might understandably demand a measure of American punishment, should people who will be deported ever be kept once they have served their minimum sentences and become eligible for parole?
- How do Michigan citizens benefit from having someone who is five years past his earliest release date continue to sit in a Michigan prison instead of being returned to Poland, Lebanon, Korea

or Mexico? Is the Michigan parole board responsible for protecting the citizens of other countries from possible future harm?

- How often do judges impose relatively short minimum sentences in order to save tax dollars in the belief that the parole board will release people for deportation?
- What role should the person's conduct in prison play in deportation cases?
- For various reasons, some people eligible by law for deportation do not actually get removed from the U.S. How certain must the parole board be that someone will actually be deported? Should someone who has served his minimum sentence be kept in a Michigan prison for years because a country like Cuba will not take him back?
- Should we be doing more, under international treaties, to return people who have not finished their minimum sentences to their home countries so they can serve their time there?
- Where no transfer treaties exist, should we commute sentences in order to make people like Kinnari Sutariya (see profile below) eligible for deportation?

All these questions bear thoughtful examination. And the case of each incarcerated foreign national should be given careful individual consideration. To help ensure that this occurs, Senator Michael Switalski (D., Roseville) has introduced SB 1008, which would require that:

"A prisoner who is an alien and who is subject to an order of deportation upon release from incarceration shall be interviewed by 1 member of the parole board each year until the prisoner is paroled or discharged."

While this process would not require that any particular prisoner be released, it would certainly focus the parole board's attention on the question whether Michigan taxpayers have anything to gain by continuing to imprison non-citizens who might just as easily, and far more cheaply, be returned to their countries of origin.

Barbara R. Levine
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Who exactly is deportable?

By Maia Justine Storm, J.D.

Michigan prisoners who are citizens of other countries have a second bureaucracy to encounter besides the MDOC: DHS, or the Department of Homeland Security. Only those who became naturalized citizens before their conviction can be sure of escaping its grasp. The process starts with an interview by an agent from a DHS subdivision, the Bureau of Immigration and Customs Enforcement (BICE), usually during initial processing at Reception and Guidance. Some prisoners have never been legal in this country; some have been legal at one time, but have overstayed their visas; some have obtained legal permanent residency ("green cards"). BICE is interested in all such "criminal aliens," and will put detainers in their file. This detainer is an immigration hold, so when prisoners are discharged, either by parole or by serving their maximum, immigration takes them immediately into custody.

When these prisoners see an immigration judge, most will be charged as "aggravated felons". This is a term specific to immigration law; it is not found in criminal statutes. Defined in the federal statute INA § 101 (a) (43) [Immigration and Naturalization Act], it covers roughly 50 crimes and also covers attempts and conspiracy.

Aggravated felonies include: firearms trafficking; drug trafficking; possession of over 5 grams of cocaine base; murder; rape; sexual abuse of a minor; money laundering over $10,000; fraud or tax evasion if the amount was over $10,000; and the following crimes for which a person receives a sentence of one year or more, whether served or not: theft; burglary; a crime of violence; obstruction of justice; forgery; trafficking in stolen vehicles with altered VINs; certain gambling crimes, if a second conviction.

Because there are no court-appointed attorneys in Immigration Court, itself a creation of the Department of Justice and the DHS, many prisoners do not have the financial resources to secure legal representation. In any event, aggravated felons have very few remedies to pursue. These include getting their criminal case overturned; getting a full gubernatorial or presidential pardon; successfully claiming U.S. citizenship through a parent. Some aggravated felons may be eligible for waiver relief, depending on the individual circumstance; some may be able to apply to have their removal stayed because of the political situation in their home country. Although difficult to win, a Convention Against Torture (CAT) claim may be filed with the Court, if a prisoner can show the possibility of being tortured upon removal.

In general, however, most state prisoners who are doing a minimum of one year for an aggravated felony can count on being ordered removed to their home country.

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Is Removal Possible during Incarceration?

The United States has treaties with many foreign countries that allow for the transfer of prisoners. In 1980, Michigan enacted a statute (MCLA 791.265) authorizing the governor or designee to approve a prisoner for transfer to a prison in his/her home country. The MDOC has established requirements for a prisoner to be eligible for transfer (Operating Procedure OP-BCF-34.03) This is one avenue to explore for prisoners who are not parole eligible. An alternative option for those with long sentences is commutation. Commutation does not expunge the underlying crime, but makes the prisoner available for detention and removal.

BICE does not, on its own initiative, remove people who are still imprisoned for their conviction, although it can and certainly does remove people who are on parole, supervised release, probation, or simply under threat of future arrest or imprisonment. However, immigration law does permit governors to ask the Attorney General to remove an imprisoned alien, if he or she is doing time

for a nonviolent crime, excluding any of the following offenses: alien smuggling or harboring; drug trafficking; firearm trafficking; certain child pornography crimes; certain crimes involving national defense. INA § 241(a)(4)(b)(i)(ii). This is a possibility that apparently has gone unexplored in Michigan.

Parole Board Considerations

Parole Board members do not seem fully aware of the consequences of an immigration detainer. They may approve a parole placement in the community with a family member, when, for example, an aggravated felon from Mexico or Ghana or the Czech Republic is going to go straight to immigration detention and then back to his/her home country. Or they may deny parole – without realizing that approval would mean removal of the parolee from the United States.

Only those prisoners from countries that no longer exist (Yugoslavia); that have no repatriation agreement with the United States (Viet Nam, Laos); that no longer have any records confirming the individual's identity; or that are currently dysfunctional (e.g. Iraq, Somalia), will not be removed from the United States. These individuals are given a post-order custody review after 90 days in detention to determine if they can be safely released into the community until such time as removal becomes possible.

Often BICE is resistant to releasing such detainees, especially if they have a long criminal history. The Supreme Court has consistently ruled that indefinite detention, defined as six months without a removal date in the reasonably foreseeable future, is unconstitutional (e.g. *Zadvydas v. INS*, 121 S. Ct. 2491) This dilemma is resolved by the ability of BICE to condition release as tightly as it chooses, by, for example, requiring the detainee to get mental health or substance abuse therapy and reporting to an immigration officer on a frequent basis. Those who violate their supervision conditions may be arrested and returned to detention.

In most cases, however, parole means removal to the home country as soon as travel documents are secured. In fact, if the detainee was illegal in this country at the time of incarceration, he or she will be removed by an administrative order and will not even see an immigration judge.

An examination of this entire process reveals several ways to open up prison beds and save taxpayer money.

1. The Parole Board needs to establish a liaison with the BICE office in Detroit, so information about individual prisoners can be shared and members can become comfortable with the process. Consequently, when prisoners with existing Removal Orders have done their minimum time, and are from countries currently taking back their nationals, the Parole Board should grant their release.

Those from countries not currently accepting removals should be looked at on a case-by-case basis. Some Cubans, for example, **will** be accepted back by Castro because of a limited list generated in the 1980s, even though Cuba and the United States do not have a general Repatriation Treaty. It would be useful for the Parole Board to know if any Cubans currently in the MDOC are on this list.

2. When qualified prisoners request a transfer to their home country, and their home country accepts them, the MDOC should promote the transfer.

3. The Governor should appoint an independent panel to review <u>all</u> alien prisoners, making recommendations for commutation and culling those who are eligible for removal before serving their entire sentence. The Governor should then request their removal. If authorizing legislation needs to be passed to facilitate these removals, the Governor should make this request of the legislature.

Gabriel Christ, No. 285326

Home Country: Germany

Offenses: Criminal sexual conduct, 3rd degree: 2 - 15 years

Assault with intent to do great bodily harm: 1 - 10 years

Earliest parole date: Nov. 18, 2000

Although his crime has been described as situational by state screeners and he would be deported to Germany upon parole, 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 59 years old and would be immediately detained by immigration for removal to Germany.

Nevertheless, the parole board has turned Christ down for parole six times, four times for 12 months, once for 18 and, most recently, for 24 months. Board decisions 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 to treatment because he denies committing a sexual offense.

Now more than five 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."

Ali Hassan Sareini, No. 203519

Home country: Lebanon

Offense: Second-degree murder

Sentence: Parolable life

Earliest parole date: Nov. 24, 1998

The judge deliberately imposed a sentence that made Sareini eligible for parole in 10 years because he knew Sareini would be deported. The board, however, continues to deny release even though Sareini has completed many prison programs and psychologists have noted his maturity.

Ali Sareini came to the United States when he was nine years old. His family emigrated from Lebanon and settled in Dearborn. Sareini had no behavior problems as a youth and graduated from high school. However, in February 1984, when Sareini was 19, he and a co-defendant robbed a gas station and Sareini killed the attendant.

Sareini fled to Lebanon but returned to the States in late 1985. No charges were pending against him at the time and he joined the Army, serving in the Airborne

Division as a paratrooper. Stationed at Fort Bragg, N.C. until his arrest in 1988, Sareini also completed two years of a bachelor's degree in economics.

Sareini pled guilty to second-degree murder. Under sentencing guidelines, the judge had the option of imposing a minimum sentence as high as 25 years or a life term that would make Sareini eligible for parole after serving 10 years. Recognizing that Sareini would be immediately deported upon release, the judge chose parolable life expressly to give the parole board the chance to exercise its discretion. He noted on the judgment of sentence that he would have no objection to parole.

A Department of Corrections psychologist who evaluated Sareini in 1989 concluded that he had matured a great deal since the offense and had high academic achievement and intellectual ability. Sareini has lived up to that assessment. He completed his bachelor's degree and several vocational courses and tutors prisoners working to earn their GEDs. An independent psychologist observed in 1998 that Sareini's offense had resulted from youthful impulsivity. He concluded that Sareini's assumption of responsibility and lack of a pattern of criminal behavior indicated a low risk of recidivism.

Sareini himself says he was "a stupid ignorant young man who thought the world owed him the good life just because he was born and came to America." He continues, "I feel a great sense of shame, not just for what I did more than 20 years ago, but for what I could have done with my life." Regarding the INS detainer lodged in 1997, Sareini notes, "The older I get the harder it will be for me in Lebanon. I am 41, and the disadvantages I have from being incarcerated for so long will not be lessened by adding old age to them."

Krzysztof Tubisz, No. 206435

Home country: Poland

Offense: Assault with intent to do great bodily harm

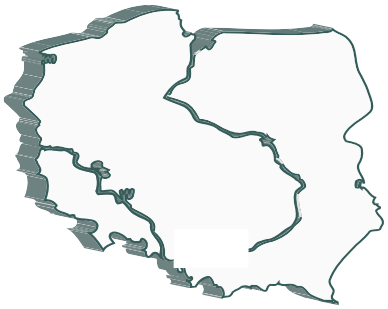
Sentence: 3½ - 15 years

Earliest parole date: Aug. 25, 2001

Although Krzysztof Tubisz has been parole-eligible for nearly five years, has extensive health problems and has a final order for deportation to his native Poland, the parole board continues to deny him release.

Krzysztof Tubisz moved with his family from Poland to the United States in 1973 when he was nine years old. He has a congenital heart condition which required three major surgeries when he was in his teens. Because of his many health problems and frequent hospitalizations, he rarely held a conventional job but worked in his family's businesses from a young age.

In 1989, Tubisz was convicted of voluntary manslaughter for stabbing to death a man with whom he had lived for six years. He was released in 1994 after serving his five-year minimum sentence and successfully completed his parole.



In 1998, Tubisz was involved in an altercation in a Royal Oak bar with a former lover who, Tubisz claimed, took clothing, electronic equipment and $1,500 in cash from his home. After the initial scuffle, Tubisz approached the man from behind and cut his face. The cut was superficial and the man required no medical attention. Because of his prior offense, however, the judge sentenced Tubisz to 3½ - 15 years in prison.

Tubisz successfully completed the year-long Assaultive Offender Program in August 2000. The therapist said he made significant progress and accepted responsibility for his offense.

Also in 2000, Tubisz had a pacemaker implanted

due to complete heart blockage. Since then, it has been replaced twice. Tubisz has several appointments with medical specialists each year, not only to monitor his heart condition but for other health problems, including diabetes. He takes numerous medications.

When Tubisz became eligible for parole in 2001, his score on the parole board's guidelines indicated "high probability of release," but the board continued him in prison for 12 months. It cited his "history of violent relationship behavior" and found, despite his positive therapy report, "no evidence documented in his file to demonstrate that he has gained meaningful insight into his violent criminal behavior."

Tubisz continued participating in treatment programs, completing courses in anger management and domestic violence prevention. Nonetheless, following each of his next three parole interviews the board continued his incarceration for an additional year.

In September 2004, just one month into his fourth continuance, Tubisz had an immigration hearing in prison and the judge signed a final order of deportation to Poland. Believing Tubisz would be released within 30 days, his mother and brother flew to Poland to find an apartment for him.

The board re-interviewed him in March 2005. In April, it decided to continue his incarceration again, until at least August 2006.

Delfino Moreno, No. 173211

Home country: Mexico

Offense: Second-degree murder

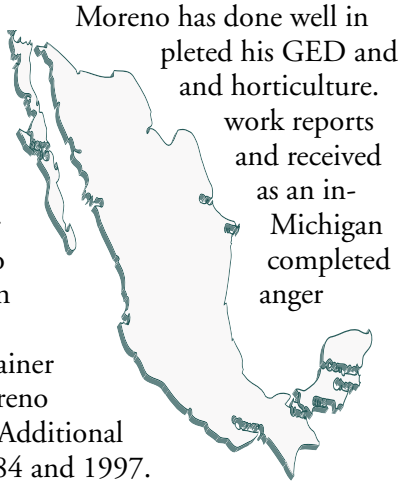
Sentence: Parolable life

Earliest parole date: Dec. 6, 1992

Even though the sentencing judge supports release, saying Moreno has served adequate time in prison, and though his prison record has been excellent and he has completed many programs, the board continues to deny parole.

Delfino Moreno was 13 when his family left Mexico for West Michigan. He had difficulty adjusting and a series of property offenses led to repeated contacts with the juvenile court and one adult conviction for attempted breaking and entering.

In 1982, at age 17, Moreno was charged with killing a man who was found stabbed and bludgeoned in a car. Moreno has consistently maintained his innocence but was convicted at trial of second-degree murder, in part on the testimony of a 28-year old co-defendant who pled guilty to manslaughter. The co-defendant was sentenced to prison for 10-15 years and released in 1994. Moreno was sentenced to a life term that made him eligible for parole after serving 10 years.



Now age 40, Moreno has done well in prison. He completed his GED and courses in electronics and horticulture. He had excellent work reports at a variety of jobs and received 2,200 hours of training as an industrial fabric cutter for Michigan State Industries. He also completed group counseling and an anger management program.

An immigration detainer was first filed when Moreno was still awaiting trial. Additional notices were filed in 1984 and 1997. If released, Moreno would be immediately deported and live with a brother in Mexico. At Moreno's request, his sentencing judge – Hon. Calvin L. Bosman of the Ottawa County Circuit Court – told immigration officials in a 2000 letter that he believed Moreno "has served adequate time in the state prison for his crime and nothing more will be gained for either him or the people of the State of Michigan by continuing his incarceration."

However, the parole board apparently disagrees. After interviewing Moreno in 1992 and 1997, it issued notices stating that it had "no interest" in proceeding in his case. In 2002, the board did not even see Moreno personally. It simply reviewed his file, then continued his incarceration for another five years.

Hanna Nasr, No. 210741

Home Country: Canada

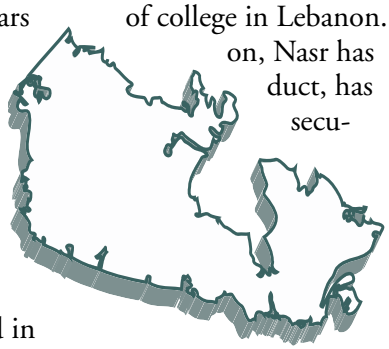
Offenses: Conspiracy to deliver and delivery of 650 grams of heroin.

Sentence: Parolable life

Earliest parole date: Sept. 1, 2006

Hanna Nasr was found guilty of trying to sell a kilo of heroin to an undercover officer in 1989. He received two life sentences under Michigan's mandatory 650 drug lifer law, but was eligible for parole in 2004, until the parole board amended the date.

Born in Lebanon, Nasr went to Canada in 1976 and became a Canadian citizen. He worked steadily at several jobs, including as an assembly worker for the Chrysler Corporation in Windsor, Ontario, and as a punch press operator. His pre-sentence report states that he has no prior convictions -- adult or juvenile. He completed high school and two years of college in Lebanon. Since coming to prison, Nasr has had only one misconduct, has been housed in a low security level prison and completed a building trades program.



Because a Final Administrative Order of Removal was entered in 2001, upon his release Nasr will be immediately deported to Canada. He maintains family ties with a cousin in Ontario who visits him monthly. His brother, brother-in-law and a nephew have offered him a home and support when he returns.

In December, 2003, the parole board notified Nasr that, based on the trial court's finding of cooperation with law enforcement, he would be parole-eligible on March 1, 2004. On April 23, 2004, the board voted preliminary interest in proceeding to a public hearing and ordered a psychological report. A month later, although no 2004 psychological report exists in his department files, the board changed its mind and voted "no interest." Nasr's next review was scheduled for 2009. Then, in February 2006, the board notified Nasr that it had recently reviewed his sentence and determined that he had another conviction for a serious crime that actually made his first parole eligibility date Sept. 1, 2006. There is no indication on what crime the board is relying.

Chol Kon Kim, No. 234936

Home Country: South Korea

Offense: Second-degree murder

Sentence: 10-60 years

Earliest parole date: Dec. 3, 2001

Although Kim has been parole-eligible for more than four years, has been rated as a good parole risk and will be immediately detained for deportation to South Korean, the board continues to keep him in prison.

Chol Kon Kim came to the United States from South Korea with his family in 1985, when he was 27. He spoke very little English and worked as a cook in Korean/Chinese restaurants. Although he had no criminal record, Kim did have a history of mental illness that resulted in violent outbursts. In the spring of 1991, he spent two weeks in a Grand Rapids psychiatric hospital. He was diagnosed with schizophreniform disorder, alcohol abuse and intermittent explosive disorder and placed on various medications.

Kim was befriended by a woman named Lee Buitehuis who allowed him to sleep in her basement and gave him occasional work at her laundromat. On Sept. 19, 1991, Kim argued with Ms. Buitehuis about money. He was drunk and on medication. When she threatened to call the police if he didn't leave, he strangled her. Kim was convicted of second-degree murder and sentenced to serve 10-60 years.

When Kim first went to prison his explosive behavior frequently got him into trouble. In the first three years, he accumulated 10 misconduct citations, mostly for fighting and assaults on staff. However, from September 1994 to July 1995, Kim participated in a residen-

tial treatment program that apparently had a dramatic impact. Subsequent reports from his work and housing unit are quite positive.

Because Kim cannot speak or write English well enough to communicate effectively, he has been excused from completing a GED and from participation in Assaultive Offender Therapy. However, his score on the MDOC's parole guidelines indicates that, statistically, he is a good risk for release. In computing the score, parole board staff said the crime was situational and not likely to happen again.

Kim is now 47 years old. When he leaves prison, he will be immediately detained by immigration for deportation to South Korea. He has been eligible for parole for more than four years. Nonetheless, the parole board continues to deny release. Although the board did not provide Kim with an interpreter at his 2004 parole interview, it concluded: "Inmate minimizes the crime and there is nothing in his file to indicate that he has gained insight into the nature of his assaultive behavior. The parole board lacks the reasonable assurance necessary to cause a release at this time." His next review is scheduled for December 2006.

Kinnari Sutariya, No. 316863

Home Country: India

Offense: Second-degree murder

Sentence: 11 - 20 years

Earliest parole date: Jan. 21, 2011

Shortly after her arranged marriage to a man she barely knew, Sutariya killed her new husband because, she said, he persistently coerced her into sexual activities she found uncomfortable and humiliating.

Kinnari Sutariya was 20 years old in January 2000, when she came to the United States from India with the husband she'd married only a few weeks earlier and his family. She knew no one else.

She had married Ramesh Sutariya in a civil service in India a year previously, talked to him several times on the telephone, but had not lived with him until she married him in a religious ceremony immediately before moving to the United States. Because it was a traditional arranged Indian marriage, she met him only once before they were engaged.

Twelve days after the couple came to the United States, the marriage ended in disaster. Sutariya said her new husband had forced her into increasingly frequent sexual activities since their marriage, including sodomy and fellatio, in which she felt very uncomfortable participating. After trying to thwart another sexual advance, Sutariya stabbed her husband to death.

She has a bachelor of science in microbiology with no previous criminal behavior. A psychologist with the Michigan Department of Corrections who counseled her because of some initial adjustment difficulties said he believes she committed the crime in "a brief episode which is dystonic (incompatible) to her personality." He said Sutariya is not a danger to society.

Since she came to prison in 2000, Sutariya has done well. She has no prison misconducts and many letters and notes of commendation from prison staff.

She is a prize-winning artist who writes poetry which has been published in prison literary magazines. She has taught Yoga to other prisoners and has taken classes in business education technology for which she now tutors. She participated in group therapy on dealing with domestic violence.

Sutariya has currently served more than six years. The sentencing guidelines recommended a minimum term between 7 ½ and 12 ½ years. Because the judge imposed a minimum of 11 years, her earliest release date is Jan. 21, 2011. Since India has no prisoner transfer treaty with the United States, she would need a commutation from the governor to be released before then. Whenever she is released, she will be immediately detained by immigration for removal to India.