

final minutes

Criminal Justice Policy Commission Meeting

9:00 a.m. • Wednesday, December 2, 2015

Senate Appropriations Room • 3rd Floor State Capitol Building

100 N. Capitol Avenue • Lansing, MI

Members Present:

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

Members Excused:

Senator Bert Johnson
Jennifer Strange
Representative Michael Webber

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. Commissioner Levine arrived at 10:35 a.m.

II. Approval of the November 4, 2015 CJPC Meeting Minutes

The Chair asked for a motion to approve the November 4, 2015 Criminal Justice Policy Commission meeting minutes. **Commissioner Lightner moved, supported by Commissioner Hilson, that the minutes of the November 4, 2015 Criminal Justice Policy Commission meeting as proposed be approved. There was no objection. The motion was approved by unanimous consent.**

III. Data Subcommittee Update

The Chair called on Commissioner Kubiak to provide an update on the activities of the data subcommittee. Commissioner Kubiak noted there were three items on the subcommittee's agenda and called on Commissioner Kaminski to report on the first which were his efforts to obtain data from the Council of State Governments (CSG). Commissioner Kaminski noted that MDOC has requested raw data from CSG. He has confirmed that CSG is working on collecting a significant amount of raw data and he hopes to have it back in time for the next CJPC meeting. For the second agenda item, Commissioner Kubiak reported that a meeting has been set up with individuals from the Judicial Data Warehouse to talk about a data request and what the process would be to obtain data from them. On the final agenda item, she shared that a meeting was held with Terry Jungle from the Sheriffs' Association regarding jail data. She distributed three handouts (see attached) and proceeded with an explanation of each. A period of question and answer followed.

IV. Council of State Governments Findings and Policy Options

The Chair opened a discussion of the CSG recommendations highlighted at the November 4, 2015 CJPC meeting. The Chair noted that a request for feedback was sent out to members in November (see written statements submitted in the document attached to these minutes.) He began with read Recommendation #2 and each member present had the opportunity to express their thoughts.

Recommendation 2:

In order to provide the legislature with an accurate evidence based analysis of the criminal justice system in an on-going manner the Criminal Justice Policy Commission makes the following recommendation; It is recommended that the legislature fund 5 permanent research and data collecting positions for the Criminal Justice Policy Commission. This will enable the Commission to provide the legislature with on-going research and analysis of all facets of the criminal justice system for their use in establishing legislation. It is further recommended that this funding be separate from the MDOC budget.

Senator Colbeck: Need to define the overall process first to determine the resources needed on a fiscal basis.

Judge Voet: Agrees data collection and analysis is necessary; and adequate or sufficient staff is required.

Commissioner Hilson: Favors putting together a process to collect data in order to develop policy based on solid information.

Senator Colbeck offered to take the lead to provide a resource framework for the Commission to review at the next meeting. The Chair accepted Senator Colbeck's offer and asked him to work with the data subcommittee to come up with a recommendation in two weeks (by December 15) that can be sent out to Commission members.

Judge Stutesman: Proposed not including a sunset provision as this should be a long-term, continual process of data collection. Agrees that funding should be kept separate from MDOC.

Representative Guerra: Agrees with the language presented and is comfortable with 5 staff. She does favor keeping the funding separate from MDOC and prefers not including a sunset provision.

Commissioner Stelma: Prefers no sunset and funding should be independent from MDOC. He also offered that this could be tied to the recommendation to obtain better information.

Commissioner Lightner: Agrees with language, but doesn't believe a specific number of staff should be included. Prefers no sunset and funding should be separate from MDOC.

Commissioner Kubiak: Prefers no sunset, sees it as a build up for the number of personnel needed, and agrees funding should be independent from MDOC. A lot of the information comes from the department and there should be some sharing of resources or funds to help augment the process.

Commissioner Moody: Agrees funding should be separate from MDOC and explained that she had offered the idea of a sunset as she wanted to make sure any commission is accountable for spending tax dollars. If there is no sunset provision, then there needs to be some discussion about deliverables.

Commissioner Kaminski: Generally supportive of the recommendation, MDOC will not be offended if funding is separate, and no need for a sunset as budget process will determine what is funded.

Commissioner Verheek: Need a separate line item from MDOC and other departments as well, prefers no sunset provision, and need to have clear path for what the group will do and what they are responsible for with assurances that the data needed is there.

Commissioner Buchanan: Tie the sunset to CJPC sunset and prefers not to use the term "adequate" but prefers to start with an idea of some minimum number of staff to do the work.

Recommendation 1:

The Chair shared Commissioners' comments submitted in response to his request for feedback (see attached document for details.) Based on some of the comments, he proposed splitting Recommendation #1 apart into defining recidivism and funding issues. The members agreed. He then expressed his views on re-arrest and recidivism and then asked each member to express his or her thoughts on the first part of the recommendation dealing with recidivism.

Part One:

It is the recommendation of the Criminal Justice Policy Commission that recidivism be defined as follows; Recidivism is the re-arrest, re-conviction, or re-incarceration of an individual within three years of their previous violation. Re-arrest is to include probation and parole violations as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators.

Judge Stutesman: Numbers are skewed whether re-arrest is included or not. The statute creating the Commission defines specifically what recidivism data is required. In order to have a basis to form an opinion, he suggested we may want to look at the data for a period of time to determine what would be the best definition to track the success or failure of a program.

Commissioner Hilson: Agrees with collecting three levels of data as the different numbers can be used for various reasons.

Judge Voet: The word "recidivism" has the ability to mislead. The goal is to measure how effective the programs being used are and what is the best use of resources in punishing or correcting behavior.

Representative Guerra: Agrees with the recommendation and is comfortable with the 3 year time period for collecting data. Later in the conversation, she commented that she would be comfortable with 5 years.

Commissioner Stelma: Need the broadest definition of recidivism so that the use of the data addresses how it affects the locals. Also, need the most accurate data as to how it was disposed of so details show up some place.

Commissioner Verheek: Since a variety of stakeholders will want to use this information, the more information collected and the more definitions of recidivism used the better. Need to be clear on how probation violation data is reported.

Commissioner Moody: Feels rearrests need to be included as this more accurately reflects what is happening and data should distinguish between violations and new arrests. Feels 5 years is a good time period to collect data as this is consistent with the feds.

Commissioner Buchanan: Strongly opposes including rearrests as this may falsely hurt the success rate of programs and inaccurately reflect the risk of re-offense.

Commissioner Lightner: Would like to see re-arrest, re-conviction, and re-incarceration expanded to include prison and jail. Feels timeline for recidivism rate should be 5 years.

Commissioner Kubiak: Arrest is used in research and is a marker to evaluate a program's success, but the type of arrest is relevant. Agrees re-arrest is an important indicator, but with caveats. In terms of parole and probation violations, she noted that she has seen that many technical rule violations are for not paying fines so need to look at reasons for violations as well. In terms of time, 3 years of a previous violation is a good marker.

The discussion of recidivism continued. The Chair proposed a subcommittee be created to look at the impact of mental illness on prisons and jails. **Commissioner Hilson moved, supported by Commissioner Moody, to create a mental health subcommittee with Commissioner Lightner as chair and Commissioners Stelma and Voet as members. There was no objection. The motion was unanimously adopted.** Commissioner Kubiak noted that the Governor's Diversion Council is tackling this issue and it may be good to align with them.

The Chair then read part one of Recommendation #1 that included the changes proposed in today's conversation. He noted that there will be no vote on the recommendation today, but he will send the language out to the members and will ask for feedback.

After a short break, the Chair opened a discussion of Part 2 of Recommendation #1 and shared the comments submitted in response to his request for feedback (see attached document for details.)

Part Two:

In addition, monies should be more equitably distributed between persons on parole and persons on probation. Programs designed to help these people are quite different in each area and need to be funded for success. Funding for success for probationers has the potential to save the MDOC a lot of money on the front end of the penal and jail system. Only programs with successful outcomes should be evaluated and used to help reduce costs of incarceration.

Using the language submitted by Commissioner Kaminski as a start, the Chair asked for comments.

Commissioner Levine provided comments on how the department counts money spent on parolees and the risk levels of parolees need to be taken into consideration.

Commissioner Verheek responded that the State has funded MPRI at a much higher rate than OCC so he feels something needs to be included to urge a more equitable distribution of the funds.

Commissioner Kaminski will put together a breakdown of the MDOC budget and monies spent on parolees.

The Chair then inquired about programs that have been created to lower the caseloads of parole and probation officers. Commissioner Kaminski responded with an explanation of how they determine the caseloads of MDOC agents using a

point system and will find out if the system has been changed in the past. A discussion of parolee and probationer needs followed.

The Chair highlighted some of the findings found in the executive summary of a report of the Michigan Swift and Sure Sanctions Probation Program from October 1, 2011 to September 30, 2013. A copy of the report will be sent to Commission members. A discussion of the Swift and Sure program followed.

Commissioner Verheek would like to see language regarding using an objective evaluation tool added to the recommendation.

Commissioner Levine suggested that the word "sufficient" should be added to the first line before "monies."

Commissioner Stelma suggested using a broader term instead of saving MDOC money. The word "taxpayers" was suggested.

The Chair will put together a final version of the recommendation using the suggested changes and will send it out for members to review and provide feedback before the next meeting.

Recommendation 3

I would also like each of you to give me your thoughts on how many years we should use for enhancing sentences. We currently use 10 years of a clean record which could take us back more than 10 years. Any change here could have a rather dramatic effect on length of sentences and thus save money. In addition, I would like your thoughts on whether we should change how we treat juveniles in terms of sentencing guidelines. When they re-offend as adults should we use all their juvenile violations to establish the new sentence length, use none of those violations or use some middle ground? Finally we need to determine if our justice system should be primarily a prevention system or a punishment system. Give me your thoughts as they will inform many of our decisions on other matters.

The Chair commented on Recommendation #3. He asked members to read through the Commissioner comments submitted and to read the Robina Institute booklet as they think through the recommendations and the prevention or punishment question.

V. Commissioners' Comments

The Chair asked for additional comments from the members. With regard to the JPIS report referred to earlier in the meeting, Commissioner Stelma thought it might be helpful to understand the process when a person is arrested and continued with an explanation. The Chair thanked Representative Guerra for her attendance. He also thanked Commissioner Kubiak and the other members of the data subcommittee for the good government work they are doing.

VI. Public Comment

There were no public comments.

VII. Next CJPC Meeting Date

The next CJPC meeting is scheduled for **Wednesday, January 6, 2016, at 9:00 a.m. in the Senate Appropriations Room, 3rd Floor of the State Capitol Building.**

VII. Adjournment

There was no further business. The Chair adjourned the meeting at 12:00 noon.

(Minutes approved at the January 6, 2016 Criminal Justice Policy Commission meeting.)

JPLS Report From Michigan Department of Corrections - Office of Community Corrections

StateWide
2010

StateWide's Latest Submission: 12/16/2010

Jan thru Oct Months of Data: 10

Housed	Offenders on Record	Average Daily Populations			No Status Change		Sentenced After Admission		Total Offenders			
		ADP	ADP % of Housed	ADP % of Housed + Bd Out	AVLOS Only	AVLOS Part Presentenced	AVLOS Only	AVLOS Part Sentenced	Releases Overall	AVLOS Overall		
Regular Inmates	51,758	3,659.5	28.3%	25.0%	46,799	22.8	10,944	45.9	9,349	47.5	46,799	22.8
Unsentenced Felons	84,425	1,439.0	11.1%	9.8%	82,652	5.5	10,944	45.9	9,349	47.5	82,652	5.5
Unsentenced Misdemeanants	13,850	2,008.2	15.5%	13.7%			22,290	17.4	11,251	12.9	10,944	45.9
Sentenced Felon (after admission)	9,349	1,906.6	14.7%	13.0%			2,578	25.2	224	26.9	9,349	45.9
Sentenced Misd (after admission)	24,371	1,380.2	10.7%	9.4%			34	30.0	38	28.6	24,371	11.4
Sentenced Misd (prior to admission)	11,251	1,063.4	8.2%	7.3%			21.7	21.7	81	33.9	11,251	37.9
Sentenced Misd (after admission)	6,612	408.8	3.2%	2.8%			916	28.3	663	23.1	6,612	11.251
Boarded In	6,575	480.3	3.7%	3.3%			2,370	21.7	21.7	81	6,575	22.9
DOC	4,305	239.5	1.8%	1.6%			10.9	10.9	6.3	32.7	4,305	6.015
Federal	6,770	361.7	2.8%	2.5%			12.4	12.4	6.3	23.1	6,770	4.076
Other Counties	219,266	12,947.2	100.0%	88.6%	145,354	12.4	39,132	3.0	21,606	28.4	219,266	6.374
Total Housed	219,266	14,617.0									219,266	20.4
Jail Capacity												
Target Populations **												
Felony Alcohol Related Arrests	3,436	381.1	2.6%	2.4%	1,809	16.5	912	55.2	372	51.7	3,436	38.6
Parole Violators	8,105	15,583.1	6.9%	4.4%	4,078	24.9	2,951	23.3	564	31.5	8,105	7.593
Felony Circuit Court Probation Violators	8,404	681.5	5.1%	4.7%	3,987	14.4	1,959	21.8	1,794	16.2	8,404	27.7
		Unk	1	2	3	4	5	6	7	8		
		38.8%	5.6%	5.5%	10.7%	10.5%	7.2%	15.9%	3.4%	2.3%		

**ADP % of Capacity for Target Populations is based on the full capacity of the counties reporting the target offense.

Top Ten Offense Categories by Percentage of Jail Capacity Utilized			Rank	ADP % of Capacity	Arrest Charge Code ***	Crime Class	Description	Offenders on Record	Releases Overall	AVLOS Overall
1	4.7%	Various	1	4.7%	Various	E	Probation Violators	8,404	7,740	26.3
2	4.4%	ParV	2	4.4%	ParV	F	Parole Violators	8,105	7,593	27.7
3	3.5%	Various	3	3.5%	Various	D	Federal Offenders	6,539	5,961	23.7
4	3.4%	Various	4	3.4%	Various	M	Alcohol Related Arrests	19,077	18,635	8.2
5	2.8%	Various	5	2.8%	Various	M	Probation Violators	5,195	4,735	23.1
6	2.6%	Various	6	2.6%	Various	F	Alcohol Related Arrests	3,436	3,093	38.6
7	1.7%	P750.812	7	1.7%	P750.812	M	DOMESTIC VIOLENCE	6,902	6,712	11.4
8	1.6%	Various	8	1.6%	Various	O	Offenders from Other Counties	4,143	3,923	18.5
9	1.3%	P333.74032A5	9	1.3%	P333.74032A5	F	CONT. SUB. - POSSESS LESS THAN 25 GRAMS	2,193	1,993	29.8
10	1.3%	P750.529	10	1.3%	P750.529	F	ROBBERY - ARMED	807	619	92.5

*** Change Code Prefixes: P for PACCC code, M for MDC Code, W for USCM/CC Arrest Code

State Wide Jail Capacities****

Reporting Jails	All Jails	Percent Reported
14,617.0	19,431.4	75.2%

State Wide Jails Reporting (Two Counties who Jails)

Counties Reporting	Counties with Jails	Percent Reporting
54	81	66.7%

**** Fractional jail capacities due to mid-year jail construction.

Average Daily Population				No Status Change				Sentenced After Admission				Total Offenders				
Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced	Unsentenced
14595	2894.55	31.51%	31.51%	2143%	9902	351172	6783									
28897	1585.03	13.51%	13.51%	9.52%	28838											
1918	944.01	4.98%	4.98%	3.51%		1277	414.16									
4719	1988.33	16.94%	16.94%	11.94%												
3482	516.01	4.4%	4.4%	3.1%												
6284	1219.07	10.39%	10.39%	7.32%												
1490	330.2	2.81%	2.81%	1.98%	1018	248.32	7	647	110	54.33	45.43	1138	43.05			
919	215.24	1.92%	1.92%	1.35%	709	688.25	1	127	12	31.33	35.25	723	46.54			
622	161.08	1.37%	1.37%	0.97%	337	203.24	81	462.14	52	7.02	115.04	472	55.39			
5220	995.66	8.49%	8.49%	5.98%	3059	336.13	111	203.65	934	6.34	16.59	4151	202.22			
65815	11735.48	100%	99.99%	70.47%	38875	179.09	949	289.06	12142	16.35	35.66	52565	24.64			
Jail Capacity																
16652																
Target Population																
Total Reported																
Total Boarded																
Total Released																
Total Disposed																
Total Released and Boarded																
Jail Capacity																
16652																
Target Population																
Total Reported																
Total Boarded																
Total Released																
Total Disposed																
Total Released and Boarded																
Jail Capacity																
16652																

Last Submission Date: None Months of Data: 0

Objective Classification of Felon Population: Housed Non-Boarders Per Level

Unit:	1: 7%	2: 8%	3: 2.0%	4: 1.0%	5: 5%	6: 1.9%	7: 2%	8: 1%
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Offense Category	Offense Level	Participation	Offender Population	Offenders Over All	Offenders Over All	Offenders Over All
ROBBERY VIOLATION	2.59% F		1311	10233		26.13
No Offense found	2.23% F		1012	18804		37.05
WYNNIE LOCAL ORDINANCE	1.67% M		911	7976		22.83
ROBBERY ARMED	0.89% F		607	12533		11.03
TEMPORARY AID FOR WYNNIE CO.	0.87% F		238	1433		126.01
96000	0.86% F		680	1675		27.11
COUNT. SUB. - POSSESS. LESS THAN	0.86% M		619	3116		35.16
SPOUSE ABUSE ACT VIOLATION	0.85% M		1447	11306		11.28
Private Violators	0.81% F		511	2961		46.85

State Wide Jail Capacity:	All Jails	Percent Reported	State Wide Jail Reporting:	Counties Reporting	Counties With Jails	Percent Reporting
16652	19670	84.65%	59	61		72.84%

COUNTY JAIL CAPACITY REPORT

July - 2015

COUNTY NAME	**RURAL/URBAN METROPOLITAN	RATED DESIGN CAPACITY	BEDS IN PLANNING OR UNDER CONSTRUCTION	PROJECTED CAPACITY	
Kalamazoo	U	482		482	
Kalkaska	R	61		61	
Kent	M	1,285		1,285	
Camp		0		0	****
Work Release	M	186		186	****
Keweenaw	R	6		6	
Lake	R	48		48	
Lapeer	R	123		123	
Leelanau	R	80		80	
Lenawee	R	287		287	
Livingston	U	254	137	391	
Luce	R	0		0	
Mackinac	R	28		28	
Macomb	M	1,238		1,238	****
Manistee	R	68		68	
Marquette	R	80		80	
Mangum Facility	R	80		80	
Mason	R	110		110	
Mecosta	R	97		97	
Menominee	R	51		51	
Midland	R	274		274	
Missaukee	R	40		40	
Monroe	U	183		183	
Dormitory	U	160		160	
Montcalm	R	205		205	
Montmorency	R	42		42	
Muskegon	U	370	102	472	
Newaygo	R	270		270	
Oakland	M	1,032		1,032	****
Greenan Facility		0		0	****
Work Release	M	398		398	
Oceana	R	67		67	
Ogemaw	R	124		124	
Ontonagon	R	19		19	
Osceola	R	77		77	
Oscoda	R	0		0	
Otsego	R	34		34	
Ottawa	U	462		462	
Presque Isle	R	23		23	
Roscommon	R	96		96	

COUNTY JAIL CAPACITY REPORT

July - 2015

COUNTY NAME	**RURAL/URBAN METROPOLITAN	RATED DESIGN CAPACITY	BEDS IN PLANNING OR UNDER CONSTRUCTION	PROJECTED CAPACITY
Saginaw	U	513		513
St. Clair	U	507		507
St. Joseph	R	165		165
Sanilac	R	175		175
Schoolcraft	R	26		26
Shiawassee	R	132		132
Work Release	R	33		33
Tuscola	R	92		92
VanBuren	R	158		158
Washtenaw	U	404		404 ****
Wayne	M			
Division I (Baird)	M *	1,285 ***	2,000	2,000 ****
Division II (Clinton)	M *	770 ***		0 ****
Division III (Dickerson)	M	896		896
Wexford	R *	32	158	158
Total Rural		5,917	186	6,074
Total Urban		6,841	239	7,080
Total Metro		7,090	2,000	7,035
TOTAL		19,848	2,425	20,189

*Existing jail closing upon completion of new jail.

**County Population Designation (based on 2000 census)

Rural (R) - 100,000 or less
Urban (U) - 100,001 to 500,000
Metropolitan (M) - 500,001 or more

Distribution:

CJSU
FINANCE-Cheryl Konopaska
FINANCE-Annette Sperry
MSA-Terry Jungel
MSA-Jail Subcommittee-Major Sam Davis

***A Court order has reduced the rated design capacity

Division I - 1,184
Division II - 685

****County closed beds

Kent-W.R.	62	Jan-11	Not Included in RDC
Kent-Camp	60	Nov-11	Not Included in RDC
Genesee	100	Aug-03	Not Included in RDC
Macomb	200	Aug-09	Not Included in RDC
Oakland	128	Aug-09	Not Included in RDC
Oakland	146	Aug-09	Not Included in RDC
Oakland	186	May-10	Not Included in RDC
Wayne	1003	Mar-10	Included in RDC
Ingham	64	Jan-11	Included in RDC
Washtenaw	24	Mar-13	Not Included in RDC
Allegan	100	Nov-14	Not Included in RDC
Grand Travers	26	14-Dec	Not Included in RDC

WES/CJSU 07-01-2015

November 12, 2015: Responses to CSG Recommendations Discussed at November 4, 2015 CJPC Meeting

Request from Chairman Caswell:

It is the recommendation of the Criminal Justice Policy Commission that recidivism be defined as follows; Recidivism is the re-arrest, re-conviction, or re-incarceration of an individual within three years of their previous violation. Re-arrest is to include probation and parole violations as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators. In addition, monies should be more equitably distributed between persons on parole and persons on probation. Programs designed to help these people are quite different in each area and need to be funded for success. Funding for success for probationers has the potential to save the MDOC a lot of money on the front end of the penal and jail system. Only programs with successful outcomes should be evaluated and used to help reduce costs of incarceration.

In order to provide the legislature with an accurate evidence based analysis of the criminal justice system in an on-going manner the Criminal Justice Policy Commission makes the following recommendation: It is recommended that the legislature fund 5 permanent research and data collecting positions for the Criminal Justice Policy Commission. This will enable the Commission to provide the legislature with on-going research and analysis of all facets of the criminal justice system for their use in establishing legislation. It is further recommended that this funding be separate from the MDOC budget.

I would also like each of you to give me your thoughts on how many years we should use for enhancing sentences. We currently use 10 years of a clean record which could take us back more than 10 years. Any change here could have a rather dramatic effect on length of sentences and thus save money. In addition, I would like your thoughts on whether we should change how we treat juveniles in terms of sentencing guidelines. When they re-offend as adults should we use all their juvenile violations to establish the new sentence length, use none of those violations or use some middle ground? Finally we need to determine if our justice system should be primarily a prevention system or a punishment system. Give me your thoughts as they will inform many of our decisions on other matters.

Commissioner Responses

Recommendation 1:

It is the recommendation of the Criminal Justice Policy Commission that recidivism be defined as follows: Recidivism is the re-arrest, re-conviction, or re-incarceration of an individual within three years of their previous violation. Re-arrest is to include probation and parole violations as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators. In addition, monies should be more equitably distributed between persons on parole and persons on probation. Programs designed to help these people are quite different in each area and need to be funded for success. Funding for success for probationers has the potential to save the MDOC a lot of money on the front end of the penal and jail system. Only programs with successful outcomes should be evaluated and used to help reduce costs of incarceration.

Commissioner Buchanan:

It is the recommendation of the Criminal Justice Policy Commission that recidivism be defined as follows: Recidivism is the re-arrest, re-conviction, or re-incarceration of an individual within three years of their previous violation. **I again object to re-arrest as a measure of recidivism. With the current issues of wrongful conviction, it seems even more broad to include arrest which may be false. At least with conviction we weed out many false arrests.**

Re-arrest is to include probation and parole violations as well as misdemeanors and felonies. **It should not include re-arrest absent a conviction, and should not probation and parole violations that are not new crimes. Recidivism should be a measure of new crimes.** It is further recommended that data on technical violators be collected separately from new crime violators. In addition, monies should be more equitably distributed between persons on parole and persons on probation. **Equitable leaves a lot of room for battle.** Programs designed to help these people are quite different in each area and need to be funded for success. Funding for success for probationers has the potential to save the MDOC a lot of money on the front end of the penal and jail system. Only programs with successful outcomes should be evaluated and used to help reduce costs of incarceration.

Commissioner Hilson:

I agree with the first sentence, except I would extend the time period from 3 to 5 years. Prior to recommending how we collect and why we would want to separate the data for technical and new crime probation violations, I would want to spell out the definition of a technical violation. Other than those comments, I agree with the rest of this paragraph.

Commissioner Kaminski:

It is the recommendation of the Criminal Justice Policy Commission **REVIEW AND TRACK MULTIPLE MEASURE OF** that recidivism **AND RE-OFFENSE, INCLUDING THE FOLLOWING:** ~~be defined as follows;~~ **Recidivism is the re-arrest, re-conviction, or AND re-incarceration of an individual within three years of their previous violation-INITIAL RELEASE FROM JAIL OR PRISON.** Re-arrest is to include probation and parole violations **THAT RESULT IN PLACEMENT IN A COUNTY JAIL** as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators. In addition, monies should be more equitably distributed between **PROGRAMS TO SERVE THE** ~~persons on~~ parole and ~~persons on~~ probation **POPULATIONS.** Programs designed to help these ~~people~~ **POPULATIONS** are quite different in each area and need to be funded for success. Funding **THAT RESULTS IN** ~~for~~ success for probationers has the potential to save the MDOC a lot of **SIGNIFICANT** money ~~on the front end of the penal and jail system~~ **BY AVOIDING THE HIGH COST OF INCARCERATION WHILE EFFECTIVELY PREVENTING CRIMES. PROGRAMS MUST BE EVALUATED UTILIZING METRICS TO DETERMINE EFFECTIVE EVIDENCE-BASED PROGRAMMING THAT WILL RESULT IN SUCCESSFUL OUTCOMES AND REDUCE THE COST OF INCARCERATION.** ~~Only programs with successful outcomes should be evaluated and used to help reduce costs of incarceration.~~

Commissioner Kubiak:

It is the recommendation of the Criminal Justice Policy Commission that recidivism be defined as follows; **Recidivism can be defined in multiple ways and as such, data should be available that would provide re-arrest, re-conviction, or re-incarceration of an individual within three years of their previous violation (for those on probation) or release from prison or jail.** Re-arrest is to include probation and parole violations as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators. In addition, monies should be more equitably distributed between persons on parole and persons on probation. Programs designed to help these people are quite different in each area and need to be funded for success. Funding for success for probationers has the potential to save the MDOC a lot of money on the front end of the penal and jail system. Only programs with successful outcomes should be evaluated and used to help reduce costs of incarceration.

In addition to some of the language changes highlighted above, there are a few general comments; While I agree that more resources are required to prevent incarceration and probation failure, supervision costs should be related to the intensity of supervision required – as assessed by risk/need assessments. The data provided by CSG states that \$596 was spent per probationer while \$2,328 was spent for parolee. The increased costs may be associated with higher risk levels – but we don't know that from the data provided.

It seems that the language here about funding for programs needs to be separate from the recommendation related to measurement of recidivism. The area of programs requires a special and nuanced discussion and recommendation. The line: "Programs designed to help these people are quite different in each area" is not clear to me in what the intention is here.

Last Line – is this what the intention is: Only programs with successful short and long outcomes (as determined by xxx), such as decreased incarceration and decreased CJ or victimization costs, will be funded.

Commissioner Moody:

I agree with this more inclusive definition of recidivism as it seems to more accurately reflect the real costs of recidivism on victims, communities, and the entire criminal justice system. However, I would like to see the number of years expanded to five but I can live with three.

Commissioner Stelma:

I'm fine with the concepts in recommendation one and two. It does seem that these thoughts are the most prevalent coming from our discussions.

Commissioner Strange:

For the first listed recommendation, I would support the current language. It does, however, feel that there are 2 recommendations in that paragraph. Maybe I'm overlooking the reason why they would both be in the same paragraph, but I would suggest that the paragraph be split starting with "In addition, monies should be..." becoming a separate recommendation.

Judge Stutesman:

Recidivism is the re-arrest, re-conviction, or re-incarceration of an individual within three years of their previous violation. Re-arrest is to include probation and parole violations as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators.

I know this is language used in various organizations but it has never made sense to me. Recidivism is a return to criminal behavior after having received a consequence such as incarceration or probation or parole. It is to gauge if the consequence was successful in changing behavior. I am not aware of how you could be re-incarcerated without being re-arrested at some point before that. You can be arrested for all kinds of things that do not relate at all to the consequence you had received previously. If I have a defendant who was sent to jail for drunk driving and two years after being discharged from jail he is arrested for driving while license suspended because he did not pay a parking ticket or his driver's responsibility fees that would count under this definition even though he has not drank in two years. We should all realize that the recidivism rate will be much higher than the current standard the DOC uses which the general public already considers high. I think it is impractical and would propose that we stay with the current standard.

In addition, monies should be more equitably distributed between persons on parole and persons on probation. Programs designed to help these people are quite different in each area and need to be funded for success. Funding for success for probationers has the potential to save the MDOC a lot of money on the front end of the penal and jail system. Only programs with successful outcomes should be evaluated and used to help reduce costs of incarceration.

I think the last line should read "Programs that have shown success in reducing recidivism should be used to reduce the costs of incarceration"

Recommendation 2:

In order to provide the legislature with an accurate evidence based analysis of the criminal justice system in an on-going manner the Criminal Justice Policy Commission makes the following recommendation; It is recommended that the legislature fund 5 permanent research and data collecting positions for the Criminal Justice Policy Commission. This will enable the Commission to provide the legislature with on-going research and analysis of all facets of the criminal justice system for their use in establishing legislation. It is further recommended that this funding be separate from the MDOC budget.

Commissioner Buchanan:

No suggested changes.

Commissioner Hilson:

I agree with this paragraph, however the number of data collectors should be fiscally viable and should reflect the amount of work that needs to be accomplished for this task. Whether it is 2, 5, or more, I think it is important that we recognize that if this group has to do more with less to stay within a reasonable budget, than that is what we must recommend. Further, this group should be independent of the DOC.

Commissioner Kaminski:

No suggested changes.

Commissioner Kubiak:

While I agree that the commission requires resources for the data needs described in the statute, I am not sure what you mean by an 'evidenced based analysis'. What type of analyses would we require? What are the reports that would be generated on an

ongoing basis that would be different from data already available? I would like to discuss how we see these positions being utilized in an ongoing manner and the contributions of the commission that are unique.

Commissioner Moody:

I agree that research and analysis is necessary for informed discussion and decision making. But I would like to reduce the number of initial positions to three. Moreover, I think some discussion of a sunset provision or a limited term that may be renewed is warranted.

Commissioner Stelma:

I'm fine with the concepts in recommendation one and two. It does seem that these thoughts are the most prevalent coming from our discussions.

Commissioner Strange:

For the second listed recommendation, I would support the current language.

Judge Stutesman

Agree completely.

Recommendation 3:

I would also like each of you to give me your thoughts on how many years we should use for enhancing sentences. We currently use 10 years of a clean record which could take us back more than 10 years. Any change here could have a rather dramatic effect on length of sentences and thus save money. In addition, I would like your thoughts on whether we should change how we treat juveniles in terms of sentencing guidelines. When they re-offend as adults should we use all their juvenile violations to establish the new sentence length, use none of those violations or use some middle ground? Finally we need to determine if our justice system should be primarily a prevention system or a punishment system. Give me your thoughts as they will inform many of our decisions on other matters.

Commissioner Buchanan:

I would also like each of you to give me your thoughts on how many years we should use for enhancing sentences. We currently use 10 years of a clean record which could take us back more than 10 years. Any change here could have a rather dramatic effect on length of sentences and thus save money. **If I understand your question, you are asking us to evaluate the 10 year gap. Ten years is a very long time without an offense to consider criminal history. It would be helpful if the 10 year gap was not eliminated by minor offenses such as Driving While License Suspended and low level misdemeanors. Perhaps a hybrid, like 10 years without a felony and 3 years without a misdemeanor. Also, sort of a different issue, we should consider whether there should be a 10 year gap rule for habitualization.**

In addition, I would like your thoughts on whether we should change how we treat juveniles in terms of sentencing guidelines. When they re-offend as adults should we use all their juvenile violations to establish the new sentence length, use none of those violations or use some middle ground? **This is a tough one. If you mean adults with a juvenile record, I think juvenile history is a decent predictor of re-offense. However, there should become a time when it no longer matters. I guess the 10 year gap covers that. It also creates a practical problem for defense counsel and many times the prosecutor. Due to the protected status of juvenile records, I often cannot know my client's juvenile history. Many times neither does the prosecutor. Therefore, we make sentencing bargains that are thwarted by the PSR wherein MDOC finds the juvenile history thus raising the guidelines.**

Finally we need to determine if our justice system should be primarily a prevention system or a punishment system. Give me your thoughts as they will inform many of our decisions on other matters. **I always thought it was both, as the goals for sentencing are punishment, rehabilitation, and deterrence. Since we are dealing with post-offense individuals, as opposed to a treatment facility that may have a chance pre-offense, punishment will always be a large part of sentencing.**

Commissioner Hilson:

I am willing and interested in engaging in a discussion of how we use prior felony convictions. I am open to listening to reasonable ideas on how we might move forward. I would not change how we handle juvenile adjudications. It mirrors the

adult system, but provides for fewer points for each category. I believe that our system carries a deterrent and prevention component. I would like to see the front end of the system be more preventative and focus on assessing the needs of the person and based on that assessment putting them into a program that meets those needs, addresses the problems, and offers solutions that are sustaining. However, our system does have to carry with it a punishment component. As long as there are violent crimes and victims of those crimes, we have to have the ability to punish those who commit the crime.

Commissioner Kaminski:

I don't have any thoughts to share on the 10 year timeframe. I would suggest that juvenile violations are of significance because age at first arrest is one fact that helps determine future risk on most risk assessments. If the goal is prevention, this information is potentially significant. That being said, utilizing all juvenile violations is likely unnecessary, so we should seek a middle ground.

Realistically, the sentences for some crimes will always be based on punishment (Murder in the 1st Degree), but considering that the vast majority of prisoners will return to the community regardless of whether their sentence is intended to prevent future crime or punish them, it seems sensible that our overall goal should be the prevention of crime. This should not deter stakeholders in the criminal justice system from seeking sentences that are reflective of the serious nature of a crime, but the overall goal of the system should be preventing future crimes because in doing so, we also prevent the creation of future victims.

Commissioner Kubiak:

I am not sure what is being asked here. Using 10 years of a clean record for what exactly?
Regarding the juvenile sentencing – isn't some of this determined as how they are sentenced? HYTA?

Commissioner Moody:

With respect to whether the criminal justice system is primarily aimed at prevention (and by that I assume we mean rehabilitation of the offender so he does not offend again) or punishment I would say that it is a combination of both. Rehabilitation is an extremely important goal because of the cost to victims and communities of re-offense. But even if the criminal justice system could guarantee that, for example, a murderer would only kill once it would hardly be just to allow that murderer to escape punishment simply because he is no longer a danger. Justice to the victims and to society at large would require that he pay for his crime.

Commissioner Stelma:

My thoughts on the "enhancing sentences" issue is that until it's proven to be broken, the process should stay as is. I'm not convinced it is having a significant negative impact.

Juvenile sentence enhancement should have a middle ground. Not everything should be used but certainly crimes of violence should be considered an enhancer.

I don't believe sentencing has to be only "Prevention" or "Punishment". It shouldn't be one or the other but needs to be dictated by the particulars of the given situation.

Commissioner Strange:

For the years used for enhancing sentences, I am still researching this and will give my opinion once I feel educated enough in the topic.

For the treatment of juveniles, I imagine this will be a complicated discussion, but I do believe that there should be a difference with how sentencing guidelines are used. I don't necessarily think that juvenile violations should be ignored altogether because past behavior should be considered. It should not be the only thing considered, however. Ultimately, looking at the interventions utilized in response to juvenile violations would be of interest. I think we will find the same for juveniles that we do for adults. Without enough focus and funding being placed on preventative measures and quality programming, juveniles are likely just going to be streamlined into prison.

Ultimately, it would be preferable to see our justice system become a prevention system which utilizes punishment as one of its tools, rather than a punishment system that uses prevention as one of its tools.

Judge Stutesman:

The “ten year back rule” applies in felony cases only. Specifically, [MCL 777.50\(1\)](#) states:

“In scoring prior record variables 1 to 5, do not use any conviction or juvenile adjudication that precedes a period of [ten] or more years between the discharge date from a conviction or juvenile adjudication and the defendant’s commission of the next offense resulting in a conviction or juvenile adjudication.”

This means that if a defendant is able to have 10 years without a conviction his prior record is not counted. The time runs from when the previous sentence ends and the new charge. So if at 17 to 25 I had five breaking and entering convictions and I was able to complete my sentence and did not get any more convictions for ten years those five B&E will not count in my prior record variable score. They still can be used for me to be charged as a Habitual Offender though.

The ten year clock restarts with every conviction also. So if I had been able to remain crime free for 9 years 10 months but then was convicted of fishing without a license (a misd.) the clock starts again and everything counts including the juvenile adjudications. The law does not differentiate between 90 day misd., 93 day misd; or one year misd. and it should.

I am not sure what the question means. Just for counting the PRVs or for the Habitual Offender enhancements? I do not have an opinion on what the best time period is but I do think that it should only be triggered if the conviction is for a one year misdemeanor or higher.

Finally we need to determine if our justice system should be primarily a prevention system or a punishment system. Give me your thoughts as they will inform many of our decisions on other matters.

The trial court’s objective in sentencing a defendant is to tailor a penalty that is appropriate to the seriousness of the offense and the criminal history of the offender.The “framework” of an appropriate sentence consists of four basic considerations:

- the likelihood or potential that the offender could be reformed;
- the need to protect society;
- the penalty or consequence appropriate to the offender’s conduct; and
- the goal of deterring others from similar conduct. Rice, 235 Mich App at 446, citing People v Snow, 386 Mich 586, 592 (1972)

The criminal justice system is always geared towards the prevention of crime. It is far less expensive to do so with programs that have proven track records in reducing recidivism rather than just incarceration. There are some crimes that society recognizes as deserving of removal from society for lengthy periods of time even though you may never commit them again. The first goal should always be the protection of society. The framework set forth above should be followed.

**October 12, 2015: Responses to CSG recommendations highlighted at October 7, 2015 CJPC meeting
[Discussion of Recommendation #3 not discussed at November 4, 2015 Meeting]**

#3. Structure sanctions in the guidelines to produce more consistent sentences.

This recommendation will need a lot of work to properly phrase the intent of what we wish to recommend. Please re-read the CSG report on this issue and for those of you who were involved in discussions last fall please bring into our discussion any ideas that surfaced at that time. Write up what you think should be included or excluded from this recommendation. Please be specific as I believe we need to be in order to be helpful to the Governor and legislature. Keep in mind we are trying to create a recommendation that will help alleviate current problems but also be able to be adjusted in future years.

Rep. Guerra

3. I will send something ASAP, wanted to get the above responses to you by the 23rd.

Barb Levine

3. TO INCREASE CONSISTENCY OF SENTENCING AMONG OFFENDERS WITH SIMILAR PRIOR RECORDS WHO HAVE COMMITTED SIMILAR OFFENSES, THE SENTENCING GUIDELINES RANGES SHOULD BE NARROWED, THE PLACEMENT OF CRIMES ON GRIDS SHOULD BE RECONSIDERED AND THE STARTING POINT FOR EACH RANGE SHOULD BE REEXAMINED IN LIGHT OF AVAILABLE DATA ABOUT CURRENT SENTENCES. IN ADDITION, GIVEN THE ENORMOUS INCONSISTENCY AMONG COUNTIES IN THE USE OF THE HABITUAL OFFENDER STATUTES, THE CSG RECOMMENDATION TO LIMIT THE DOUBLECOUNTING OF PRIOR OFFENSES THAT RESULTS FROM SCORING THEM IN THE PRIOR RECORD VARIABLE AND USING THEM AS THE BASIS FOR HABITUAL OFFENDER CHARGES SHOULD BE ADOPTED.

Sarah Lightner

3. I agree with the statement the statement as written with some expanded language. Presumptive sentence of probation, jail or prison I can see as a positive in each cell. The cost savings of this should be rolled back to the local level to cover the cost of the increase jail sentences and probation sentences. That needs to be clear when making a positive recommendation to the legislature and governor. If local funds are not received then, I would have to oppose any enforcement of presumptive sentencing as it causes unfunded mandates on the counties. We could also look at the HO points assessed and not count them twice to reduce disparity in sentencing.

Lawrence Stelma

3. I am not convinced that "more consistent sentences" is an issue and I have not been convinced that current parameters is bad or wrong. What does "more consistent" mean and what is the target and goal? All the exact same, within a certain percentage of each other or within the parameters as set by the legislature? Personally, I think they are appropriate right where they are.

Andrew Verheek

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

This recommendation will need a lot of work to properly phrase the intent of what we wish to recommend. Please re-read the CSG report on this issue and for those of you who were involved in discussions last fall please bring into our discussion any ideas that surfaced at that time. Write up what you think should be included or excluded from this recommendation. Please be specific as I believe we need to be in order to be helpful to the Governor and legislature. Keep in mind we are trying to create a recommendation that will help alleviate current problems but also be able to be adjusted in future years.

While this is important, my thought on this is that we need to tackle the other two recommendations mentioned above before we can really discuss and make recommendations tied to this issue. Without knowing the data, definition/s of recidivism, etc., I don't think we can do justice to structuring sanctions in the guidelines to produce more consistent sentences. Additionally, meeting this objective involves some open and honest dialogue on regional differences in terms of sentencing and an acknowledgment of how different punishment philosophies may impact any sentencing structure in Michigan. So at this point, I'd vote to table any recommendations here until we've hammered out the previous two recommendations.