

final minutes

Criminal Justice Policy Commission (CJPC) Meeting

9:00 a.m. • Wednesday, September 18, 2019

Room 7900 • 7th Floor of the Binsfeld Office Building

201 Townsend Street • Lansing, MI

Members Present:

Dr. Amanda Burgess-Proctor, Chair
Linus Banghart-Linn
Ronald Bretz
Honorable Chuck Goedert
D.J. Hilson
Kyle Kaminski
Sheryl Kubiak
Representative Beau LaFave
Sheriff Michelle LaJoye-Young
Barbara Levine
Senator Peter Lucido
Kenneth Mitchell
Representative Isaac Robinson (via teleconference)
Senator Sylvia Santana
Jennifer Strange
Honorable Paul Stutesman
Andrew Verheek

Members Excused:

None

I. Convening of Meeting and Roll Call

The Chair called the meeting to order at 9:04 a.m. and asked the clerk to take the roll. A quorum was present. Representative Robinson joined the meeting via teleconference at 9:07 a.m. Representative LaFave joined the meeting at 9:12 a.m. There were no absent members. Chair Burgess-Proctor welcomed Assistant Attorney General Linus Banghart-Linn who was appointed on September 11, 2019 to serve as the Attorney General's designee on the Commission.

II. Approval of the August 7, 2019 Criminal Justice Policy Commission Meeting Minutes

The Chair asked members if there were any additions, corrections, or edits to the proposed August 7, 2019 CJPC meeting minutes. There were none. **Commissioner Verheek moved, supported by Commissioner Hilson, to approve the minutes of the August 7, 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 reported that she met with leadership staff last week and was told there will be no movement on the bills to extend the Commission's sunset. She noted that, based on that information, the Commission's final day will be September 30. As a point of information, she shared that today may be the Commission's last face-to-face meeting; however, if the Commission is unable to come to a vote on the final summary report, another meeting before September 30 may be necessary and added that members would be able to participate in that meeting via teleconference. There were no other comments.

IV. Old Business: Recommendation and Vote of Proposed Gardner Fix

The Chair noted that Judge Goedert's motion to approve the proposed Gardner fix was tabled at the last meeting to give members the opportunity to take the proposed recommendation back to their respective organizations for review. **Judge Goedert moved, supported by Commissioner Bretz, to take his motion off the table.**

Senator Lucido moved, supported by Judge Goedert, that the Commission approve the following statement:

"Historically, the purpose of Michigan's habitual offender statutes was to increase punishments for "habitual criminals" – that is, individuals who demonstrated persistent patterns of offending over time. This understanding was relied upon by judges, prosecutors, and defense attorneys for decades and was confirmed by 1987 and 1990 Michigan Supreme Court opinions affirming that each predicate felony must "arise from separate criminal incidents." However, in 2008 the Court in *People v Gardner*

overruled its own precedents and dramatically changed its interpretation of the habitual offender statutes, ruling that multiple convictions arising from the *same criminal incident* can be counted separately. The Criminal Justice Policy Commission believes that the former long-established understanding of habitual offending better reflects the sentencing goals of Michigan and should be restored. It therefore recommends that the Legislature amend MCL 769.11 and .12 to direct that: "*Not more than 1 conviction arising out of the same transaction shall be considered a prior felony conviction.*" In addition, the Legislature should take into consideration any and all input from stakeholders and their respective organizations as the legislation proceeds through the legislative process."

The motion prevailed with a vote of 17-0-0.

FAVORABLE ROLL CALL:

YEAS: Commissioners Burgess-Proctor, Banghart-Linn, Bretz, Goedert, Hilson, Kaminski, Kubiak, LaFave, LaJoye-Young, Levine, Lucido, Mitchell, Robinson, Santana, Strange, Stutesman, Verheek.

NAYS: None.

PASS: None.

After the vote, Senator Lucido asked members to send him any proposed changes their respective organizations may have after reviewing the legislation when it is introduced. He also reaffirmed Sheriff LaJoye-Young's comment that groups like the Michigan Sheriff's Association and the Prosecuting Attorneys Association will have the opportunity to weigh in on any discussions as the bills move through the Legislature.

Representative LaFave provided additional comments regarding the legislation to extend the Commission's sunset.

V. Discussion and Vote of Final Summary Report and Recommendations

The Chair opened a discussion of the proposed Final Summary Report and Recommendations (see attached). **Commissioner Levine moved, supported by Senator Lucido, for the adoption of the final summary report and recommendations as presented.** Each Commission member was given the opportunity to share specific concerns they have with the report as written.

After the discussion, the Chair thanked the members for their input and commented how much she appreciated everyone's hard work as good conversations like the one had at today's meeting, with divergent viewpoints and vested stakeholders who bring different viewpoints and expertise, is how good policy gets made.

The Chair laid the Commission at ease at 10:15 a.m.

The Chair reconvened the Commission at 10:30 a.m.

After the break, the Chair noted that changes to the following three areas of the proposed summary report will be made and circulated for review:

- 1) The inclusion of a limitation section.
- 2) A more thorough discussion of the potential impact any changes to the straddle cells will have on counties and local systems including funding issues and making a reference to the work of the Jail and Pre-trial Incarceration Task Force.
- 3) Remove Option 1 and Option 2 as recommendations and move them to a separate section where they are framed in terms of being options the Legislature may wish to consider and clarify that the presence of disparities may not be the result of judicial discretion but warrants further review and evaluation.

After further discussion, the Chair stated that she and Mr. Bridges will work on another draft, but she strongly encouraged members to send her specific language they wish to see for the three identified areas requiring change. She noted the changes are substantive enough that another meeting will be required to vote on the revised draft. Members will be allowed to call in to participate if necessary.

Commissioner Mitchell moved, supported by Commissioner Hilson, to table the motion to adopt the final summary report and recommendations as presented. There were no objections. The motion was approved by unanimous consent.

The Chair presented a proposed cover letter for the Final Summary Report and noted a change to the third sentence in the third paragraph so that the sentence reads: "Bipartisan legislation to extend the Commission was introduced in both the House and the Senate by the Commission's legislative members and received support from key stakeholder groups across the state."

Commissioner Verheek moved, supported by Commissioner Bretz, to adopt the proposed cover letter as amended. There were no objections. The motion was approved by a majority of the members present and voting. Sheriff LaJoye-Young voted in opposition as she felt it would be better to have the vote after the final report is approved.

VI. Commissioner Comments

The Chair asked if there were any Commissioner comments. Commissioner Hilson commented that, as a charter member of the Commission, he has enjoyed being part of the discussions and appreciated the Chair's movement in the short amount of time she has been on the Commission. He added that it is unfortunate that the Commission will not continue, but it has been an honor and a pleasure to serve with the Commission members. Judge Goedert and Commissioner Levine agreed with Commissioner Hilson's comments. Commissioner Levine also acknowledged the work of Grady Bridges and thanked him for his work. Commissioner Mitchell expressed his appreciation of the brain power and open-mindedness of everyone on the Commission. Commissioner Banghart-Linn commented that he is very impressed about the level of the discussion and echoed the Chair's comment that this is how good policy is made. He added that the speed with which the Attorney General filled the vacancy is evidence of her support of the Commission's work. Commissioners Kubiak and Verheek acknowledged the work of the subcommittees. Judge Stutesman thanked Grady Bridges for his work and expressed his appreciation to everyone for being open-minded as issues were being deliberated. Sheriff LaJoye-Young also appreciated the open-mindedness of everyone. There were no other Commissioner comments.

VII. Public Comments

The Chair asked if there were any public comments. Cindy L. Warner, representing herself, commented that she did not realize the Commission had a sunset; however, if the Commission were to continue, she urged a data-driven approach be used to analyze what is going on at MDOC and to review of the effectiveness of MDOC programming. Bruce Timmons, representing himself, spoke in support of the Commission and urged the Governor be approached to create a similar entity. Sue Stutzky, representing herself, spoke in support of the Commission's work and urged that the information found on the Commission's website remain online. There were no other public comments.

VIII. Chair Comment

The Chair commented that the expiration of this Commission does not mean that the work ends, and she plans to urge Michigan's leaders to fill this void by convening a similarly situated group with a similar mandate. She thanked the members for the warm welcome she received when she was appointed as the new chair and expressed her appreciation of the considerate and thoughtful interaction of the Commission. She then acknowledged the original members of the Commission—Commissioners Hilson, Kaminski, Kubiak, Levine, Strange, Stutesman, and Verheek—and recognized and thanked the efforts of the legislative members—Senator Lucido, Senator Santana, Representative LaFave, and Representative Robinson. She noted that she will be presenting a Certificate of Appreciation to each member at the end of the meeting. She also recognized and presented gifts to Grady Bridges and Susan Cavanagh. Susan Cavanagh presented a gift to the Chair on behalf of the Legislative Council and Legislative Council Administrator Jennifer Dettloff.

IX. Next CJPC Meeting Date

After a discussion of the next meeting date, the Chair announced that the next Criminal Justice Policy Commission will be scheduled on **Thursday, September 26, 2019, at 4:00 p.m.** The Chair noted that members may participate in the meeting via teleconference. The location for the meeting will be determined and announced later.

X. Adjournment

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

(Minutes approved at the September 26, 2019 Criminal Justice Policy Commission meeting.)

CRIMINAL
JUSTICE
POLICY
COMMISSION

Evaluation of Straddle Cell Sentencing in Michigan

Summary Report and
Recommendations



Draft Report
September 16, 2019

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EXECUTIVE SUMMARY

This report summarizes the findings of, and offers recommendations based on, straddle cell sentencing analyses completed by the Criminal Justice Policy Commission (CJPC). Across three reports, the CJPC examined straddle cell sentencing for class D (December 2018), class E (June 2019), and class B and C (July 2019) felonies. Collectively, our analyses examined 18,841 felony convictions for individuals sentenced between 2012 and 2017. We used logistic regressions to determine whether there are disparities in the rate at which straddle cell offenders were sentenced to prison versus intermediate sanctions.

FINDINGS

CJPC analyses found statistically significant sentencing disparities for straddle cell offenders based on several factors, including **offender race**, **age**, **gender**, **employment status**, **attorney status** (retained vs. appointed), **conviction method** (found guilty vs. pled guilty), **crime group** (type of crime committed), and **circuit court** (see Table 1).

Table 1: Factors Contributing to Sentencing Disparities by Felony Class

	Felony Classes		
	<i>B & C</i>	<i>D</i>	<i>E</i>
Race (Black or African American vs. White)	✓		✓
Age	✓	✓	✓
Gender (Female vs. Male)	✓	✓	✓
Employed (Employed vs. Unemployed)	✓	✓	✓
Attorney Status (Retained vs. Appointed)	✓	✓	✓
Conviction Method (Found Guilty vs. Pled Guilty)	✓	✓	✓
Crime Group (e.g., Crimes Against a Person)	✓	✓	✓
Circuit Court	✓	✓	✓
Number of Convictions	2,960	4,823	11,058
Received Prison Sentence (%)	25.7%	30.3%	24.9%

Specifically, our analyses showed that:

- **Younger black straddle cell offenders were *significantly more likely*** to receive a prison sentence than their younger white counterparts, while **older black straddle cell offenders were *significantly less likely*** to receive a prison sentence than their older white counterparts. [Significant racial disparities were not found for class D felonies.]
- **Female straddle cell offenders were *significantly less likely*** to receive a prison sentence than male straddle cell offenders.
- **Employed straddle cell offenders were *significantly less likely*** to receive a prison sentence than those who were unemployed.
- **Straddle cell offenders with retained attorneys were *significantly less likely*** to receive a prison sentence than those with appointed attorneys.
- **Straddle cell offenders found guilty at trial were *significantly more likely*** to receive a prison sentence than those who pled guilty. Some disparity is to be expected as plea bargains may be structured to reduce, or remove altogether, the prospect of being sentenced to prison. However, given the magnitude of this difference, these results suggest a strong association between going to trial and greater chances of receiving a prison sentence.
- **Rates of prison sentences differed significantly based on felony class and crime group** (type of crime committed). For example, offenders convicted of a class D controlled substance felony were significantly less likely to receive a prison sentence than offenders convicted of a class D crime against a person.
- **Rates of prison sentences differed significantly depending on the circuit and the felony class.**

RECOMMENDATIONS

Guidelines

The CJPC recommends that the Michigan Legislature **consider reducing the number of straddle cells in the state’s sentencing guidelines by redefining them as intermediate sanction cells having presumptive local sentences.** Total elimination of straddle cells, though having the greatest potential impact, understandably might be regarded as too extreme a change. As more moderate options, the CJPC has identified two alternative approaches:

- **Option 1** is to increase the upper limit in the definition of intermediate sanction cells from “18 months or less” to “23 months or less.” This approach would redefine 34 straddle cells across the B-G grids into intermediate sanction cells.
- **Option 2** is to increase the upper limit in the definition of 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.” This approach would redefine 19 straddle cells across the D-G grids into intermediate sanction cells.

Our analyses indicate that the **County Jail Reimbursement Program has promise as a mechanism for ameliorating the financial burden counties might incur** from a redefinition of straddle cells into intermediate sanction cells.

Funding

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.

Data

The CJPC recommends that the State Court Administrative Office (SCAO) use existing MDOC data to **prepare annual, internal administrative straddle cell sentencing reports** to inform judicial education and training. The CJPC recommends that **MDOC and SCAO collaborate to identify data sources** and mechanisms for analyzing sentencing agreements among straddle cell cases.

System

The CJPC recommends **providing supportive services to offenders beginning at the pretrial phase**, including access to substance abuse programming (for example, through Medicaid) and job placement activities through Workforce Development Agencies and other supports.

I. INTRODUCTION

The attached report is provided pursuant to Sec. 33a of Public Act 465 of 2014. The Criminal Justice Policy Commission (CJPC) was tasked with conducting a systematic review of Michigan’s sentencing guidelines. Of particular interest is the ability of the sentencing guidelines to reduce sentencing disparities based on factors other than offense characteristics and offender characteristics, and to ensure that offenders with similar offense and offender characteristics receive substantially similar sentences.

The CJPC has focused its efforts on examining outcomes among straddle cells – that is, convictions for which the sentencing guidelines support either a prison or an intermediate sentence. Straddle cell sentencing was selected for examination because of the large amount of judicial discretion involved in these cases. Using data provided by the Michigan Department of Corrections, we examined over 18,000 felony convictions for individuals sentenced between 2012 and 2017. **Our analyses found statistically significant sentencing disparities for straddle cell offenders across several domains.** In three reports published between December 2018 and July 2019, we documented disparities in the rates at which prison sentences are imposed for class B and C, D, and E felonies. This final report summarizes the findings of our three studies and offers specific recommendations to address the sentencing disparities our analyses uncovered.

II. OVERVIEW OF SENTENCING GUIDELINES AND STRADDLE CELLS IN MICHIGAN

Throughout the United States, sentencing guidelines were established to ensure consistency and proportionality in sentencing and to reduce sentencing disparities. Michigan enacted its statutory sentencing guidelines in 1998 under advisement of the Michigan Sentencing Commission. As noted in the Michigan Sentencing Guidelines Manual, “In 2015 the Michigan Supreme Court rendered the previously-mandatory sentencing guidelines advisory only, *People v Lockridge*, 498 Mich 358 (2015).”

Michigan’s sentencing guidelines include 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.

Unlike prison and intermediate cells in which the sentences are presumptive, for straddle cell convictions, judges have discretion regarding the “in/out” decision -- that is, whether a defendant is sentenced to prison or to a community sanction.

In recent years, sentencing experts have urged caution regarding Michigan’s straddle cells. For example, a 2008 National Center for State Courts (NCSC) study¹ comparing sentencing systems in Michigan, Virginia, and Minnesota identified issues with Michigan’s straddle cells. Especially relevant to the CJPC’s analyses, the study referenced race-based sentencing disparities as a particular concern:

“A potentially troubling factor is the over-representation of black offenders in Straddle Cells. The Straddle Cell was developed to give the judge the maximum possible leeway in determining the location of the sentence – if there is no location guidance from the guidelines, it is possible that race may be playing a role in the decision making” (p. 185).

In light of these and other concerns, the authors proposed reducing the number of straddle cells as a means of enhancing sentencing consistency:

“[C]onsideration should be given to reducing the number of straddle cells. When contemplating the use of straddle cells, the Michigan Sentencing Commission believed they were identifying sets of offenders with a 50/50 chance of receiving a prison sentence. Reducing their number would very likely increase the consistency of sentencing with respect of who goes to prison” (p. 301).

Similarly, a 2014 Council of State Governments (CSG) report² likewise recommends that Michigan replace straddle cells with those containing presumptive probation/jail/prison sentences:

“Each guidelines cell should have a single presumptive sentence of probation, jail, or prison. Instead of using straddle cells, the guidelines should clearly assign jail or prison as presumptive sentences. For individuals with little or no criminal history who are convicted of less serious crimes, the presumptive sentence should be probation” (p. 10).

Taken together, the 2008 NCSC report and the 2014 CSG report provide context for the recommendations contained in this report about the role of straddle cells in Michigan’s sentencing guidelines.

III. FINDINGS OF CJPC STRADDLE CELL REPORTS

A. DATA & METHODS

Over three reports, the CJPC examined straddle cell sentencing for class D (December 2018), class E (June 2019), and class B and C (July 2019) felonies. All three analyses used data from the Michigan Department of Corrections (MDOC) about all felony convictions sentenced between January 1, 2012 through December 31, 2017. The datasets included offender- and offense-based

¹ Ostrom, Brian J., Charles W. Ostrom, Roger A. Hanson, and Matthew Kleiman. (2008). Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States. Final Report submitted to the National Institute of Justice. Award number 2003-IJ-CX-1015.

² Applying a Justice Reinvestment Approach to Improve Michigan’s Sentencing System. (2014) New York, NY: Council of State Governments Justice Center.

information used to generate prior record and offense variable scores in the presentence investigation (PSI) reports. In addition, offender demographic characteristics such as gender, age, race, and education level were included. Collectively, our analyses of class B, C, D, and E felonies examined 18,841 convictions.³

We used logistic regressions to determine whether there are disparities in the rate at which straddle cell offenders were sentenced to prison versus intermediate sanctions. Regression results describe correlations between certain factors and the probability that an offender is sentenced to prison as opposed to jail and/or probation. These results should not be interpreted as causal. Statistically significant results mean that there are substantial differences in the chance of an offender receiving a prison sentence associated with a given factor.⁴

B. FACTORS RELATED TO SENTENCING DISPARITIES

Across class B, C, D, and E felonies, the CJPC identified consistent disparities in straddle cell sentencing based on several factors (see Table 1).

Table 1: Factors Contributing to Sentencing Disparities by Felony Class

	Felony Classes		
	<i>B & C</i>	<i>D</i>	<i>E</i>
Race (Black or African American vs. White)	✓		✓
Age	✓	✓	✓
Gender (Female vs. Male)	✓	✓	✓
Employed (Employed vs. Unemployed)	✓	✓	✓
Attorney Status (Retained vs. Appointed)	✓	✓	✓
Conviction Method (Found Guilty vs. Pled Guilty)	✓	✓	✓
Crime Group (e.g., Crimes Against a Person)	✓	✓	✓
Circuit Court	✓	✓	✓
Number of Convictions	2,960	4,823	11,058
Received Prison Sentence (%)	25.7%	30.3%	24.9%

³ The sample for the previous reports included all individuals sentenced between 2012-2017 and scored within a straddle cell for class B, C, D, and E offenses, excluding habitual offenders and those with a special status during the offense. Special statuses include the following: HYTA, Probation, District Court Probation, Delay of Sentence, Parole, Jail, State Prisoner, Bond, Juvenile Court Supervision, Federal Probation, and Federal Parole.

⁴ Please see the published CJPC straddle cell reports for complete data and methodological information.

Specifically, our analyses showed that:

- **Younger black straddle cell offenders were *significantly more likely*** to receive a prison sentence than their younger white counterparts, while older black straddle cell offenders were *significantly less likely* to receive a prison sentence than their older white counterparts. [Note: Significant racial disparities were not found for class D felonies.]
- **Female straddle cell offenders were *significantly less likely*** to receive a prison sentence than male straddle cell offenders.
- **Employed straddle cell offenders were *significantly less likely*** to receive a prison sentence than those who were unemployed.
- **Straddle cell offenders with retained attorneys were *significantly less likely*** to receive a prison sentence than those with appointed attorneys.
- **Straddle cell offenders found guilty at trial were *significantly more likely*** to receive a prison sentence than those who pled guilty. Some disparity is to be expected as plea bargains may be structured to reduce, or remove altogether, the prospect of being sentenced to prison. However, given the magnitude of this difference, these results suggest a strong association between going to trial and greater chances of receiving a prison sentence.
- **Rates of prison sentences differed significantly based on felony class and crime group** (type of crime committed). For example, offenders convicted of a class D controlled substance felony were significantly less likely to receive a prison sentence than offenders convicted of a class D crime against a person.
- **Rates of prison sentences differed significantly based on the circuit and the felony class**, as outlined below.

C. SENTENCING DISPARITIES BY CIRCUIT

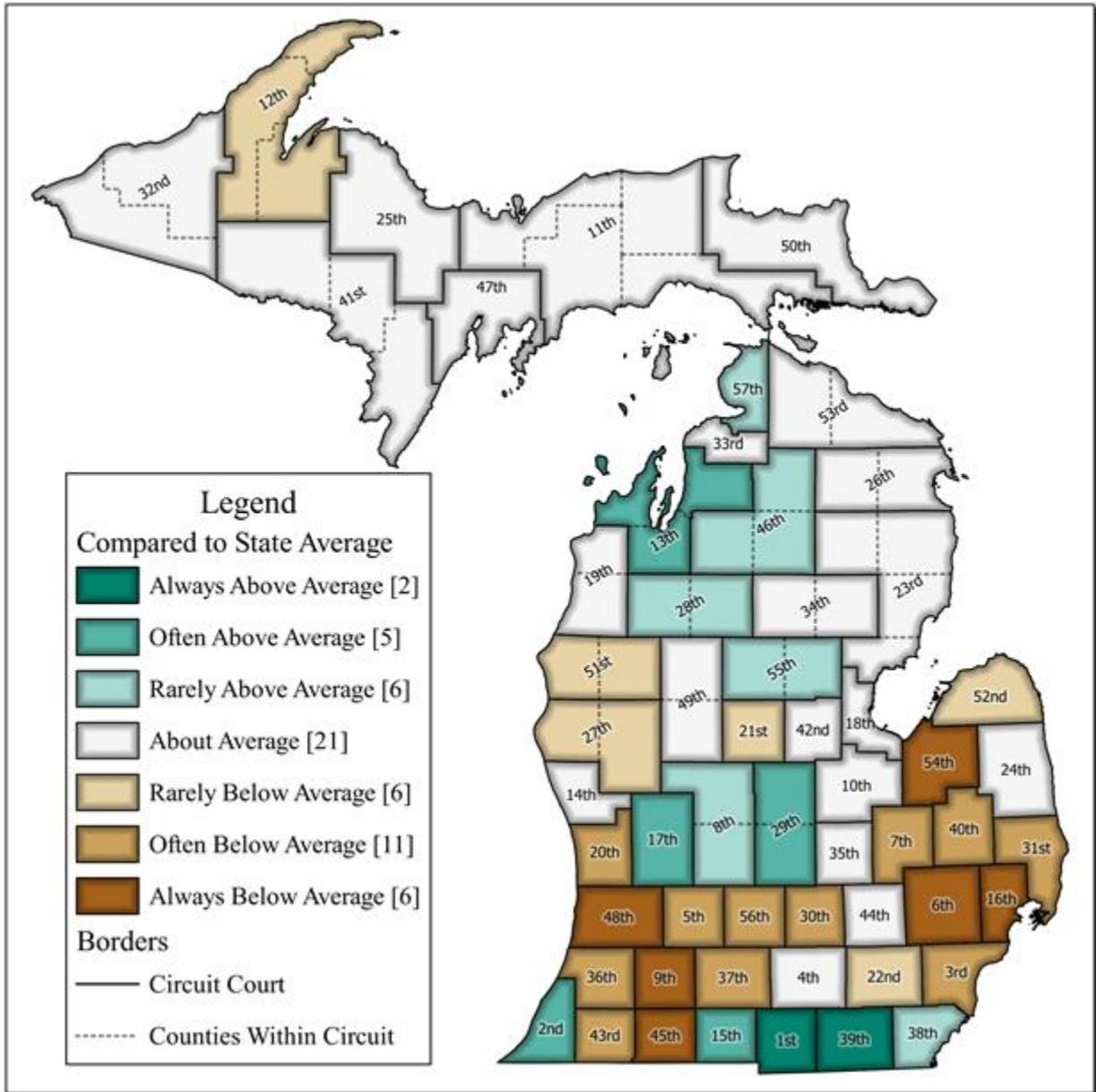
In each of the previous reports, we found significant differences when comparing circuit courts to the statewide average for imposing prison sentences. The table below provides the state number of circuits that differed significantly, either above or below, from the rest of the state for each felony class.

Table 2: Rate of Sentencing Straddle Cell Offenders to Prison

Felony Class	Number of Circuit Courts				Prison Sentencing Rate		
	Above Average	Near Average	Below Average	Circuits Excluded	State Average	Minimum Rate	Maximum Rate
B & C	2	39	9	7	30.5%	6.3%	80.0%
D	11	30	16	0	35.8%	3.7%	91.4%
E	10	25	22	0	29.0%	7.8%	89.5%

Whether a circuit court differs from the state average for sentencing offenders to prison is not inherently problematic. The average across the state is not meant to represent the “correct rate” of sentencing, but instead is used as a benchmark for making comparisons. However, the presence of circuits far below and far above the average demonstrates vast differences in straddle cell sentencing depending on where offenders are sentenced. Across each felony class we found straddle cell sentencing practices that ranged from *seldomly* sentencing to prison (minimum rates: B&C = 6.3%, D = 3.7%, E = 7.8%) to *nearly always* imposing a prison sentence (maximum rates: B&C = 80%, D = 91.4%, E = 89.5%; see Figure 1). Ultimately, this wide range demonstrates a lack of consistency in straddle cell sentencing, in contradiction to one of the fundamental goals of sentencing guidelines.

Figure 1: Frequency of Straddle Cell Prison Sentences - Comparing Circuit Courts to State Average⁵



⁵ Figure 1 shows how often circuit courts differed from the state average for sentencing straddle cell offenders to prison. See Table A-1 in the appendix for more detailed comparisons and specific values.

IV. RECOMMENDATIONS

In order to address and reduce the disparities identified during our systematic review of Michigan’s sentencing guidelines, the CJPC has prepared a list of recommendations for the Legislature to consider. We have grouped our recommendations into four categories: guidelines-related, data-related, funding-related, and system-related.

A. GUIDELINES RECOMMENDATIONS

The mere presence of sentencing disparities does not necessarily indicate a problem for which the Legislature should intervene. As noted, disparities related to conviction method may reflect the fact that plea bargains often are structured to reduce or remove the prospect of a prison sentence. Likewise, it is neither inherently good nor inherently bad for a circuit to sentence straddle cell offenders at a range above or below the state average. Where documented sentencing disparities become potentially problematic is when they are correlated with demographic and extralegal factors that should be unrelated to sentencing decisions. Sentencing disparities based on domains such as race, age, employment status, and sentencing court indicate a failure of sentencing guidelines to achieve their primary function of ensuring consistency in punishment. More troublingly, such disparities call into question fundamental tenets of justice, fairness, and due process. **Given the persistent sentencing disparities identified within them, the CJPC recommends that the Michigan Legislature consider reducing the number of straddle cells in the state sentencing guidelines by redefining them into intermediate sanction cells having presumptive local sentences.**

The simplest and most direct mechanism would be to eliminate all 45 straddle cells by making them intermediate sanction cells instead. Total elimination of straddle cells, though having the greatest potential impact, understandably might be regarded as too extreme a change. As more moderate options, the CJPC has identified two alternative approaches:

- **Option 1** is to increase the upper limit in the definition of intermediate sanction cells from “18 months or less” to “23 months or less.” This approach would redefine 34 straddle cells across the B-G grids into intermediate sanction cells.
- **Option 2** is to increase the upper limit in the definition of 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.” This approach would redefine 19 straddle cells across the D-G grids into intermediate sanction cells.

The CJPC performed additional analyses to estimate whether reduction of straddle cells in any amount would result in a corresponding reduction in sentencing disparities. We analyzed three domains across which we found sentencing disparities: (1) attorney status (retained vs. appointed), (2) race/age, and (3) employment status. As elimination of all straddle cells would remove any opportunity for sentencing disparities to exist, we estimated outcomes for Options 1 and 2.

Both Option 1 and Option 2 are projected to reduce sentencing disparities for attorney status, race/age, and employment status. In some cases, sentencing disparities would remain but would be significantly reduced; in other cases, sentencing disparities would be eliminated entirely. As expected, the disparity reduction would be greater under Option 1 than Option 2 (see Table 3).

Table 3: Impact of Straddle Cell Recommendations on Sentencing Disparities

Attorney Status (Retained vs.Appointed)		
Our reports showed that straddle cell offenders with retained attorneys were <u>significantly less likely</u> to receive a prison sentence than those with appointed attorneys.		
Grid	Option 1	Option 2
B & C	Disparity is reduced from 40.9 to 35.3 percentage points (for found guilty at trial only).	N/A. No B or C grid straddle cells are affected, therefore the disparity (40.9 percentage points) is projected to remain the same.
D	All D grid straddle cells would be reclassified as intermediate sanction cells, essentially eliminating the opportunity for straddle-cell sentencing disparities.	Disparity is eliminated (is no longer significant).
E	Disparity is eliminated (is no longer significant).	Disparity is reduced from 3.8 to 2.2 percentage points.
Age and Race (Black vs. White)		
Our reports showed that across class B, C, and E felonies, younger black straddle cell offenders were <u>significantly more likely</u> to receive a prison sentence than their younger white counterparts, while older black straddle cell offenders were <u>significantly less likely</u> to receive a prison sentence than their older white counterparts.		
Grid	Option 1	Option 2
B & C	Racial disparity between younger (age 20) offenders is eliminated (is no longer significant). Racial disparity between older (age 50) offenders remains but is reduced from 16.1 to 12.6 percentage points.	N/A. No B or C grid straddle cells are affected, therefore disparities by race/age are projected to remain the same.
D	All D grid straddle cells would be reclassified as intermediate sanction cells, essentially eliminating the opportunity for straddle-cell sentencing disparities.	N/A. No significant disparities found; disparities remain insignificant under this option.
E	Racial disparities at all ages are eliminated (are no longer significant).	Racial disparity between younger (age 20) offenders is eliminated (is no longer significant). Racial disparity between older (age 50) offenders remains but is reduced from 5.4 to 2.0 percentage points.
Employment Status (Employed vs. Unemployed)		
Our reports showed that employed straddle cell offenders were <u>significantly less likely</u> to receive a prison sentence than those who were unemployed.		
Grid	Option 1	Option 2
B & C	Disparity is reduced from 7.3 to 6.4 percentage points.	N/A. No B or C grid straddle cells are affected, therefore the disparity (7.3 percentage points) is projected to remain the same.
D	All D grid straddle cells would be reclassified as intermediate sanction cells, essentially eliminating the opportunity for straddle-cell sentencing disparities.	Disparity is reduced from 6.1 to 4.5 percentage points.
E	Disparity is reduced from 10.1 to 2.1 percentage points.	Disparity is reduced from 10.1 to 3.8 percentage points.

Financial Impact of Straddle Cell Reduction

Reclassification of existing straddle cells to intermediate sanction cells, in any number, presumably would decrease the number of people sentenced to prison and increase the number of people sentenced to jail and/or community-based corrections -- thereby shifting incarceration costs from the state to counties. Mindful of the potential financial impact to counties of any straddle cell reduction, the CJPC examined possible funding sources for counties to recoup any additional expenses related to an increase in their correctional population. We selected for an analysis an existing program already familiar to counties: the County Jail Reimbursement Program (CJRP). Our analyses indicate that the CJRP has promise as a mechanism for ameliorating the financial burden counties might incur from an increase in the number of intermediate sanction cells.

From 2012-2017, approximately 2,638 straddle cell offenders were sentenced to jail each year. Of these, 1,092 (41.4%) were eligible for reimbursement under the county jail reimbursement program (CJRP). The amount the MDOC reimburses counties is based on the length of the offender's jail sentence and their offense group (1 or 2)⁶. If counties were to request reimbursement for all 1,092 offenders, the cost to the MDOC would be \$10,698,964 annually. However, had the same offenders been sentenced to prison, the cost of incarceration to the department would have been at least \$19,164,786.⁷

Table 4: Current Yearly Jail Sentences and CJRP Estimates

<u>Annual Average (2012-2017)</u>	
Jail Total	2,638
Eligible	1,092 (41.4%)
Ineligible	1,546 (58.6%)
Eligible Offenders	1,092
Savings	\$ 19,164,786
Cost	\$ 10,698,964
Net Benefit	\$ 8,465,822

In these circumstances, the net benefit from the program is a savings of \$8,465,822 annually. It is important to note that this scenario assumes the maximum cost of the program (reimbursements) and the minimum savings (foregone incarceration costs). Using these extremes demonstrates that the program is cost effective even under the least ideal conditions. In reality, the benefits from the CJRP are likely much greater, as not all counties seek reimbursement and some of the foregone prison sentences would be longer than a year.

⁶ State reimbursement under the CJRP is \$55.00 per diem per diverted offender for offenders with a straddle cell guideline for a group 1 crime and \$40.00 per diem per diverted offender for offenders with a straddle cell guideline for a group 2 crime. Reimbursements shall be paid for sentences up to a 1-year total.

⁷ The estimated savings were calculated using the marginal daily cost of incarceration provided by the MDOC (\$48.09). The shortest possible sentence length, 1 year, was used to determine the minimum savings to the department. In practice, the savings to the department are likely much greater, given that some offenders would have been incarcerated for longer than 1 year.

Table 5: Projected CJRP Impact from Additional Jail Sentences⁸

	Offenders	Savings	Cost	Net Benefit	
	Total	1,160	\$ 32,366,425	\$ 9,408,483	\$ 22,957,942
Eliminate All	Eligible	564	\$ 14,922,651	\$ 9,408,483	\$ 5,514,168
	Ineligible	596	\$ 17,443,774	\$ -	\$ 17,443,774
	Total	929	\$ 25,445,574	\$ 7,473,375	\$ 17,972,200
Option 1	Eligible	453	\$ 11,921,457	\$ 7,473,375	\$ 4,448,083
	Ineligible	476	\$ 13,524,117	\$ -	\$ 13,524,117
	Total	567	\$ 15,265,698	\$ 4,190,808	\$ 11,074,889
Option 2	Eligible	256	\$ 6,553,013	\$ 4,190,808	\$ 2,362,204
	Ineligible	311	\$ 8,712,685	\$ -	\$ 8,712,685

Under Option 1, the number of offenders sentenced to jail is expected to increase by 929 per year, with 453 being CJRP eligible. Assuming the offenders diverted from prison receive jail sentences of 1 year, reimbursements to the counties would increase by \$7,473,375 each year. Similarly, the annual savings to the department from the reduced prison population increase by \$25,445,574. If Option 1 is implemented, the net benefit of the CJRP is expected to increase at least by \$17,972,200 annually.

Under Option 2, the number of offenders sentenced to jail is expected to increase by 567 per year, with 256 being CJRP eligible. Again, assuming the offenders diverted from prison receive jail sentences of 1 year, reimbursements to the counties would increase by \$4,190,808 each year, while the department’s savings increase by \$15,265,698. If Option 2 is implemented, the net benefit of the CJRP is expected to increase by at least \$11,074,889 annually.

The benefits projected above are in addition to the savings from the scenario in which there is no change to the number of straddle cells (\$8,465,822). The total annual benefit for Option 1 is estimated at \$26,438,022 (\$17,972,200 + \$8,465,822), and the total annual benefit for Option 2 is estimated at \$19,540,711 (\$11,074,889 + \$8,465,822). These projected benefits represent the “worst-case” scenario in which the costs to the CJRP are maximized (by assuming the longest alternative jail sentence) while savings to the MDOC are minimized (by assuming the shortest period of incarceration saved). Realistically, CJRP reimbursement amounts likely would increase less than we project here while the amount saved from avoided prison incarceration would be greater than projected. Of note, the analyses presented here use the current reimbursement rates for straddle cell offenders; any changes to these rates would significantly alter the estimated savings, costs, and net benefits. Finally, an important caveat is warranted: although the CJRP could lessen the financial impact on counties from additional eligible offenders, the program would not address costs from an increase in ineligible offenders unless eligibility criteria were expanded.

⁸ The additional jail sentences reported in Table 5 represent the number of offenders, previously sentenced to prison, that are expected to receive a jail sentence if the given option for reducing the number of straddle cells was implemented.

B. FUNDING RECOMMENDATIONS

Beyond any changes to the sentencing guidelines, 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 courts 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.**

Again, 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.

C. DATA 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.**

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.**

D. SYSTEM 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. Work should be undertaken to 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.**

V. CONCLUSION

The CJPC intends this report to serve as a resource for legislative members to determine whether, or how, to examine straddle cells in Michigan's sentencing guidelines. The goal of this report is to inform the Legislature about the persistent straddle cell sentencing disparities we identified and to offer the Legislature a "menu" of options aimed at reducing these disparities. Regardless of whether our recommendations ultimately result in legislative action, the documentation of these disparities alone should prompt closer inspection of Michigan's sentencing guidelines by lawmakers. If Michigan's sentencing guidelines are failing to ensure consistency or reduce disparity in sentencing outcomes for straddle cell offenders, it is incumbent upon the Legislature to examine next steps in order to ensure a commitment to principles of equity, fairness, and justice for the people of Michigan.

VI. APPENDIX

Figure A-1: Counties of Michigan

Figure A-2: Circuit Courts of Michigan

Table A-1: Difference in Probability of Receiving a Prison Sentence
- Comparing Circuit Court to the State Average -

Table A-2: Straddle Cells Impacted by Recommendation Options

Table A-3: Estimated Reduction in Disparities from Recommendation Options

Figure A-1: Counties of Michigan

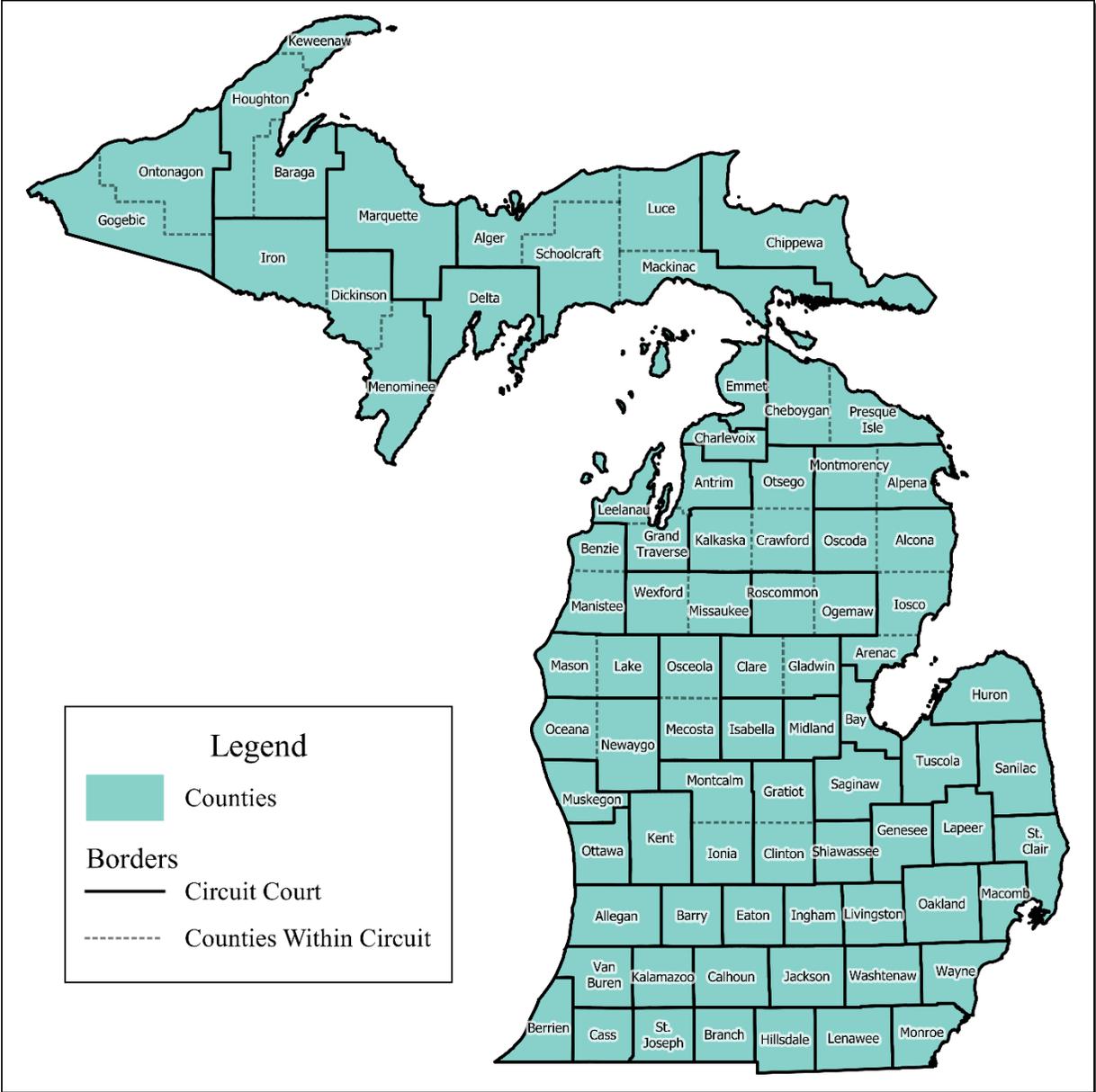
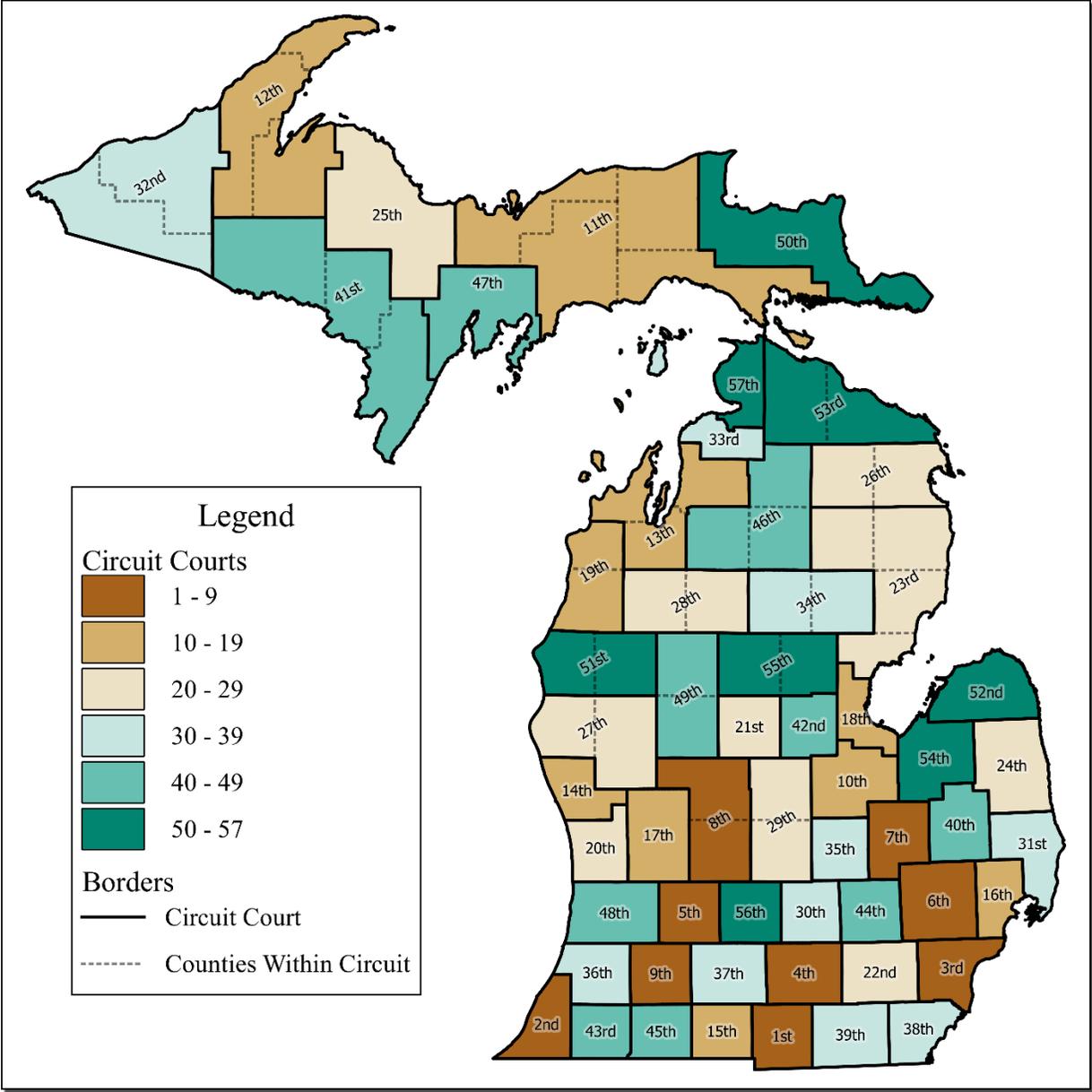


Figure A-2: Circuit Courts of Michigan



**Table A-1: Difference in Probability of Receiving a Prison Sentence
- Comparing Circuit Court to the State Average -**

Circuit	B&C Grid (30.5%)		D Grid (35.8%)		E Grid (29.0%)		Counties
	Diff. From Average	Number of Cases	Diff. From Average	Number of Cases	Diff. From Average	Number of Cases	
1	0.431**	8	0.556***	35	0.605***	38	Hillsdale
2	-0.041	54	0.108**	206	0.123***	451	Berrien
3	-0.027	559	-0.126***	1,149	-0.13***	2,849	Wayne
4	-0.016	33	0.078	71	0.035	268	Jackson
5	Excluded from Analysis		-0.238***	25	-0.126**	55	Barry
6	-0.108***	232	-0.095*	129	-0.102***	351	Oakland
7	-0.024	129	-0.178***	249	-0.108***	538	Genesee
8	0.014	27	0	81	0.221***	180	Montcalm and Ionia
9	-0.131**	117	-0.238***	208	-0.191***	344	Kalamazoo
10	-0.073	65	-0.068	62	-0.054	127	Saginaw
11	Excluded from Analysis		0.086	18	-0.052	42	Luce, Mackinac, Schoolcraft, and Alger
12	0.181	4	-0.158	5	-0.179***	36	Houghton, Baraga, and Keweenaw
13	Excluded from Analysis		0.295***	52	0.16***	120	Leelanau, Antrim, and Grand Traverse
14	0.019	65	0.026	65	0.022	141	Muskegon
15	-0.011	13	0.213**	35	0.232***	69	Branch
16	-0.112**	116	-0.062**	378	-0.129***	547	Macomb
17	0.071	154	0.115***	325	0.141***	976	Kent
18	-0.007	16	-0.108	52	-0.043	158	Bay
19	Excluded from Analysis		0.108	15	0.143	30	Benzie and Manistee
20	-0.161**	38	-0.091	71	-0.09***	220	Ottawa
21	Excluded from Analysis		-0.068	31	-0.079*	95	Isabella
22	-0.102*	69	-0.022	128	-0.005	429	Washtenaw
23	-0.129	21	0.005	22	0.002	72	Iosco, Arenac, Alcona, and Oscoda
24	-0.119	5	-0.128	13	0.071	36	Sanilac
25	-0.046	11	0.142	20	-0.098	47	Marquette
26	-0.052	15	0.096	33	-0.065	49	Alpena and Montmorency
27	-0.03	38	-0.001	42	-0.211***	102	Oceana and Newaygo
28	0.181	6	0.121	48	0.117*	91	Wexford and Missaukee
29	0.075	33	0.176**	43	0.127**	108	Gratiot and Clinton
30	-0.055	91	-0.193***	115	-0.098***	312	Ingham
31	-0.011	39	-0.157***	104	-0.134***	148	St. Clair
32	0.081	5	0.142	6	0.058	23	Ontonagon and Gogebic
33	0.348	3	0.142	6	0.21	14	Charlevoix
34	-0.248***	14	0.257**	26	0.009	107	Ogemaw and Roscommon
35	0.281	10	0.171	17	0.11	50	Shiawassee
36	-0.095	49	-0.217***	92	-0.129***	137	Van Buren
37	-0.061	31	-0.119***	92	-0.062*	224	Calhoun
38	0.081	30	0.116*	59	0.065	172	Monroe
39	0.481**	5	0.231***	56	0.233***	86	Lenawee
40	Excluded from Analysis		-0.321***	27	-0.152***	94	Lapeer
41	-0.046	11	0.278	11	-0.047	33	Iron, Dickinson, and Menominee
42	0.148	15	-0.108	12	0.014	46	Midland
43	-0.176	14	-0.149***	67	-0.123**	90	Cass
44	-0.081	21	-0.073	28	-0.008	85	Livingston
45	-0.186**	30	-0.187***	99	-0.12***	124	St. Joseph
46	-0.097	9	0.156*	35	0.092	89	Otsego, Crawford, and Kalkaska
47	0.014	6	-0.108	16	0.103	28	Delta
48	-0.176*	21	-0.154***	137	-0.163***	142	Allegan
49	-0.033	21	0.07	49	0.07	128	Osceola and Mecosta
50	0.014	3	0.07	21	0.172	26	Chippewa
51	-0.119	10	0.07	14	-0.115*	40	Mason and Lake
52	0.181	8	-0.177	11	-0.159*	23	Huron
53	Excluded from Analysis		-0.092	15	0.018	52	Cheboygan and Presque Isle
54	-0.236**	12	-0.216***	35	-0.176***	35	Tuscola
55	0.027	26	0.262**	29	-0.03	100	Clare and Gladwin
56	-0.001	22	-0.306***	19	-0.157**	45	Eaton
57	0.181	2	0.07	14	0.182*	36	Emmet

Significance Levels: * p<0.05, ** p<0.01, *** p<0.001

Table A-2: Straddle Cells Impacted by Recommendation Options

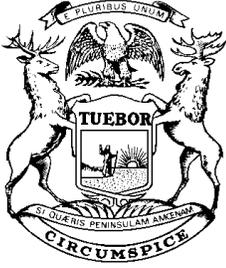
Class	Cell		Minimum Sentence Range (Months)		Felony Convictions (2012-2017)			Option 1	Option 2
	PRV	OV	Lower Limit	Upper Limit	Total	Prison	Prison (%)		
B	A	II	12	20	379	75	19.8%	X	✓
	B	I	12	20	263	39	14.8%	X	✓
C	A	III	10	19	240	67	27.9%	X	✓
	A	IV	12	24	313	120	38.3%	✓	✓
	B	III	12	24	186	61	32.8%	✓	✓
	C	I	10	19	619	111	17.9%	X	✓
	C	II	12	24	702	205	29.2%	✓	✓
	D	I	12	24	258	84	32.6%	✓	✓
D	A	V	5	23	240	64	26.7%	X	X
	A	VI	10	23	129	66	51.2%	X	✓
	B	IV	5	23	154	42	27.3%	X	X
	B	VI	10	23	106	36	34.0%	X	✓
	C	III	5	23	394	98	24.9%	X	X
	C	IV	10	23	368	122	33.2%	X	✓
	D	II	5	23	997	253	25.4%	X	X
	D	III	10	23	254	105	41.3%	X	✓
	E	I	5	23	968	237	24.5%	X	X
	E	II	10	23	454	180	39.6%	X	✓
E	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%	✓	✓
	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%	X	✓
F	E	III	12	24	242	110	45.5%	✓	✓
	F	I	9	23	699	173	24.7%	X	X
	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%	✓	✓
G	F	I	10	23	578	73	12.6%	X	✓
	F	II	12	24	253	63	24.9%	✓	✓
	E	III	5	23	431	126	29.2%	X	X
Total	F	II	5	23	355	88	24.8%	X	X
	F	III	7	23	254	80	31.5%	X	X
	45							34 X's	19 ✓'s

Impact on Straddle Cells: "X" = No Longer a Straddle Cell "✓" = Remains a Straddle Cell

Table A-3: Estimated Reduction in Disparities from Recommendation Options

		<i>B & C</i>			<i>D</i>			<i>E</i>		
		Currently	Option 1	Option 2	Currently	Option 1	Option 2	Currently	Option 1	Option 2
Attorney Status	Overall	-1.5	0.6	-1.5	-6.0***	--	-2.2	-3.8***	-0.9	-2.2**
	Retained vs. Appointed									
	Pled Guilty	-0.9	1.1	-0.9	-6.0***	--	-2.2	-3.8***	-0.9	-2.1**
	Found Guilty	-40.9**	-35.3**	-40.9**	-6.5***	--	-3.7	-4.9***	-2.1	-3.6**
Offender's Race	20 Years Old	5.7**	2.5	5.7**	-1.4	--	-0.4	3.5*	0.3	2.0
	Black vs. White									
	35 Years Old	-4.6	-4.5*	-4.6	-1.5	--	-0.4	-1.2	-0.4	-0.3
	50 Years Old	-16.1***	-12.6***	-16.1***	-1.5	--	-0.4	-5.4***	-0.9	-2.0*
Employment (Employed vs. Unemployed)		-7.3***	-6.4***	-7.3***	-6.1***	--	-4.5***	-10.1***	-2.1***	-3.8***
Number of Convictions		2,960	2,935	2,960	4,823	--	4,807	11,058	10,816	10,906
Sentenced to Prison (%)		25.74%	16.01%	25.74%	30.29%	--	15.96%	24.90%	5.07%	10.00%

* p<0.05, ** p<0.01, *** p<0.001



CRIMINAL JUSTICE POLICY COMMISSION

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September 18, 2019

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Representing the General Public

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Representing the Michigan Senate

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HONORABLE PAUL STUTESMAN
Representing Circuit Court Judges

ANDREW VERHEEK
*Representing the Michigan Association of
Community Corrections Advisory Boards*

Members of the Michigan legislature,

The attached report is provided pursuant to Sec. 33a of Public Act 465 of 2014. The Criminal Justice Policy Commission was tasked with conducting a systematic review of Michigan's sentencing guidelines. This final report summarizes the findings of our three published analyses on class D (December 2018), class E (June 2019), and class B & C (July 2019) felonies, as well as recommendations stemming from our findings. Across the four felony classes we studied, we found statistically significant sentencing disparities for straddle cell offenders based on several factors, including offender race, age, gender, employment status, attorney status (retained vs. appointed), conviction method (found guilty vs. pled guilty), crime group (type of crime committed), and circuit court.

The goal of this summary report is to inform the legislature about the persistent straddle cell sentencing disparities we identified, and to offer the legislature a "menu" of options aimed at reducing these disparities. Regardless of whether our recommendations ultimately result in legislative action, the documentation of disparities alone should prompt closer inspection of Michigan's sentencing guidelines by lawmakers.

This will be the Commission's last report. Pursuant to MCL 769.33a, the Commission will sunset on September 30, 2019. Bipartisan legislation to extend the Commission was introduced in both the House and the Senate and received support from key stakeholder groups across the state. However, lack of legislative movement on those bills signals that there will be no extension. As was the case from 2002 when the state Sentencing Commission was disbanded until 2015 when the Criminal Justice Policy Commission was created, Michigan once again will have no permanent, nonpartisan advisory body to analyze its sentencing guidelines or provide data-driven recommendations about crime and justice policy to the Michigan legislature.

We urge Michigan's leaders to work quickly and collaboratively to fill the void left by the Commission's expiration. If Michigan's sentencing guidelines are failing to ensure consistency or reduce disparities in sentencing outcomes for straddle cell offenders, as our analyses suggest, then it is critical for our state to have an entity that can join empirical research findings with stakeholder input to inform legislative decision-making, including continued review of the sentencing guidelines. That the Criminal Justice Policy Commission will cease to exist does not mean that the need for our work ends as well. On the contrary, much work remains. With or without the assistance of the Commission, it is incumbent on the legislature to use the best available data to ensure that our state's laws uphold the foundational principles of equity, fairness, and justice for the people of Michigan.

Respectfully,

Dr. Amanda Burgess-Proctor
Chair, Criminal Justice Policy Commission