

final minutes

Michigan Law Revision Commission Meeting

Thursday, June 20, 2013 ▪ 11:30 a.m.

Room 810 ▪ Farnum Building

123 W. Allegan ▪ Lansing, Michigan

Members Present:

Richard McLellan, Chair
Tony Derezinski, Vice Chair
Representative Tom Leonard
John Strand
George Ward
Judge William Whitbeck

Members Absent and Excused:

Senator Vincent Gregory
Representative Andrew Kandrevas
Senator Tonya Schuitmaker

Others Present:

Carl Reynolds, CSG Justice Center
Andy Barbee, CSG Justice Center
Keith Barber, Legislative Corrections Ombudsman
Connie Burgess, Office of Representative Joe Haveman
Susan Cavanagh, Office of the Legislative Council Administrator/MLRC Clerk
Bob Ciaffone, Political Activist
Beth Clement, Office of the Governor
Marshall Clement, CSG Justice Center
Clifford Flood, State Bar of Michigan
Phil Goodrich, Office of Representative Leonard
Kathy Hagenian, MI Coalition to End Domestic & Sexual Violence
Dan Hayes, MDOC
Dave Hodgkins, Office of Representative John Walsh
Richard Jerome, Pew Charitable Trusts
Chris Klaver, Gongwer News Service
Barbara Levine, Citizens Alliance on Prisons & Public Spending (CAPPs)
Russ Marlan, MDOC
John Mulcrone, Senate Democratic Counsel
Mike Pendy, PAAM
Jessica Peterson, MDOC
Chad Schmucker, State Court Administrator - SCAO
Matt Schueller, Office of Representative Greg MacMaster
KC Steckelberg, Prosecuting Attorney Association of MI
Bruce Timmons
Dawn VanHoek, State Appellate Defender
Ellen Whelan-Wuest, CSG Justice Center
Jane Wilensky, MLRC Executive Secretary
Anne Yantus, SADD

I. Convening of Meeting

Chairperson McLellan called the meeting to order at 11:40 a.m.

II. Roll Call

The roll was taken and absent members were excused. A quorum was present.

III. Approval of February 21, 2013 Meeting Minutes

The Chair asked for a motion to approve the minutes of the February 21, 2013 meeting. No corrections or additions were offered. **Commissioner Derezinski moved, supported by Commissioner Ward, to adopt the minutes of the February 21, 2013 Michigan Law Revision Commission meeting. The minutes were unanimously approved.**

IV. Approval of May 22, 2013 Meeting Minutes

The Chair asked for a motion to approve the minutes of the May 22, 2013 meeting. Ms. Wilensky asked that the minutes reflect that Bruce Timmons was at the meeting and be added to the list of attendees. No other corrections or additions were offered. **Commissioner Ward moved, supported by Judge Whitbeck, to adopt the minutes of the May 22, 2013 Michigan Law Revision Commission meeting. The minutes were unanimously approved.**

V. Criminal Sentencing and Procedures Project

The Chair offered comments regarding the Criminal Sentencing and Procedures project and called on Commissioner Derezinski to provide more details. Commissioner Derezinski highlighted the efforts made so far and explained the process going forward. He emphasized that the project would include extensive involvement with all stakeholders. He then called on Mr. Carl Reynolds of The Council of State Governments to begin the kick-off presentation. A copy of the CSG presentation is attached to these minutes.

A future meeting schedule was discussed with possible meetings in September, November, January, and March. Commissioner Derezinski noted that the Commission seeks collaboration and input with all stakeholders and assured everyone that there will be ample opportunity to ask questions.

VI. Public Comment

The Chair asked if there were any public comments. There was none.

VII. Adjournment

Having no further business, the meeting was adjourned at 1:25 p.m.

(Approved at the September 24, 2013 Michigan Law Revision Commission meeting.)





Michigan's Sentencing and Justice Reinvestment Review

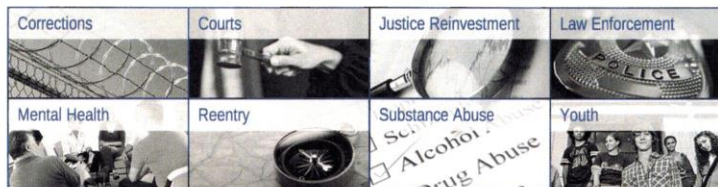
Kickoff Meeting

June 20, 2013

Carl Reynolds, Senior Legal & Policy Advisor
Andy Barbee, Research Manager
Ellen Whelan-Wuest, Policy Analyst
Marshall Clement, Division Director

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- National non-profit, non-partisan membership association of state government officials
- Engages members of all three branches of state government
- Justice Center provides practical, nonpartisan advice informed by the best available evidence



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Our Justice Reinvestment Work and Funders

Justice Reinvestment

*a data-driven approach to reduce corrections spending
and reinvest savings in strategies that can
decrease recidivism and increase public safety.*



BJA
Bureau of Justice Assistance
U.S. Department of Justice



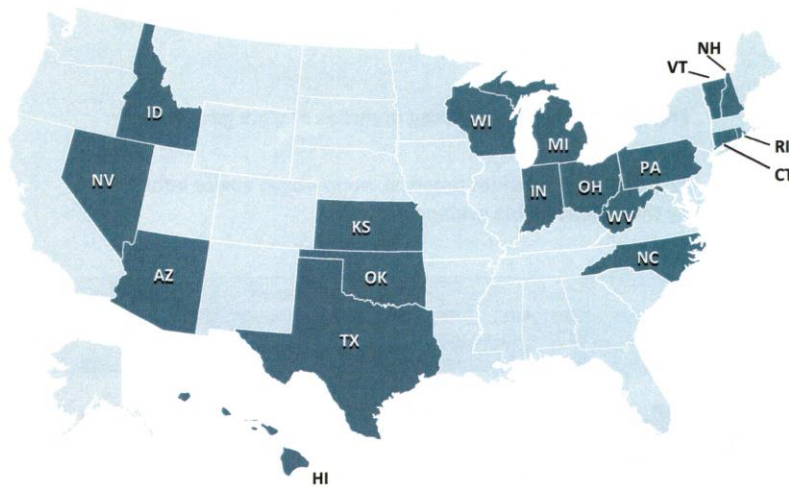
THE
PEW
CENTER ON THE STATES

Public Safety
Performance
Project

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CSG Justice Reinvestment States to Date



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Previous Work in Michigan



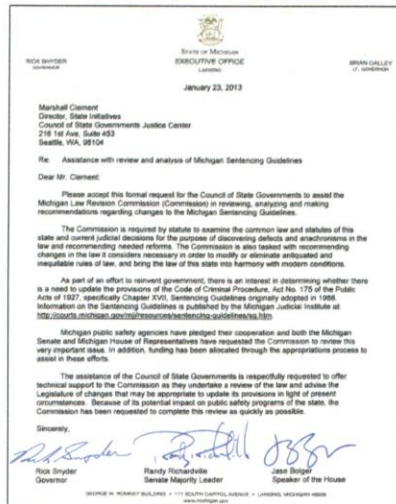
Justice Reinvestment Initiative (2008 - 2010)

- ✓ Formed working group, met with 50+ stakeholders and organizations
- ✓ Project focused on:
 - Law enforcement resources
 - Recidivism reduction strategies
 - Reducing spending on corrections

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State Leaders Request Assistance with Sentencing and Parole Review

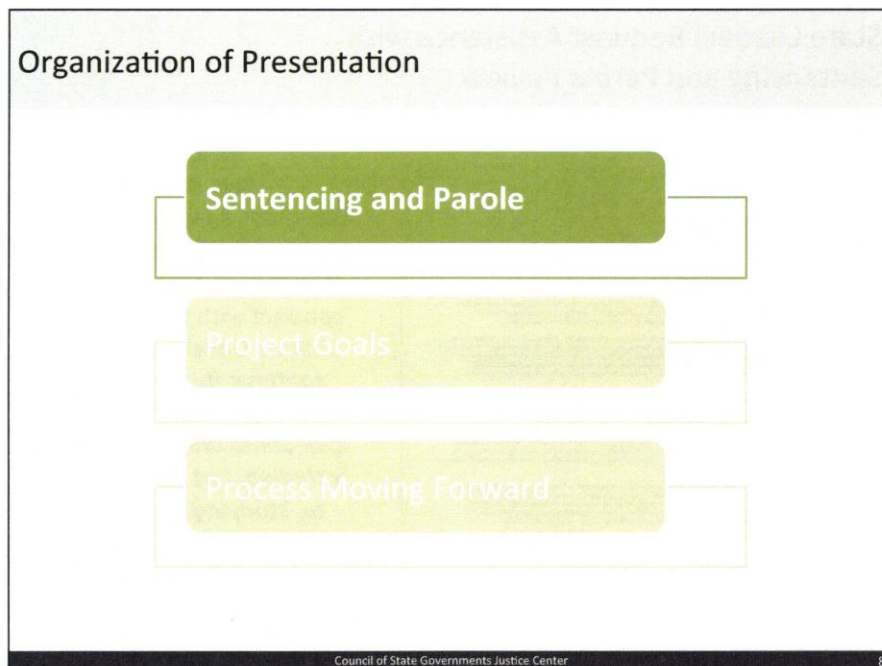
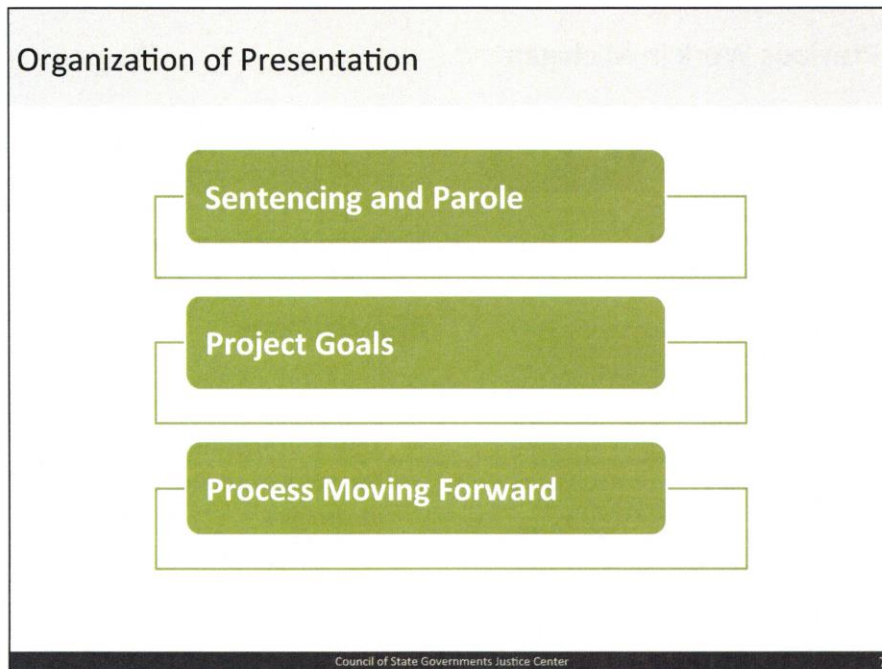


SB 233 Sec. 351:

The funds appropriated in part 1 for the legislative council shall be used for a contract with the Council of State Governments to ***continue its review of Michigan's sentencing guidelines and practices, including, but not limited to, studying length of prison stay and parole board discretion.***

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Long History of Indeterminate Sentencing

1850	1908	1963	1972
<p>Const. 1963, Art. IV, Sec. 45.</p> <p>"The legislature may provide by law for indeterminate sentences, so called, as a punishment for crime..."</p>	<p>MCL 769.8(1)</p> <p>When a person is convicted for the first time for committing a felony and the punishment . . . may be imprisonment . . . , the court imposing sentence shall not fix a definite term of imprisonment, but shall fix a minimum term...., The maximum penalty provided by law shall be the maximum sentence.</p>	<p>People v. Lorenzen (1972); People v. Cook (1907)</p> <p>The indeterminate sentence act aims to provide greater protection to law-abiding members of society by "convert[ing] bad citizens into good citizens" and encouraging imprisoned offenders to reform themselves during incarceration</p>	

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Beginning of the Modern Era, *People v. Tanner*

1972
<p>The "Tanner rule " limited the length of an offender's minimum sentence term to not more than two-thirds of the statutory maximum sentence, a significant check on judicial discretion.</p> <ul style="list-style-type: none">- The rule made sense to the legislature, now codified at MCL 769.34(2)(b) <p><i>Tanner</i> involved a 14 year 11 month minimum sentence and a 15 year maximum sentence. There were many similar cases.</p>

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Study Finds Disparities in Sentencing




SENTENCING IN MICHIGAN, Report of the Michigan Felony Sentencing Project
July 1979 - Zalman, Ostrom, Guilliams, Peaslee

Geographical disparity in felony sentencing practices. <i>"...sentence a defendant receives is dependent, in part, on where he was sentenced."</i>	Racial disparity in felony sentencing practices.. <i>"...statistically different patterns in the sentencing of whites and non-whites."</i>
Custodial status of the individual impacted the probability of being incarcerated. <i>"... a rather invidious type of disparity."</i>	Asking for a trial increased the probability of being incarcerated. <i>"...oftentimes quite substantially."</i>

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Michigan Supreme Court Adopts Guidelines in 1983 Modeled on Judicial Norms



In 2001 (*People v. Hegwood*), the Court described the period from 1983-1998

"The effort reflected this Court's attempt to respond to unwarranted disparities in sentencing practices between judges. Thus, the very premise of the guidelines is that judicial discretion will be restricted to a certain degree."

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Legislature Moves Towards Adoption of Sentencing Guidelines By Passing HB 4782 (1994 PA 445)

1979 1983 1994 1998 2004 2013

Commission created and charged with developing sentencing guidelines. The Commission was directed to focus on the following:

Proportionality

- Account for seriousness of offense and prior record
- Reduce sentencing disparities

Public Safety

- Determine prison versus alternative sanctions

Impact to Resources

- State and Local

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Legislature Adopts Sentencing Guidelines – 1998 PA 317

1979 1983 1994 1998 2004 2013

☐ Minimum ranges based on recommendations by the Sentencing Commission and lawmakers

❖ “Truth-in-Sentencing” tied to enactment of sentencing guidelines.

❖ Commission ceased to function after enactment, and was formally repealed by 2002 legislation, along with purposes of guidelines.

Source: Deming, Sheila, “Michigan’s Sentencing Guidelines,” *Michigan Bar Journal* 79.6 (2000): 652-655.

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Robust Appellate Jurisprudence of Sentencing Guidelines

1979 1983 1994 1998 2004 2013

- ❖ **Validity** - separation of powers & jury trial
- ❖ **Applicability** - to probation revocation
- ❖ **Scoring** - errors & clarifications
- ❖ **Departures** – requirements & appellate review

Source: *People v. Babcock*, 2003; *People v. Garza*, 2003; *People v. Hendrick*, 2005; *People v. McCuller*, 2007.

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National Center for State Courts Analyzed 2004 Sentencing Data

1979 1983 1994 1998 2004 2013

NCSC Findings

- ☐ Comparatively restrictive guidelines
- ☐ Low rates of departure
- ☐ Geographical disparities persist
- ☐ One of four guideline states without a standing Commission
- ☐ Comparatively complex, e.g., high number of grid cells

Source: *Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States*, National Center for State Courts, 2008.

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Michigan's Guidelines Are Unique

☐ Highly Complex

- 1,032 potential cells into which an offender may fall. Determining the correct cell is based on a multi-dimensional scoring of many factors including offense characteristics and prior criminal record.

☐ Only address issues of "minimum" sentence

- Guidelines do not impact the maximum length of incarceration.

Source: Sentencing Guidelines Manual, Michigan Judicial Institute, June 2012.

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Michigan's Sentencing Guidelines Are Highly Complex

☐ There are nine different "classes" of offenses, each with its own grid.

☐ Regardless of the grid to which an offense belongs, a multi-layered *scoring* process is required to determine the correct cell within the appropriate grid.

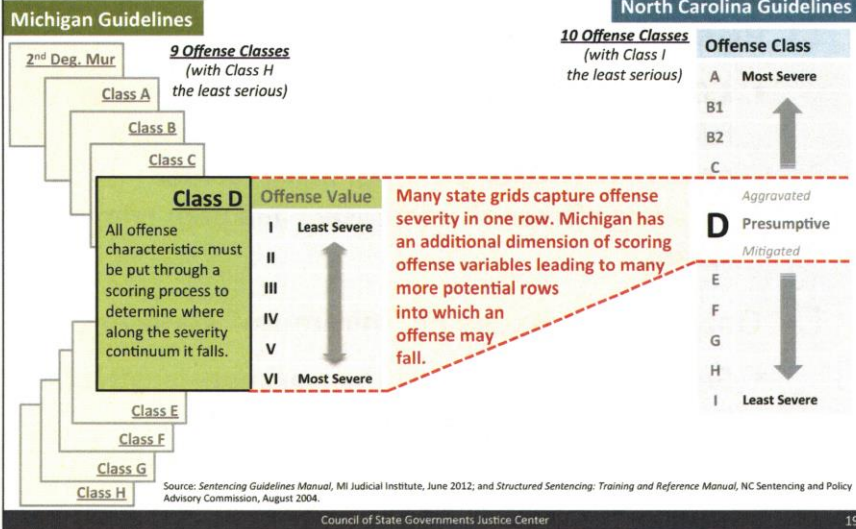
- Prior 10 years' criminal record
- Offense and offender characteristics (20 offense variables total; number considered depends on the type of offense – could be as many as 19 variables scored)
- Habitual offender status (prior felony convictions)

Source: Sentencing Guidelines Manual, Michigan Judicial Institute, June 2012.

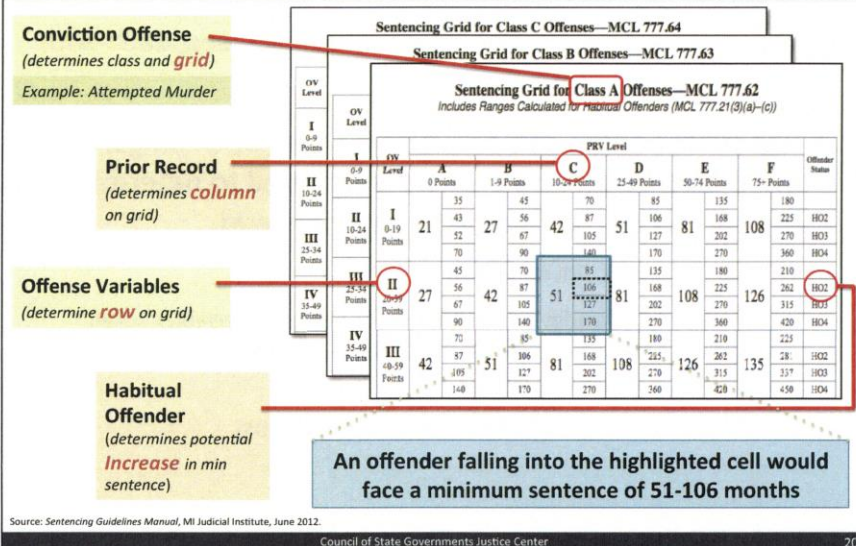
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In Handling Offense Characteristics, Michigan Is More Complex than Other States



Sentence Scoring: Determinants for Sentence Ranges



Three Types of Cells on Grids

Sentencing Grid for Class F Offenses

Example: Fraudulently obtaining Controlled Sub.

OV Level	PRV Level						Offender Status
	A 0 Points	B 1-9 Points	C 10-24 Points	D 25-49 Points	E 50-74 Points	F 75+ Points	
I 0-9 Points	3*	6*	9*	17*	23	23	
	3*	7*	11*	21	28	28	HO2
	4*	9*	13*	25	34	34	HO3
	6*	12*	18*	34	46	46	HO4
II 10-34 Points	6*	9*	17*	23	23	24	
	7*	11*	21	28	28	30	HO2
	9*	13*	25	34	34	36	HO3
	12*	18*	34	46	46	48	HO4
III 35-74 Points	9*	17*	23	23	24	29	
	11*	21	28	28	30	36	HO2
	13*	25	34	34	36	43	HO3
	18*	34	46	46	48	58	HO4
IV 75+ Points	17*	23	24	29	30	30	
	21	28	30	36	37	37	HO2
	25	34	36	43	45	45	HO3
	34	46	48	58	60	60	HO4

Intermediate Sanction

Any sanction other than prison or state reformatory
– May include probation and/or jail

Straddle

Cells where the sentence may be prison or intermediate sanctions

Prison

The presumed sentence is to prison. A lesser sentence would be considered a departure.

In both "straddle" and "intermediate sanction" cells, a sentence below the low end of the cell range is not considered a departure

Source: Sentencing Guidelines Manual, MI Judicial Institute, June 2012.

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Michigan's Sentencing Guidelines

Do not Impact Maximum Sentence Length

Hypothetical where an offender faces minimum of 5 years in prison...

Kansas: guidelines dictate maximum sentence and available time credits.

No less than 60 months w/ good time
Max sent = 71 months

No parole board, but offenders must "earn" their way to the minimum.

North Carolina: guidelines dictate minimum and maximum sentence.

Min sentence = 60 months
Max sent = 84 months

Michigan: guidelines dictate minimum sentence in most cases. The Parole Board controls most of the prison sentence.

Min sentence = 60 months

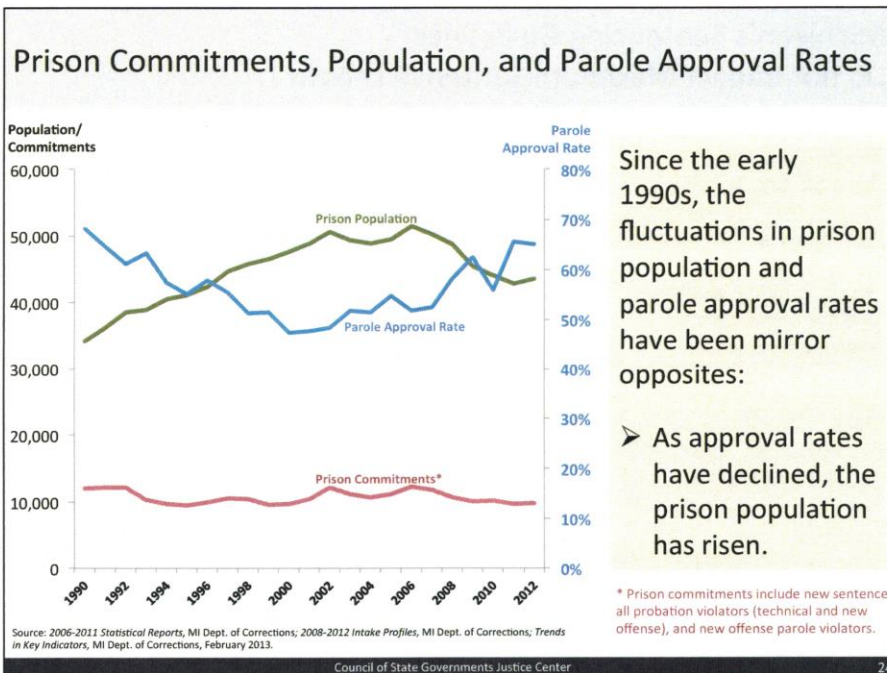
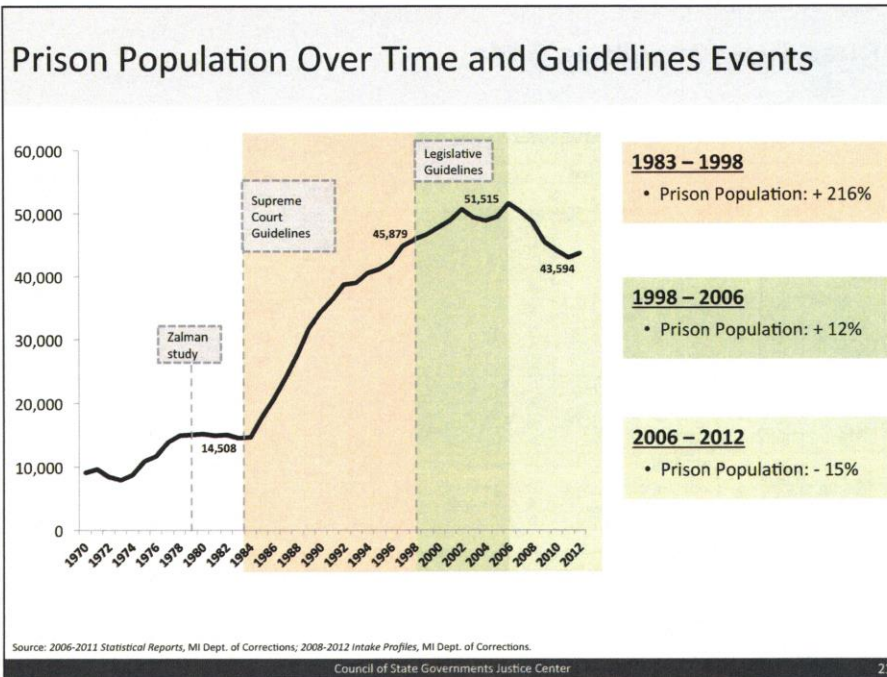
Parole board determines when released.

Max sentence = 180-240 months
(set in statute for specific offense)

Source: Sentencing Guidelines Manual, MI Judicial Institute, June 2012; Kansas Sentencing Guidelines Desk Reference Manual 2012, KS Sentencing Commission; and Structured Sentencing: Training and Reference Manual, NC Sentencing and Policy Advisory Commission, August 2004.

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Despite Complexity and Passage of Time, Research into Sentencing Guidelines Is Limited

- NCSC study is the only report relating to the sentencing guidelines since they were enacted into law 15 years ago.
- Unknowns about impacts of sentencing guidelines:
 - Have sentencing disparities continued since 2004?
 - Do the guidelines maximize public safety? Do they complement principles of effective supervision and recidivism reduction?
 - What are impacts to local and state resources?

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Organization of Presentation

Sentencing and Parole

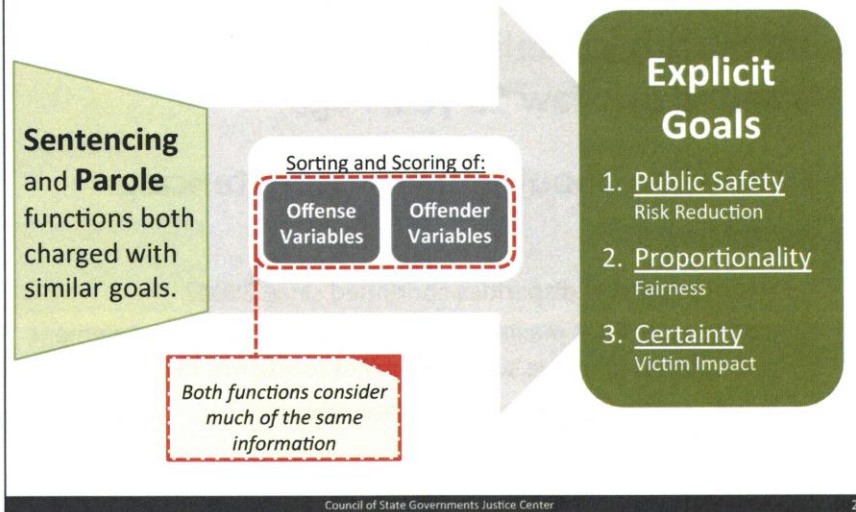
Project Goals

Process Moving Forward

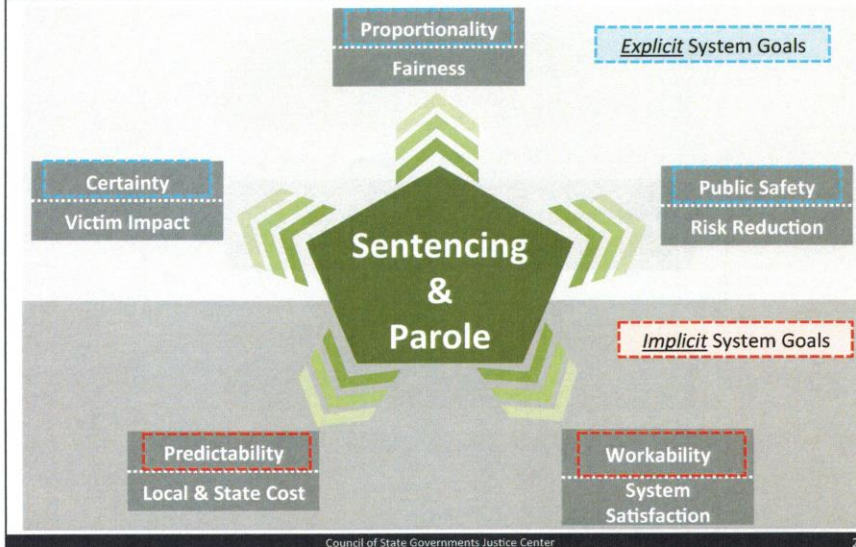
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Sentencing and Parole Are “Sorting” Decisions with Three Explicit Goals



In Addition to the Explicit Goals of Sentencing and Parole, Project Will Focus on Implicit Goals



Do Sentencing Guidelines and Larger Criminal Justice System Maximize Value for the Public?

Potential Research Questions:

System Goal	Question
Public Safety	Do the sentencing and parole decisions promote risk reduction?
Proportionality	Is there disparity in sentencing and time served for similar cases? If so, what are the causes?
Certainty	Are victims satisfied or frustrated with the uncertain portion of a sentence?
Predictability	To what degree are sentencing and parole decisions driving population trends?
Workability	Is the complexity of the sentencing system sufficiently advancing other goals to be worth the effort?

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Long-Term Trends Since 2008 Have Been Mostly Good, But There Are Some Concerning Signs

Generally positive trends in Michigan during recent years.

- ✓ Crime has been down, as well as arrests for serious offenses.
- ✓ Felony case filings and 'guilty' dispositions in the courts are down.

However...

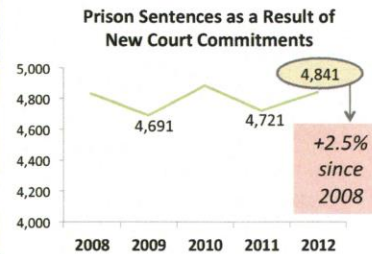
- ☐ Share of guilty verdicts resulting in a sentence to prison ticking upward.
- ☐ Increasing rate of failure and revocation to prison among probationers.

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Increasing Rate of Sentences to Prison Driving Increase in Admissions to Prison

Year	Felony Convictions	Prison Sentences	Prison % of Convictions
2008	58,113	11,292	19.4%
2009	55,592	10,702	19.3%
2010	53,422	10,831	20.3%
2011	50,862	10,287	20.2%
2012	50,833	10,547	20.7%
2008-12 % Chg	- 13%	- 7%	+ 7%



If the 2012 prison rate were 19.4% as in 2008, there would have been almost 700 fewer sentences to prison.

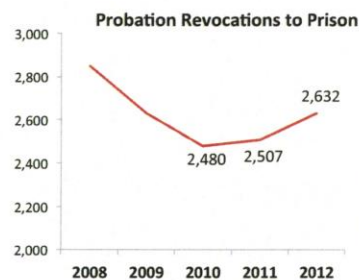
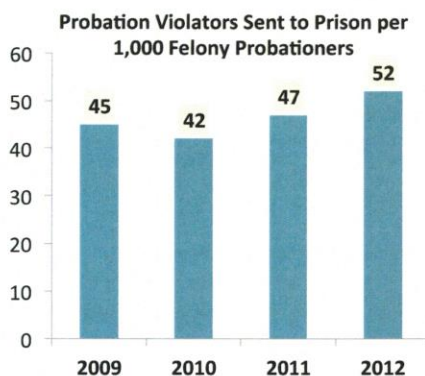
Source: Statistical Report Supplement, 2003-2011: Court Dispositions, MI Dept. of Corrections, December 2012; Statewide Dispositions – Fiscal Year 2012, Office of Community Alternatives, MI Dept. of Corrections, November 2012; 2006-2011 Statistical Reports, MI Dept. of Corrections; 2008-2012 Intake Profiles, MI Dept. of Corrections.

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Increasing Rate of Probation Failure Driving Increase in Admissions to Prison

Probation revocation rate increased almost 24% from 2010 to 2012.



Number of probation revocations to prison increased 6% from 2010 to 2012.

Source: 2006-2011 Statistical Reports, MI Dept. of Corrections; 2008-2012 Intake Profiles, MI Dept. of Corrections; Trends in Key Indicators, MI Dept. of Corrections, February 2013.

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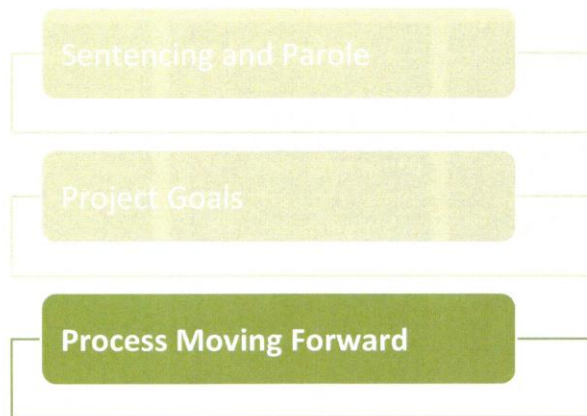
Does System Maximize Value? ...Some Early Indicators Are Available

System Goal	Question	Current Knowledge
Public Safety	Do the sentencing and parole decisions promote risk reduction?	Indications are that probation recidivism is on the rise.
Proportionality	Is there disparity in sentencing and time served for similar cases? If so, what are the causes?	Prior research and current anecdotes suggest disparity.
Certainty	Are victims satisfied or frustrated with the uncertain portion of a sentence?	We do not know, but plan on investigating.
Predictability	To what degree are sentencing and parole decisions driving population trends?	Sentencing contributes, but parole is major driver.
Workability	Is the complexity of the sentencing system sufficiently advancing other goals to be worth the effort?	Lots of appellate activity; not much user dissatisfaction detected.

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Organization of Presentation



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Project Integrity and Policy Objectives

Data driven analyses of sentencing:

- Disparity in sentencing
- Effectiveness of supervision

Ensure analyses reflect both state and local concerns:

- Use of jail and probation at the local level

Identify policies to:

- ✓ Make sentencing and parole decisions more cost-effective
- ✓ Retain truth-in-sentencing and increase certainty of time served
- ✓ Improve public safety by strengthening probation and parole supervision

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Accountability for the Process

Data

Justice Center synthesizes and conceptualizes the data that Michigan provides

- System dynamics
- Guideline scoring
- Risk reduction

Collaboration

Justice Center supports in convening state leaders to participate in active discussions

- Bipartisan
- Inter-branch
- Inter-disciplinary

Leadership

Michigan provides leadership and the Justice Center provides support

- Communication
- Policy adoption
- Sustainability

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Justice Center Data Requests Are Underway

Data	Source	Status
Crime and Arrest	State Police	Obtained
Criminal History	State Police	In Discussions
Court Dispositions	Judiciary; DOC	Requested
Jail	Kent and Jackson Counties; DOC	In Discussions
Community Corrections	Kent and Jackson Counties	In Discussions
Probation	Department of Corrections	Requested
Prison	Department of Corrections	Requested
Parole	Department of Corrections	Requested
Parole Board Decision-Making	Department of Corrections	Requested
Appellate Court Activity	Court of Appeals & Supreme Court	In Discussions

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Project Will Require Stakeholder Engagement



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Tentative Project Timeline

Dates	Activity
May – October 2013	Data Collection
June 20	MLRC Meeting – Kick off
June	Begin soliciting stakeholder input
July – October	Finish data collection & begin detailed data analysis
September	MLRC Meeting – Review Findings
September – October	Additional data analysis & meetings with stakeholders
November	MLRC Meeting – Review Findings
December 21, 2013	 at 
January 2014	MLRC Meeting – Review Findings
January – March	Model potential policy options
March 2014	MLRC Meeting – Discuss Policy Options

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Thank You

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