

final minutes

Criminal Justice Policy Commission (CJPC) Meeting

9:00 a.m. • Wednesday, August 7, 2019

Room 6900 • 6th Floor of the Binsfeld Office Building

201 Townsend Street • Lansing, MI

Members Present:

Dr. Amanda Burgess-Proctor, Chair
Ronald Bretz
Honorable Chuck Goedert
D.J. Hilson
Kyle Kaminski
Brian Kolodziej
Sheryl Kubiak
Barbara Levine
Senator Peter Lucido
Kenneth Mitchell
Senator Sylvia Santana (teleconference)
Jennifer Strange
Judge Paul Stutesman
Andrew Verheek

Members Excused:

Representative Beau LaFave
Sheriff Michelle LaJoye-Young
Representative Isaac Robinson

I. Convening of Meeting and Roll Call

The Chair called the meeting to order at 9:01 a.m. and asked the clerk to take the roll. A quorum was present. Absent members were excused.

II. Approval of the July 10, 2019 Criminal Justice Policy Commission Meeting Minutes

The Chair asked members if there were any additions or corrections to the proposed July 10, 2019 CJPC meeting minutes. There were none. **Commissioner Verheek moved, supported by Commissioner Mitchell, to approve the minutes of the July 10, 2019 Criminal Justice Policy Commission meeting as proposed. There was no further discussion. The minutes were approved by unanimous consent.**

III. Commission Extension Legislative Update

The Chair shared that, after the last meeting, she emailed information regarding the Commission's budget to Commission members and asked if there were any questions. There were none. She then announced the nine organizations that have endorsed the Commission's consensus statement—the American Civil Liberties Union of Michigan (ACLU), Michigan Association of Counties (MAC), Michigan Citizens for Justice, Michigan District Judges Association, Michigan Judges Association, Nation Outside, Safe and Just Michigan, State Bar of Michigan Prisons & Corrections Section, and the State Court Administrative Office. She noted that the list of supporting organizations is posted on the Commission's webpage and urged that, if there are any other organizations that wish to submit letters of support, they can do so by sending an email or letter to the Chair with a copy to the Commission Clerk Susan Cavanagh. Senator Lucido then provided an update on the status of the bill request to extend the CJPC for 4-years. A discussion of the Commission's extension followed. Commissioner Kaminski asked for a copy of the bill drafts and indicated that he will work on securing the Governor's support as the bills move through the legislative process.

IV. Prior Record Variable (PRV)/Habitual Offender (HO) Subcommittee Update

The Chair called on Commissioner Levine for an update. Commissioner Levine proceeded with an overview of the issues and concerns discussed by the subcommittee including recommending to the Legislature the "Gardner fix" that each prior conviction used to charge someone as a habitual offender must come from a separate criminal transaction. See attached handout for more details (Michigan's Habitual Offender Laws: Restoring their Original Intent). **Judge Goedert moved, supported by Commissioner Bretz, to recommend that the Legislature amend MCL 769.11 and .12 to add to the entirety of those provisions the language of MCL 769.12(1)(a) "Not more than 1 conviction arising out of the same transaction shall be considered a prior felony conviction for the purposes of this subsection only."** A discussion of any concerns followed. Commissioner Hilson reiterated that he supports the concept of looking at this area, but he must be careful when representing his association. He would prefer to see the bill draft and reserves the right to negotiate the language if it needs to be tweaked as it moves through the legislative process. Judge Stutesman added he prefers the Commission propose a concept and leave it up to the Legislature to draft the exact legislative language to amend the statute. Senator Lucido suggested legislative intent should be looked at and recommended the Commission include strongly

suggested language. After further discussion, Judge Goedert's motion was tabled. The Chair noted that Commission members will take the concept of the recommendation back to their organizations and Commissioner Levine and the other subcommittee members will prepare and circulate draft language of the proposed recommendation for consideration at the next CJPC meeting. The issue of what impact this change might have on sentencing was raised by Commissioner Verheek and then discussed by the Commission.

Commissioner Levine then presented the PRV/HO subcommittee's suggestions to address concerns with how "prior conviction" is defined under the habitual offender statute (see July 29, 2019 memo from HO/PRV Subcommittee to CJPC Members for details).

1. The CJPC recommend to the Legislature that the habitual offender statutes be amended to include both a limit on the age of the prior convictions and criteria to define the nature and/or severity of the priors.
2. The CJPC recommend to the Legislature that prior convictions used to charge someone as a habitual offender must be in the same sentencing guidelines crime group as the sentencing offense.
3. The CJPC recommend to the Legislature that priors be weighted by whether they are high or low severity, much as they are in PRV scoring.

After the subcommittee suggestions were discussed and no consensus reached about what recommendations the Commission should make to the Legislature about the habitual offender statutes, the Chair noted that no Commission action will be taken at this time. The subcommittee will continue to research the issue and investigate what Michigan's law is relative to other states. Commissioner Kaminski commented that the Robina Institute has done a lot of work around this issue and the Commission may want to look to them for more information. Judge Stutesman's requested the subcommittee may also want to look at the prior record variable rule where the 10-year time frame is for any conviction. He suggested the 10-year rule apply only to crimes against person, crimes against property, or drug crimes. Commissioner Kaminiski added that he is interested in seeing information regarding the distribution of the offenses for the people who are habitualized as it may give the Commission a better sense of what types of crimes are being escalated.

The Chair laid the Commission at ease at 10:26 a.m.

The Chair reconvened the Commission at 10:38 a.m.

V. Discussion of Final Summary Report and Recommendations

The Chair began by acknowledging Commissioner Kubiak's, Commissioner Hilson's, and Senator Santana's role and participation on the Governor's Joint Task Force on Jail and Pretrial Incarceration and thanked them for mentioning the Commission in their remarks at the task force's first meeting. She noted that she and Mr. Bridges attended that meeting. The Chair then directed attention to the Draft Recommendations for CJPC Final Straddle Cell Summary Report (see attached) and Mr. Bridges provided an overview of the table found on the first page of the draft summary report. A discussion of each of the draft recommendations followed. The Chair noted that input was received from the State Court Administrative Office (SCAO) on the data-related recommendations and, after discussion, there was no objection to the two recommendations as presented; however, language to expand the first recommendation to include a companion recommendation for the Commission to conduct an on-going review will be added. For the guideline-related recommendations, Mr. Bridges presented new data prepared for alternative options in addressing disparities in the sentencing guidelines (see attached presentation for more details). Two options were identified. Option 1 would increase the upper limit for intermediate sanction cells from "18 months or less" to "23 months or less". Option 2 would increase the upper limit for intermediate sanction cells from "18 months or less" to "23 months or less" but only for those cells having a lower limit of "less than 10 months". A discussion of additional costs to jails and local governments, a lack of community-based treatment resources, and the impact on plea deals followed. No consensus was reached on these recommendations. The Chair noted that a decision needs to be made if the Commission wants to make a recommendation for an alteration to the sentencing guidelines and further work will be done in preparation of the next meeting. The Chair also recognized Mr. Bridges for the extensive work and data analysis he put in to prepare the presentation.

VI. Commissioner Comments

The Chair asked if there were any Commissioner comments. Commissioner Strange suggested the possibility for a mechanism to highlight some of the Commission's previous recommendations. Judge Stutesman encouraged the preparation of a summary report of the Commission's accomplishments. Commissioner Kaminski pointed out the

need to prepare how options 1 and 2 correlate back to disparity. Commissioner Levine offered it might be useful to include the number of states that use straddle cells. There were no other Commissioner comments.

VII. Public Comments

The Chair asked if there were any public comments. There were no public comments.

VIII. Next CJPC Meeting Date

After a discussion of the next meeting date, the Chair announced that the next Criminal Justice Policy Commission is tentatively scheduled for **Wednesday, September 18, 2019, at 9:00 a.m.** There were no objections to the date. The location for the meeting is to be determined and will be announced later.

IX. Adjournment

There being no further business before the Commission and seeing no objection, the Chair adjourned the meeting, the time being 12:00 noon.

(Minutes approved at the September 18, 2018 Criminal Justice Policy Commission meeting.)

Michigan's Habitual Offender Laws: Restoring their Original Intent

For decades, Michigan judges, prosecutors and defense attorneys understood a habitual offender to be someone who persisted in committing crimes over a period of time, i.e., someone who repeatedly got convicted and broke the law again. The sentence for a new crime can be incrementally increased for being a second, third or fourth offender.

But the Michigan Supreme Court reinterpreted the law to count each conviction arising from a single criminal incident as separate prior offenses. Now, someone who was convicted of three offenses as a result of their first criminal episode can be a fourth offender, subject to life in prison, if s/he is subsequently convicted of another crime.

When choosing sentences for criminal offenses, the defendant's criminal history is always a relevant consideration. For instance, the defendant's prior record is a key factor in scoring Michigan's sentencing guidelines.

However, Michigan had habitual offender laws long before the guidelines were adopted in 1998. The current statutes were enacted in 1927 and their roots go back to 1857. They basically work like this:

- If the defendant has a single prior conviction, the prosecutor can charge him or her as a second offender. The judge can then impose a maximum sentence up to 1 ½ times the length the penal statute would otherwise allow. MCL 769.10.
- If the defendant has two prior convictions, the prosecutor can charge him or her as a third offender. The judge can then impose a maximum sentence that is up to twice the length the penal statute would otherwise allow. MCL 769.11.
- If the defendant has three or more prior convictions, the prosecutor can charge him or her as a fourth offender. If the current crime normally carries a maximum sentence of five years or more, the judge can impose any maximum up to life. If the current crime normally carries a maximum of less than five years, the judge can impose a maximum sentence up to 15 years. MCL 769.12.
- If the defendant is being sentenced as a habitual offender, under the sentencing guidelines the minimum sentence can also be raised.

Historically, the purpose of the habitual offender statutes was viewed as increasing punishment for people who had the opportunity to reform after having been convicted of previous offenses but chose not to do so. That is, the statutes are aimed at "habitual criminals" in the common meaning of the words: people who persist in committing crimes despite having been previously caught and convicted. That was not only the understanding of practitioners for decades, it was confirmed by two Michigan Supreme Court opinions, *People v Stoudemire*, 429 Mich 262 (1987) and *People v Preuss*, 436 Mich 714 (1990) in which the Court said each predicate felony must "arise from separate criminal incidents."

In 2008, in the case of *People v Gardner*, 482 Mich 41, the Court overruled its own precedents and dramatically changed its interpretation of the habitual offender statutes. It held: **multiple prior convictions that arose from the same criminal incident can each be counted separately.** Under this reasoning, if the defendant was involved in a single crime that resulted in three convictions s/he can be convicted as a fourth offender and receive a maximum sentence of life or any term. For example:

A 40-year old defendant is charged with uttering and publishing, an offense with a 14-year maximum. At age 20, he was convicted of breaking and entering, possession of a small quantity of drugs and possession of a firearm as the result of a single break-in at a convenience store during which he had the drugs and the gun in his pocket. The prosecutor could charge him as a fourth habitual offender, exposing him to a potential maximum sentence up to parolable life. (See additional examples attached)

As this example shows, prosecutors' broad charging discretion can have substantial consequences for both individual defendants and Corrections resources.

- Some prosecutors charge every crime possible from a single incident which they may then pursue to conviction or may use for leverage in plea negotiations.
- Some prosecutors bring habitual offender charges whenever possible which they may then pursue to conviction or may use for leverage in plea negotiations.

In *Gardner* the Court relied on a literal reading of the statutes.

- The third offender law says: "If a person has been convicted of *any combination* of 2 or more felonies..."
- The fourth offender law says: "If a person has been convicted of *any combination* of 3 or more felonies..."

Although these references to "any combination of felonies" may have been intended by legislators to mean crimes of any kind and any age, the four-member majority of Justices said it also means the prior crimes can have arisen from any incident. The test is the number of convictions, not the number of criminal incidents.

If the Legislature wants to reverse this interpretation, the fix is extremely simple. The answer lies in the habitual offender statute itself. In 2012 the Legislature chose to mandate a 25-year mandatory minimum sentence for fourth offenders who committed "serious" crimes and had at least one prior of a listed type. To avoid the impact of *Gardner* it then added the caveat:

"Not more than 1 conviction arising out of the same transaction shall be considered a prior felony conviction for the purposes of this subsection only."

All that is required to restore the longstanding, common sense intention of the habitual offender statutes is for the Legislature to apply this directive from MCL 769.12(1)(a) to all of MCL 769.11 and .12.

TO: CJPC Members
FROM: HO/PRV Subcommittee
RE: Proposed CJPC Recommendations about Prior Convictions Used for
Habitual Offender Charges
DATE: July 29, 2019

At the July CJPC meeting it was agreed that we would recommend to the Legislature the “Gardner fix”, i.e., that each prior conviction used to charge someone as a habitual offender must come from a separate criminal transaction. This would reverse the holding of the Michigan Supreme Court in *People v Gardner* that allows multiple convictions from the same transaction to all be counted. As requested, attached is a draft handout that fully explains the rationale for this recommendation.

This memo addresses the subcommittee’s other concerns with how “prior conviction” is defined under the habitual offender statute. These involve the age, nature and severity of the priors.

NOTE: Two other aspects of habitual offender sentencing are also matters of concern. One is the fact that people who are convicted of being habitual offenders then have their sentencing guidelines range broadened, even though that range is determined in the first instance by the scoring of the person’s prior record. This double enhancement based on prior record is exacerbated by the fact that the very same prior convictions may be counted twice. Strictly speaking, this is a result of how the sentencing guidelines are structured, not how the habitual offender statute is worded. The subcommittee plans to address the issue after completing analysis of data about its impact.

The other concern is with the mandatory 25-year minimum sentence required by the habitual offender statute for fourth offenders convicted of a “serious” crime who have at least one prior specified on a statutory list. The subcommittee suggests that this be addressed in the context of examining other mandatory minimum sentences.

BACKGROUND

The purpose of the habitual offender statutes is to allow for enhanced punishment of defendants who repeatedly engage in criminal behavior, i.e. whose criminal histories show an unwillingness to learn from their past and a persistent threat to the community. Not only do the statutes allow the maximum sentence to be raised, under the sentencing guidelines people who have been habitualized can have their minimum sentences increased as well. However, the statutes place no limits on the age of prior convictions that can be used to charge someone as a second, third or fourth offender. As a result, people can have their sentences substantially lengthened on the basis of offenses committed literally decades earlier. Moreover, the habitual offender statutes set no criteria for the nature or severity of the prior convictions, as long as they were felonies.

In combination, these characteristics allow someone who has not engaged in criminal behavior in many years to be habitualized on the basis of wholly dissimilar relatively low-level prior offenses. The 45-year old man who committed several B&E’s at age 17 and now has an OWI

and the 50-year old woman who had multiple drug possession charges at age 35 and now is convicted of embezzling \$2000 are equally vulnerable to receiving sentences of up to life in prison.

Enhancing the length of a sentence based on a distorted assessment of the defendant's status as a "habitual" offender undermines the goal of proportionality in sentencing. Because the criteria are so broadly drawn, the habitual enhancement can increase sentences in dramatic ways which are not proportionate to the offense or the offender.

The problem is further complicated by the fact that prosecutors use the habitual offender statutes to varying degrees and in various ways. In some counties prosecutors convict defendants of being habitual offenders whenever possible. In other counties the prosecutors bring habitual offender charges often but use them as bargaining tools to be reduced or dismissed through plea negotiations. Other prosecutors use the statutes much more selectively. These disparities in habitual offender charging mean that whether disproportionate impacts occur depends on the county of sentencing.

Notably, the sentencing guidelines have a somewhat more refined approach to weighing the defendant's criminal history.

- First, more or fewer points are scored depending on whether the prior offense was high or low severity, with offenses carrying maximum sentences of 10 years or more being defined as high severity. (On the other hand, under the guidelines but not the habitual offender statute "prior conviction" includes misdemeanors and juvenile adjudications.)
- Second, under the "10-year gap rule", if the defendant was discharged from supervision for the most recent prior conviction more than 10 years before committing the sentencing offense, that prior and any even older ones cannot be counted.
 - However, the guidelines also use a complicated process called "chaining." If the most recent prior conviction is to be counted, it must be determined whether the next most recent prior was committed more than 10 years before discharge from supervision for the first usable one. If there is not a 10 year gap between the most recent prior and the second most recent prior, the second most recent can also be used. The process is repeated for all available prior convictions. (Again, a misdemeanor or juvenile adjudication for misdemeanor conduct can break the 10-year gap.)

In light of this information, the subcommittee suggests the CJPC recommend to the Legislature that the habitual offender statutes be amended to include both a limit on the age of the prior convictions and criteria to define the nature and/or severity of the priors. There are a number of ways in which this could be done.

AGE

- ❖ The alternative preferred by the subcommittee is to allow prior felony convictions to be used to habitualize only if there were no more than 10 years between discharge from

incarceration or, if no incarceration, 10 years from conviction and commission of the sentencing offense.

- This would eliminate chaining and focus on the actual age of the priors.
 - It would not count the time someone was incarcerated and incapacitated from committing crimes in the community but would include in the 10-year period time spent on probation or parole when the person was in the community and able to commit crimes if s/he chose.
- ❖ Other alternatives include:
- Prohibit the use of any prior conviction from which the defendant was discharged from supervision 10 years or more before the sentencing offense was committed. This would count 10 years in the same way the PRVs currently do but eliminate chaining.
 - Prohibit the use of any prior conviction for which the defendant was convicted 10 years or more before the sentencing offense was committed. This would count the time someone was incarcerated on the rationale that people can and do commit crimes while in prison, so an absence of offenses during that time should not be ignored. This option would also eliminate chaining.
 - Tie the habitual offender statutes to the sentencing guidelines so that the same 10-year gap rule and the same definitions of offense severity apply to both.

OFFENSE TYPE

The subcommittee suggests the CJPC recommend to the Legislature that prior convictions used to charge someone as a habitual offender must be in the same sentencing guidelines crime group as the sentencing offense. The rationale is that habitual offender should mean having a pattern of related offenses, not a random collection of unrelated behaviors over a 10-year period. Having a DWI and then having a larceny in a building 6 years later and then having a felonious assault three years after that does not make one habitually assaultive.

While this qualification is simple to administer, it does not capture the fact that very similar offenses sometimes appear in very different crime groups. For instance, falsely reporting a crime may fall into the public order, public trust or person groups depending on the nature of the crime being reported. Similarly, embezzlement may fall into the property or public trust group depending on who did it. To address this problem, the definition could be broadened to allow prior convictions to be used if they are part of a pattern of similar criminal behavior as determined either by crime group or overlapping elements of the offenses.

Limiting prior convictions to similar crimes does not address the possibility that dissimilar offense types may be motivated by the same problems, such as substance abuse or mental illness. For instance, drug addiction may result in convictions for both drug possession and theft. The answer to this point is simple. The purpose of the habitual offender statute is to address a pattern of prior crimes, not punish someone for the status of being mentally ill or engage in complicated exercises to divine the defendant's motives.

OFFENSE SEVERITY

A final option is recommending that priors be weighted by whether they're high or low severity, much as they are in PRV scoring. This would minimize the risk of substantially enhancing sentences based on relatively low level prior crimes. At least two alternatives are possible.

- ❖ Require that for habitual 2nd, the prior has to be high severity, for habitual 3rd at least one of the two priors must be high severity and for habitual 4th, two of the three priors must be high severity.
- ❖ Permit the use only of prior convictions that are equal to or higher in severity than the sentencing offense.

**DRAFT RECOMMENDATIONS FOR
CJPC FINAL STRADDLE CELL SUMMARY REPORT
revised 8/6/19**

Summary of Findings:

Across the B, C, D, and E grids, we found consistent disparities in straddle cell sentencing based on the following factors:

- **The Circuit Court**
- **Offender’s Gender, Race, and Age**
- **Conviction Method**
(Found Guilty at Trial vs. Pled Guilty)
- **Type of Crime Committed**
- **Employment Status**
- **Attorney Status**
(Retained vs. Appointed)

**Factors Contributing to Sentencing Disparities
Class B, C, D, and E Felonies**

	Felony Classes		
	<i>B & C</i>	<i>D</i>	<i>E</i>
Circuit Court	✓	✓	✓
Crime Group (e.g., Crimes Against A Person)	✓	✓	✓
Conviction Method (Found Guilty vs. Pled Guilty)	✓	✓	✓
Attorney Status (Retained vs. Appointed)	✓	✓	✓
Gender (Female vs. Male)	✓	✓	✓
Age	✓	✓	✓
Race (Black or African American vs. White)	✓		✓
Employed	✓	✓	✓
History of Drug Abuse	✓		
History of Alcohol Abuse		✓	
Convictions	2,960	4,823	11,058
Received Prison Sentence (%)	25.74%	30.29%	24.90%

In order to address and reduce the disparities identified during our systematic review of Michigan’s sentencing guidelines, the CJPC has prepared the following list of recommendations for the legislature to consider.

Data-Related Recommendations:

- “Our analyses indicate the presence of sentencing disparities across a variety of factors. Although these disparities are not solely driven by judicial decisions, it is beneficial for judges to be aware of state- and circuit-wide trends in straddle cell sentencing. **The CJPC recommends that SCAO use existing MDOC data to prepare annual, internal administrative straddle cell sentencing reports to inform judicial education and training.**” [Note: revised with SCAO input]
- “One unanswered question arising from our analyses concerns sentencing agreements. It would be helpful to know how many straddle cell defendants entered into sentencing agreements, what kind of sentencing agreements they entered (e.g. Cobbs, Killebrew), and when during the process they entered into those agreements. **The CJPC recommends that MDOC and SCAO collaborate to identify data sources and mechanisms for analyzing sentencing agreements among straddle cell cases.**” [Note: revised with SCAO input. Some questions raised about feasibility. Could also be included in “additional research” paragraph.]

Guidelines-Related Recommendations:

- Initial suggestion to eliminate from the straddle cell category all cells that have been shown to result in prison in 33% or fewer of the cases falling within them.
- Alternative options to be presented -- see powerpoint.

Funding-Related Recommendations:

- “One strategy for ameliorating the impact of straddle cell sentencing disparities is to increase funding for justice reinvestment initiatives. To incentivize community-focused sentencing, access to these funds could be reserved for circuits or counties demonstrating a reduction in prison dispositions or disparities within straddle cells. Another strategy is to provide direct assistance (funding, technical expertise, pilot programming, etc.) to circuits or counties in which specific straddle cell offenses have been identified as increasing prison disposition rates or statistically significant disparities, with the goal of reducing the number of offenses that are committed rather than simply seeking to create greater equity amongst offenders at sentencing. **The CJPC recommends creation of a justice reinvestment fund process that captures correctional savings and reinvests those funds into existing programs such as Community Corrections, and/or into new programs aimed at diverting straddle cell offenders from prison and into community services available for probationers.**”

- **“Recognizing that the impact of any changes made as a result of our recommendations may differ greatly across counties, we urge the Legislature to consider, in making its policy decisions, implementing a flexible funding system so that each county can accommodate their system needs accordingly.”**

[Note: adapted from Raise The Age report cover letter]

System-Related Recommendations:

- **“Our analyses show direct disparities in sentencing related to employment, as well as disparities in other areas (e.g., attorney status) that are closely related to the economic status of the offender. The system should work to intentionally reduce the disparities in these factors prior to sentencing, rather than exacerbating them through policies such as high bonds that may prevent an individual from standing before the court with employment due to prolonged pretrial incarceration. **The CJPC recommends providing supportive services to offenders beginning at the pre-trial phase, including access to substance abuse programming (for example, through Medicaid) and job placement activities through Workforce Development Agencies and other supports.**”**

Other Ideas to Discuss:

- Review individual crimes to determine the evidence-based response to that crime, which may or may not include incarceration, that has the highest likelihood of reducing an offender’s future risk of reoffense (this is likely work for the CJPC or CJ experts). These approaches should then be offered on a statewide basis so that incarceration alone is not used in lieu of effective evidence-based responses to offender risks and needs.
- Additional research to help answer questions we could not answer
- Job skills/employment training
- Implications for indigent defense mechanisms

COMMISSIONERS' ORIGINAL DRAFT RECOMMENDATION LANGUAGE

Funding -Related Recommendations:

- Creation of a Criminal Justice Reinvestment Fund process that captures savings from the criminal justice system, including Corrections, and reinvests these funds either through existing programs such as Community Corrections or new programs aimed at diverting straddle cell offenders from prison to services available in the community for probationers. Circuits/counties that continue to show higher than average prison dispositions or disparities within the straddle cells would not receive funding from the new fund, incentivizing effective community-focused sentencing.
- Provide direct assistance (funding, technical expertise, pilot programming) to counties in which specific straddle cell offenses have been identified as increasing prison disposition rates or statistically significant disparities with the goal of reducing the number of offenses that are committed, rather than simply seeking to create greater equity amongst offenders at sentencing.
- [Language adapted from RTA cover letter] Recognizing that the impact of any changes made as a result of our recommendations may differ greatly across counties, we urge the Legislature to consider, in making its policy decisions, implementing a flexible funding system so that each county can accommodate their system needs accordingly.

Guideline-Related Recommendations:

- My recommendation is to eliminate from the straddle cell category all cells that have been shown to result in prison in 33% or fewer of the cases falling within them. An alternative would be to exclude from straddle cells all the cases in select crime groups.

System-Related Recommendations:

- Provide supportive services to offenders beginning at the pre-trial phase, including access to substance abuse programming (likely through Medicaid) and job placement activities through Workforce Development Agencies and other supports. The results of this study have shown direct disparities in sentencing related to employment and disparities in other areas that are closely related to the economic status of the offender (attorney status). The system should work to intentionally reduce the disparities in these factors prior to sentencing, rather than exacerbating them through policies such as high bonds that may prevent an individual from standing before the court with employment due to prolonged pretrial incarceration.

Other Ideas to Discuss:

- Review individual crimes to determine the evidence-based response to that crime, which may or may not include incarceration, that has the highest likelihood of reducing an offender's future risk of reoffense (this is likely work for the CJPC or CJ experts). These approaches should then be offered on a statewide basis so that incarceration alone is not used in lieu of effective evidence-based responses to offender risks and needs.
 - Additional research to help answer questions we could not answer
 - Job skills/employment training
 - Implications for indigent defense mechanisms

RECOMMENDATION OVERVIEW

STRADDLE CELL SENTENCING REPORT

CRIMINAL JUSTICE POLICY COMMISSION
AUGUST 7, 2019

Cell Types

Within the guidelines, there are three cell classifications:

- **Prison cells** are those cells for which the minimum sentence recommended exceeds one year of imprisonment.
- **Straddle cells** are those cells in which the lower limit of the recommended range is one year or less and the upper limit of the recommended range is more than 18 months.
- **Intermediate sanction cells** are those cells in which the upper limit recommended by the guidelines is 18 months or less.

Cell Types

- **Prison cells** are those cells for which the minimum sentence recommended exceeds one year of imprisonment.
- **Straddle cells** are cells in which the lower limit of the recommended range is one year or less and the upper limit of the recommended range is more than 18 months.
- **Intermediate sanction cells** are those cells in which the upper limit recommended by the guidelines is 18 months or less.

Cell Type	Lower Limit	Upper Limit
Prison	> 12 Months	-
Straddle	≤ 12 Months	> 18 Months
Intermediate	-	≤ 18 Months

Current Guidelines

Across the nine sentencing grids (M2, A-H) there are 258 cells:

- Prison: **140**
- Straddle: **45** →
- Intermediate Sanction: **73**

Minimum Sentence Ranges for Straddle Cells

Lower Limit	Upper Limit	Number of Cells
5	23	13
7	23	5
9	23	1
10	19	2
10	23	11
12	20	2
12	24	11
Total		45

Lower Limit	Upper Limit	Number of Cells
0	1	1
0	3	5
0	6	10
0	9	14
0	11	13
0	14	5
0	17	14
0	18	1
2	17	8
5	17	2
Total		73

Minimum Sentence Ranges

Proposed Changes

Option 1: increase the upper limit for intermediate sanction cells from “18 months or less” to “23 months or less”.

Option 2: increase the upper limit for intermediate sanction cells from “18 months or less” to “23 months or less” but *only* for those cells having a lower limit of “less than 10 months”.

Minimum Sentence Ranges for Straddle Cells

Lower Limit	Upper Limit	Number of Cells	Grid							
			B	C	D	E	F	G	H	
5	23	13			5	3	3	2		
7	23	5				4		1		
9	23	1				1				
10	19	2		2						
10	23	11			6	2	3			
12	20	2	2							
12	24	11		4		4	3			
Total		45	2	6	11	14	9	3	0	

Option 1

Increase the upper limit for intermediate sanction cells from “18 months or less” to “23 months or less”.

- Prison cells** are those cells for which the minimum sentence recommended exceeds one year of imprisonment.
- Straddle cells** are cells in which the lower limit of the recommended range is one year or less and the upper limit of the recommended range is more than 23 months.
- Intermediate sanction cells** are those cells in which the upper limit recommended by the guidelines is 23 months or less.

Cell Type	Lower Limit	Upper Limit
Prison	> 12 Months	-
Straddle	≤ 12 Months	> 23 Months
Intermediate	-	≤ 23 Months

Option 2

Increase the upper limit for intermediate sanction cells from “18 months or less” to “23 months or less” but *only* for those cells having a lower limit of “less than 10 months”

- **Prison cells** are those cells for which the minimum sentence recommended exceeds one year of imprisonment.
- **Straddle cells** are cells in which the lower limit of the recommended range is one year or less and the upper limit of the recommended range is more than 18 months.
- **Intermediate sanction cells** are those cells in which the upper limit recommended by the guidelines is 18 months or less OR cells in which the upper limit recommended is 23 months or less and the lower limit of the recommended range is less than 10 months.

Cell Type	Lower Limit	Upper Limit
Prison	> 12 Months	-
Straddle	≤ 12 Months	> 18 Months
Intermediate	-	≤ 18 Months
Intermediate	< 10 Months	≤ 23 Months

Comparing Options

Option 1:

Would shift **34** cells from straddle to intermediate

Would keep **11 of 45** current straddle cells

Estimated reduction in prison sentences based on our analyses: **4,843**

Affects straddle cells in grids: **B, C, D, E, F, G**

Would affect straddle cells with recommended minimum ranges of:

- 5-23 months (13 cells)
- 7-23 months (5 cells)
- 9-23 months (1 cells)
- 10-19 months (2 cells)
- 10-23 months (11 cells)
- 12-20 months (2 cells)

Option 2:

Would shift **19** cells, from straddle to intermediate

Would keep **26 of 45** current straddle cells

Estimated reduction in prison sentences based on our analyses: **2,951**

Affects straddle cells in grids: **D, E, F, G**

Would affect straddle cells with recommended minimum ranges of:

- 5-23 months (13 cells)
- 7-23 months (5 cells)
- 9-23 months (1 cells)

Comparing Options



Option 1:

- Would shift **34** cells from straddle to intermediate
- Would keep **11** of **45** current straddle cells
- Affects straddle cells in grids: **B, C, D, E, F, G**
- Estimated reduction in prison sentences: **4,843**

Option 2:

- Would shift **19** cells, from straddle to intermediate
- Would keep **26** of **45** current straddle cells
- Affects straddle cells in grids: **D, E, F, G**
- Estimated reduction in prison sentences : **2,951**

Comparing Options

Option 1:

- Would shift **34** cells from straddle to intermediate
- Would keep **11** of **45** current straddle cells
- Affects straddle cells in grids: **B, C, D, E, F, G**
- Estimated reduction in prison sentences: **4,843**

Option 2:

- Would shift **19** cells, from straddle to intermediate
- Would keep **26** of **45** current straddle cells
- Affects straddle cells in grids: **D, E, F, G**
- Estimated reduction in prison sentences : **2,951**

Class	Cell	Minimum Sentence Range (Months)		Felony Convictions (2012-2017)			Option 1	Option 2
		Lower	Upper	Total	Prison	Prison (%)		
B	A II	12	20	379	75	19.8%	X	✓
	B I	12	20	263	39	14.8%	X	✓
C	A III	10	19	240	67	27.9%	✓	✓
	A IV	12	24	313	120	38.3%	✓	✓
	B III	12	24	186	61	32.8%	✓	✓
	C I	10	19	619	111	17.9%	X	✓
D	C II	12	24	702	205	29.2%	✓	✓
	D I	12	24	258	84	32.6%	✓	✓
	A V	5	23	240	64	26.7%	X	X
	A VI	10	23	129	66	51.2%	X	X
E	B IV	5	23	154	42	27.3%	X	X
	B VI	10	23	106	36	34.0%	X	X
	C III	5	23	394	98	24.9%	X	X
	C IV	10	23	368	122	33.2%	X	X
	D II	5	23	997	253	25.4%	X	X
	D III	10	23	254	105	41.3%	X	✓
F	E I	5	23	968	237	24.5%	X	X
	E II	10	23	454	180	39.6%	X	✓
	F I	10	23	759	258	34.0%	X	✓
	B V	5	23	106	19	17.9%	X	X
	B VI	7	23	36	14	38.9%	X	X
	C IV	5	23	482	131	27.2%	X	X
	C V	7	23	248	100	40.3%	X	X
	C VI	12	24	83	48	57.8%	✓	✓
G	D I	5	23	2729	407	14.9%	X	X
	D II	7	23	2631	567	21.6%	X	X
	D III	10	23	571	182	31.9%	X	✓
	D IV	12	24	303	128	42.2%	✓	✓
	E I	7	23	1127	251	22.3%	X	X
	E II	10	23	1111	361	32.5%	✓	✓
	E III	12	24	242	110	45.5%	✓	✓
	F I	9	23	699	173	24.7%	X	X
Total	F II	12	24	690	262	38.0%	✓	✓
	C IV	5	23	150	74	49.3%	X	X
	D II	5	23	1111	147	13.2%	X	X
	D III	10	23	407	120	29.5%	X	✓
	D IV	12	24	66	37	56.1%	✓	✓
	E I	5	23	879	80	9.1%	X	X
	E II	10	23	478	97	20.3%	X	✓
	E III	12	24	158	75	47.5%	✓	✓
F I	10	23	578	73	12.6%	X	✓	
F II	12	24	253	63	24.9%	✓	✓	
Total	E III	5	23	431	126	29.2%	X	X
	F II	5	23	355	88	24.8%	X	X
	F III	7	23	254	80	31.5%	X	X
Total		45					34 X's	19 ✓'s

"X" = No Longer a Straddle Cell
"✓" = Remains a Straddle Cell

Straddle Cells Impacted by Recommendation Options

Class	Cell		Minimum Sentence Range (Months)		Felony Convictions (2012-2017)			Option 1	Option 2
	PRV	OV	Lower	Upper	Total	Prison	Prison (%)		
B	A	II	12	20	379	75	19.80%	X	✓
	B	I	12	20	263	39	14.80%	X	✓
	A	III	10	19	240	67	27.90%	X	✓
	A	IV	12	24	313	120	38.30%	X	✓
C	B	III	12	24	186	61	32.80%	✓	✓
	C	I	10	19	619	111	17.90%	X	✓
	C	II	12	24	702	205	29.20%	✓	✓
	D	I	12	24	258	84	32.60%	✓	✓
D	A	V	5	23	240	64	26.70%	X	✓
	A	VI	10	23	129	66	51.20%	X	✓
	B	IV	5	23	154	42	27.30%	X	✓
	B	VI	10	23	106	36	34.00%	X	✓
	C	III	5	23	394	98	24.90%	X	✓
	C	IV	10	23	368	122	33.20%	X	✓
	D	II	5	23	997	253	25.40%	X	✓
	D	III	10	23	254	105	41.30%	X	✓
	E	I	5	23	968	237	24.50%	X	✓
	E	II	10	23	454	180	39.60%	X	✓
	F	I	10	23	759	258	34.00%	X	✓
	E	B	V	5	23	106	19	17.90%	X
B		VI	7	23	36	14	38.90%	X	✓
C		IV	5	23	482	131	27.20%	X	✓
C		V	7	23	248	100	40.30%	X	✓
C		VI	12	24	83	48	57.80%	✓	✓
D		I	5	23	2729	407	14.90%	X	✓
D		II	7	23	2631	567	21.60%	X	✓
D		III	10	23	571	182	31.90%	X	✓
D		IV	12	24	303	128	42.20%	✓	✓
E		I	7	23	1127	251	22.30%	X	✓
E		II	10	23	1111	361	32.50%	X	✓
E		III	12	24	242	110	45.50%	✓	✓
F	F	I	9	23	699	173	24.70%	X	✓
	F	II	12	24	690	262	38.00%	✓	✓
	C	IV	5	23	150	74	49.30%	X	✓
	D	II	5	23	1111	147	13.20%	X	✓
G	D	III	10	23	407	120	29.50%	X	✓
	D	IV	12	24	66	37	56.10%	✓	✓
	E	I	5	23	879	80	9.10%	X	✓
	E	II	10	23	478	97	20.30%	X	✓
Total	F	I	12	24	578	73	12.60%	X	✓
	F	II	10	23	253	63	24.90%	✓	✓
	E	III	5	23	431	126	29.20%	X	✓
	F	III	5	23	355	88	24.80%	X	✓
Total					455	254	80	34 X's	19 X's

¹ Enlarged version of the table on slide 10 of the Recommendation Overview presentation (8.7.2018).

Geographic Impact

Option 1:

Rank	Circuit	County	Impacted Straddle Cell Convictions (2012-2017)		
			Total	Prison	Prison (%)
1	3rd	Wayne	5,035	792	15.7%
2	17th	Kent	1,752	699	39.9%
3	2nd	Berrien	873	346	39.6%
4	16th	Macomb	1,198	216	18.0%
5	7th	Genesee	972	171	17.6%
6	22nd	Washtenaw	660	168	25.5%
7	6th	Oakland	693	145	20.9%
8	8th	Ionia, Montcalm	323	133	41.2%
9	4th	Jackson	386	122	31.6%
10	38th	Monroe	326	107	32.8%

Option 2:

Rank	Circuit	County	Impacted Straddle Cell Convictions (2012-2017)		
			Total	Prison	Prison (%)
1	3rd	Wayne	3,449	450	13.05%
2	17th	Kent	1,190	449	37.73%
3	2nd	Berrien	587	224	38.16%
4	16th	Macomb	808	115	14.23%
5	22nd	Washtenaw	438	107	24.43%
6	7th	Genesee	648	95	14.66%
7	8th	Ionia, Montcalm	237	94	39.66%
8	6th	Oakland	438	77	17.58%
9	4th	Jackson	276	77	27.90%
10	38th	Monroe	226	77	34.07%

Geographic Impact

Option 1:

Rank	Circuit	County	Impacted Straddle Cell Convictions (2012-2017)		
			Total	Prison	Prison (%)
1	1st	Hillsdale	87	72	82.8%
2	13th	Antrim, Leelanau, Grand Traverse	183	95	51.9%
3	15th	Branch	131	68	51.9%
4	19th	Benzie, Manistee	45	22	48.9%
5	57th	Emmet	62	28	45.2%
6	39th	Lenawee	189	85	45.0%
7	50th	Chippewa	70	31	44.3%
8	33rd	Charlevoix	23	10	43.5%
9	8th	Ionia, Montcalm	323	133	41.2%
10	28th	Missaukee, Wexford	170	68	40.0%

Option 2:

Rank	Circuit	County	Impacted Straddle Cell Convictions (2012-2017)		
			Total	Prison	Prison (%)
1	1st	Hillsdale	63	53	84.1%
2	15th	Branch	87	44	50.6%
3	13th	Antrim, Leelanau, Grand Traverse	124	61	49.2%
4	33rd	Charlevoix	13	6	46.2%
5	57th	Emmet	47	20	42.6%
6	39th	Lenawee	126	52	41.3%
7	19th	Benzie, Manistee	34	14	41.2%
8	8th	Ionia, Montcalm	237	94	39.7%
9	50th	Chippewa	48	19	39.6%
10	29th	Clinton, Gratiot	130	50	38.5%