

final minutes

Michigan Law Revision Commission Meeting

Wednesday, December 11, 2013 ▪ 12:00 noon
Room 424 ▪ State Capitol Building
100 N. Capitol Avenue ▪ Lansing, Michigan

Members Present:

Richard McLellan, Chair
Tony Derezinski, Vice Chair
Representative Andrew Kandrevas
Representative Tom Leonard
Senator Tonya Schuitmaker
John Strand
George Ward

Members Absent and Excused:

Judge William Whitbeck
Senator Vincent Gregory

I. Convening of Meeting

The Chair called the meeting to order at 12:07 p.m.

II. Roll Call

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

III. Approval of September 24, 2013 Meeting Minutes

The Chair asked for a motion to approve the minutes of the September 24, 2013 meeting. No corrections or additions were offered. **Commissioner Derezinski moved, supported by Commissioner Ward, to adopt the minutes of the September 24, 2013 Michigan Law Revision Commission meeting. The minutes were unanimously approved.**

IV. Criminal Sentencing and Procedures Project

The Chair called on Commissioner Derezinski who provided a summary of the project and introduced members of the Council of State Government team. Commissioner Derezinski then called on Mr. Carl Reynolds, Senior Legal and Policy Advisor of The Council of State Governments, to begin the presentation. For more details, a copy of the CSG presentation is attached to these minutes.

V. Comments from Commissioners

After the presentation, a period of question and answer followed. Chairman McLellan inquired about the issue of reducing criminal behavior by delivering programs based upon offender learning style. CSG will try to get more information on this for the Chair. The Chair also wondered if CSG will be issuing broad policy recommendations rather than recommending specific changes. Mr. Reynolds confirmed that is the plan especially since he believes the policy recommendations for Michigan will be a significant set of proposals that will change the way things are viewed.

Commissioner Derezinski then commented about the potential improvements achieved by reinvesting in various alternative programs and wondered if CSG has any data from other states that show this type of reinvestment works. Mr. Reynolds responded that they are working on a report using that type of data to see what has been happening. Commissioner Derezinski then thanked Dawn Van Hoek, the director of the Michigan State Appellate Defender Office, for providing a copy of a new publication entitled "The Defenders Sentencing Guidelines Manual Annotated." He also acknowledged the presence of Beth Clemente from the Governor's Office and Judge Timothy Kenney from the Wayne County Circuit Court.

Representative Kandrevas expressed that he would appreciate the inclusion of any recommendations or ideas on alternatives other states have used regarding assigning subjective point values when scoring victim injury. He also had a question about the use of habitual sentencing and whether this leads to better safety numbers or cost savings.

Commissioner Ward inquired about the kind of recidivism reduction Michigan should expect to see if all of the policy changes recommended are implemented. CSG responded that it is difficult to predict a ballpark number, but experience has shown there will be lower recidivism rates and in North Carolina there has been a decline in the prison population by over 10% primarily driven by the probation revocation being cut in half.

VI. Public Comment

The Chair asked if there were any public comments. Dr. Ron Kolito asked if the efforts to revise criminal sentencing procedures are going to be tied to law enforcement techniques and if the State of Michigan is prepared to train police and parole officers. Mr. Reynolds responded that although he cannot speak for the State of Michigan, he can say that if the state succeeds in passing policy changes, training is usually a big part. He noted that federal funds may be available for this. The Chair noted that it is important to keep in mind that whatever the Committee recommends will be for a change in criminal sentencing policy and that he is sure there will be opportunity in the future to raise other aspects of the criminal justice system and how it works when the legislature considers making any changes. Commissioner Derezinski acknowledged the information Dr. Kolito has shared with him and noted Dr. Kolito has had a lot of experience in training probation officers.

There were no other public comments.

VII. Adjournment

Having no further business, the meeting was adjourned at 1:30 p.m.

(Approved at the March 19, 2014 Michigan Law Revision Commission meeting.)



Sentencing and Justice Reinvestment Initiative



December 11, 2013

Michigan Law Revision Commission

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

Council of State Governments Justice Center and Our Justice Reinvestment Funding Partners

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

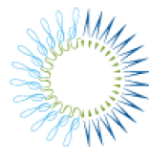
Justice Reinvestment:

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

Partner with Bureau of Justice Assistance and Pew Charitable Trusts



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



THE
PEW
CHARITABLE TRUSTS

1. Sentencing Guidelines

- ## 2. Population Pressure

- ### 3. Disparity & Disconnection

- Council of State Governments Justice Center 3

The diagram illustrates five pillars of justice, each represented by a blue rounded rectangle, with arrows pointing towards a central blue circle labeled "Justice".

- Punishing Predictably & Proportionally** (Top Left)
- Holding Offenders Accountable** (Top Center)
- Reducing Criminal Behavior** (Top Right)
- System & Offender Focus Incapacitation - Fairness** (Bottom Left)
- Victim & Offender Focus Humanity - Restoration** (Bottom Center)
- Public Safety Focus Effectiveness** (Bottom Right)

All five pillars point towards the central circle labeled **Justice**.

Overview of Presentation

Punishing Predictably & Proportionally

Holding Offenders Accountable

Reducing Criminal Behavior

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5

Overview of Presentation

Punishing Predictably & Proportionally

- Good Intentions but Guidelines Allow Disparity
- Evidence of Unpredictable and Disparate Sentencing
- Impact on Prison and Jail Populations

Holding Offenders Accountable

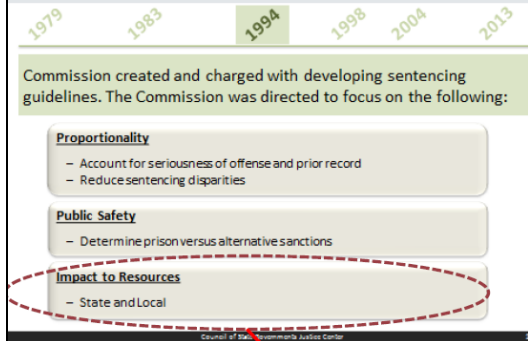
Reducing Criminal Behavior

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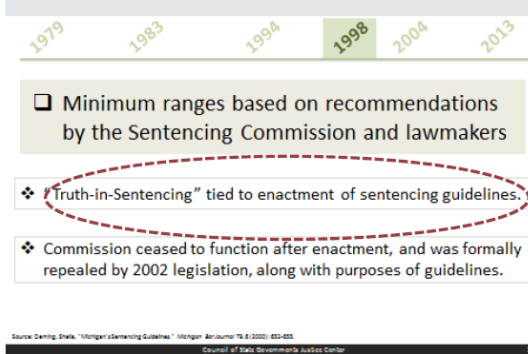
6

Guidelines Have Been Effective at Limiting Admissions to Prison, and Imposing Truth in Sentencing for Prison Sentences

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



Legislature Adopts Sentencing Guidelines – 1998 PA 317

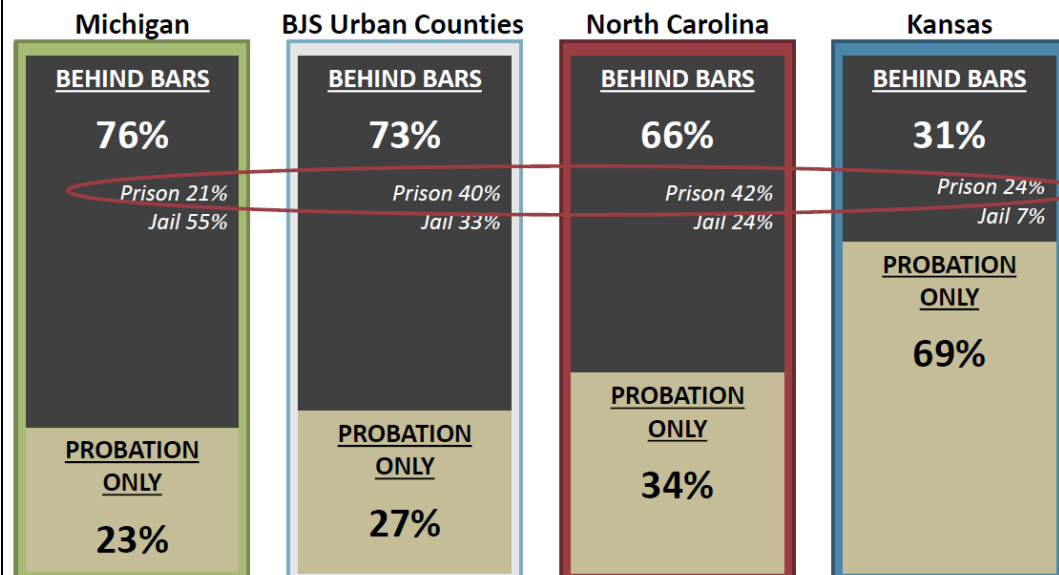


(2) In developing recommended sentencing guidelines, the commission shall consider the likelihood that the capacity of state and local correctional facilities will be exceeded. The commission shall submit to the legislature a prison impact report relating to any sentencing guidelines submitted under this section. The report shall include the projected impact on total capacity of state correctional facilities.

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7

Michigan Sentences Fewer to Prison but More to Jail

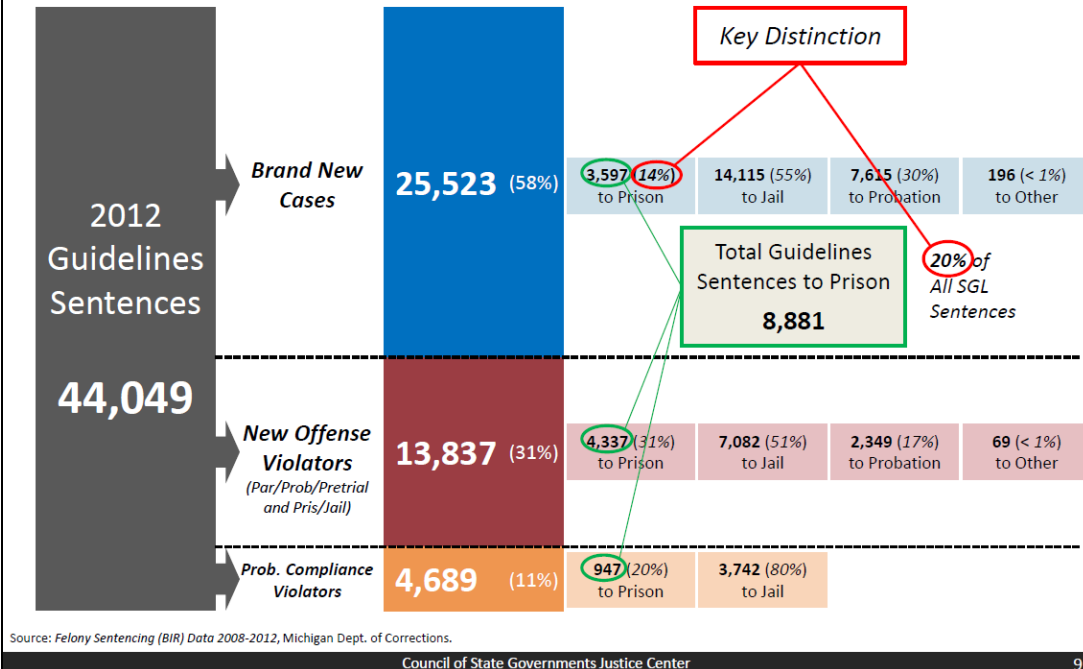


Source: *Statewide Dispositions – Fiscal Year 2012*, Office of Community Alternatives, MI Dept. of Corrections, November 2012; *Felony Defendants in Large Urban Counties*, 2006, May 2010, Bureau of Justice Statistics; Analysis of KS Felony Sentencing Data by CSG Justice Center; *Structured Sentencing Statistical Report FY 2011/12*, NC Sentencing and Policy Advisory Commission.

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8

Only 14% of “New” Cases Lead to Prison in Michigan, Versus 20% of All Guidelines Cases



Original Sentencing Commission Statute Emphasized Proportionality and Reduction of Disparity (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

(i) Provide for protection of the public.

(ii) An offense involving violence against a person shall be considered more severe than other offenses.

(iii) Be proportionate to the seriousness of the offense and the offender's prior criminal record.

(iv) Reduce sentencing disparities based on factors other than offense characteristics and offender characteristics and ensure that offenders with similar offense and offender characteristics receive substantially similar sentences.

(v) Specify the circumstances under which a term of imprisonment is proper and the circumstances under which intermediate sanctions are proper.

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But the Sentencing System Builds In Multiple Sources of Enormous Potential Disparity

Grid Cells

- ❖ Only 1 of 3 cell types (*Prison*, *Straddle*, *Intermediate*) in the Guidelines results in predictable sentencing – to Prison

Prison Sentencing

- ❖ Upper end of minimum range (Min-Max) typically 2-4 times longer than lower end (Min-Min), and habitual laws expand to 5-8 times longer, as well as expand statutory maximum

Time Served in Prison

- ❖ Parole discretion controls ultimate length of stay up to Statutory Maximum, which may be 3-4 times longer than sentenced minimum

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11

Grid Cells: 89% of Cases Fall in Cells with Unpredictable Sentencing Dispositions

Intermediate (62% of Cases)

Allowable punishments:

- ☐ Up to 1 year in jail plus probation
- ☐ Jail only (1 year max)
- ☐ Probation only (5 year max)
- ☐ Fees/fines only

Straddle (27% of Cases)

Allowable punishments:

- ☐ Prison
- ☐ Up to 1 year in jail plus probation
- ☐ Jail only (1 year max)
- ☐ Probation only (5 year max)
- ☐ Fees/fines only

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*	1802
	0	0	0	2	5	10	1803
	0	0	0	2	5	10	1804
II 10-34 Points	6*	9*	12*	15*	18*	21*	1802
	0	0	0	5	10	12	1803
	0	0	0	5	10	12	1804
III 35-74 Points	9*	12*	15*	18*	21*	24*	1802
	0	0	2	10	12	14	1803
	0	0	2	10	12	14	1804
IV 75+ Points	12*	15*	18*	21*	24*	27*	1802
	0	2	5	12	14	17	1803
	0	2	5	12	14	17	1804

Prison (11% of Cases)

Allowable punishment:

- ☐ Prison

Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections; *Sentencing Guidelines Manual*, Michigan Judicial Institute, June 2012..

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12

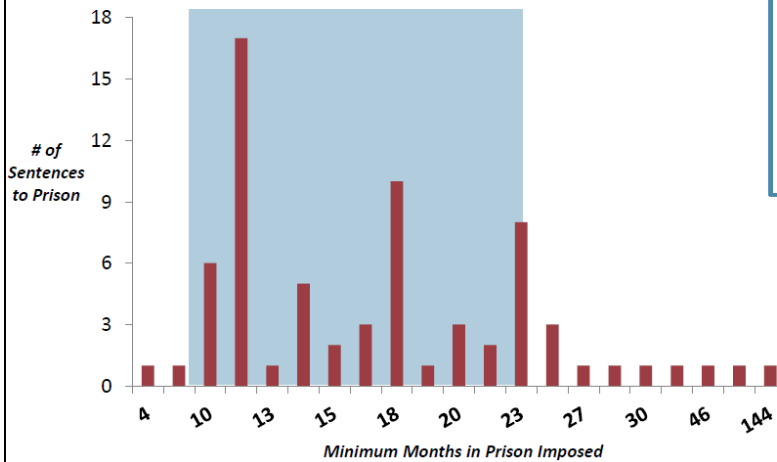
Minimum Prison Sentence Range Is Wide, and Sentences Range Across It and Beyond

Min SL Distribution for Del./Man. < 50g I-II CS (Class D):
Prior Level F, Offense Level I – Straddle Cell (excl. Habitual Offenders)

Min-Min = 10 months
Min-Max = 23 months

Minimum SL Imposed:

- ☐ 9% to 10 months
- ☐ 24% to 12 months
- ☐ 14% to 18 months
- ☐ 11% to 23 months



Prison Sentence Length Ranges:
Min-Max Usually 100-300% Greater than Min-Min

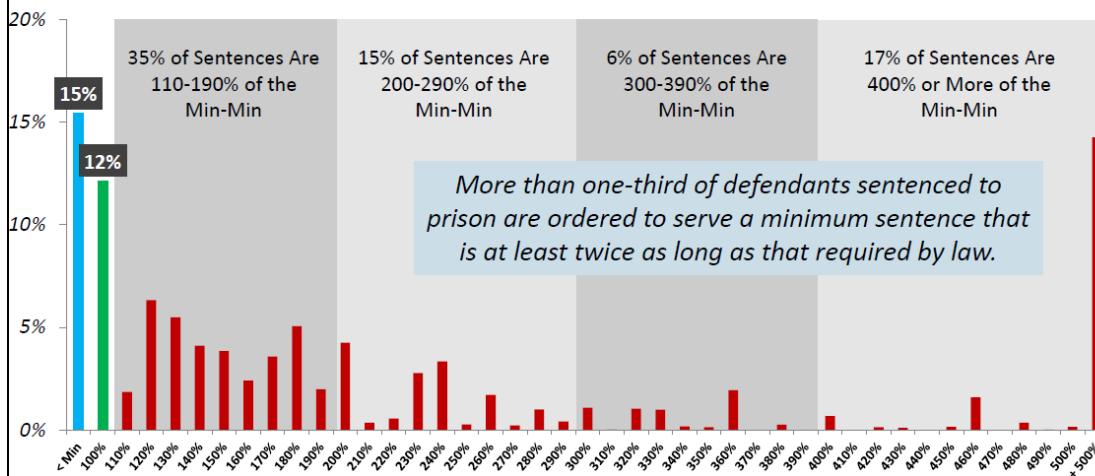
Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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13

Guidelines Result in Minimum Sentences All Over the Map

2012 SGL Non-Habitual Sentences to Prison – Relationship of Actual Minimum Imposed Compared to Minimum Required



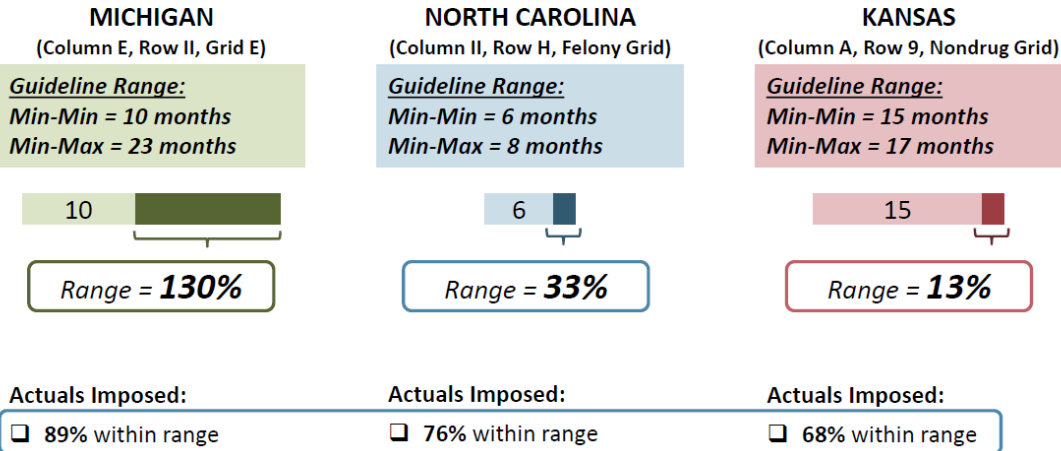
Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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14

Michigan Ranges are Much Greater than Other Guidelines States and Has Fewer Departures as a Result

Each of the examples below summarizes non-habitual prison sentences from the most frequently used cell in the state's respective guidelines.



Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections; *Structured Sentencing Statistical Report FY 2011/12*, NC Sentencing and Policy Advisory Commission; Analysis of KS Felony Sentencing Data by CSG Justice Center.

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15

Actual Sentencing in Most Frequently Used Straddle Cell Shows Very Different Dispositions

Sentencing breakdown of brand new cases in the 'E' grid *Straddle cells* (Non Habitual)

Total 2012 Sentences = 1,463

	A	B	C	D	E	F
I				402	128	103
II				359	141	69
III				77	26	
IV			69	36		
V		10	27			
VI		7	9			

Very different sentencing outcomes...

Supervised in Community

"Behind Bars"

43 Prison (Min range of 5-23 mos)
Avg. min. term imposed = 17 mos.;
Range of 6-36 mos.

224 Jail
Avg. term imposed = 6 mos.;
Range of 1-365 days.

Probation **134**
Avg. term imposed = 24 mos.;
Range of 9-60 mos.

Despite falling in the same cell on the same grid, defendants punished disparately:

- As little as a few months in jail without any supervision to follow,
- As much as 5 years on probation, or
- Minimum of up to 3 years in prison with potential for parole supervision of varying length.

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

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16

Geography Compounds Disparity in Actual Sentencing for Most Frequently Used Straddle Cell

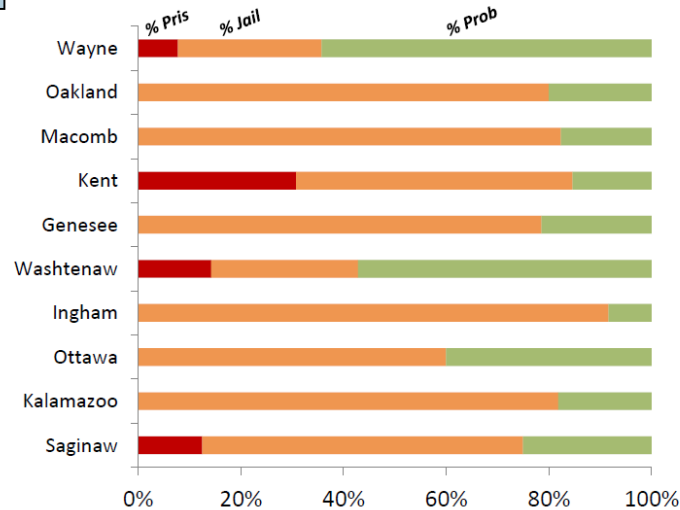
Sentencing breakdown of brand new cases in the 'E' grid 'Straddle' cells (Non Habitual)

Total 2012 Sentences = 1,463

	A	B	C	D	E	F
I				402	128	103

The 10 most populous counties accounted for 299 (74%) of the 402 sentences falling in this one straddle cell.

- 6 of the 10 counties didn't use prison at all
- 1 county used prison for almost a third of cases
- 2 counties used probation for more than half of cases



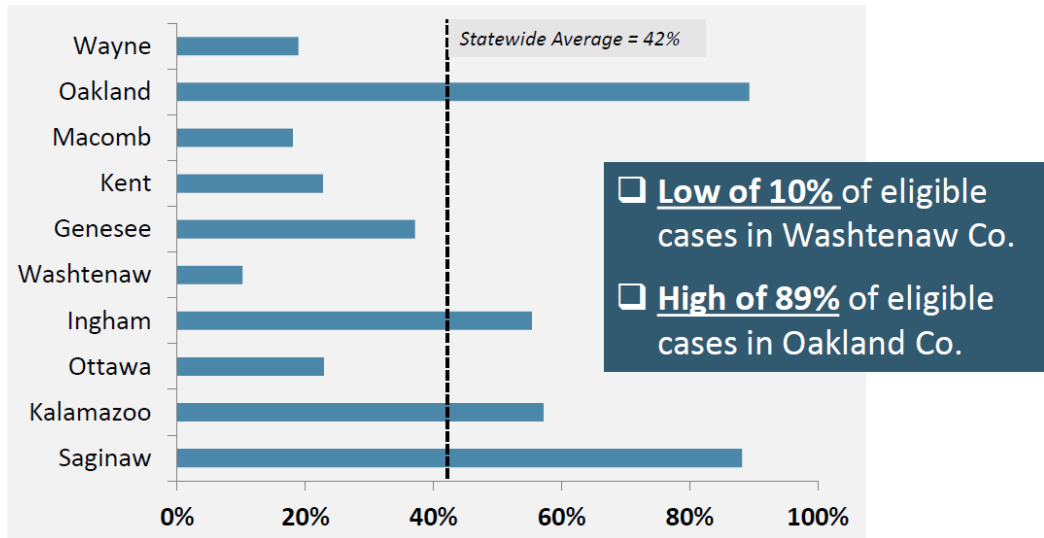
Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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17

Wide Disparity in Use of Habitual Sentencing Among Top 10 Counties

Percent of Eligible Cases Sentenced as Habitual Offender in 2012 (SGL Prison Bound Only)



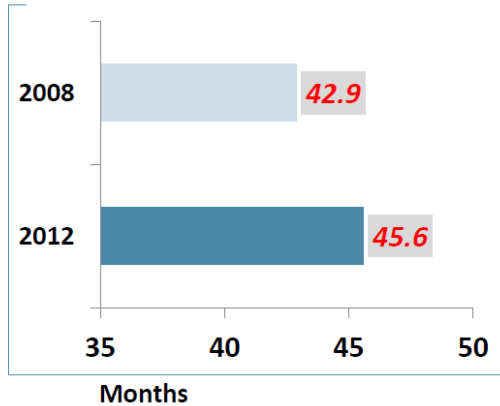
Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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18

Length of Minimum Prison Sentences Has Increased by Almost Three Months

**Length of Minimum Prison Sentence
Imposed**



Cost Impact of the Increase

- ❖ The 8,881 individuals sentenced to prison in 2012 will serve on average at least 2.7 months longer compared to the 2008 average.
- ❖ Translates to an additional 1,971 prison beds occupied on any given day.
- ❖ At \$98 per day, cost to Michigan is an additional \$70 million each year.

Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections; *Corrections Background Briefing*, December 2012, House Fiscal Agency.

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19

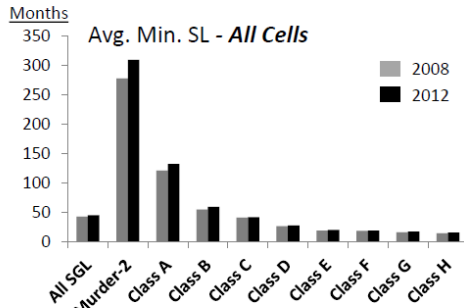
Possible Causes of Increased Minimum Sentences

Possible Cause	Assessment	Details
More serious offenses?	No	Grid placement is constant
More consecutive sentencing?	No	Consistent over time
More habitual sentencing?	A little	Increased use, increased minimums
Higher PRV/OV Scores?	No	Only two classes had scoring changes leading to longer minimums
Use of Discretion?	Yes	Everything points to changes in practice within discretion allowed

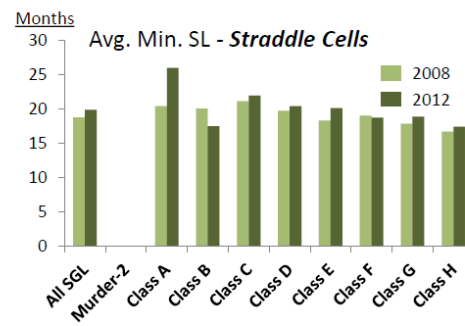
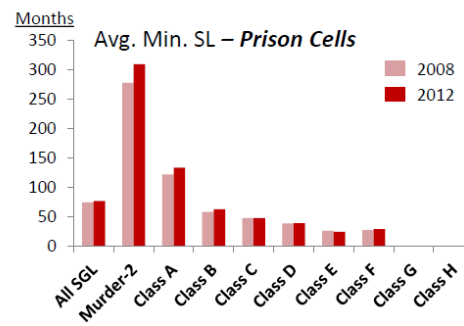
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20

Average Minimum Sentences Have Increased Across Offense Classes and Cell Types



Increases in sentence lengths occur across all grids and apply to all cell types except Class B Straddle Cells



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

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21

Cases Are not Migrating to More Serious Offense Classes

Distribution of Guidelines Prison Sentences by Class

Grid	2008	2012
2nd Deg. Mur.	2%	2%
Class A	11%	11%
Class B	12%	11%
Class C	13%	14%
Class D	18%	16%
Class E	27%	27%
Class F	7%	7%
Class G	9%	10%
Class H	1%	1%
Total Cases	9,411	8,851

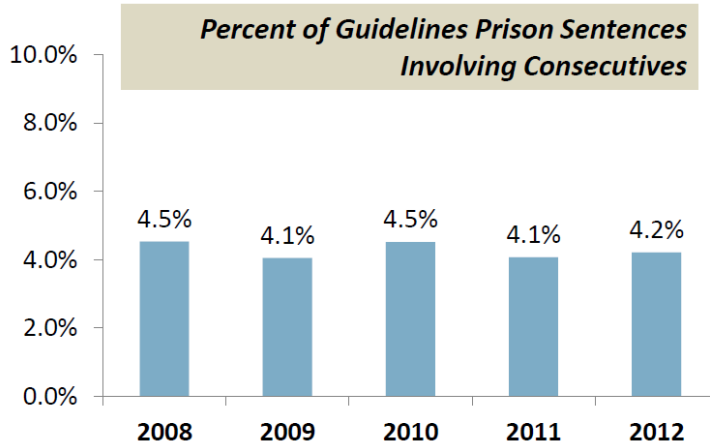
Increase in overall average minimum sentence length is not due to cases moving from less to more serious offense classes

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

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22

Fewer than 5% of Guidelines Prison Sentences Imposed Involve Consecutive Sentencing, Consistently from 2008-12



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

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23

Use of Habitual Sentencing Is Selective but Increasing, Occurring in 42% of Eligible Cases

Habitual Offender Type	2008		2012	
	# Eligible	% Habitualized	# Eligible	% Habitualized
Habitual – 2nd	1,271	22.2%	1,088	24.4%
Habitual – 3rd	1,141	33.5%	1,088	35.6%
Habitual – 4th	4,226	44.8%	4,044	49.1%
Habitual – Subtotal	6,638	38.5%	6,220	42.4%

2,556
Defendants
Habitualized
in 2008

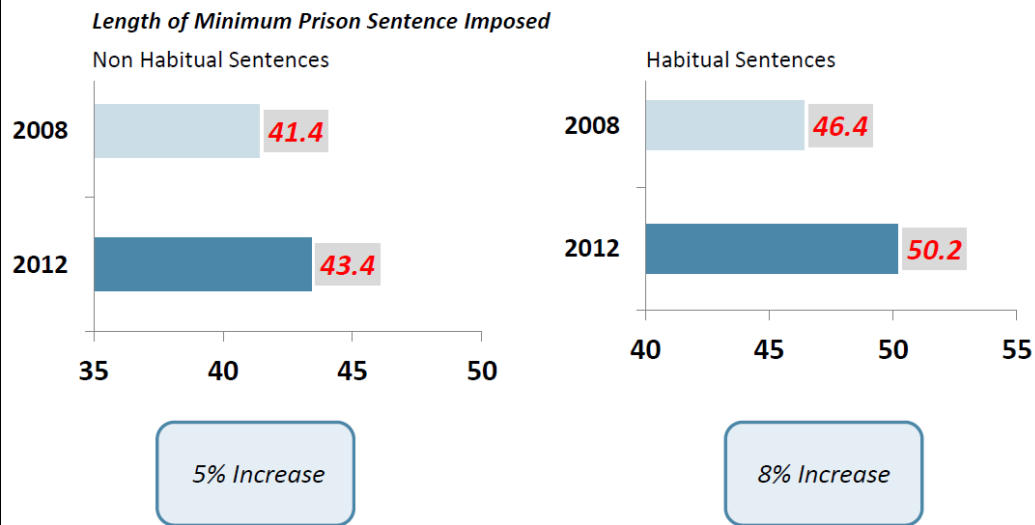
2,638
Defendants
Habitualized
in 2012

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

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24

Minimum Sentences Are Increasing for Non-Habitualized and Habitualized Offenders



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

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25

Only Two Classes Showed Average Scoring Changes Large Enough to Move Cases to Cells with Longer Minimums

SGL Sentences to Prison – Average Minimum Sentence Length (Months), Average Offense Variable Score, and Average Prior Record Value Score

Grid	Min SL		OV Score		PRV Score	
	2008	2012	2008	2012	2008	2012
2nd Deg. Mur.	277.9	309.6	113	117	30	28
Class A	121.4	132.7	59	59	33	32
Class B	54.9	59.4	37	33	34	38
Class C	41.5	41.8	34	33	42	41
Class D	26.4	27.8	24	25	58	63
Class E	19.1	20.3	18	20	58	59
Class F	18.9	19.1	23	25	51	54
Class G	16.3	17.6	17	18	64	61
Class H	14.8	15.6	15	16	64	66

Move to less severe sentencing cell.

Cell IV-D → III-D

Cell II-E → III-E

Cell II-E → III-E

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

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26

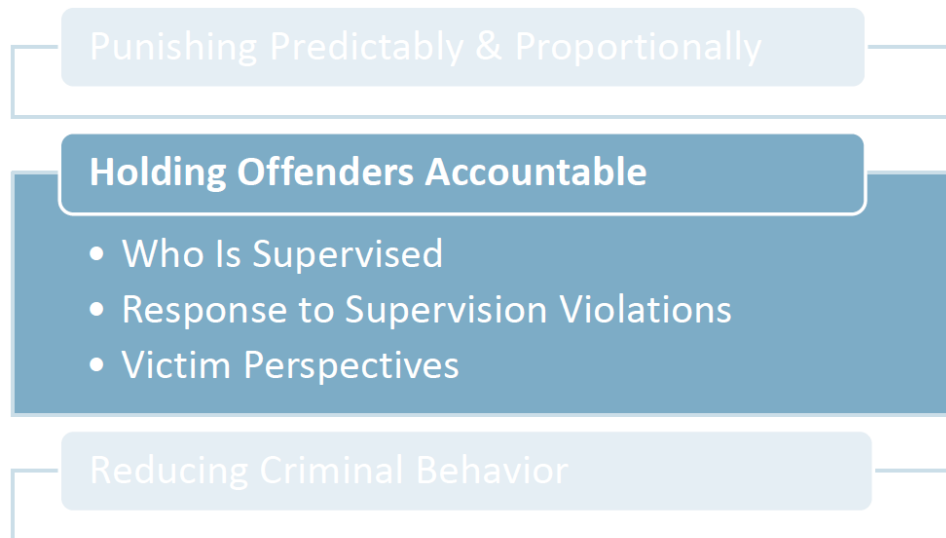
Summary – Punishing Predictably & Proportionally: Unpredictable and Disparate Sentencing

Key Findings	Further Research
<ul style="list-style-type: none"> ❑ Opportunities for disparity built in <ul style="list-style-type: none"> ✓ Most sentences fall in grid cells with unpredictable outcomes ✓ Minimum ranges span 100-300% ❑ Actual disparity emerges <ul style="list-style-type: none"> ✓ Minimums span the full 100-300% range ✓ Disparate outcomes in straddle cell sentencing ✓ Great variation by county in sentencing ❑ Prison sentence length increasing <ul style="list-style-type: none"> ✓ Primary cause is the exercise of discretion to ratchet up sentencing 	<ul style="list-style-type: none"> ➤ Patterns and factors in parole decision making <ul style="list-style-type: none"> – Does parole add to or smooth out disparity? – Length of stay based on parole decisions – Parole decisions by risk level

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27

Overview of Presentation



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28

Guidelines Do Not Effectively Structure Supervision

Who Gets Supervision

- ❖ Too many high-risk felons unsupervised after release from jail

Length of Supervision

- ❖ Low-risk probationers supervised almost as long as high-risk
- ❖ Sentencing law forces choice between incapacitation and post-prison supervision

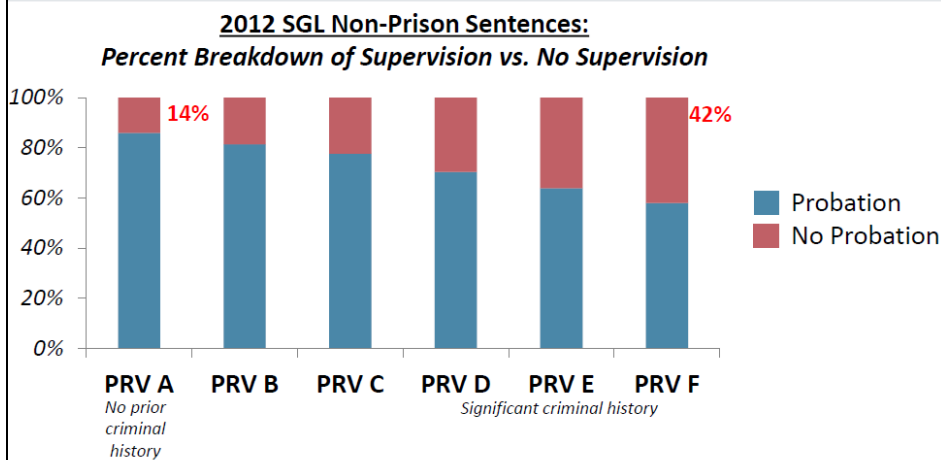
Responses to Violations

- ❖ Violation responses never written into guidelines
- ❖ Voluntary deployment of Swift and Sure

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29

Repeat Offenders Three Times Less Likely to Be Supervised After Release from Jail



For non-prison sentences, as the degree of risk increases, the probability of being supervised decreases.

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

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30

More than 4,000 Higher Risk Felons Sentenced to Jail Without Post-Release Supervision

2012 SGL Sentences by Prior Record Level

	No prior criminal history			Significant criminal history		
PRV Level	A	B	C	D	E	F
Total Sentences	7,985	6,110	10,904	9,360	5,302	4,388
Jail Only	978	1,017	2,078	2,080	1,136	849

These felons are higher recidivism risk by virtue of their criminal history (PRV) scores.

4,065 offenders with significant criminal history received sentences that involved no supervision at all (only received a period of time in jail).

- Represents 21% of total cases involving offenders with significant criminal history

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

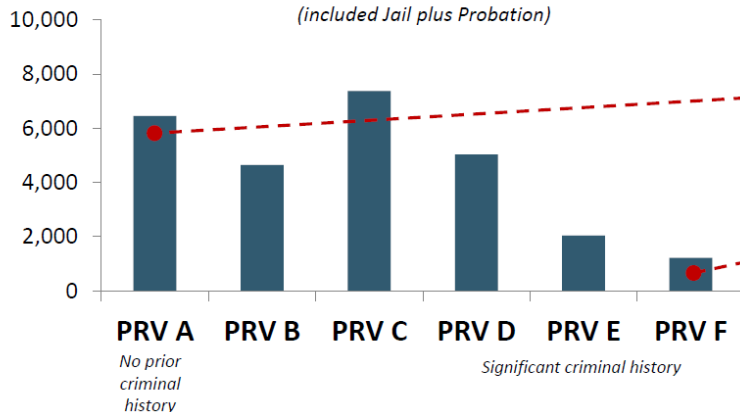
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31

Low-Risk Probationers Supervised Almost As Long as High-Risk Probationers

2012 SGL Sentences Involving Probation

(included Jail plus Probation)



Months of Probation

- PRV A = 24
- PRV B = 24
- PRV C = 26
- PRV D = 28
- PRV E = 29
- PRV F = 30

Supervising low-risk individuals for 2 years provides little public safety benefit and uses resources that should be targeted to supervise higher risk individuals.

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

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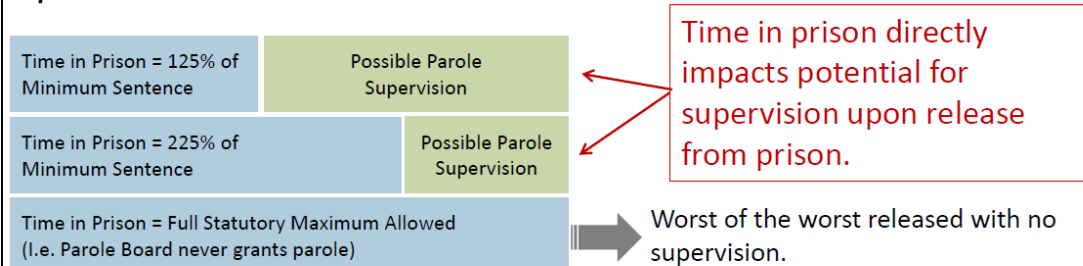
32

Michigan Law Forces a Trade-Off Between Incapacitation and Post-Release Supervision

Many sentencing guideline schemes have a predictable period of post-release supervision.



But under Michigan law, with parole release discretion overlaid on the guidelines, the effect is that as release from prison is delayed, the potential for post-release supervision is reduced.



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33

Guidelines Were Silent on Probation Revocation and Court Ruling Filled the Void

1979 1983 1994 1998 2004 2013

❖ **Validity** - separation of powers & jury trial

❖ **Applicability** - to probation revocation

"The legislative sentencing guidelines apply to sentences imposed after probation revocation. . . . Further, a defendant's conduct while on probation can be considered as a substantial and compelling reason for departure from the legislative sentencing guidelines."

People v. Hendrick (2005)

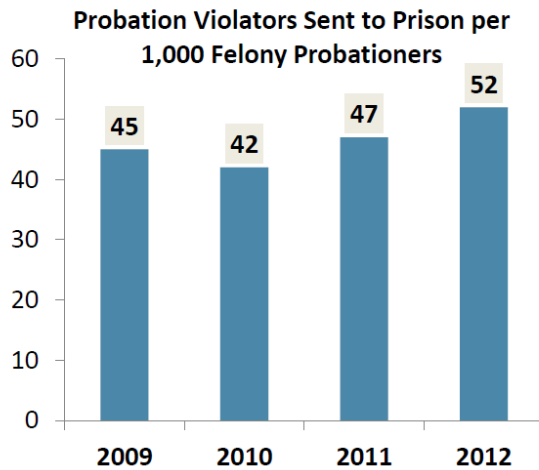
Source: *People v. Babcock*, 2003; *People v. Garza*, 2003; *People v. Hendrick*, 2005; *People v. McCuller*, 2007.

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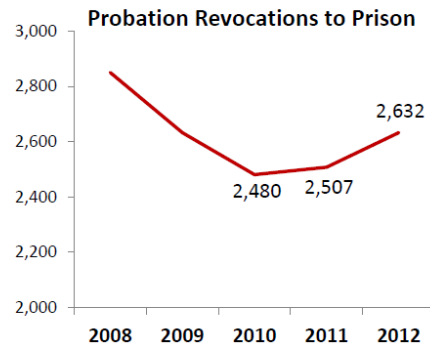
34

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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35

Grid Severity Has Minimal Effect on the Length of Revocation Sentence for Probation Compliance Violators

2012 Guidelines Probation Compliance Violator Cases

Grid	#	% of Total
2nd Deg. Mur.	1	0.0%
Class A	16	0.3%
Class B	92	2.0%
Class C	272	5.8%
Class D	641	13.7%
Class E	1,395	29.8%
Class F	688	14.7%
Class G	1,370	29.2%
Class H	214	4.6%
Subtotal	4,689	

# to Prison	Avg. Min. Sen. Len.
1	360 Mos
14	40 Mos
47	45 Mos
96	26 Mos
147	23 Mos
304	20 Mos
124	19 Mos
193	19 Mos
21	19 Mos
947	23 Mos

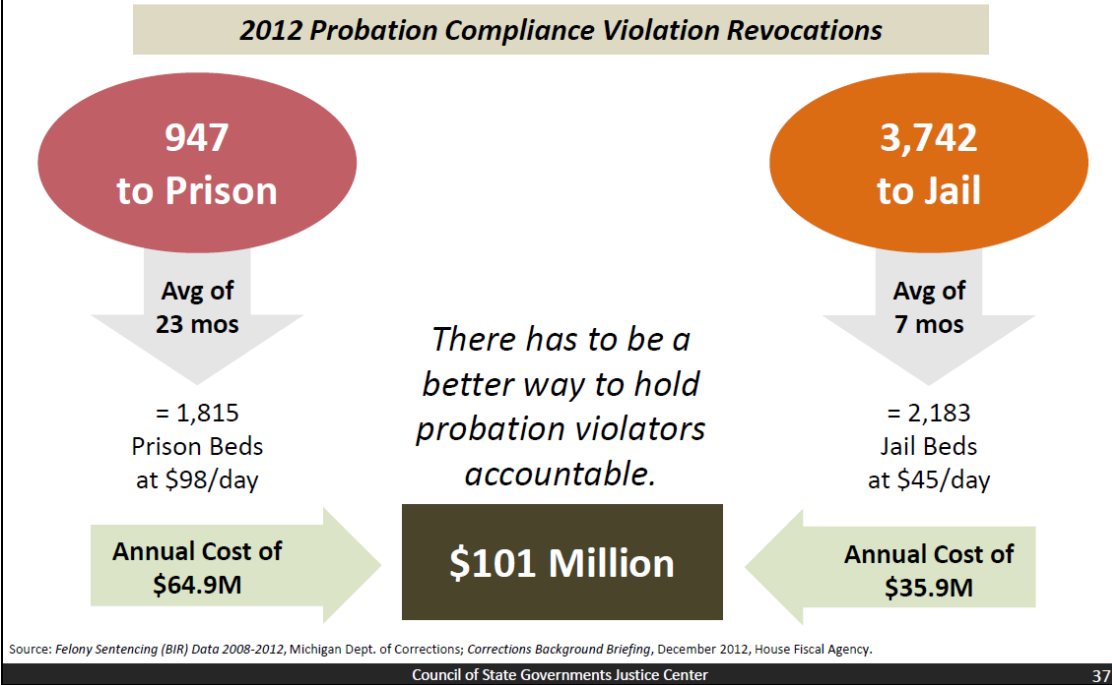
# to Jail	Avg. Sen. Len.
0	---
2	12 Mos
45	7 Mos
176	8 Mos
494	7 Mos
1,091	7 Mos
564	6 Mos
1,177	7 Mos
193	6 Mos
3,742	7 Mos

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

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36

More than \$100 Million Spent Annually Revoking Probation Compliance Violators to Prison and Jail



Use of Jail as Response to Compliance Violations Is Critical in Reducing Both Violations and New Crime

- Prior slides illustrate what we know about the “final” sanctioning of probation violators.
- Reality is that “final” sanctioning is likely preceded by many compliance violations.
- Question becomes not how probation violators are ultimately sentenced, **but when and how sanctions are used to respond to initial patterns of non-compliance.**

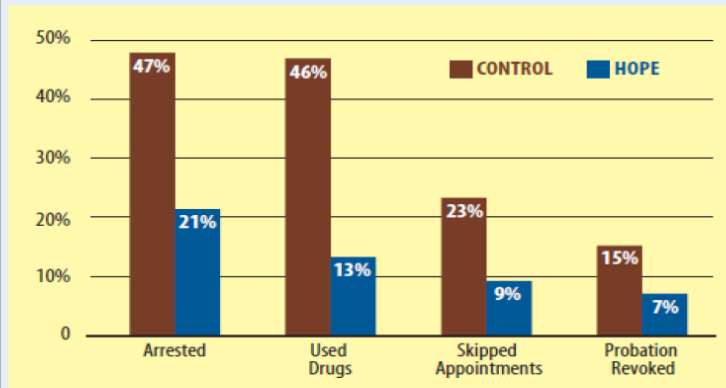
Research Shows Effect of Swift and Certain Responses to Reduce Recidivism

Georgia POM

Enabling probation officers to employ administrative sanctions & probationers to waive violation hearings reduced jail time three-fold, reduced time spent in court, and increased swiftness of responses to violations.

Hawaii HOPE

Intensive, random drug testing with swift, certain, and brief jail sanctions.



Source: An Evaluation of Georgia's Probation Options Management Act, Applied Research Services, October 2007; Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE, Hawken, Angela and Mark Kleiman, December 2009.

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39

Michigan Has Enacted the Swift and Sure Sanctions Act (2012 PA 616)

Probationers subject to close monitoring and prompt arrest with immediate sanctions following a violation

Funds (\$6m for 2013) available: for assessments; drug-testing; substance abuse/mental health treatment; EM tether devices; contractual employees; law enforcement overtime; jail reimbursement.

But...

Voluntary - i.e., if local circuit court does not want it, this proven concept is not in place

Bottom Line: Until use of swift/certain sanctions becomes the norm, there will be limited accountability for probationers.

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40

Victim Advocates Raise Concerns

Restitution

Restitution must be ordered if crime causes harm to property or injury to victim

Is restitution assessed at the correct amount in appropriate cases?

What are restitution collection rates in Michigan?

Sentencing

Three offense variables address degree of injury to victim or victim's family

Advocates indicate that interpretations of trauma are painful and inadequate

Is there a more direct way to incorporate injury to the victim in sentencing process?

Crime

Crime and arrests down since 2008, but violent crime and low clearance rates continue to plague specific areas

Victim service providers and advocates still see a high need for their services and programs

Are there enough resources for local law enforcement and victim services?

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41

Michigan Is Firm on Restitution in the Constitution and Crime Victim's Rights Act

Constitution 1963, art. 1, § 24 and William Van Regenmorter Crime Victim's Rights Act (CVRA)

- Judge **must** order restitution equal to the victim's loss if the crime causes harm to property or physical or psychological injury.
- Restitution is to be imposed regardless of ability to pay.
- Payments are required across probation, prison and parole.

Collaboration to improve restitution collection is ongoing, across agencies and branches of government.

"Offender compliance with restitution and support orders is a key measure of offender accountability and the performance of offender supervision agencies."

M.C.L. § 780.766(3)(a)-(c); M.C.L. § 780.766(4)(a)-(e)

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42

Scoring Victim Injury Requires Assigning Subjective Point Values

- ☐ **Offense Variable 3:** Physical Injury to a Victim
 - Score 0, 5, 10, 25, 50, or 100 points
- ☐ **Offense Variable 4:** Psychological Injury to a Victim
 - Score 0 or 10 points
- ☐ **Offense Variable 5:** Psychological Injury to Victim's Family
 - Score 0 or 15

Victim advocates indicate that subjective, 'point value' interpretations of injury or trauma are painful and inadequate

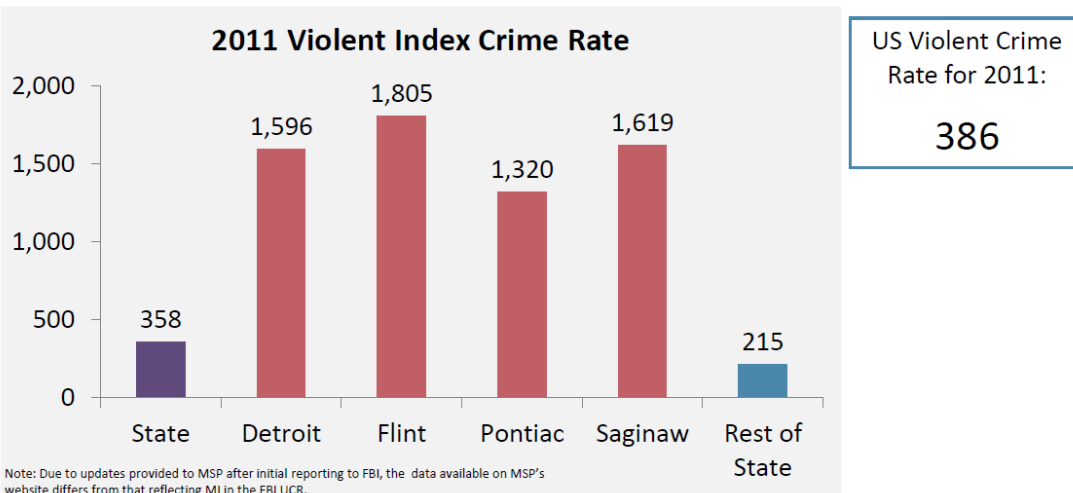


Is there a more empowering way to incorporate injury to victims in the sentencing score and process?

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43

High Levels of Reported Violent Crime in Detroit, Flint, Pontiac, and Saginaw



Source: Michigan State Police; <http://www.micrstats.state.mi.us/MICR/Reports/Report01.aspx> for Michigan breakdowns by city; and FBI, Uniform Crime Report for US average.

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44

Low Violent Crime Clearance Rates in Detroit, Flint, Pontiac, and Saginaw

Clearance Rate: the percent of reported crimes “cleared” by an arrest.

2011 Violent Index Crime Clearance Rates

Location	Reported Crimes	Reported Arrests	Clearance Rate
Michigan	39,247	12,520	32%
Detroit	14,153	2,809	20%
Flint	2,140	206	10%
Pontiac	889	226	25%
Saginaw	945	235	25%
Rest of State	21,120	9,044	43%
US	1,203,564	534,704	44%

Clearance rates in the “Top Four” are much lower than in the rest of Michigan.

Clearance rates in the rest of Michigan are in line with the rest of the nation.

Note: Due to updates provided to MSP after initial reporting to FBI, the data available on MSP's website differs from that reflecting MI in the FBI UCR.

Source: Michigan State Police; <http://www.micrstats.state.mi.us/MICR/Reports/Report01.aspx> for Michigan breakdowns by city; and FBI, Uniform Crime Report for US average.

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45

Summary – Holding Offenders Accountable: Unstructured Supervision and Response Decisions

Key Findings	Further Research
<p><input type="checkbox"/> Disconnect between risk and supervision practices</p> <ul style="list-style-type: none"> ✓ High-risk felons unsupervised after jail ✓ Lengthy probation for low-risk individuals ✓ Forced choice between incapacitation and supervision after prison <p><input type="checkbox"/> High state and county expense for locking up compliance violators</p> <ul style="list-style-type: none"> ✓ Lack of structured violation responses weakens accountability ✓ “Swift and Sure” sanctioning dependent on voluntary adoption <p><input type="checkbox"/> Victim concerns with crime and sentencing</p> <ul style="list-style-type: none"> ✓ OV scoring of trauma is painful and inadequate ✓ Crime in major cities causes fear and defeat 	<p>➤ Probation re-arrest rates</p> <ul style="list-style-type: none"> – by PRV score – by risk level <p>➤ Re-arrest outcomes from disparate revocation responses</p> <ul style="list-style-type: none"> – jail vs. prison <p>➤ Restitution collection rate</p>

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46

Overview of Presentation

Punishing Predictably & Proportionally

Holding Offenders Accountable

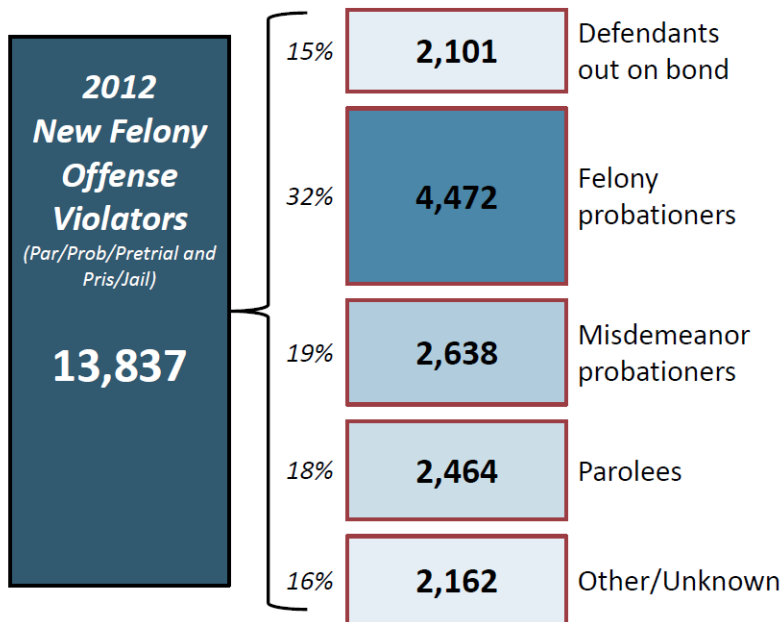
Reducing Criminal Behavior

- Crime by Offenders on Supervision
- Risk Assessment Adoption

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47

One-Third of New Felony Offense Violators Are Felony Probationers

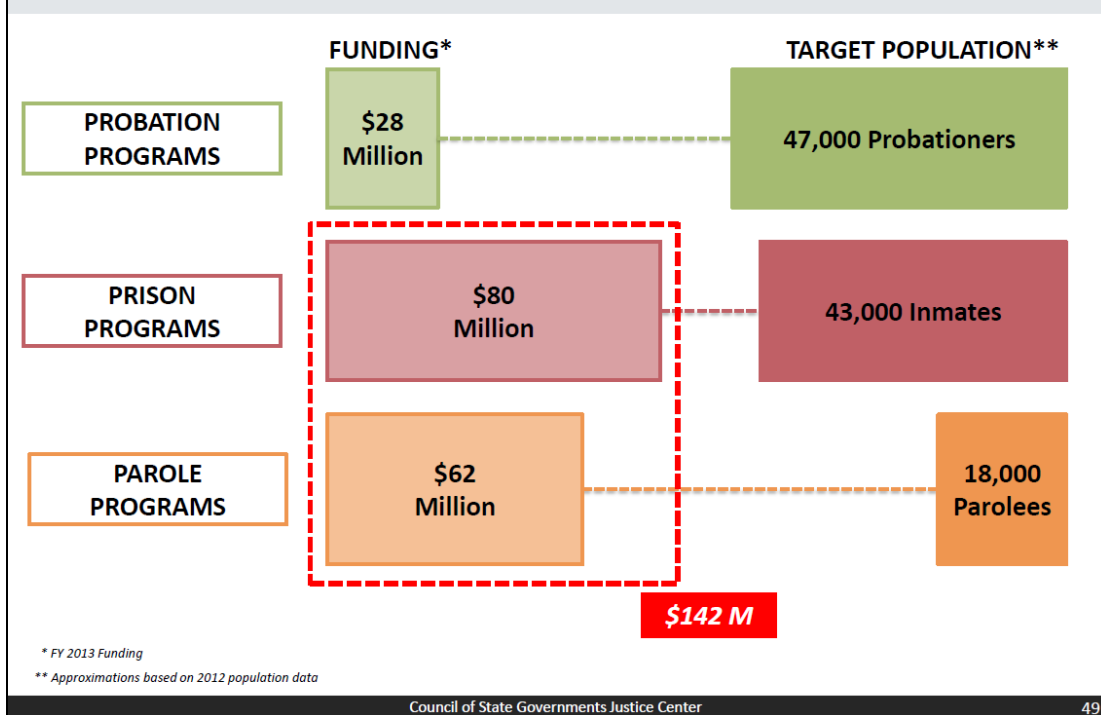


Source: *Felony Sentencing (BIR) Data 2008-2012*, Michigan Dept. of Corrections.

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48

Less Funding Devoted for Probationers Despite Higher Population and Impact on New Felony Offenses

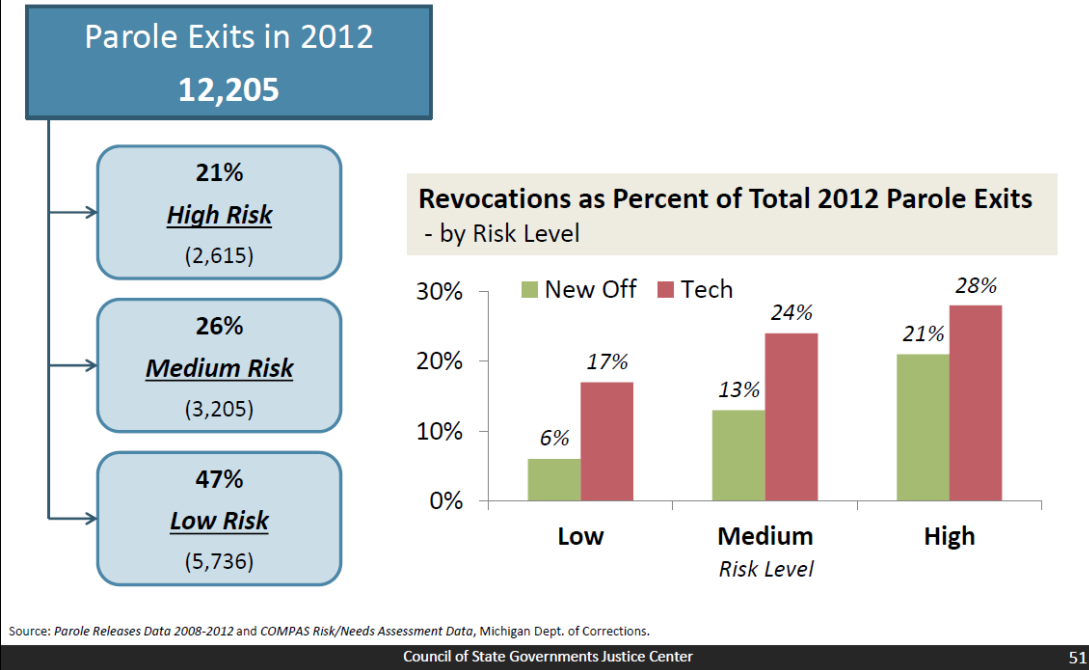


Risk Assessment Adopted in DOC and Parole

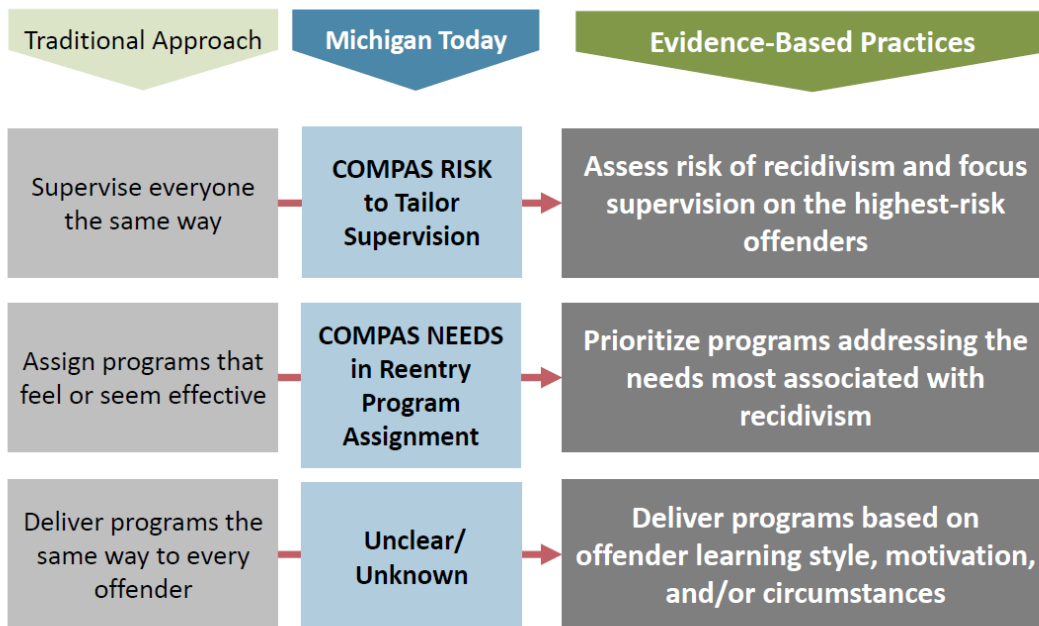
Risk / Needs Assessment	Pretrial	Sentencing	Probation	Prison "Getting Ready"	Parole Board "Going Home"	Parole "Staying Home"
Used in MI?	Not Yet	Not Yet	Risk Yes/ Needs Not Yet	Yes	Yes	Yes
Adoption Status	2014	2014	Risk: Adopted Needs: 2014	Adopted	Adopted	Adopted
Validation Status*	Awaiting Validation	Awaiting Validation	Awaiting Validation	Validated	Validated	Validated

*Risk assessment tools must be validated to test whether a low-risk group identified by the tool actually turns out to have a lower rate recidivism than the medium-risk and high-risk groups.

Risk Assessment Is Working for Parole - Only 6% of Low Risk Parolees Are Revoked for New Offenses



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



Michigan Invests in Prison and Jail Diversion as well as Other Programs to Reduce Rates of Re-offense

**County Jail
Reimbursement Program**

Community Corrections

Specialty Courts

Prisoner Reentry

***Continued
research to
analyze program
outcomes and
impacts***

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53

Summary – Reducing Criminal Behavior: Using Risk to Guide Practice Is the Key

Key Findings	Further Research
<p><input type="checkbox"/> Crime by offenders on supervision</p> <ul style="list-style-type: none">✓ Felony probationers generate a third of the new felony crime, yet relatively few program resources go to reduce criminal behavior among this populations	<p>➤ Further analysis of supervision and program spending</p>
<p><input type="checkbox"/> Successful use of risk assessment for parole supervision</p> <ul style="list-style-type: none">✓ Parole outcomes improving and resources are fairly significant accounting for prison and parole programming✓ Risk assessment is key, and adoption of EBP is still in practice	<p>➤ Opportunities to improve supervision and reduce recidivism</p>

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54

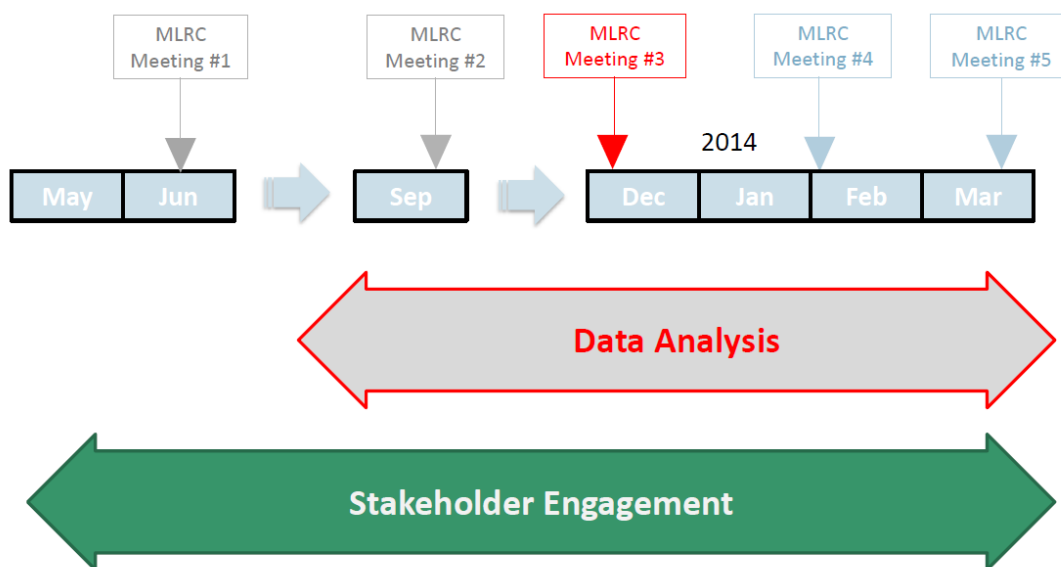
Key Findings and Further Research

Topic	Key Findings	Further Research
Punishing Predictably & Proportionally	<ul style="list-style-type: none"> ❖ Opportunities for disparity built in ❖ Actual disparity emerges ❖ Creep upward in prison sentence length 	<ul style="list-style-type: none"> ❖ Patterns in parole decision making, by risk level, and impacts on length of stay
Holding Offenders Accountable	<ul style="list-style-type: none"> ❖ Disconnect between risk and assigning supervision ❖ Uneven responses to violations ❖ Victim concerns with sentencing and crime 	<ul style="list-style-type: none"> ❖ Re-arrest rates, comparing to PRV levels and types of sentence imposed ❖ Restitution collection rate
Reducing Criminal Behavior	<ul style="list-style-type: none"> ❖ Crime by offenders on supervision ❖ Successful use of risk for parole supervision 	<ul style="list-style-type: none"> ❖ Analysis of program funding and effectiveness in reducing criminal behavior

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55

Project Timeline



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56

Thank You



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