

# final minutes

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## **Criminal Justice Policy Commission Meeting**

9:00 a.m. • Wednesday, May 4, 2016

Senate Appropriations Room • 3<sup>rd</sup> Floor State Capitol Building

100 N. Capitol Avenue • Lansing, MI

### **Members Present:**

Senator Bruce Caswell, Chair  
Stacia Buchanan  
Senator Patrick Colbeck  
D. J. Hilson  
Kyle Kaminski  
Sheryl Kubiak  
Barbara Levine  
Sarah Lightner  
Laura Moody  
Sheriff Lawrence Stelma  
Judge Paul Stutesman  
Andrew Verheek  
Judge Raymond Voet  
Representative Michael Webber

### **Members Excused:**

Representative Vanessa Guerra  
Senator Bert Johnson  
Jennifer Strange

### **I. Call to Order and Roll Call**

The Chair called the meeting to order at 9:00 a.m. and asked the clerk to take the roll. A quorum was present and absent members were excused.

### **II. Approval of the April 6, 2016 CJPC Meeting Minutes**

The Chair asked for a motion to approve the April 6, 2016 Criminal Justice Policy Commission meeting minutes.

**Commissioner Moody moved, supported by Commissioner Stelma, that the minutes of the April 6, 2016 Criminal Justice Policy Commission meeting as proposed be approved. There was no objection. The motion was approved by unanimous consent.**

### **III. CJPC Budget and Boilerplate Language Discussion and Update**

The Chair moved up the CJPC budget and boilerplate language discussion to allow Senator Colbeck the opportunity to present an update before leaving to attend Senate session. Senator Colbeck reported that the boilerplate language mentioned at the last CJPC meeting is going into the budget bill in the Senate and includes \$500,000 for 3 years. He also noted that Senate Bill 938, which he introduced and is one of the bills that deals with criminal justice reform, converts the proposed boilerplate language into a statute proposal. He asked members to review the bill and provide feedback at the next meeting.

Representative Webber provided an update on the House criminal justice reform bill package. Chair Caswell inquired if it is the legislature's intent under House Bill 4964 to use the proposed appropriation to the CJPC to fund a study of juvenile justice services for 17 year olds. Representative Webber did not think that was the intent and Senator Colbeck concurred adding that the CJPC funding is under the Legislative Council.

### **IV. Data Subcommittee Update**

The Chair called on Commissioner Kubiak for an update. She shared that since the last meeting she has been communicating with Dr. Marlowe about data elements in relation to the boilerplate language. She explained that Dr. Marlowe's data elements presume we have data on an individual level, which she noted we do not have at this point. (See the attached email for more specific details.) The Chair then mentioned he is aware that there are companies that are capable of going into a business and creating a software flow to enable tracking and analyzing of data. He asked if it would be reasonable to explore this type of an option. Commissioner Kubiak indicated that the data subcommittee has been exploring those options and there is movement within the state attempting to do some of that data integration; however, jail data is still missing. Senator Colbeck suggested the first step is to conduct a gap assessment and cautioned against using one-stop shopping with one vendor. A discussion followed. Commissioner Stelma emphasized the need to find a way to gather good data from the jails in a more consistent manner similar to how it is done by the F.B.I. on the arrest side. Commissioner Kubiak suggested it might be useful to invite Terry Jungle of the Michigan Sheriffs' Association to the next Commission meeting to share his knowledge and insight of his efforts to get the jails to move to one data collection system. Judge Stutesman suggested it might also be helpful to have Mark Dobek come in to explain what is

done on the court side. The Chair asked the clerk to contact Mr. Jungle and Mr. Dobek to extend an invitation for them to attend the next meeting. The Chair also asked that the subcommittee bring back a recommendation the Commission could consider on how to gather missing jail data.

Commissioner Kubiak then shared that there is some good sentencing data available and the subcommittee looked back at the Council of State Governments' recommendation on consistency and predictability in sentencing (attached to these minutes). She called on Commissioner Kaminski and Commissioner Verheek to share some of the data that is available. Commissioner Kaminski proceeded with an explanation of a handout he prepared of the statewide depositions for FY 2015 collected by the Department of Corrections and focused on an overview of the statewide data for the straddle cells. He shared that a third of the straddle cell cases result in prison and there are seven counties where the disposition rate is approximately 70%. He noted that while the system is built to have flexibility, this disparity between counties may be a valid point of discussion for the Commission. A discussion followed. Commissioner Verheek provided data specifically for Kent County (see attached handouts for more details.) He expressed that if the Commission is going to have an honest discussion of disposition rates, we need to have the discussion now and we need to consider the extraneous factors in our conversations. The Chair called on an audience member, Bruce Timmons, for a history of straddle cells which he explained were a creation of the previous Michigan Sentencing Commission.

## **V. Robina Institute Criminal History Enhancements Sourcebook and Worksheet**

### **a. Statement on Punishment vs. Rehabilitation**

The Chair opened a discussion of the statement on punishment vs. rehabilitation distributed since the last CJPC meeting. He asked members if they wish to start the discussion using the original statement he prepared or the revised statement submitted by Commissioner Kaminski. By voice vote, the majority of the Commissioners chose to use Mr. Kaminski's version of the statement:

"The Criminal Justice Policy Commission feels that each citizen bears personal responsibility for his/her actions. The citizens of this state have a right to impose punishment on those negative actions that impact the well-being of individuals and safety of our communities through the criminal justice system, with the goal being to prevent crime and hold individuals responsible for their actions. As a result, punishment is a component of the criminal justice system, but this punishment must be commensurate with the impact of the negative actions, and should be consistent for offenders committing similar crimes with similar criminal histories, regardless of race, religion, gender, or geography.

In addition, the Criminal Justice Policy Commission also recognizes that society in general will benefit if the perpetrators of crime can be rehabilitated, and, as a result, not return to a life of crime when released from probation, jail or prison. As a result, effective, evidence-based rehabilitation programs for prisoners, parolees and probationers are a key component of providing offenders with the opportunity to become productive members of society."

A discussion of including geography as a factor in consistent sentencing guidelines followed.

**Commissioner Kaminski moved, supported by Commissioner Verheek, to amend the last sentence of the first paragraph, after the word "histories" by deleting ", regardless of race, religion, gender, or geography". There was no further discussion. The motion prevailed by unanimous consent.**

**Yeas—12**

**Chair Caswell  
Commissioner Buchanan  
Commissioner Hilson  
Commissioner Kaminski  
Commissioner Kubiak  
Commissioner Levine**

**Commissioner Lightner  
Commissioner Moody  
Commissioner Stelma  
Judge Stutesman  
Commissioner Verheek  
Judge Voet**

**Nays—0**

**Commissioner Kubiak moved, supported by Commissioner Levine, to amend the second sentence of the first paragraph, after the word "impose", by deleting the word "punishment" and adding the word "sanctions". A discussion of the amendment followed. Commissioner Kubiak withdrew her amendment.**

**Commissioner Kubiak moved, supported by Commissioner Levine, to amend the third sentence of the first paragraph, after the word "punishment", by inserting "in the form of sanctions (i.e. fines, redirection, supervision, confinement)". A discussion of the amendment followed. Commissioner Kubiak withdrew her amendment.**

**Commissioner Levine moved, supported by Commissioner Lightner, to amend the third sentence of the first paragraph, after the word "punishment", by inserting "(e.g. fines, diversion, supervision, confinement)". There was no further discussion. The motion prevailed by unanimous consent.**

**Yeas—12**

**Chair Caswell  
Commissioner Buchanan  
Commissioner Hilson  
Commissioner Kaminski  
Commissioner Kubiak  
Commissioner Levine**

**Commissioner Lightner  
Commissioner Moody  
Commissioner Stelma  
Judge Stutesman  
Commissioner Verheek  
Judge Voet**

**Nays—0**

**Commissioner Levine moved, supported by Commissioner Lightner, to amend the first sentence of the second paragraph, after the second word "crime" by inserting ". Options and tools for rehabilitation should be available through the criminal justice continuum, beginning at arrest, arraignment, sentencing as well as"; and to amend the second sentence after the word "programs" by inserting "should be available across the criminal justice continuum" and deleting "for prisoners, parolees and probationers are". A discussion of the amendment followed.**

**Judge Voet moved, supported by Commissioner Verheek, to amend the proposed amendment by not amending the first sentence of the second paragraph; inserting "Evidence-based" before the word "Options" and changing the "O" to "o"; deleting the word "through" and inserting the word "throughout" after the word "available"; deleting "beginning at arrest, arraignment, sentencing as well as" after "continuum," and inserting "from arrest through discharge from supervision."; and deleting the last sentence in the second paragraph.**

**There was no further discussion. The amendment to the amendment prevailed by unanimous consent.**

**Yeas—12**

**Chair Caswell  
Commissioner Buchanan  
Commissioner Hilson  
Commissioner Kaminski  
Commissioner Kubiak  
Commissioner Levine**

**Commissioner Lightner  
Commissioner Moody  
Commissioner Stelma  
Judge Stutesman  
Commissioner Verheek  
Judge Voet**

**Nays—0**

**The Chair called for a vote on Commissioner Levine's amendment as amended. There was no further discussion. The amendment to the amendment prevailed by unanimous consent.**

**Yeas—12**

**Chair Caswell  
Commissioner Buchanan  
Commissioner Hilson  
Commissioner Kaminski  
Commissioner Kubiak  
Commissioner Levine**

**Commissioner Lightner  
Commissioner Moody  
Commissioner Stelma  
Judge Stutesman  
Commissioner Verheek  
Judge Voet**

**Nays—0**

The Chair asked Commissioners Verheek, Hilson, and Voet if they had any further changes. They did not. The Chair noted that the approved recommendation on Punishment vs. Rehabilitation will be put on file:

"The Criminal Justice Policy Commission feels that each citizen bears personal responsibility for his/her actions. The citizens of this state have a right to impose punishment on those negative actions that impact the well-being of individuals and safety of our communities through the criminal justice system, with the goal being to prevent crime and hold individuals responsible for their actions. As a result, punishment (e.g. fines, diversion, supervision, confinement) is a component of the criminal justice system, but this punishment must be commensurate with the impact of the negative actions, and should be consistent for offenders committing similar crimes with similar criminal histories.

In addition, the Criminal Justice Policy Commission also recognizes that society in general will benefit if the perpetrators of crime can be rehabilitated, and, as a result, not return to a life of crime when released from probation, jail or prison. Evidence-based options and tools for rehabilitation should be available throughout the criminal justice continuum; from arrest through discharge from supervision.

**b. Commissioners' Preference Sheet – In Order of Importance**

The Chair indicated that he will attempt to get something written up on the first couple of items on the priority list of Robina Institute Sourcebook Suggestions. He noted that he will add this to next month's meeting agenda.

**VI. Commissioner Comments**

The Chair noted that he would like the Commission to consider reaching out to find out why different sentences are imposed. He then asked members if they had any additional comments. Commissioner Lightner shared that she and Commissioner Strange will continue to follow the Diversion Council pilot and inquired if there is anything more the Commission needs from the Mental Health Subcommittee. The Chair mentioned a few areas for them to consider looking into including finding ways to better assist jails in identify those with mental health issues and providing training for indigent defense attorneys to better identify those with mental health issues.

**VII. Public Comments**

The Chair asked if there were any public comments. Bruce Timmons, of Okemos, responded to an earlier question on disparity.

**VIII. Next CJPC Meeting Date**

The next CJPC meeting is scheduled for **Wednesday, June 1, 2016, at 9:00 a.m. in the Senate Appropriations Room, 3<sup>rd</sup> Floor of the State Capitol Building.**

**IX. Adjournment**

There was no further business. The Chair adjourned the meeting at 12:09 p.m.

*(Minutes approved at the June 1, 2016 CJPC meeting.)*

On Friday, April 29, 2016 12:30 PM, Douglas Marlowe <[dmarlowe@nadcp.org](mailto:dmarlowe@nadcp.org)> wrote:

Dr. Kubiak and Sen. Caswell,

Again, please allow me to apologize for taking so long to respond to your questions. My responses are in **red font** below the respective questions from Dr. Kubiak. I am happy to get on the phone to discuss them further.

Respectfully,

Doug

Questions: I think it important to compare/contrast what is being mandated legislatively and the core dataset list – but this is a discussion with Dr. Marlowe – not a specific question. Among these core items – there is no measure of recidivism – so from a policy perspective, I am interested in how Dr. Marlowe’s proposed list is used.

**Are you permitted to share with me the legislative mandate so I can cross-walk it with my list of performance indicators? It would also be helpful to see the CSG Justice Reinvestment Report for Michigan to see what was specifically recommended. I might be able to answer your questions better if I have this information. Thanks!**

Below are the core items – with my assumed definitions and questions:

1) Arrest rate – annual rate configured by race, ethnicity, gender using state population per 100,000. Would there be benefit of looking at this geographically as well.

**From your question, it sounds like you may be thinking about providing a composite index (percentage or ratio) representing the arrest rate for the entire state or individual counties. My dataset assumes that variables are entered at the individual offender level. The data would be nested at the state, county, and program levels, allowing analyses to be broken down accordingly.**

**This also allows outcomes such as recidivism to be cross-tabulated with, or conducted separately by, such other variables as risk level, charge/conviction level, sentence/disposition, race, ethnicity, etc. Otherwise, there will no way to interpret the meaning of the recidivism rate. For example, it is critical to determine whether recidivism rates, completion rates, etc. differ by the type of sentence imposed (jail vs. probation, for example) for offenders with equivalent criminal records and risk levels. Comparing outcomes across sentences or dispositions will provide important information for policy makers related to sentencing practices and guidelines.**

**To accomplish this, it will be necessary to link datasets from different sources (courts, probation, jails, etc.). That is why I emphasized the importance of having a central data-repository in Slide #4 of my talk.**

2) Conviction rate – annual rate of conviction by race, ethnicity, gender (using arrest population or state population or both). Do you differentiate felony/misdemeanor – or does this get too messy with plea arrangements?

**Yes, arrests, convictions and reincarcerations should be broken down or sub-coded by offense level (misdemeanor, felony, technical violation, traffic violation), because different levels of offenses can have very different implications for costs and victim impacts.**

3) Incarceration rate - annual rate of new incarcerations – separate for prisons and jails - by race, ethnicity, gender (using conviction population or state population or both?)

**Yes, because jail and prison have different costs associated with them, and the costs are usually borne differently by counties vs. the state. For example, Justice Realignment, which originated in CA, determined that many counties transfer costs (whether intentionally or not) to the state by imposing felony sentences on straddle cases. The “denominator” is the cohort or number of offenders included in the database.**

4) Days of incarceration – computed by the number of jail AND prison beds filled annually (i.e. 100 beds, filled on 365 days would equal 36500 days of incarceration). Is this computed as a whole number or a ratio? Also computed by race, ethnicity and gender.

**Again, this should be broken down by jail vs. prison for cost reasons, and entered at the offender level. It is computed as the number of incarcerated days per individual, which can then be analyzed as a percentage, average, standard deviation, range, etc.**

5) # of in-program technical violations –by ‘program’ are you referring to specialized program (i.e. drug treatment) or is program ‘parole or probation’? There is quite a large substance abuse treatment network while individuals are on parole and probation. This also would need to be broken down by race, ethnicity and gender.

**This refers to technical violations founded or adjudicated by the court following a petition for revocation or modification of conditions by probation. Although a technical violation might be based upon an infraction committed at a treatment program, the probation dept. would handle the petition and the court would enter the finding.**

6) Days of in-program detention for violations – assuming that this refers to sanctions received; i.e., returned to TRV center for a technical rule violation for number of days; in county jail on a technical violation, etc.

**Yes. In cost evaluations, these are treated as investment costs for the program (e.g., Drug Court or probation), whereas reincarceration for a new offense is treated as an outcome cost. Measuring in-program detention for technical violations allows you to assess whether probation is following evidence-based practices in applying graduated sanctions, as opposed to administering excessive sanctions.**

7) Successful completion rate by program type (probation, parole, drug court, mental health court, substance abuse treatment). There is so much variability within these specialty programs (i.e. district vs. circuit court level; length of stay; associated treatment modality, etc.) how do you accommodate? Also, I assume that there is a desire to report these rates by race, ethnicity and gender.

**If these data are reported at the offender level, you can calculate successful completion rates by different types of dispositions, race, etc. Completion would be defined at the dispositional level (e.g., probation or Drug Court), and not necessarily at the level of referral to an individual treatment program, such as substance abuse treatment. Although it would be great if you also included completion rates for treatment referrals, that is not included in the core dataset because of the extra effort required.**

8) Length of stay in the program – assuming this would be by any outcome (successful, termination, mortality...) – also by race, ethnicity and gender.

**Yes, all analyses would be intent-to-treat, regardless of the outcome. You will also have the completion status (discussed immediately above), so you can break down the length of stay by different outcomes if you so choose.**

9) Broken down by validly measured risk level – would require utilization of current COMPAS scores for both recidivism and violence?

**This is critically important for interpreting outcomes. For example, recidivism rates might be higher for jail than for probation simply because persons sentenced to jail had higher risk scores or more serious criminal histories to begin with. If so, then lower recidivism rates for probation might not mean that probation is necessarily a more effective and cost-effective sentence. By controlling statistically for criminal history (including violence charges) or risk score, you can approximate a more “apples to apples” comparison. Although a tool such as the COMPAS, LSI-R, or RANT would be ideal, I recognize that many programs do not administer these tools. That is why I mentioned the Proxy Risk Score on Slide #22. It uses only three items that are already part of the public record and should be available routinely in offenders’ criminal background checks.**

10) Broken down by race, ethnicity, gender (as noted above).

**Yes, all variables should be reported separately by race, ethnicity, and gender, because they are constitutionally suspect classes.**

**Let me know if you have any additional questions.**

**My Best,**

**Doug**

Sheryl Kubiak, Professor  
Michigan State University  
School of Social Work and Consortium on Gender-based Violence  
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517 432 7110  
[spk@msu.edu](mailto:spk@msu.edu)

**From:** [bcaswell@frontier.com](mailto:bcaswell@frontier.com) [<mailto:bcaswell@frontier.com>]  
**Sent:** Friday, April 15, 2016 6:41 PM  
**To:** Sheryl Kubiak  
**Subject:** Re: boilerplate

Dear Sheryl;

Prepare your material and send to me. I will forward it to him with a request for his estimated charge, if any, for his answers. Then you and I will discuss his response and we go from there.

Respectfully,

Bruce Caswell

On Friday, April 15, 2016 2:24 PM, Sheryl Kubiak <[spk@msu.edu](mailto:spk@msu.edu)> wrote:

Hello Bruce,

As I was re-writing the boiler plate language based upon Dr. Marlowe's 'core data set' slide, I realize there is a lot of information missing that would help us. For example, the first is 'new arrest rate' – I can assume that this is a calculated arrest rate for the state to be calculated annually – and then broken down by race, ethnicity, and gender (#10)– but I would also like to be more precise.

I had some conversation with Dr. Marlowe after the meeting and he gave me his card, saying that I could contact him for clarity. In your more recent email, you have asked us to go through you – so, please advise as to how you would like me to proceed.

Sheryl Kubiak, Professor  
Michigan State University  
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## Michigan's Sentencing Guidelines: Process

Michigan's felony sentencing guidelines provide a scoring system to determine the recommended minimum sentence range for a person convicted of a particular felony.<sup>15</sup> State statute sets the maximum sentence for each offense, and it is the parole board's decision whether the person will be released at or near the minimum sentence length set by the court in accordance with the guidelines, or at or near the maximum date prescribed by statute.

There are several key components in the guidelines that factor into an individual's final score.

**Crime Grid:** Crimes are categorized into nine different classes, or grids, based on the seriousness of the offense, from most severe (second-degree murder) to least severe (H grid).<sup>16</sup>

**Crime Group:** Crimes are also sorted into six different crime groups, including crimes against a person, crimes against property, and crimes involving controlled substances. The crime group affects which offense variables may apply in determining an individual's sentencing score.

**Offense Variable:** Offense variables (OVs) are specific elements of the offense that are scored and added together. Each crime group has its own set of OVs that may be scored where applicable, based on the facts of the case.

**Prior Record Variable:** Prior record variables (PRVs) are factors that score for prior criminal history. There are seven variables and six PRV levels in the guidelines.

**Habitual Offender Sentencing Enhancement:** If an individual has a felony criminal history, prosecutors may decide to request habitual offender sentencing enhancements, which expand the range of the possible minimum sentences. There are three levels of habitual offender sentencing, from second degree (meaning the individual had one prior felony conviction in his or her criminal record) to fourth degree (meaning at least three prior felony convictions). When habitual offender sentencing is applied, prior criminal history is effectively used twice.

**Cells:** There are 258 total cells across the sentencing grids, with 3 types of cells:

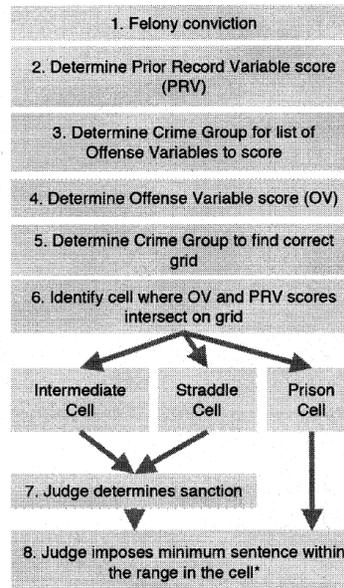
- **Presumptive Prison Cells:** These cells call for a recommended sentence that exceeds a minimum of one year of prison. In these cases, a sentence of anything other than prison requires a judicial departure from the guidelines.

- **Straddle Cells:** These cells call for a recommended sentence that may be either prison or an intermediate sanction.

- **Intermediate Sanction Cells:** These cells call for a recommended sentence that may include jail, probation, or another non-prison sanction, such as electronic monitoring or fines. A sentence to prison for a case that falls in these cells requires a judicial departure from the guidelines.

**Sentencing Ranges:** The cell provides the minimum sentence range in months. Sentencing judges may depart from the recommended range, either to increase (an upward departure) or decrease (downward departure) the sentence, but they must offer a substantial and compelling reason on the record. Judges may also consider a person's status as a habitual offender within the guidelines, which may expand the minimum sentence length range, if prosecutors choose to apply the habitual offender enhancement to a case.

**Process:** Steps to determine a person's sentencing guidelines score are enumerated below:



\* Range within cell may expand, depending on use of habitual offender sentencing enhancements.

## Consistency and Predictability: There are opportunities to improve the consistency and predictability of Michigan's sentencing system.

### FINDING 1

#### People with similar criminal histories who are convicted of similar crimes receive significantly different sentences.

To sentence someone convicted of a crime, the court conducts an elaborate calculation to make a precise determination about where a person belongs among the many cells in the guidelines.

- When an individual is convicted of a felony, the sentencing process requires evaluating each person's criminal history and the particular characteristics of the crime in order to determine the appropriate cell (see "Michigan's Sentencing Guidelines: Process").
- Michigan's sentencing guidelines feature 9 crime grids, which are subdivided into 258 cells. When

habitual sentencing enhancements are used, the number of possible cells increases to 1,032.<sup>17</sup>

The precision involved in scoring a person's guidelines cell is undermined by the wide sentence ranges and variety of sanctions within many of the cells.

- Most cases fall into guidelines cells that allow for a wide variation of sentencing options, ranging from jail to probation, fines, or community service, and many of these cells also allow for prison. [See Figure 2]

FIGURE 2. FELONY GUIDELINES SENTENCES BY CELL AND SANCTION TYPE, 2012

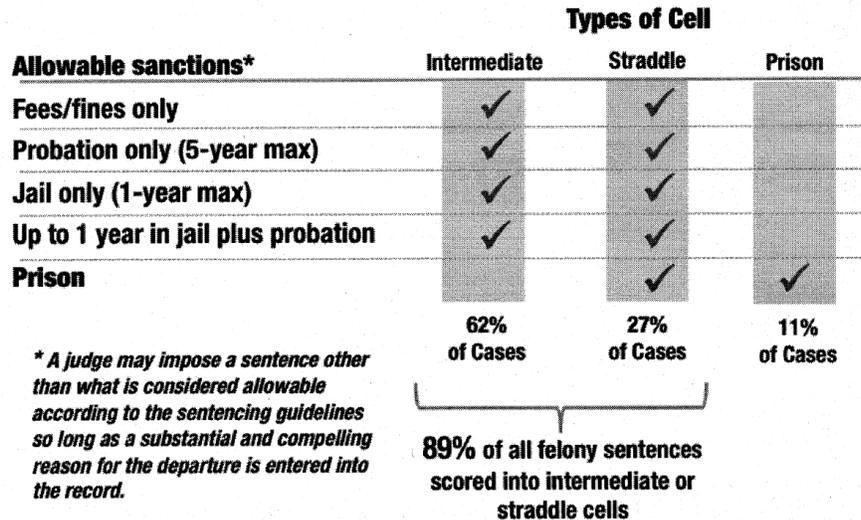
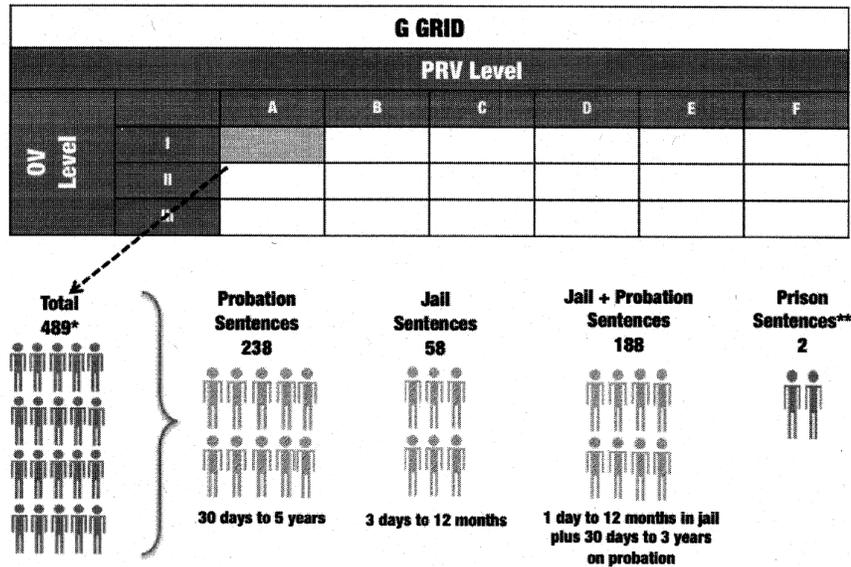


FIGURE 3. FELONY SENTENCES FOR INDIVIDUALS IN ONE GUIDELINES CELL, 2012



\* 3 sentences were for fines only.

\*\* Prison sentences for this cell were the result of judicial departures from the guidelines.

- Even with a high degree of precision in the scoring process, it is possible for two people with similar criminal histories who are convicted of similar crimes with similar characteristics, to receive vastly different sentences ranging from probation, to jail, to prison.
- In 2012, 489 people convicted of the same drug possession offense received OV and PRV scores that placed them into the same guidelines cell in the G grid. Of those 489 people, 238 received probation-only terms, 188 received jail and probation sentences, 58 were sentenced to jail only, and 2 people were sentenced to prison.<sup>18</sup> [See Figure 3]
- In one of the most commonly used straddle cells in the guidelines, sentences can range between as little as 10 months in jail to as much as 23 months in prison.<sup>19</sup>
- The length of sentences for the 489 individuals who scored into the same guidelines cell in the G grid varied considerably. The minimum terms for jail-only sentences ranged from 3 to 365 days in jail. The minimum terms for sentences combining jail and probation ranged from 1 day to 1 year in jail, plus probation terms between 30 days and 3 years. The minimum terms for probation-only sentences ranged from 30 days to 5 years.<sup>20</sup>

Many guidelines cells include a wide range of possible sentence lengths, providing the courts with a great deal of latitude in setting minimum sentences. This high degree of discretion results in variations in imposed sentences between people who score into the same cell.

Habitual offender sentencing enhancements allow for the option to count criminal history twice to increase sentence lengths.

- Habitual offender sentencing enhancements (see “Michigan’s Sentencing Guidelines: Process”), which the prosecutors can request and judges can apply at their discretion, can significantly increase

the length of the minimum sentence established in a particular guidelines cell in certain situations.

- When habitual offender enhancements are applied, the judge also has the option to raise the statutory maximum sentence anywhere from 50 percent longer than the original maximum to a life sentence, depending on the person's number of prior felony convictions.
- Though Michigan's sentencing guidelines automatically account for most of a person's criminal history through the PRV score, habitual offender enhancements also allow for counting much of an individual's criminal history twice.

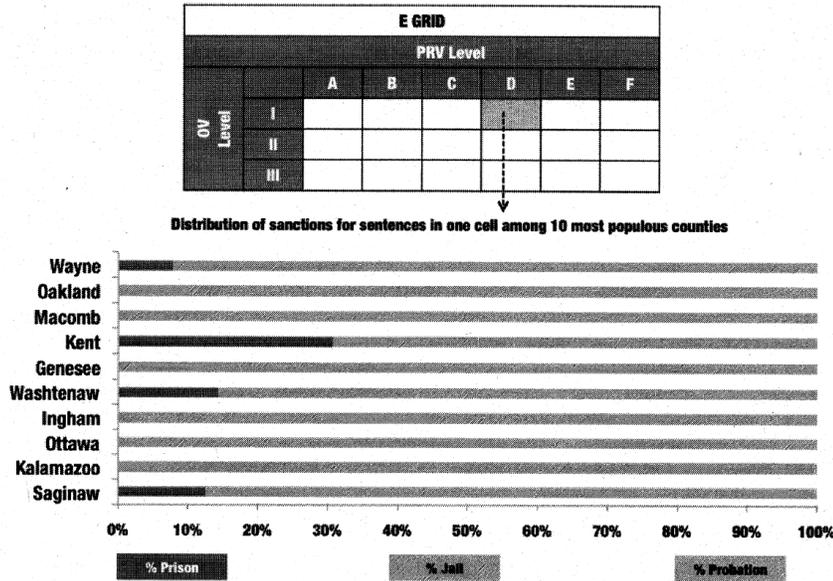
**Due to the wide ranges of sentence lengths within the guidelines cells, there is a high potential that people who score into different cells will receive the same sentence.**

- There is a great deal of overlapping sentence ranges within the different cells of each grid, regardless of the specific characteristics of the case. In the E grid, 72 percent of the cells allowed for a 6- to 12-month sentence to jail, and 64 percent allowed for prison sentences ranging between 12 and 24 months.<sup>21</sup>
- This means that two people who score into different guidelines cells on the same grid are likely to face similar sentencing ranges, despite the differences in their criminal histories and the characteristics of the crimes they committed, thus undermining the guidelines' intention to impose proportional sentences.

**Among Michigan's 10 most populous counties, where the majority of sentencing takes place, sentences can vary significantly.**

- The wide array of sanctions and minimum sentence lengths built into many guidelines cells results in sentences that vary considerably from one county to the next.
- In 2012, 402 people statewide had a sentencing score that placed them in the same guidelines cell on the E grid. Comparing across the 10 most populous counties, those convicted in Wayne County were 8 times more likely to receive a probation term than those in Ingham County. A third of the people convicted in Kent County were sentenced to prison, while in Kalamazoo, Ottawa, Ingham, Genesee, Macomb, and Oakland counties no one received prison terms.<sup>22</sup> [See Figure 4]
- Three out of four judges responding to a statewide survey reported that the sentence a person receives depends on the county in which he or she is convicted, and almost half of surveyed prosecutors acknowledge differences in sentencing outcomes depending on the courts where cases are tried.<sup>23</sup>
- These geographic sentencing distinctions mean that people with comparable criminal histories who are convicted of similar crimes should expect to receive different sentences depending on where they are convicted. It also means that people who are victimized under similar circumstances by people with similar criminal histories should expect different outcomes depending on the county where the case is tried.

FIGURE 4. FELONY SENTENCES IN ONE CELL ACROSS 10 MOST POPULOUS COUNTRIES, 2012



**POLICY OPTION 1**

**Structure sanctions in the guidelines to produce more consistent sentences.**

Structure the use of probation, jail, and prison within the guidelines to increase predictability.

- 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.
- Judges should retain their current ability to depart from the guidelines.

Reduce the wide ranges in sentence lengths within guidelines cells that include the possibility for a prison sentence.

- Reduce the degree of overlap between sentencing ranges across different guidelines cells within the same grid.
- Judges should continue to have the discretion to establish sentence lengths tailored to individual cases within narrowed ranges, and prosecutors should have the discretion to request the application of HO enhancements in eligible cases without counting prior criminal history twice, as is the current practice.

*Greater consistency in sentencing will achieve two of the key purposes of the guidelines: proportionality and less disparity. It will also enhance state and local systems' ability to plan, and can be used to reconfigure and stabilize state funding for county jails.*

Statewide: From MDOC Office of Community Corrections  
Statewide Dispositions - FY 2015 (OMNI data) Created 1/12/2016

Statewide: Fiscal Year 2015 OMNI Dispositions, Listed by Guideline and Offense Group

			DISPOSITION					
			Prison	Jail	Jail/Prob	Probation	Other	Total
SGL NA	Offense	Count	1094	657	330	579	30	2690
	Group1	%	40.7	24.4	12.3	21.5	1.1	100.0
	Offense	Count	487	1706	679	1152	94	4118
	Group2	%	11.8	41.4	16.5	28.0	2.3	100.0
	Total	Count	1581	2363	1009	1731	124	6808
		%	23.2	34.7	14.8	25.4	1.8	100.0
Intermediate	Offense	Count	328	1418	2984	2153	40	6923
	Group1	%	4.7	20.5	43.1	31.1	.6	100.0
	Offense	Count	493	3804	8550	4893	189	17929
	Group2	%	2.7	21.2	47.7	27.3	1.1	100.0
	Total	Count	821	5222	11534	7046	229	24852
		%	3.3	21.0	46.4	28.4	.9	100.0
Straddle	Offense	Count	1456	743	1511	432	7	4149
	Group1	%	35.1	17.9	36.4	10.4	.2	100.0
	Offense	Count	2287	1534	2628	786	44	7279
	Group2	%	31.4	21.1	36.1	10.8	.6	100.0
	Total	Count	3743	2277	4139	1218	51	11428
		%	32.8	19.9	36.2	10.7	.4	100.0
Presumptive	Offense	Count	3385	64	269	120	14	3852
	Group1	%	87.9	1.7	7.0	3.1	.4	100.0
	Offense	Count	796	22	191	47	2	1058
	Group2	%	75.2	2.1	18.1	4.4	.2	100.0
	Total	Count	4181	86	460	167	16	4910
		%	85.2	1.8	9.4	3.4	.3	100.0

Assaultive  
Non-Assaultive

Statewide, 35% of those committing an assaultive offense, whose guideline scores fall with straddle cell range, are sent to prison.

Similarly, 31% of those committing a non-assaultive offense-whose guideline scores are in straddle cell range- are sent to prison.

Seven counties have rates of 70% or more.

*Kent County Data*

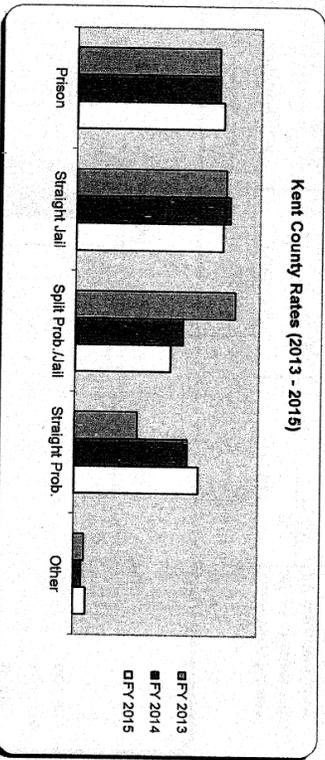
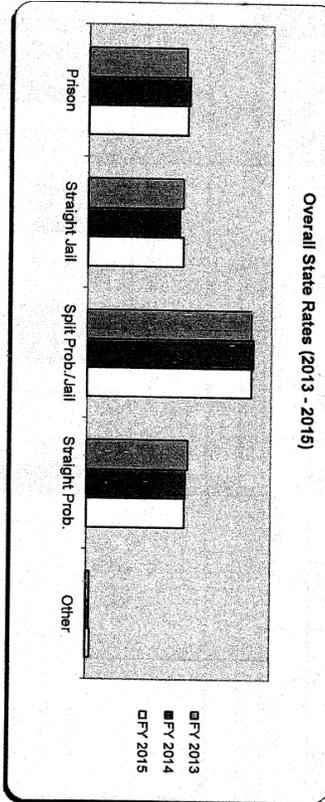
Fiscal Year 2015 OMNI - County Dispositions, Listed by Guideline and Offense Group

				DISPOSITION					
				Prison	Jail	Jail/Prob	Probation	Other	Total
Kent	SGL NA	Offense Group1	Count	60	69	13	27	10	179
			%	33.5	38.5	7.3	15.1	5.6	100.0
		Offense Group2	Count	26	126	10	39	19	220
			%	11.8	57.3	4.5	17.7	8.6	100.0
		Total	Count	86	195	23	66	29	399
			%	21.6	48.9	5.8	16.5	7.3	100.0
	Intermediate	Offense Group1	Count	11	148	115	148	5	427
			%	2.6	34.7	26.9	34.7	1.2	100.0
		Offense Group2	Count	21	387	276	413	28	1125
			%	1.9	34.4	24.5	36.7	2.5	100.0
		Total	Count	32	535	391	561	33	1552
			%	2.1	34.5	25.2	36.1	2.1	100.0
	Straddle	Offense Group1	Count	141	42	41	35	1	260
			%	54.2	16.2	15.8	13.5	.4	100.0
		Offense Group2	Count	294	83	79	56	7	519
			%	56.6	16.0	15.2	10.8	1.3	100.0
		Total	Count	435	125	120	91	8	779
			%	55.8	16.0	15.4	11.7	1.0	100.0
	Presumptive	Offense Group1	Count	245	5	13	9	2	274
			%	89.4	1.8	4.7	3.3	.7	100.0
Offense Group2		Count	63	3	9		1	76	
		%	82.9	3.9	11.8		1.3	100.0	
Total		Count	308	8	22	9	3	350	
		%	88.0	2.3	6.3	2.6	.9	100.0	
Keweenaw	SGL NA	Offense Group1	Count						
			%						
		Offense Group2	Count		1				1
		%		100.0				100.0	
	Total	Count		1				1	
		%		100.0				100.0	
	Intermediate	Offense Group1	Count			1			1
			%			100.0			100.0
		Offense Group2	Count		2				2
		%		100.0				100.0	
	Total	Count		2	1			3	
		%		66.7	33.3			100.0	
	Straddle	Offense Group1	Count						
			%						
		Offense Group2	Count		1				1
		%		100.0				100.0	
	Total	Count		1				1	
		%		100.0				100.0	
	Presumptive	Offense Group1	Count	1					1
			%	100.0					100.0
Offense Group2		Count							
	%								
Total	Count	1					1		
	%	100.0					100.0		

Offense Group1 = Homicide,Robbery,CSC,Assault,Arson,Other Sex Offense,Assaultive Other,Burglary,Weapons Possession  
Offense Group2 = Larceny,Fraud,Forgery/Embezzle,Motor Vehicle,Malicious Destruction,Drugs,OUIL 3rd,Other Non-Assaultive

**State of Michigan  
Sentencing Information - Fiscal Years 2013 through 2015 (October 1 through September 30)  
All Counties and Top 5 Counties by Population**

	Overview of Offense Dispositions									
	FY 2013			FY 2014			FY 2015			Kent %
	Overall - State %	Top 5 Counties %	Kent %	Overall - State %	Top 5 Counties %	Kent %	Overall - State %	Top 5 Counties %		
Prison	21.1%	20.6%	27.1%	21.9%	21.9%	27.2%	21.5%	21.5%	28.0%	
Straight Jail	20.6%	18.6%	28.5%	19.8%	17.8%	29.3%	20.7%	18.6%	28.0%	
Split Prob./Jail	35.6%	28.3%	30.4%	36.1%	28.2%	20.5%	35.7%	27.8%	18.1%	
Straight Prob.	21.9%	31.9%	12.0%	21.4%	31.5%	21.5%	21.2%	31.4%	23.6%	
Other	0.7%	0.6%	2.0%	0.7%	0.5%	1.5%	0.9%	0.7%	2.4%	
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	



**Straddle Cell Dispositions - FY 2013 through 2015 (October Through September)**

Disposition	Overall - State				
	FY 2013 %	FY 2014 %	FY 2015 %	FY 2013 %	FY 2015 %
Prison	32.5%	33.2%	32.8%	53.9%	55.8%
Straight Jail	18.7%	18.8%	15.7%	15.7%	16.0%
Split Jail/Prob.	36.8%	37.0%	36.2%	21.2%	15.4%
Straight Prob.	11.6%	10.7%	10.7%	6.4%	11.7%
Other	0.4%	0.4%	0.4%	0.8%	1.0%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

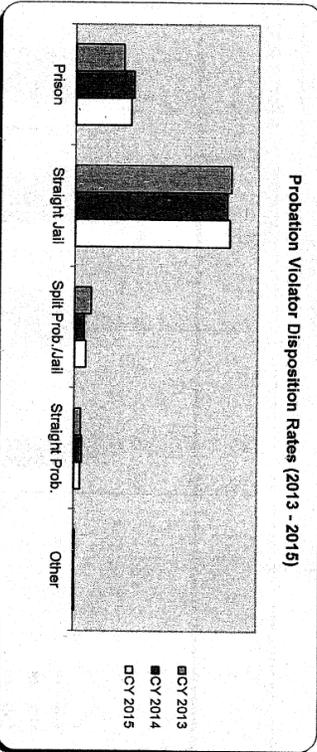
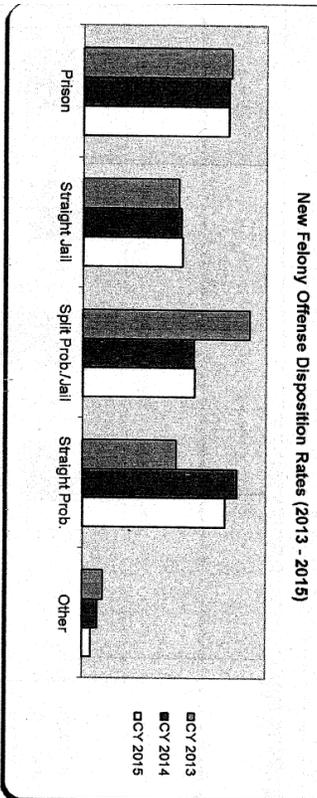
Kent County Office of Community Corrections

**Kent County - 17th Circuit Court  
Sentencing Information - Calendar Years 2013 through 2015 (January through December)**

All Circuit Court Judges

4/30/2016

	Overview of Dispositions - All Offenders				CY 2013				CY 2014				CY 2015					
	New Felony Offenses		Prob. Violators		Overall		New Felony Offenses		Prob. Violators		Overall		New Felony Offenses		Prob. Violators		Overall	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Prison	697	28.3%	136	21.1%	26.8%	702	27.8%	160	25.4%	27.3%	638	27.8%	154	24.3%	27.0%	427	67.5%	29.2%
Straight Jail	447	18.2%	440	68.2%	28.5%	472	18.7%	418	66.5%	28.2%	450	19.0%	427	67.5%	29.2%	427	67.5%	29.2%
Split Prob./Jail	783	31.8%	47	7.3%	26.7%	534	21.2%	27	4.3%	17.8%	508	21.4%	31	4.9%	17.9%	31	4.9%	17.9%
Straight Prob.	438	17.8%	19	2.9%	14.7%	741	29.4%	22	3.5%	24.2%	645	27.2%	18	2.8%	22.1%	18	2.8%	22.1%
Other	97	3.9%	3	0.5%	3.2%	74	2.9%	2	0.3%	2.4%	110	1.6%	3	0.5%	3.8%	3	0.5%	3.8%
<b>Total</b>	<b>2462</b>	<b>100.0%</b>	<b>645</b>	<b>100.0%</b>	<b>100.0%</b>	<b>2523</b>	<b>100.0%</b>	<b>629</b>	<b>100.0%</b>	<b>100.0%</b>	<b>2371</b>	<b>100.0%</b>	<b>633</b>	<b>100.0%</b>	<b>100.0%</b>	<b>633</b>	<b>100.0%</b>	<b>100.0%</b>



Agent Recommendation vs. Actual Disposition	Non-Prison Rec.		Prison Rec		No Rec		Non-Prison Rec		Prison Rec		No Rec	
	#	%	#	%	#	%	#	%	#	%	#	%
New Felony Offenses	1714	88.9%	83	15.5%	27	39.3%	1623	89.2%	72	14.6%	18	31.6%
Straight Cell Offenders	275	59.8%	42	19.7%	4	40.0%	197	10.8%	422	83.4%	39	68.4%
Prison	185	40.2%	171	80.3%	6	60.0%	167	39.3%	168	82.4%	13	76.5%

Select Target Populations - 2013 through 2015 (January through December) - New Felony Offenses

Disposition	Overall - Straddle Cell Offenders			Group 2 Straddle Cell Offenders		
	CY 2013	CY 2014	CY 2015	CY 2013	CY 2014	CY 2015
	#	%	#	%	#	%
Prison	343	55.1%	362	53.0%	348	53.9%
Straight Jail	82	13.2%	113	16.5%	94	14.6%
Split Jail/Prob.	148	23.8%	93	13.6%	123	19.0%
Straight Prob.	33	5.3%	101	14.8%	66	10.2%
Other	17	2.7%	14	2.0%	15	2.3%
<b>Total</b>	<b>623</b>	<b>100.0%</b>	<b>683</b>	<b>100.0%</b>	<b>646</b>	<b>100.0%</b>

Completed for new felony offenses only. PV offenders have been excluded.

# KENI

Dispositions received by New Felony Offense-Straddle Cell offenders who were sentenced in the PRV Level D / Offense Variable Level I square of the Crime Class E Sentencing Grid. Data is taken from Calendar Year 2013 through Calendar Year 2016 (January through March).

Group 1 Offenses are violent/assaultive with Group 2 Offenses non-violent/assaultive.

		Offense Group		Total
		Group 2	Group 1	
Disposition	PRISON	45 40.2%	20 35.1%	65 38.5%
	JAIL/TIME SERVED	14 12.5%	12 21.1%	26 15.4%
	SPLIT	29 25.9%	17 29.8%	46 27.2%
	PROBATION	21 18.8%	6 10.5%	27 16.0%
	OTHER	3 2.7%	2 3.5%	5 3.0%
	Total	112 100.0%	57 100.0%	169 100.0%

Dispositions received by Retail Fraud-1, New Felony Offense-Straddle Cell offenders who were sentenced in the PRV Level D / Offense Variable Level I square of the Crime Class E Sentencing Grid. Data is taken from Calendar Year 2013 through Calendar Year 2016 (January through March).

		Retail Fraud - 1	Total
		Group 2	
Disposition	PRISON	22 40.0%	22 40.0%
	JAIL/TIME SERVED	9 16.4%	9 16.4%
	SPLIT	15 27.3%	15 27.3%
	PROBATION	8 14.5%	8 14.5%
	OTHER	1 1.8%	1 1.8%
	Total	55 100.0%	55 100.0%

KENI

Dispositions received by New Felony Offense-Straddle Cell offenders who were sentenced in the PRV Level E / Offense Variable Level I square of the Crime Class E Sentencing Grid. Data is taken from Calendar Year 2013 through Calendar Year 2016 (January through March).

Group 1 Offenses are violent/assaultive with Group 2 Offenses non-violent/assaultive.

		Offense Group		Total
		Group 2	Group 1	
Disposition	PRISON	65 66.3%	29 56.9%	94 63.1%
	JAIL/TIME SERVED	14 14.3%	8 15.7%	22 14.8%
	SPLIT	8 8.2%	9 17.6%	17 11.4%
	PROBATION	10 10.2%	5 9.8%	15 10.1%
	OTHER	1 1.0%	0 .0%	1 .7%
	Total	98 100.0%	51 100.0%	149 100.0%

Dispositions received by Retail Fraud-1, New Felony Offense-Straddle Cell offenders who were sentenced in the PRV Level E / Offense Variable Level I square of the Crime Class E Sentencing Grid. Data is taken from Calendar Year 2013 through Calendar Year 2016 (January through March).

		Retail Fraud - 1	Total
		Group 2	
Disposition	PRISON	36 69.2%	36 69.2%
	JAIL/TIME SERVED	6 11.5%	6 11.5%
	SPLIT	4 7.7%	4 7.7%
	PROBATION	6 11.5%	6 11.5%
	Total	52 100.0%	52 100.0%

### **Chairman Caswell's Statement on Punishment vs. Rehabilitation 1<sup>st</sup> Draft:**

The Criminal Justice Policy Commission feels that each citizen bears personal responsibility for his/her actions. If the actions are of a positive nature the citizen is entitled to benefit from those actions. If the actions are negative the citizen is entitled to be punished for those actions. As a result punishment is a key component of the criminal justice system. In addition, the Criminal Justice Policy Commission also recognizes that society in general will benefit if the perpetrators of crime can be rehabilitated, and, as a result, not return to a life of crime when released from jail or prison. As a result, effective, evidence-based rehabilitation programs for both parolees and probationers are a key component of allowing people to be rehabilitated and become productive members of society. Prior record variables (PRVs) should be researched to ensure that they are correctly indicating to the criminal justice system those who are the most dangerous members of society. The challenge to sentencing guidelines is to maximize the preventive power of criminal history enhancements without imposing additional punishment where this may prove to be a poor policy choice.

### **Commissioner Responses:**

#### Representative Guerra:

My only recommendation is perhaps in the last sentence change "challenge to" to "purpose of."

#### Commissioner Stelma:

Perhaps someplace after the "(PRVs)" language indicating "and other appropriate data" could be inserted as the decision to enhance a sentence is often driven by more than PRV's – issues such as the severity of the crime, brutality of the crime, lack of remorse, etc.

### **Commissioner Kaminski's Suggested Version of the Statement:**

"The Criminal Justice Policy Commission feels that each citizen bears personal responsibility for his/her actions. The citizens of this state have a right to impose punishment on those negative actions that impact the well-being of individuals and safety of our communities through the criminal justice system, with the goal being to prevent crime and hold individuals responsible for their actions. As a result, punishment is a component of the criminal justice system, but this punishment must be commensurate with the impact of the negative actions, and should be consistent for offenders committing similar crimes with similar criminal histories, regardless of race, religion, gender, or geography.

In addition, the Criminal Justice Policy Commission also recognizes that society in general will benefit if the perpetrators of crime can be rehabilitated, and, as a result, not return to a life of crime when released from probation, jail or prison. As a result, effective, evidence-based rehabilitation programs for prisoners, parolees and probationers are a key component of providing offenders with the opportunity to become productive members of society."

### **Commissioner Responses:**

#### Commissioner Kubiak:

My main concern is that both statements seem to obscure the multiple options available for sanctioning through-out the criminal justice continuum. For example, legal actors in the process (i.e. prosecutors) have choices prior to sentencing that can move a perpetrator to reform/rehabilitation prior to confinement or supervision.

Beginning with Commissioner Kaminski's alternative proposal – I offer the following modifications and comments:

"The Criminal Justice Policy Commission feels that each citizen bears personal responsibility for his/her actions. The citizens of this state have a right to impose ~~punishment~~ **sanctions** on those negative actions that impact the well-being of individuals and safety of our communities through the criminal justice system, with the goal being to prevent crime and hold individuals responsible for their actions. As a result, punishment ***in the form of sanctions (i.e. fines, re-direction, supervision, confinement)*** is a component of the criminal justice system. This punishment must be commensurate with the impact of the negative actions, and should be consistent for offenders committing similar crimes with similar criminal histories, regardless of race, religion, gender, or geography.

In addition, the Criminal Justice Policy Commission also recognizes that society in general will benefit if the perpetrators of crime can be rehabilitated, and, as a result, not return to a life of crime. *Options and tools for rehabilitation should be available through the criminal justice continuum, beginning at arrest, arraignment, sentencing as well as* when released from probation, jail or prison. As a result, effective, evidence-based rehabilitation programs *should be available across the criminal justice continuum* ~~for prisoners, parolees and probationers~~ are as a key component of providing offenders with the opportunity to become productive members of society.”

#### **Additional Comments made after the April 6, 2016 Meeting**

##### Commissioner Andrew Verheek:

As a broad suggestion, we may want to look at breaking the paragraph out into two or three separate paragraphs. There is a lot of information in the one paragraph with the various topics each deserving their own paragraph so that we can try and incorporate the importance of each individual point/issue.

##### Commissioner D.J. Hilson

I have had a chance to review the suggested changes from some of the other commissioners. I know that in the end we will find a happy medium between the language being used. I do like how Andy has put it together. The one suggestion that I would make is separating the punishment vs. rehabilitation recommendation from the PRV discussion. Although both are intertwined in some fashion in our system, I believe we will lose the importance of the function of the PRV's if it is left to a sentence or two at the end of this particular recommendation. Thank you.

##### Judge Raymond Voet

I like the suggestions made thus far by other commissioners and would suggest one more iteration. I suggest that we add after the proposed language *“Options and tools for rehabilitation should be available through the criminal justice continuum, beginning at arrest, arraignment, sentencing etc....”* a sentence that reads as follows: “All offenders should be plugged into rehabilitative programs through the use of scientifically validated screening tools.”