

final minutes

Michigan Law Revision Commission Meeting

Tuesday, September 24, 2013 ■ 12:00 noon
Room 405 ■ State Capitol Building
100 N. Capitol Avenue ■ Lansing, Michigan

Members Present:

Tony Derezinski, Acting Chair
Senator Vincent Gregory
Representative Andrew Kandrevas
Representative Tom Leonard
Senator Tonya Schuitmaker
George Ward
Judge William Whitbeck

Members Absent and Excused:

Richard McLellan, Chair
John Strand

I. Convening of Meeting

Acting Chairperson Derezinski called the meeting to order at 12:05 p.m.

II. Roll Call

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

III. Approval of June 20, 2013 Meeting Minutes

The Acting Chair asked for a motion to approve the minutes of the June 20, 2013 meeting. No corrections or additions were offered. **Representative Leonard moved, supported by Senator Schuitmaker, to adopt the minutes of the June 20, 2013 Michigan Law Revision Commission meeting. The minutes were unanimously approved.**

IV. Criminal Sentencing and Procedures Project

Acting Chair Derezinski presented background and explained the goal of the Criminal Sentencing and Procedures project. He then called on Mr. Carl Reynolds of The Council of State Governments to begin the presentation. A copy of the CSG presentation is attached to these minutes.

A period of question and answer followed. The Acting Chair announced that the next CSG presentation is expected in early December.

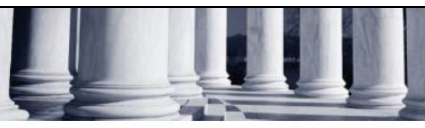

V. Public Comment

The Acting Chair asked if there were any public comments. Mr. Sean Bennett provided a written statement (attached) which was made available to the Commission members. Mr. Bennett requested that the Commission consider recommending the repeal of the drug corporation immunity statute. There were no other comments from the public.

VI. Adjournment

Having no further business, the meeting was adjourned at 1:45 p.m.

(Approved at the December 11, 2013 Michigan Law Revision Commission meeting.)



Sentencing and Justice Reinvestment Initiative

Michigan Law Revision Commission
September 24, 2013

Carl Reynolds, Senior Legal & Policy Advisor
Andy Barbee, Research Manager
Ellen Whelan-Wuest, Policy Analyst
Shane Correia, Program Associate

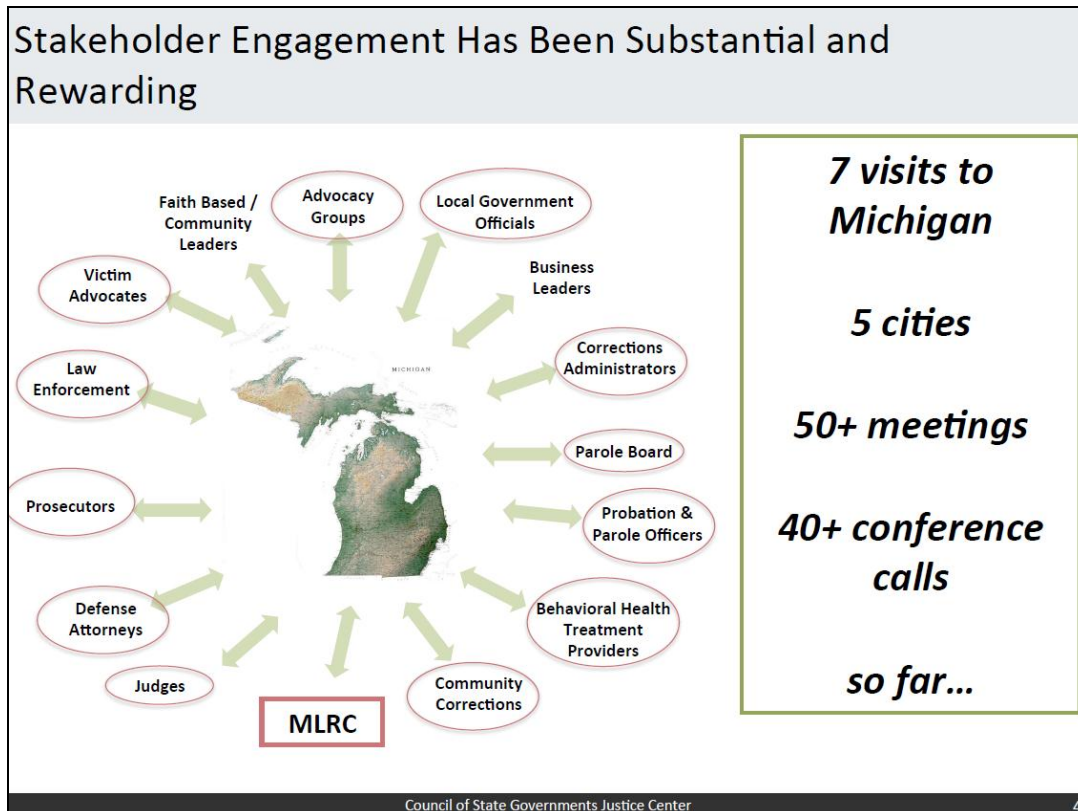
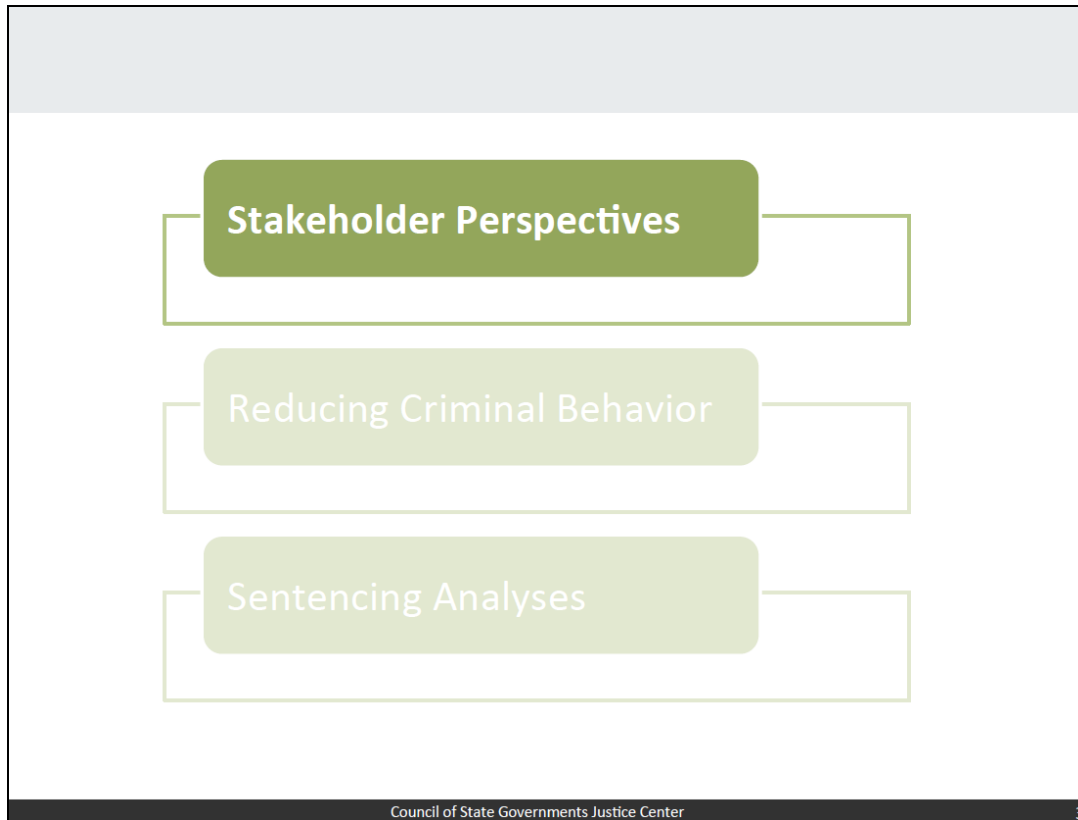
Overview of Presentation

Stakeholder Perspectives

Reducing Criminal Behavior

Sentencing Analyses

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Divergent Views of Michigan's Longer Lengths of Stay

Prosecutors see longer lengths of stay as the natural effect of a serious crime problem - a hardening population - and of the difficulty of getting to a prison sentence under the sentencing guidelines.

Defenders see an accumulation of increased penalties in amendments to the guidelines, increased maximums, harsh mandatory minimum terms, increased authority for consecutive sentencing, wide discretion for habitual and repeat drug offenders, and tough parole practices and policies.



Analyses: Reduce spending on corrections

Analysis of Difference in Time Served

Offense	Percent of convictions resulting in a prison sentence		Time served in prison (in months)		
	National (2009 report) (approximate data)	Michigan (2009 report) (approximate data)	National Average (2009 release)	Michigan Average (2007 release)	Michigan Minimum Sentence (2007 release)
Murder	89%	86%	147	142	139
Robbery	72%	77%	64	97	73
Sexual Assault	61%	63%	79	105	61
Aggravated Assault	43%	38%	42	64	49
Burglary	49%	38%	29	52	33

Source: FBI National Judicial Reporting Program, 2004 Civil Disposition Data & 2009 Prisoners Data; 2009 VIOG Annual Report; 2007 VIOG Michigan Data File

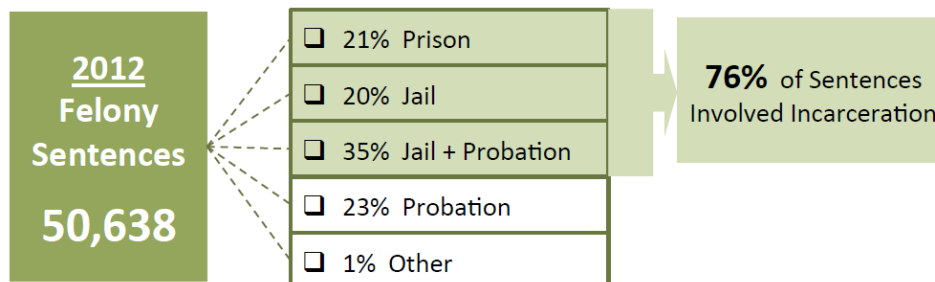
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Divergent Views of the "Short Sentence" Problem

Counties feel burdened by existing sentences to jail and fear the "shift and shaft" where the guidelines are concerned.

DOC feels ineffective when short sentences defeat their ability to provide appropriate programming sufficiently before ERD.

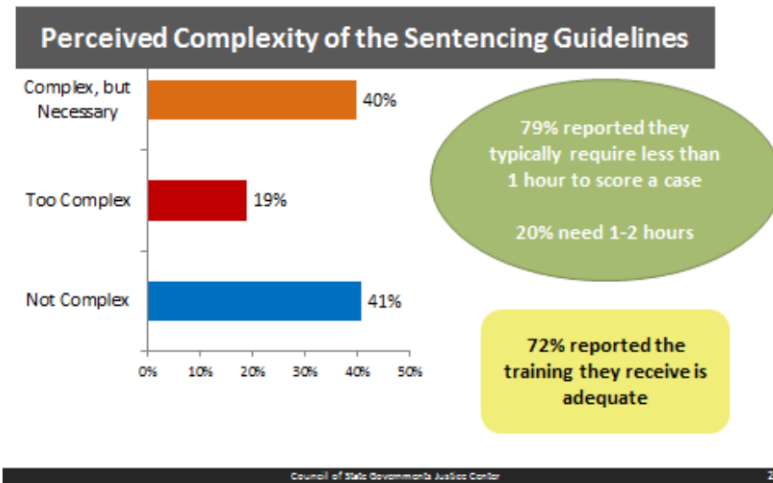


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Survey of Prosecutors Informs the Question of “Workability”

Almost 60% of Prosecutors Find the Guidelines Complex, But Most Feel the Complexity Is Necessary



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Divergent Views on Disparities in Sentencing and Charging

Probation Agents view PSIs as bench-driven, so practices differ from place to place.

Prosecutors and judges view sentencing recommendations in PSIs as driven by DOC policy.

Prosecutors perceive sentencing disparities and primarily attribute them to judicial philosophy.

Defenders perceive disparity in prosecutor charging practices.

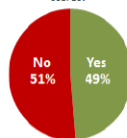
Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A) Presentence Report; Contents.

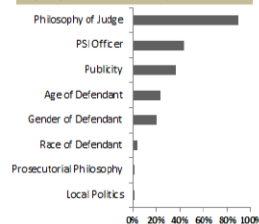
(1) Prior to sentencing, the probation officer must investigate the defendant's background and character, . . .

Almost Half of Prosecutors Perceive Sentencing Disparities

Do you perceive there to be sentencing disparities in your county for similar offenses and guidelines scores?



Percent of Respondents Indicating Causes of Disparity (could check more than one)



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Legal Financial Obligations Are a Recurring Theme

Different perspectives:

- Reentry & Offender Impact
- Child Support Enforcement
- Court System Collections
- Crime Victim Compensation
- Crime Victim Restitution

Issues Emerging in Michigan:

- Victims: Courts not prioritizing restitution
- Defenders & Advocates: Courts using 'pay or stay' sentencing

Consensus? Many Stakeholders suggest Driver Responsibility Fees are excessive

Repaying Debts



MAKING RESTITUTION REAL

Five Case Studies on Improving Restitution Collection



IN FOR A PENNY

The Rise of America's New Debtors' Prisons



ACLU

A REPORT BY THE AMERICAN CIVIL LIBERTIES UNION

NOVEMBER 2012

FINANCE DEBT

COLLECTION



Driver Responsibility

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Stakeholder Perspectives

Reducing Criminal Behavior

Sentencing Analyses

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Knowledge on Improving Criminal Justice Outcomes Has Increased Dramatically Over the Last 20 Years

*Academics and practitioners have contributed to this
growing body of research*

Risk Principle of Case Classification in Correctional Treatment
A Meta-Analytic Investigation

D. A. Andrews
Craig Dowden
Carleton University, Ottawa, Canada

Recent meta-analyses have documented considerable evidence demonstrating that correctional treatment programs are indeed effective for reducing recidivism in offender populations. The effect of client risk, an issue that has received extensive coverage in the extant literature from an assessment perspective, has been relatively ignored in these efforts. The present study marks the first exhaustive meta-analytic investigation of the risk principle and its effects on correctional treatment program effectiveness. The results reveal moderate support for its utility, although the magnitude of the findings are affected by the reporting practices used in the primary studies. Finally, the evidence supporting the risk principle is much stronger for female offenders and young offenders and within programs that are derived appropriate according to the principles of need and responsivity. It should be noted that positive interventions that did not include elements of human service (e.g., structured sanctions) yielded negative results regardless of level of client risk.

Keywords: risk principle; meta-analysis; what works; treatment

Two issues in regard to risk assessment are prominent in the health, human, and social services. One issue is how reasonably well understood. In many domains of human functioning and behavior and certainly in the analysis of criminal behavior, it is understood that individuals may be differentiated according to their chances of dis-

Assessing Correctional Rehabilitation: Policy, Practice, and Prospects
by Patricia T. Cullen and Paul Gendreau

A theme that has persisted throughout the history of American corrections is that efforts should be made to reform offenders. In particular, at the beginning of the 1950s, the rehabilitation ideal was enthusiastically embraced and helped to direct the reorientation of the correctional system (e.g., implementation of intermediate sentencing, parole, probation, a separate juvenile justice system). For the next several decades, offender treatment remained in the dominant correctional philosophy. Then, in the early 1970s, rehabilitation suffered a precipitous reversal of fortune. The larger dissonance in American society in this era prompted a general critique of the "state-run" criminal justice system. Rehabilitation was blamed for allowing the state to act coercively against offenders, and was blamed by conservatives for allowing the state to act leniently toward offenders. In this context, the death knell of rehabilitation was seemingly sounded by Robert Martinson's (1974b) influential "nothing works" essay, which reported that few treatment programs reduced recidivism. This stream of evidence makes one legitimate to the summertime conclusions of the day: it is usually "guilty" what everyone "already knew." Rehabilitation did not work.

Crime SOLUTIONS.gov
OFFICE OF JUSTICE PROGRAMS
RELIABLE RESEARCH. REAL RESULTS.

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Access New Practice Evaluations

About CrimeSolutions.gov

The Office of Justice Programs' CrimeSolutions.gov uses rigorous research to inform practitioners and policy makers about what works in criminal justice, juvenile justice, and crime victim services.

On CrimeSolutions.gov you will find:

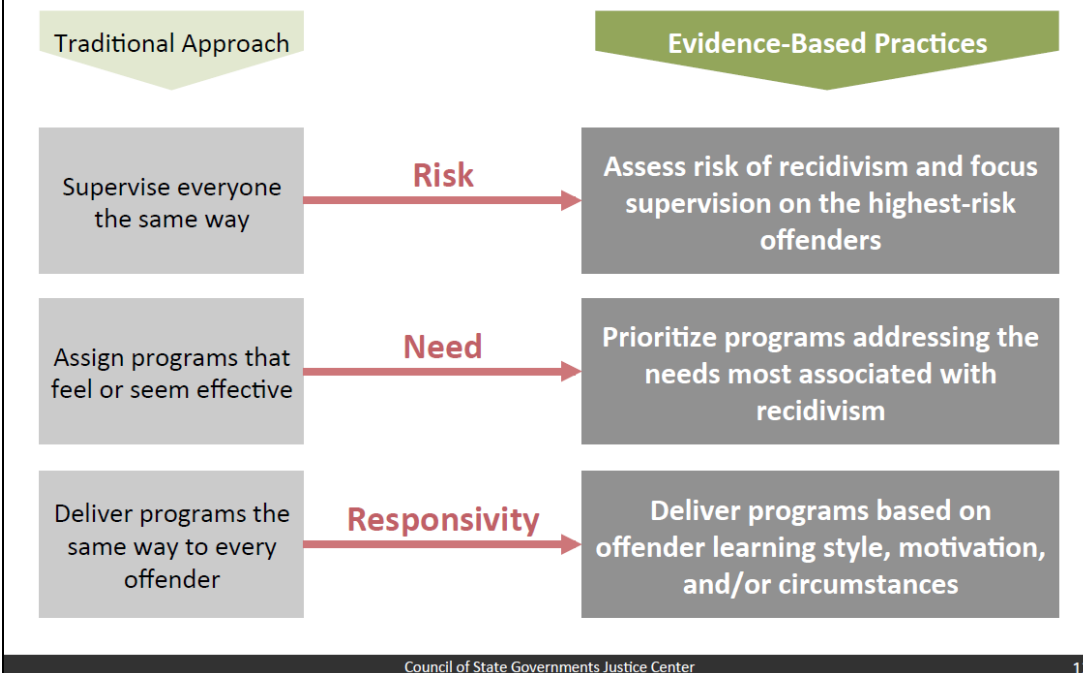
- Research on the effectiveness of programs and practices as reviewed and rated by Study Researchers
- Easily understandable ratings based on the evidence that indicates whether a program or practice achieves its goals (see [Program Details and Rating from Start to End](#) and [Practice Details and Rating from Start to End](#))
- Effective
- Promising
- No Effects

What is the difference between programs and practices on CrimeSolutions.gov?

	Programs	Practices
Description	A specific set of actions carried out according to guidelines to achieve a defined purpose	A general category of programs, strategies, or procedures that share similar characteristics with regard to the issues they address and how they address them
Question Answered	How effective is this program according to the most rigorous methodology available?	How effective is this general practice guideline across many evaluations?
Example	On the ABC Mentoring Program in Anytown, USA, achieve its goals?	Does mentoring usually achieve its goals?
Evidence Ratings	Single evidence rating per program	Single evidence rating for each outcome affected by the practice
Evidence Base	Up to 3 rigorous evaluations of a specific program	Meta-analysis that assesses the average effectiveness of the practice on various outcomes across a large number of studies

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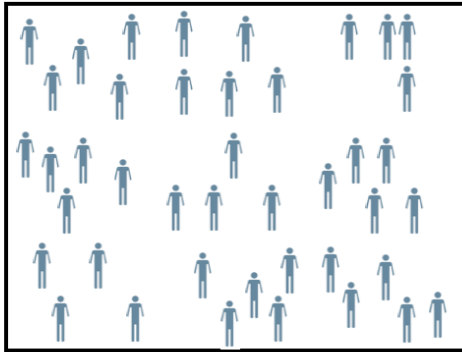
Reducing Criminal Behavior Requires Focusing on Risk, Need, and Responsivity



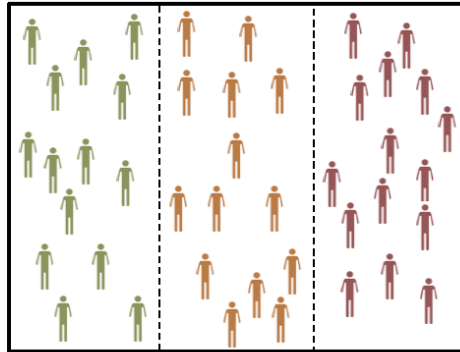
Identify and Focus on Higher-Risk Offenders

Who?

Without Risk Assessment...



With Risk Assessment...



Risk of Re-offending

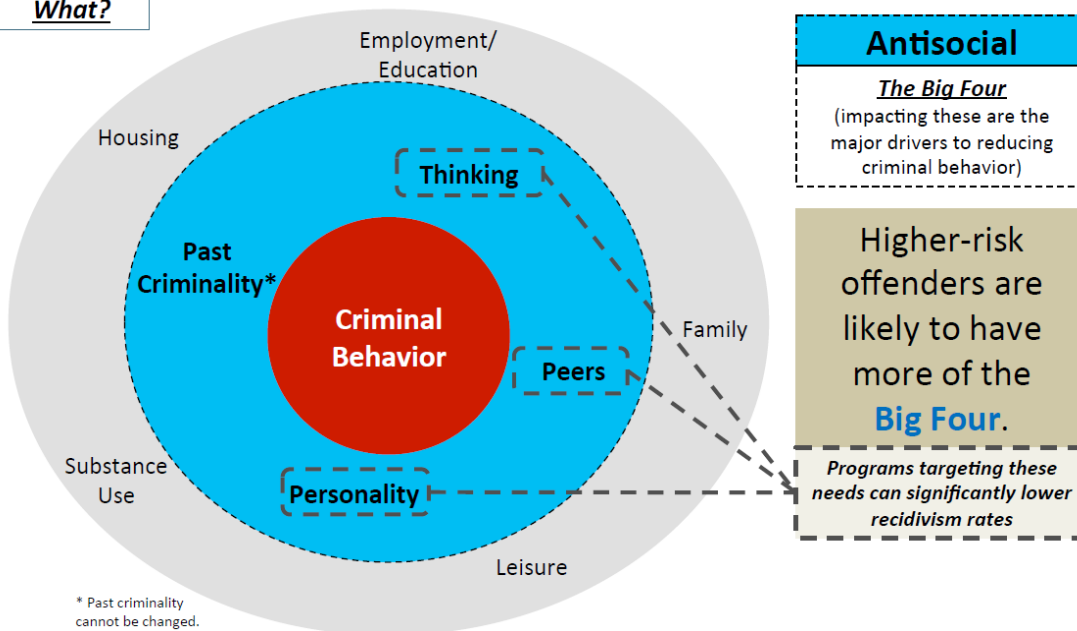
LOW 10% re-arrested	MODERATE 35% re-arrested	HIGH 70% re-arrested
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Target the Factors that Evidence Shows Are Most Central to Criminal Behavior

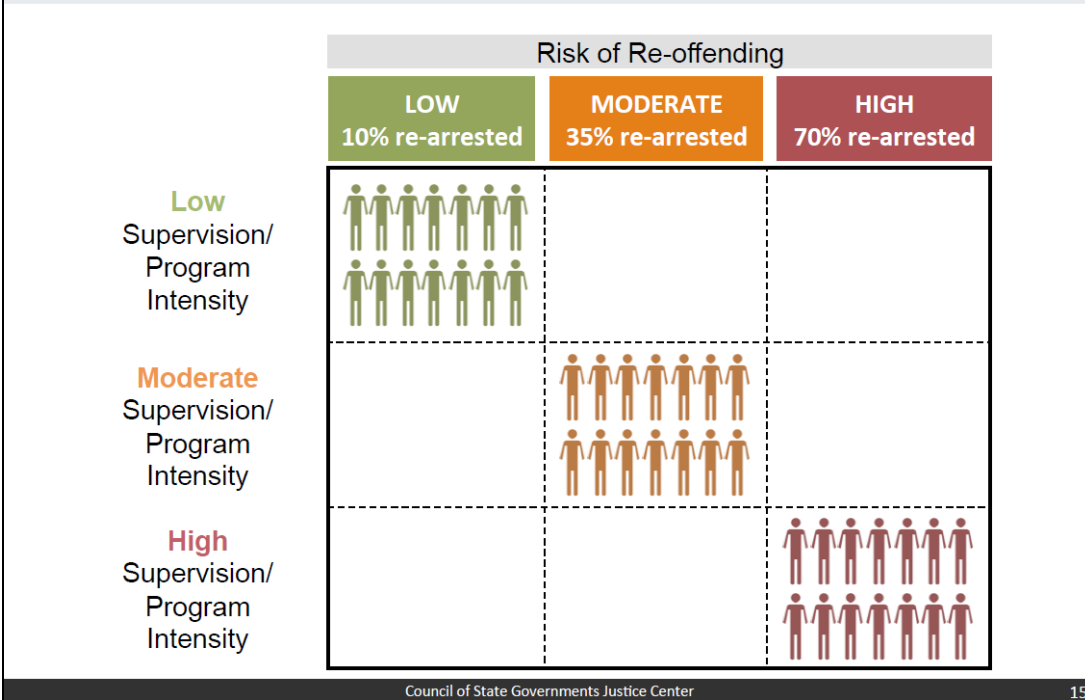
What?



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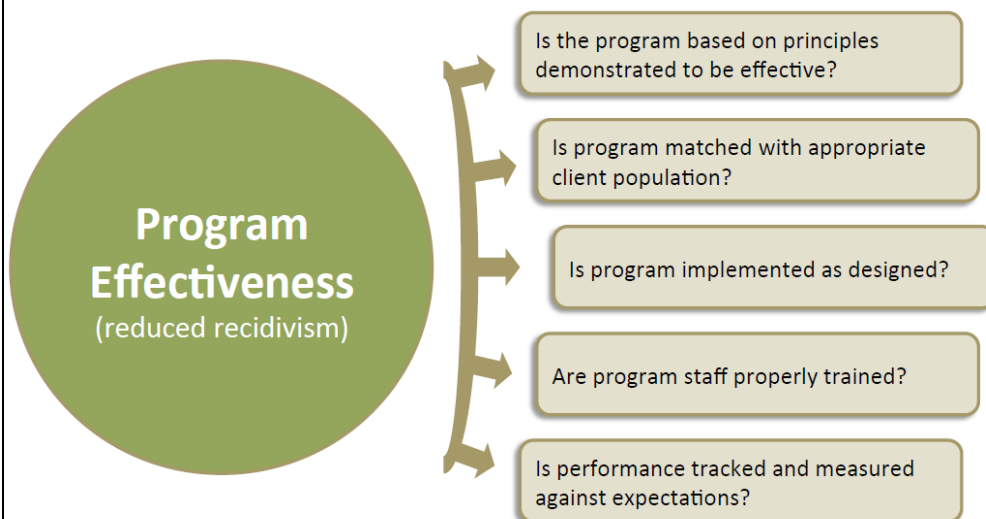
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After Getting the Who and the What, Supervision and Programming Should Be Well Targeted



Ensure Programs Are High Quality and Properly Implemented

How Well?



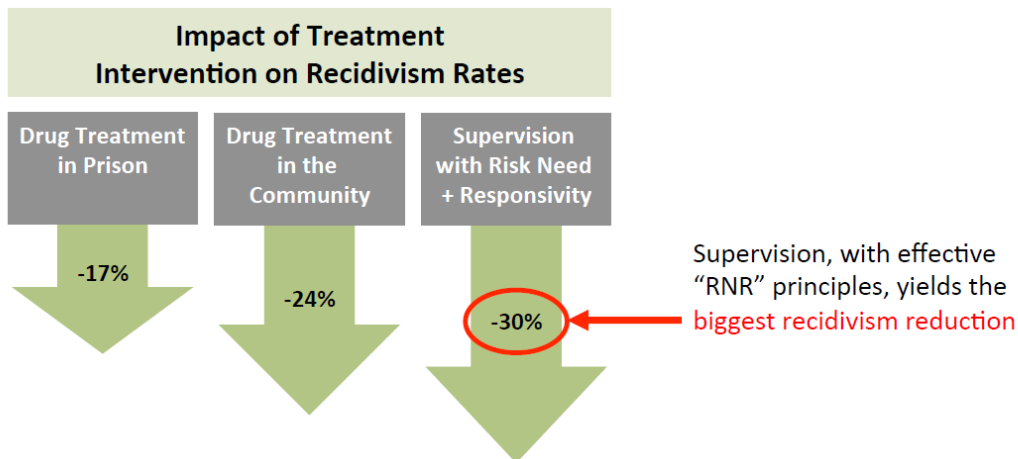
Elements of Effective Supervision



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Where and How Treatment Is Delivered Impacts the Degree of Recidivism Reduction

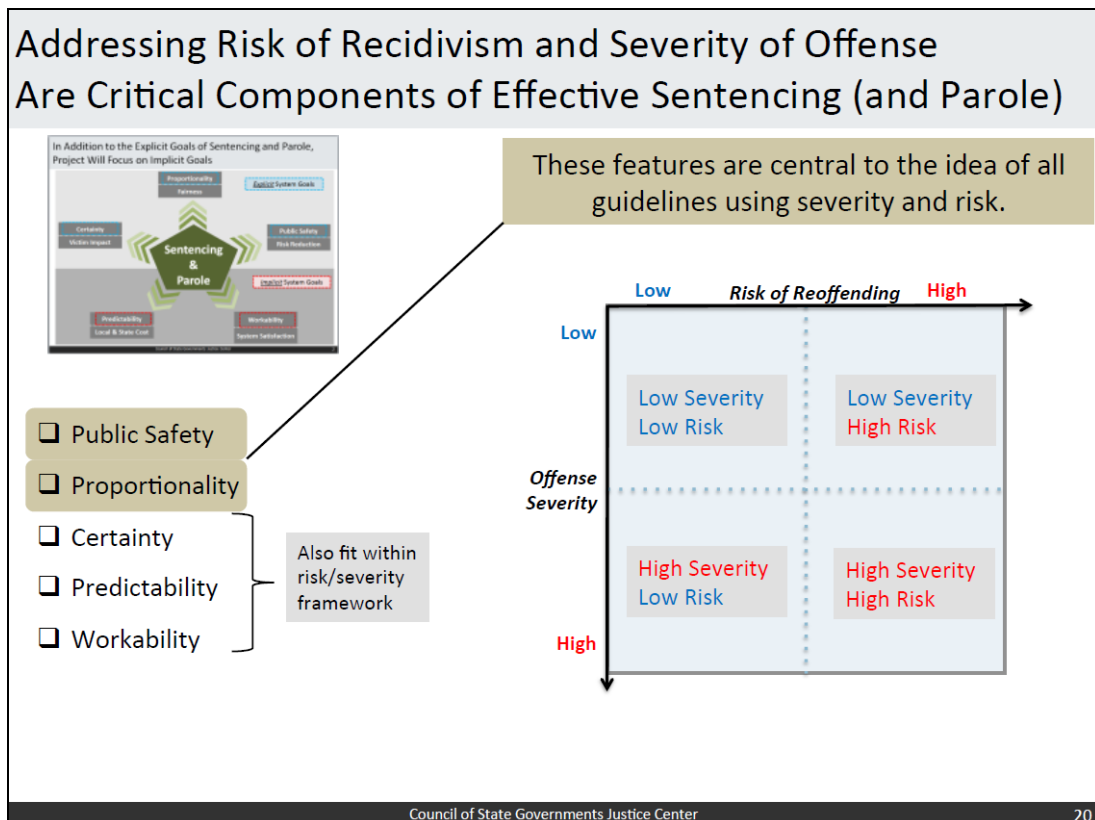
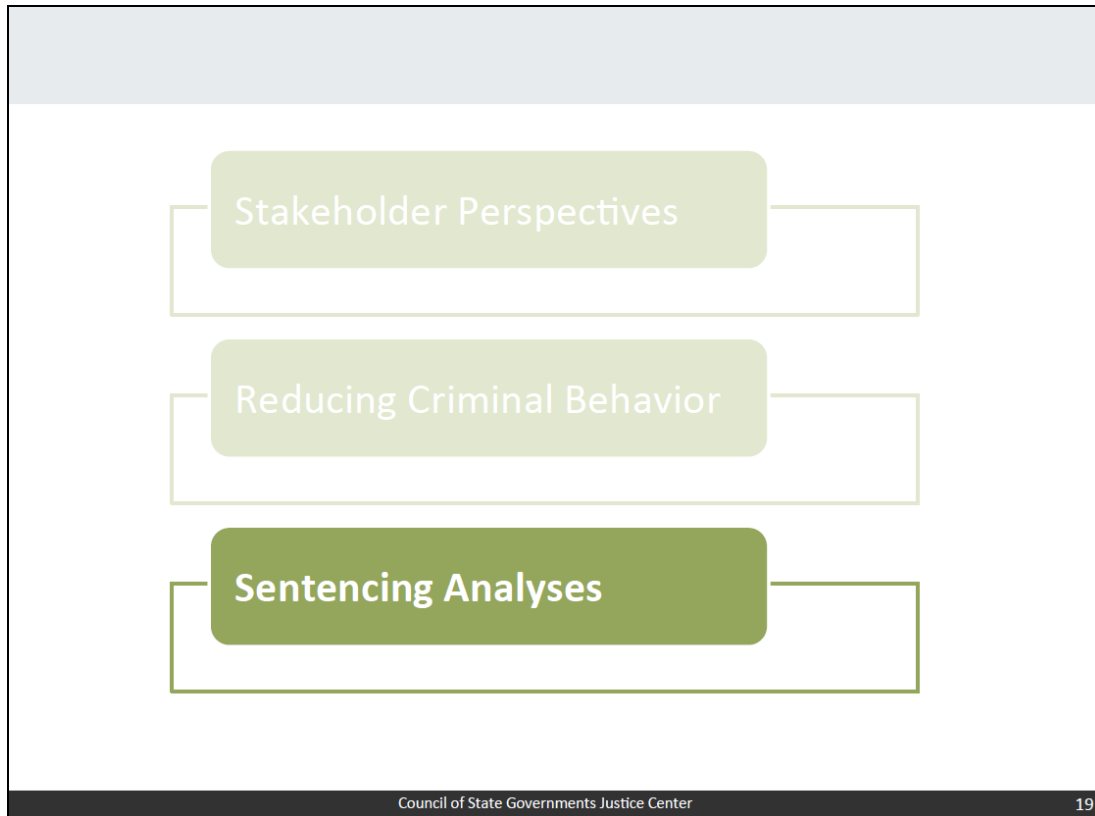


Source: Lee, S., Aos, S., Drake, E., Pennucci, A., Miller, M., & Anderson, L. (2012). Return on investment: Evidence-based options to improve statewide outcomes, April 2012 (Document No. 12-04-1201). Olympia: Washington State Institute for Public Policy.

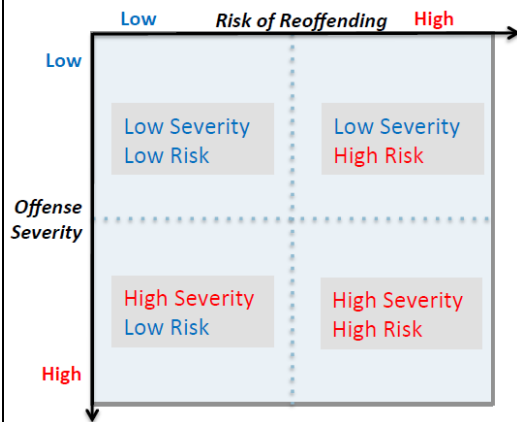
Source: Latessa, Lovins, and Smith, "Follow-up Evaluation of Ohio's Community Based Correctional Facilities, Outcome Study, February 2010

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Michigan Sentencing Guidelines Attempt to Classify by Offense Severity and Risk of Recidivism



Sentencing Grid for Class F Offenses—MCL 777.67
Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

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*	12*	15*	18*	
II 10-34 Points	0	0	0	0	0	0	
III 35-74 Points	0	0	0	0	0	0	
IV 75+ Points	0	0	0	0	0	0	

For all grids, defendants are:

- ❖ Moved along a 'left to right' scale based on prior criminal activity, AND
- ❖ Moved along a 'top to bottom' scale based on aggravating factors.

The intersection of the horizontal and vertical scores indicates a cell-type into which the defendant falls for sentencing. There are 3 cell-types (Intermediate, Straddle, and Prison).

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

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Sentencing Begins with Crime

Crime and Arrest Statistics are Down, but...

- 17% and 11% declines in crime and arrests since 2008, respectively

High Crime Remains a Problem

- Four of nation's 10 most violent cities
- Very low clearance rates in high crime areas

Resources Limited

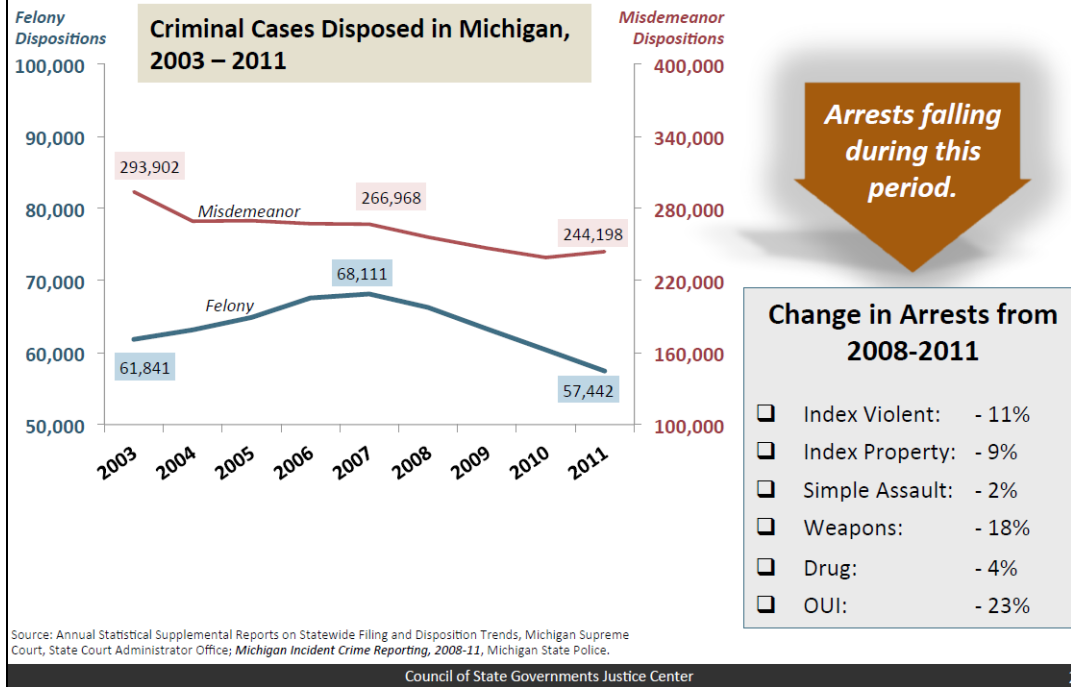
- Loss of sworn officers
- Loss of entire police departments

Source: Michigan Incident Crime Reporting, 2008-12, Michigan State Police.

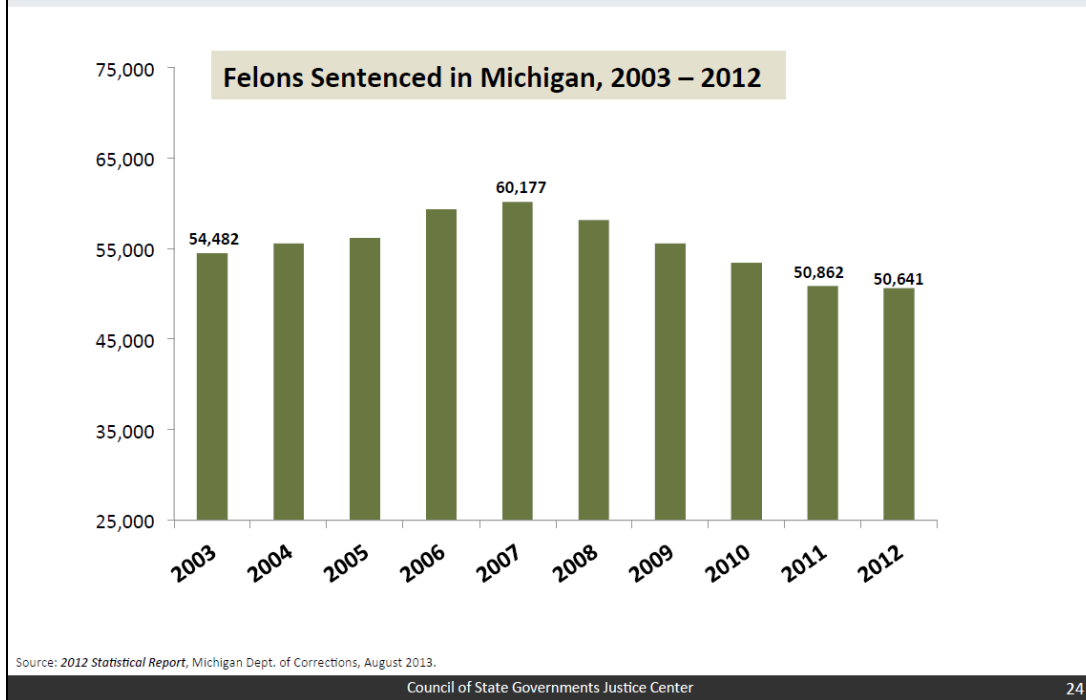
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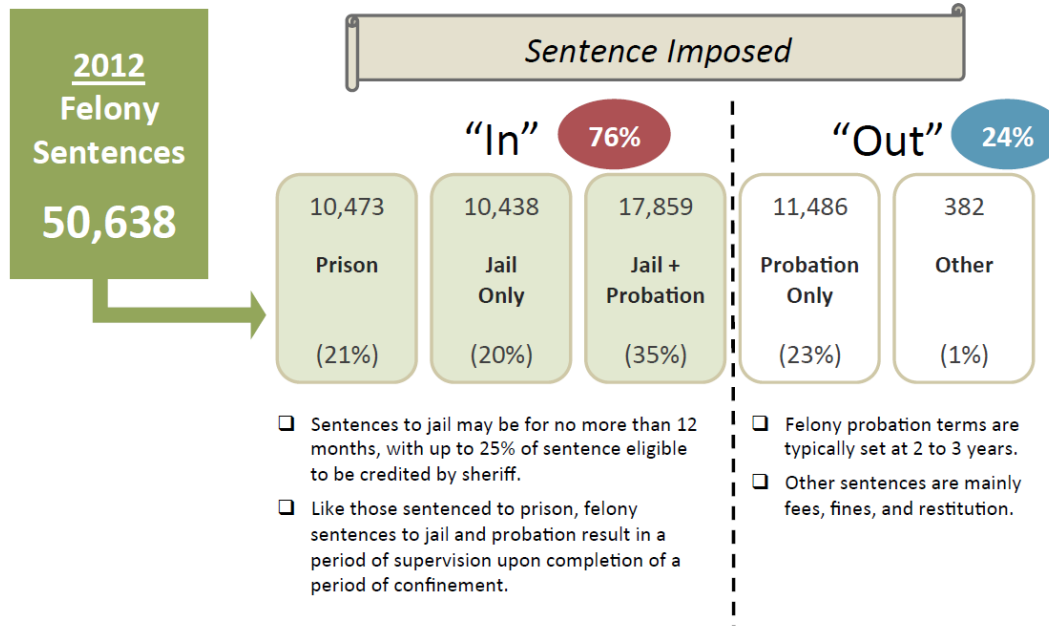
With Arrests Declining, Felony and Misdemeanor Case Dispositions Declined 7% and 17% from 2003 to 2011



Number of Felons Sentenced Declined 15% from 2007 to 2011, but the Decline Slowed Considerably in 2012



Most Felony Sentences Include Jail/Prison Time

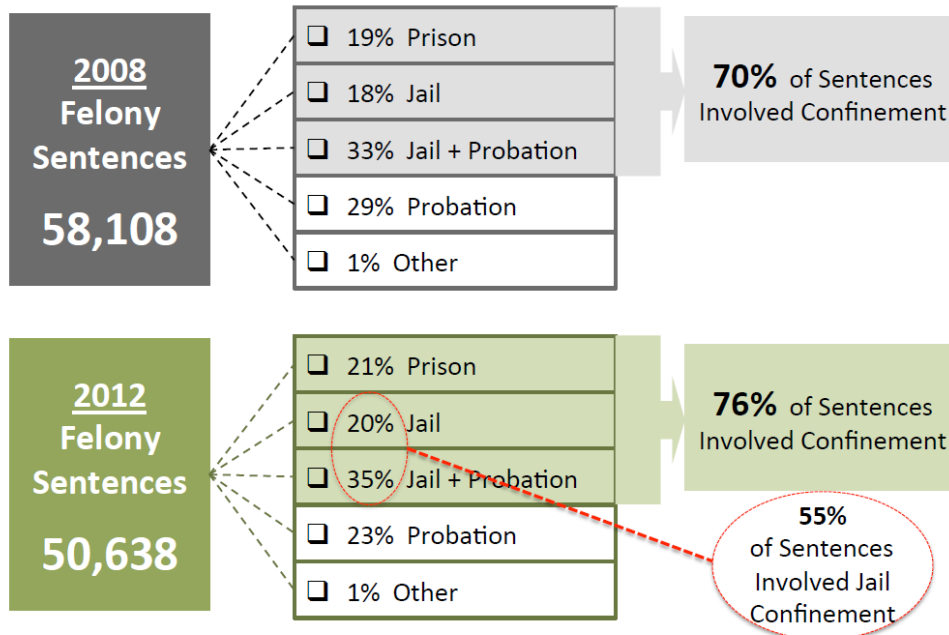


Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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10% Increase in Share of Sentences to Jail or Prison, and 21% Decrease in Share of Sentences to Probation, 2008-2012



Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

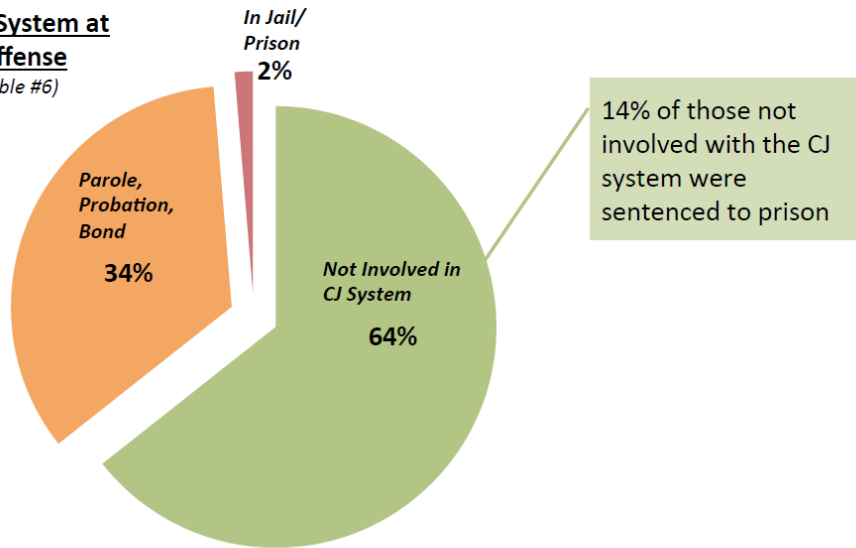
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64% of Felons Sentenced in 2012 Were not Involved with the Criminal Justice System at the Time of Their Offense

2012 Felony Sentences

Relationship to CJ System at Time of New Offense (Prior Record Variable #6)



Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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All Offense Grids Show Increase in Share of Sentences Involving Jail or Prison Incarceration

Offense Class	2008		2012	
	# Sent	% Incarc.	# Sent	% Incarc.
All Felony Sentences	58,108	70%	50,638	76%
Class H	2,217	61%	1,630	74%
Class G	13,316	66%	11,367	74%
Class F	7,571	63%	6,326	69%
Class E	15,661	72%	13,176	77%
Class D	7,060	72%	5,874	79%
Class C	2,844	81%	2,844	85%
Class B	1,828	84%	1,647	90%
Class A	1,103	97%	1,035	99%
2 nd Deg. Murder	168	100%	150	100%
Subtotal SGL	51,768	70%	44,049	77%
Non SGL	6,340	72%	6,589	75%

The least serious offense grids have experienced the largest increase in sentences involving confinement.

Sentencing outside of the guidelines:

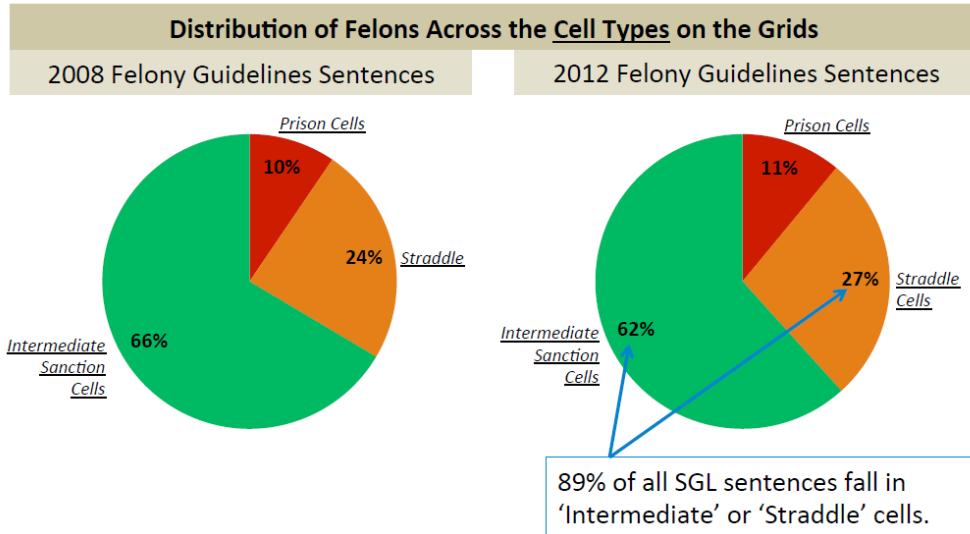
- Offenses of 1st Degree Murder or Felony Firearm
- Term of years sentences
- Filed as felony but reduced to misdemeanor
- Offense date preceding effective date of SGL

Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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Share of Felons Falling in *Prison* Cells Is Virtually Unchanged

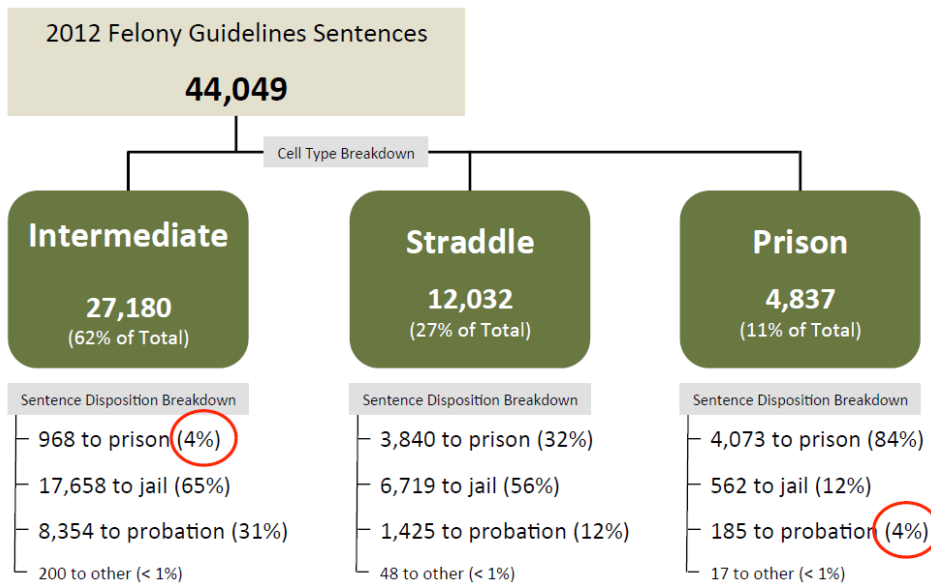


Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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Jail Is the Most Common Sentence for Intermediate and Straddle Cell Felons

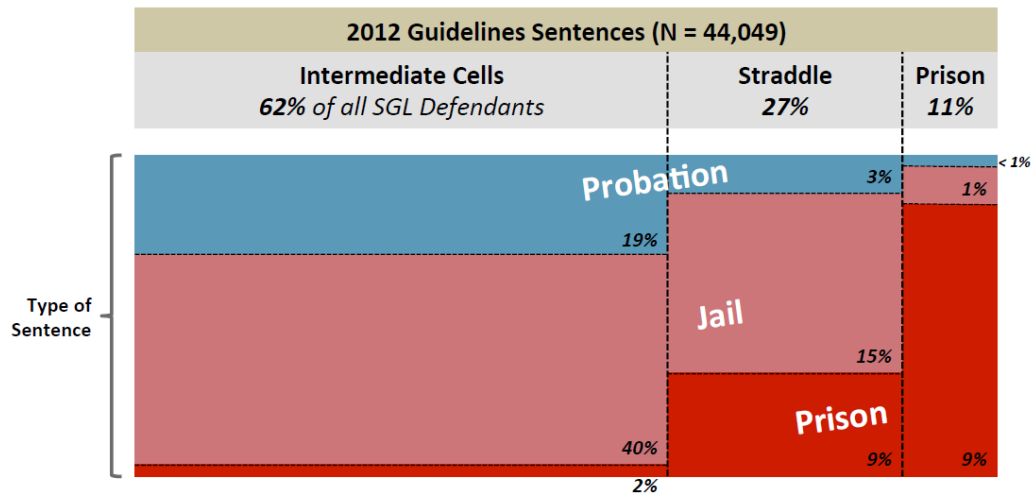


Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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Intermediate Cell Felons Sentenced to Jail Confinement Account for 40% of all Guidelines Sentences

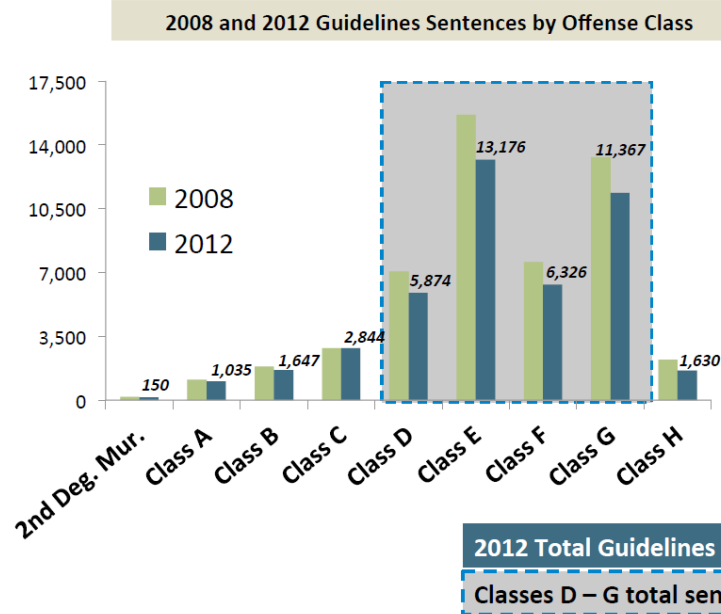


Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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Almost 85% of All Guidelines Sentences Fall in Four Grids, D - G



Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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Workability: 84% of Class D-G Sentences Only Utilize the First Two Rows of the Grids

2012 Sentences		A	B	C	D	E	F	
Class G 11,367	I	12.7%	10.1%	15.1%	12.0%	6.3%	5.1%	82%
	II	2.9%	2.3%	5.3%	4.8%	3.1%	2.2%	
	III	2.3%	2.0%	4.3%	4.5%	3.0%	2.0%	
Class F 6,326	I	11.7%	8.4%	13.4%	10.3%	4.7%	3.1%	86%
	II	6.8%	5.0%	7.9%	8.0%	4.2%	2.9%	
	III	2.4%	2.0%	2.9%	2.6%	1.2%	1.0%	
	IV	0.3%	0.1%	0.4%	0.3%	0.2%	0.2%	
Class E 13,176	I	9.6%	7.0%	10.2%	9.0%	4.3%	3.5%	85%
	II	5.6%	6.0%	10.5%	9.2%	5.7%	4.0%	
	III	1.1%	0.9%	2.1%	2.1%	1.5%	1.8%	
	IV	0.5%	0.4%	0.9%	1.0%	0.6%	0.6%	
	V	0.2%	0.1%	0.3%	0.3%	0.2%	0.3%	
	VI	0.1%	0.1%	0.1%	0.1%	0.0%	0.1%	
Class D 5,874	I	8.6%	6.4%	13.4%	11.6%	7.0%	7.6%	84%
	II	3.6%	3.0%	6.5%	7.3%	4.3%	4.6%	
	III	0.6%	0.7%	1.4%	1.4%	0.7%	0.7%	
	IV	0.8%	0.4%	1.0%	0.8%	0.7%	0.6%	
	V	0.6%	0.4%	1.1%	0.8%	0.4%	0.6%	
	VI	0.4%	0.1%	0.6%	0.4%	0.4%	0.3%	

How much value is added with the effort of scoring OV's, plus litigating and legislating over their interpretation?

Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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Proportionality: Within Narrowly Defined Cell Types, Considerable Variation in Sentencing

Breakdown of most common offense for the 'G' grid, Possession of less than 25g of Certain Controlled Substance Schedule I or II (MCL 333.7403(2)(a)(v)).

2012 Sentences = 3,409

	A	B	C	D	E	F
I	14.3%	13.6%	20.4%	17.6%	10.2%	9.2%
II	1.1%	1.1%	2.5%	2.9%	2.2%	1.8%
III	0.4%	0.2%	0.5%	0.7%	0.6%	0.7%

Note: Shaded cells account for 66% of all sentences.

Regardless of Prior Record (PRV) score, similar odds for getting:

- ☐ Probation term in lieu of confinement, or
- ☐ Jail term of varying length which may/may not include supervision afterward

Prior A (489)	
Pris:	2
Jail:	246
Range	1-365 days
Avg	52 days
Prob:	238
Range	1-60 mos
Avg	18 mos

Prior B (462)	
Pris:	0
Jail:	283
Range	1-365 days
Avg	75 days
Prob:	177
Range	1-48 mos
Avg	19 mos

Prior C (696)	
Pris:	5
Jail:	435
Range	1-365 days
Avg	116 days
Prob:	251
Range	1-60 mos
Avg	21 mos

Prior D (601)	
Pris:	27
Jail:	399
Range	1-365 days
Avg	152 days
Prob:	172
Range	1-60 mos
Avg	23 mos

4 PRV Groups (2,248)	
Pris:	34
Jail:	1,363
Range	1-365 days
Avg	106 days
Prob:	838
Range	1-60 mos
Avg	20 mos

Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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Proportionality: Within a Single Cell Type, Considerable Variation in Sentencing

Breakdown of most common offense for the 'G' grid, Possession of less than 25g of Certain Controlled Substance Schedule I or II (MCL 333.7403(2)(a)(v)).

2012 Sentences = 3,409

	A	B	C	D	E	F
I	14.3%	13.6%	20.4%	17.6%	10.2%	9.2%
II	1.1%	1.1%	2.5%	2.9%	2.2%	1.8%
III	0.4%	0.2%	0.5%	0.7%	0.6%	0.7%

PRV Level A (489)

Pris: 2
Jail: 246
Prob: 238

58
Jail Only

– Jail terms ranging from
3 days to 365 days

188
Jail & Probation

– Jail terms ranging from
1 day to 365 days
– Probation terms ranging from
30 days to 3 years

238
Probation Only

– Probation terms ranging from
30 days to 5 years

Despite falling in the same cell on the same grid for the same offense, defendants faced a wide range of possible punishments:

- As little as 3 days in jail,
- As much as 5 years on probation, or
- A combination of the two, with widely ranging lengths of jail and probation time.

Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

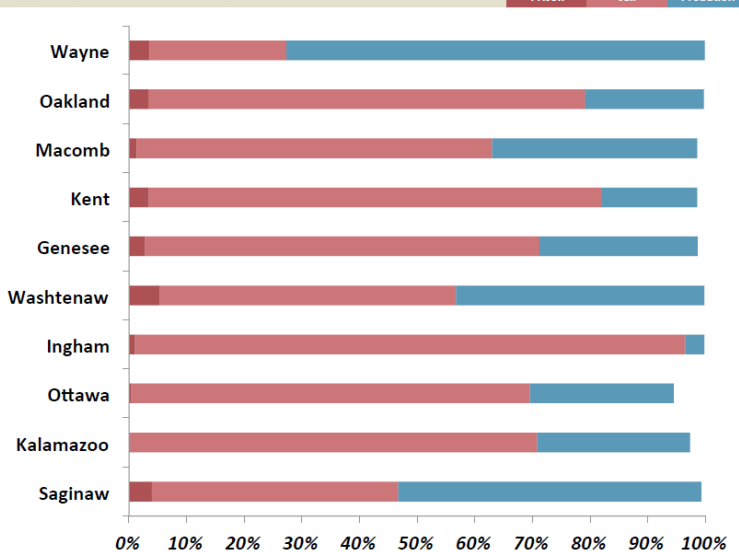
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Proportionality: Top 10 Counties Show Wide Variance in *Intermediate* Cell Sentences

2012 Class D-G Intermediate Sentences in Top 10 Counties

Type of Punishment Imposed



Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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Type of Sentence Imposed

Jail

- Lowest: Wayne 24%
- Highest: Ingham 96%

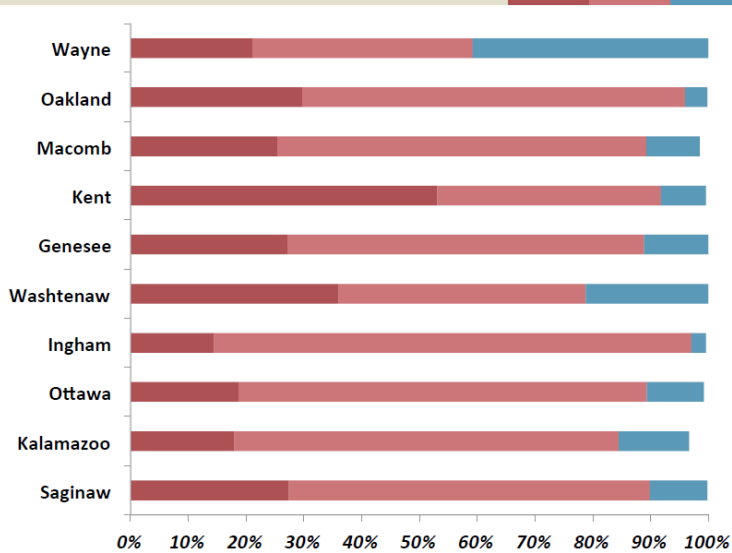
Probation

- Lowest: Ingham 3%
- Highest: Wayne 73%

Proportionality: Top 10 Counties Show Wide Variance in *Straddle* Cell Sentences

2012 Class D-G Straddle Sentences in Top 10 Counties

Type of Punishment Imposed



Type of Sentence Imposed

Prison

- ☐ Lowest: Ingham 15%
- ☐ Highest: Kent 53%

Jail

- ☐ Lowest: Wayne 38%
- ☐ Highest: Ingham 83%

Probation

- ☐ Lowest: Ingham 3%
- ☐ Highest: Wayne 41%

Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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Public Safety & Risk Reduction: Guidelines Do Not Effectively Direct Who Should Receive Jail

	No prior criminal history			Significant criminal history		
Class	A	B	C	D	E	F
Class H	345	217	406	347	176	139
Class G	2,039	1,626	2,814	2,421	1,411	1,056
Class F	1,334	983	1,555	1,343	658	453
Class E	2,264	1,909	3,169	2,847	1,634	1,353
Class D	860	648	1,411	1,313	800	842
Class C	609	405	797	529	257	247
Class B	363	201	390	315	197	181
Class A	140	111	319	209	148	108
Mur-2	31	10	43	36	21	9

55% received a jail sentence

- These felons should be the lowest risk of recidivism based on their lack of criminal history
- 3,556 sentenced to an average of 78 days at \$45 per day =

\$12.5M cost to counties

Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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Public Safety & Risk Reduction: Guidelines Do Not Effectively Direct Who Should Receive Supervision

	No prior criminal history			Significant criminal history		
Class	A	B	C	D	E	F
Class H	345	217	406	347	176	139
Class G	2,039	1,626	2,814	2,421	1,411	1,056
Class F	1,334	983	1,555	1,343	658	453
Class E	2,264	1,909	3,169	2,847	1,634	1,353
Class D	860	648	1,411	1,313	800	842
Class C	609	405	797	529	257	247
Class B	363	201	390	315	197	181
Class A	140	111	319	209	148	108
Mur-2	31	10	43	36	21	9

33% received a jail sentence without probation supervision

- These felons should be a higher recidivism risk by virtue of their criminal history (PRV) scores.

Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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Public Safety: Indications Are that Guidelines Do Not Maximize Effectiveness of Scarce Resources

Breakdown of most common offense for the 'G' grid, Possession of less than 25g of Certain Controlled Substance Schedule I or II (MCL 333.7403(2)(a)(v)).

4 PRV Groups

Pris: 34
Jail: 1,363
Avg 106 days
Prob: 838
Avg 20 mos

1,363 Jail
3.5 months avg.

838 Probation
20 months avg.

Costs to the Criminal Justice System

\$6.4M in local county costs for jail confinement
(assuming average cost/day of \$45)

\$3.5M in state costs for supervision
(assuming average cost/day of \$7)

Recidivism Reduction Potential

Up to **5% reduction** if programs provided. Potential increase.

Up to **20% Reduction** in Re-Arrests.

More cost-effective path towards better public safety outcomes.

Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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Does System Achieve Goals?

Goal	Questions	Current Knowledge
Public Safety	Do the sentencing and parole decisions promote risk reduction?	Probation recidivism is increasing Guidelines do not effectively direct jail and supervision sentencing
Proportionality	Is there disparity in sentencing and time served for similar cases? If so, what are the causes?	Considerable variation within a narrowly defined cell type or individual cell; top 10 counties show wide variation
Certainty	Are victims satisfied or frustrated with the uncertain portion of a sentence?	Unknown but under study
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 but not much user dissatisfaction OV scoring adds low value

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Summary of Sentencing Analyses

High Odds of Doing Time

- ✓ 88% of Straddle sentences involve confinement in jail or prison
- ✓ 69% of Intermediate sentences involve confinement in jail or prison

Illusory Precision of Guidelines

- ✓ OV scoring adds little precision
- ✓ Wide variance on type of sentence imposed within narrowly defined offense ranges

Sentencing Poorly Aligned with Goals of Public Safety

- ✓ Guidelines direct low risk to jail and high risk away from potentially effective supervision

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Recap of Key Points For the Day

1.

- ✓ Distinct stakeholder perspectives make consensus difficult
- ✓ Divergent views reinforce the value of data analysis

2.

- ✓ Identify and focus on high-risk offenders
- ✓ Target the factors that most influence criminal behavior
- ✓ Ensure programs are high quality and properly implemented

3.

- ✓ Crime is a serious problem, particularly in four cities
- ✓ Felons typically, increasingly sentenced to do time, most often in jail
- ✓ Wide discretion in sentencing and observable disparity
- ✓ Sentencing is not well aligned with public safety objectives

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Forthcoming Analyses and Engagement

More Sentencing

- ✓ Predictive validity of PRV scoring
- ✓ Sentence length imposed
- ✓ Use of jails at original sentencing and for detaining supervision violators

Effectiveness

- ✓ Re-arrest rates for jail, probation, community corrections and parole populations
- ✓ Qualitative analysis of programs and policy

Parole and LOS

- ✓ Interplay of recidivism risk and denial of parole
- ✓ Factors contributing to denial of parole

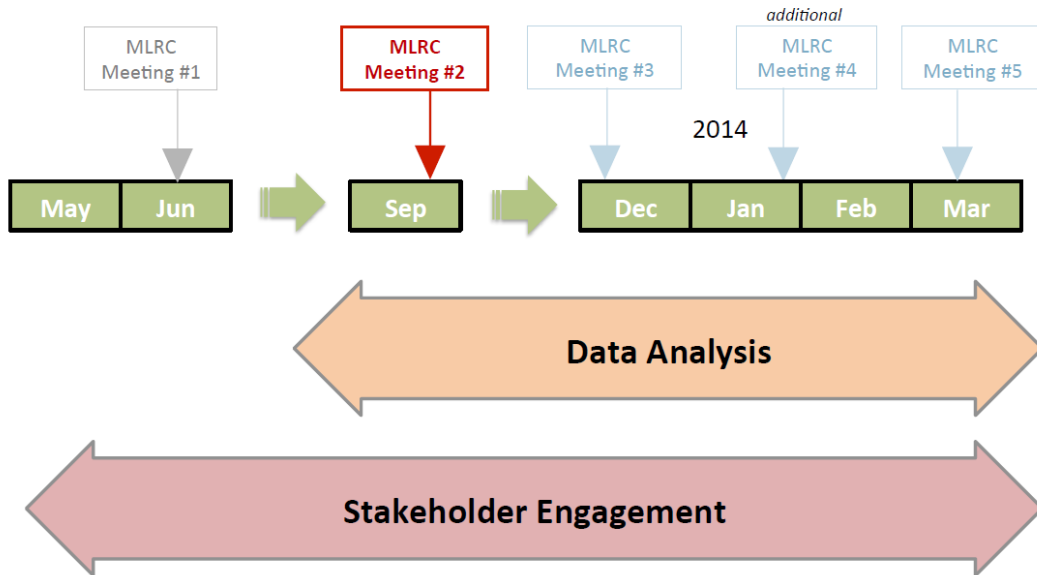
Stakeholder Perspectives

- ✓ Victim perceptions of certainty, restitution satisfaction, and realization of victims' rights
- ✓ Faith community and business community engagement
- ✓ Further surveys of practitioners

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Project Timeline – We Need an Additional Meeting



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Thank You



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To MICHIGAN LAW REVISION COMMISSION

9-24-13 Meeting

I request the MLRC consider repeal of the inequitable, defective and unconstitutional drug corporation immunity statute.

Michigan's drug company immunity law MCL 600.2946(5) disserves the public, is unconstitutional, and should be repealed immediately. The fact that Michigan is the only state with such a law proves that the law is unnecessary, unfair, and serves only to steal from Michigan's victims. Lawsuits do more than compensate the injured, they encourage safer drugs and discourage the production of dangerous drugs. Michigan's law is a step in the wrong direction towards exposing the public to more harmful drugs. Moreover, lawsuits are often the only way of to expose the bogus, biased science and ubiquitous fraudulent misconduct of drug companies. MCL 600.2946(5) is also brazenly unconstitutional. It is a "special law" which benefits only drug corporations at the expense of Michigan's citizens (Mich. Const. Art.4, Sec.29). Out-of-state, out-of-country, drug corporations, are absolved of all their liabilities for harms, paid for by the Michigan public, and paid for by the injured and most in need of help. This unconstitutional special law confers special privileges and immunities on corporate tort defendants, while imposing special disabilities on the tort plaintiffs injured by drugs. The harm and deprivation of justice this law does to Michigan citizens is severe, while the benefits to the public are non-existent. Note, Best v Taylor Machine Works, 689 NE2nd 1057, Ill. 1997, \$500,000 non-economic damages cap in product liability actions is unconstitutional special law.

This law also deprives Michigan citizens of their rights to equal protection of the laws, due process, access to the courts to remedy injury, and the right to jury trial. Compare the complete elimination of all tort liability for drug companies to: \$1.2 Million dollar non-economic damages cap on medical malpractice actions violates right to jury trial, Atlanta Oculoplastic Surgery P.C. v Nestlehutt, 691 SE2nd 218, Ga. 2010. \$875,000 non-econ. personal injury damages cap violates equal protection, Brannigan v Usitula, 587 A2nd 1232, N.H. 1991. \$1 Million dollar medical malpractice damages cap violates due process, Knowles v U.S., 544 NW2nd 183, S.D. 1996. \$1 Million dollar Med. Mal. damage cap violates due process, right to remedy and right to jury trial, Kansas Malpractice Victims v Bell, 757 P2nd 251, Kan. 1988, citing Marbury v Madison, 1803: "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Med. Mal. screening hearings constitute "special class legislation enacted solely for the benefit" of medical tort defendants violating equal protection, Boucher v Sayeed, 459 A2nd 87, R.I. 1983. As stated by the court in Jeanne v Hawkes Hospital, 598 NE2nd 1174, Ohio 1991: "It is not the business of government to manipulate the law so as to provide succor to one class, the medical, by depriving another", the equal protection mandated by the constitution.

Whether or not the FDA is an unreliable, incompetent, corrupt, rogue agency, FDA approval does not ensure that a drug is not defective or unreasonably dangerous. All that FDA approval tells us is that a drug company produced a study or two, on a small number of people, for a limited span of time, showing the drug worked a little better than placebo, that is it. FDA approval is a minimum marketing standard, not an appropriate liability standard. The actual safety and harms of drugs usually are not known until the drug is widely distributed to consumers after FDA approval, and then drugs are virtually never recalled no matter how dangerous they are. The people of Michigan don't need a law applauding the performance of the FDA, let alone depriving them of recovery when injured. When the chronic, massive, documented, fraudulent misconduct of the drug companies is factored into analysis of Michigan's immunity law, the law becomes even more in need of immediate repeal. Note, Marcia Angell (former editor of New England Journal of Medicine) Drug Companies and Doctors: A story of Corruption, 2009, The Truth About The Drug Companies: How They Deceive Us and What To Do About It, 2004.

Thank you. Sincerely, Sean Bennett (734-239-3541)
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