

**TO:** The Michigan Law Revision Commission  
**FROM:** The Council of State Governments Justice Center  
**RE:** Stakeholder feedback received

In 2013, Michigan state leaders invited the Council of State Governments (CSG) Justice Center to study sentencing and parole release discretion using a Justice Reinvestment approach, with plans to report its findings to the Michigan Law Revision Commission (MLRC).

After a series of public presentations of findings, the CSG Justice Center issued a report in May. In July, the MLRC hosted a policy forum, at which representatives from various stakeholder groups considered and discussed specific policy options designed to address challenges in Michigan's sentencing and criminal justice systems. The MLRC also solicited feedback from members of the public through an online survey. Throughout July, the CSG Justice Center staff expanded these policy discussions by presenting at seven public meetings hosted by sheriffs, prosecuting attorneys and county officials across the state.

The first draft of legislation, drafted by the CSG Justice Center and posted for public comment by the MLRC in August 2014 was based on the initial policy options outlined in the May report and presented publicly in July. Those options were drafted while the CSG Justice Center continued seeking feedback from stakeholders. As such, this first draft does not reflect the wealth of information and comments received between July and August 2014.

Therefore, the CSG Justice Center offers the following summary of the feedback we received throughout July 2014, with the expectation that this feedback, along with the public comments the MLRC is receiving in response to this first draft of legislation, will inform and guide future policy conversations.

If you have any questions, please contact Ellen Whelan-Wuest, Project Manager, or Carl Reynolds, Senior Legal and Policy Advisor.

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## **SPECIFIC AREAS OF CONCERN**

### **Restructuring the guidelines towards presumptive sanctions of probation, jail, and prison:**

- This policy change may unacceptably reduce judicial discretion, which is a crucial element in sentencing for many reasons, including:
  - Judges may use their discretion to account for factors of severity in the offense, which may be negotiated down in the plea bargaining process.
  - Under the current system, judges may also use their discretion to account for mitigating factors that are not part of the sentence scoring process.
- Eliminating the straddle cells may shift costs and burdens to local jails and sheriffs.
- This policy may result in "cookie cutter" sentencing policies that insufficiently factor in the specifics of each case.

### **Establishing a maximum prison term at sentencing:**

- This is a creative idea that may provide victims of crime with greater clarity about how long offenders will actually serve in prison.
- From a victim's perspective, it is equally important to know what efforts and structures are in place to ensure that a released offender will not recommit crime.
- A key to this policy would be ensuring that there are programs and supervision practices in the community to reduce recidivism once people are released from prison. Otherwise, it doesn't mean much to the public.
- This may enhance truth in sentencing, but to what extent does that phrase also apply to reducing the minimum terms imposed?
- This is a proposal solely motivated by funding concerns.
- The 20% of prisoners who are spending longer terms in prison may be there for a reason- either their institutional behavior is poor, or the severity of their offense warrants a longer stay.
- To this point, the totality of a person's crime is, again, not always captured in the final sentencing due to plea bargaining.
- This policy could reduce MDOC's ability to "control" inmate behavior. If an inmate knows they are getting out at a certain time, they have little incentive to comply with MDOC programming and rules.
- Linking maximum sentence to the minimum puts the guidelines at risk of an "Apprendi" challenge.

### **Reduction in the scope and application of habitual offender enhancements:**

- There are times when a single episode can max out a PRV score, in which case an offense and offender "look worse" than they are, from a prior record standpoint.
- The importance of habitual offender enhancements is that they highlight the prior record for those offenders' whose prior records are especially egregious.
  - This is not about double counting, it is "highlighting."
- Further, the judge still retains discretion over the final decision whether or not to accept these enhancements.
- Victims want repeat offenders to stop repeating.

### **Implement Swift and Sure probation practices statewide:**

- In those counties that currently have swift and sure courts, judges want to be involved, and there is frustration with the eligibility criteria to participate in a swift and sure program.
- A concern that "one size fits all" won't work for implementing a program like this across Michigan.
- Administering greater uniformity in how the program is carried out would achieve greater impacts across Michigan.

### **Reallocate funding to focus on recidivism reduction**

- Other funding programs, such as the County Jail Reimbursement Program (CJRP), have achieved some successes in meeting their goals. However, in the case of CJRP, it was an underfunded program.
- Programs at the local level should work towards successful outcomes.
- Some indicate support for empowering MDOC with greater oversight and involvement for how local programs allocate funds, with the goals of reducing

recidivism and achieving greater coherence between different programs at the front and back of the system, i.e. probation and parole.

- However, others maintain that it is equally important that local entities retain control and influence over how to structure and fund programs in their communities.
- A compromise might be a regional approach that includes input and guidance from local leaders and practitioners.
- A key goal of Public Act 511 (the Community Corrections Act) is to improve jail utilization, and strict adherence to recidivism reduction as the sole metric for success will undercut those aspects of community corrections funding that help jails utilize their space more effectively.

**Adopt a statewide definition for recidivism:**

- Agreement that there should be a common definition for recidivism, and strong support for the inclusion of police contact or arrests as part of that definition.
- It is important that there are straight, meaningful numbers that everyone can trust and agree upon, so that effective policies can be passed and implemented with success.

**GENERAL QUESTIONS AND CONCERNS**

- *People v. Lockridge*, also involving “*Apprendi*” and right to a jury, is before the Michigan Supreme Court, and the legislature should wait to see how it is resolved before amending the guidelines.
- Some offenders are sentenced to and need to serve longer probation terms in order to pay large restitution amounts. These restitution-related probationers may be skewing the data on probation terms for “low risk” offenders.
- Counties do not want more prisoners sentenced to local jails.
- There should be more discussion of treatment providers and options available to offenders in the community, particularly in regards to swift and sure programs.
- Questions and concerns about how these policies will interact with district court practices, particularly if now some felons will receive “lighter” sentences with less confinement in jail than some misdemeanants.
- Questions about the allowance for different probation supervision terms for sex offenders.
- A concern that probation terms may be skewed by larger restitution orders. In some cases judges order longer terms of probation to ensure that the offender will be monitored and held accountable for paying a larger restitution amount.