



STATE OF MICHIGAN
**Department of
Human
Services**

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Maura Corrigan, Director

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October 24, 2014

Jane Wilensky, Executive Secretary
Michigan Law Revision Commission
B.O. Box 30036
Lansing, MI 48909-7536
Sent via Email to: jwilensky@comcast.net

Re: Comment on CSG Justice Reinvestment Recommendations (second-draft)

Dear Michigan Law Revision Commission members:

I am writing on behalf of the Michigan Domestic & Sexual Violence Prevention & Treatment Board (MDSVPTB), to convey the Board's opposition to the second draft of the Michigan Justice Reinvestment Recommendations prepared by the Council of State Governments Justice Center (CSG). The MDSVPTB is a 7-member, legislatively created, governor-appointed body, charged in part with advising the Governor and Legislature regarding changes in state statutes, policies, and standards addressing domestic violence, sexual assault, and stalking. The Board opposes the Recommendations because: a) they are not yet ready for action by the Legislature; and b) they contain limitations on judicial discretion in sentencing that pose a danger to victims of domestic violence, sexual assault, and stalking. That said, the Board is not opposed to sentencing guidelines reform, and welcomes the opportunity to continue working with other stakeholders to address victim concerns.

The CSG Recommendations would introduce major changes to Michigan's sentencing guidelines that are dangerous to victims of domestic violence, sexual assault, and stalking. Given the complexity of the task and the safety interests at stake, careful consideration must be given to the proposed changes, with adequate time allowed to identify unintended consequences and address victim concerns. The Board understands that proponents of the CSG Recommendations intend to submit them for legislative consideration in November, with the intent of enacting them into law by the end of the current session. The Board does not believe that this timeline will permit stakeholders or lawmakers to fully understand the effects the Recommendations may have on victim safety, or to assess the Recommendations for possible unintended negative consequences to the criminal justice response to domestic violence, sexual assault, and stalking. Thus, the Board opposes the Recommendations on the grounds that they are not yet ready for legislative consideration.

While the Board also appreciates the revisions made to the first-draft Recommendations, it remains opposed to the inflexible restrictions on judicial discretion that remain in the second-draft. These restrictions are inconsistent with the following General Principles adopted by the MDSVPTB to promote public policy responses to domestic violence, sexual assault, and stalking that maximize victim



RICK SNYDER, Governor

safety and offender accountability:

- “Judges should have the full range of sentencing options to sanction felony offenders convicted of crimes involving domestic violence, sexual assault, and stalking on a case-by-case basis.” While well-intentioned, the CSG second-draft Recommendations do not account for the unique circumstances of the crimes addressed by this General Principle. Cases involving domestic violence, sexual assault, and stalking commonly involve serial offenders and/or offenders who are engaged in an ongoing pattern of criminal behavior against a targeted victim. To promote victim safety and offender accountability in these cases, judges need discretion to tailor sanctions to the unique circumstances of each offender and victim.
- “The Board supports policies that give survivors a full opportunity to express safety and other concerns about perpetrators’ release from custody. If they wish to do so, survivors should be allowed to participate meaningfully in proceedings where a perpetrator’s release is under consideration. Survivor participation should include:
 - Timely advance notice of a proceeding to consider a perpetrator’s release from custody.
 - Access to information in advance of the proceeding, relevant to the decision to release a perpetrator from physical custody.
 - An opportunity to testify and present information to the body with authority over the perpetrator.
 - Timely notice of the outcome of the proceeding.”

The Board is concerned that inflexible restrictions on judicial discretion in sentencing will render victim input into the process meaningless.

Regarding the above General Principle on judicial discretion in sentencing, MDSVPTB staff identified the following specific proposals in the second-draft Recommendations that pose particular dangers for survivors of domestic violence, sexual assault and stalking:

- **MCL 769.34(4):** This provision currently governs imposition of intermediate sanctions, which may include jail, probation, or another non-prison sanction, such as electronic monitoring or a fine. The second-draft Recommendations would amend this provision to set a maximum length for terms of probation supervision following terms of jail or imprisonment imposed on the offender. Under the second-draft Recommendations, such supervision terms must be equal to the term of jail or imprisonment. A supervision term that is limited in this way may not adequately protect victims of domestic violence, sexual assault, or stalking in cases where an offender is likely to harass the crime victim after serving a short term of confinement. Offenders who continue their criminal behavior despite criminal justice intervention are likely to pose a great risk to victims; in such cases, terms of supervision that exceed the term of confinement may be needed to promote victim safety and offender accountability.
- **MCL 771.2(1):** This provision currently sets forth the terms of probation for defendants convicted of felonies. In most cases, the probation period shall not exceed 5 years. The second-draft Recommendations would limit the applicability of the 5-year maximum probation period to offenders with a prior record variable score of 25 or more. Offenders with a prior record variable score of less than 25 could be given a maximum 2-year probation term, unless, in light of victim restitution ordered, the court determines that a maximum 5-year period is needed. The Recommendation does not account for the fact that a prior record variable score may not reflect the danger posed by a perpetrator of domestic violence, sexual assault, or stalking. Because these crimes are under-reported, an offender’s prior record variable score may not reflect the extent and seriousness of past criminal activity. To protect victims and hold offenders accountable, judges need flexibility to impose terms of probation that address risks not reflected in the prior record variable.

- **MCL 771.4:** This provision governs sanctions for probation violations. Currently, if probation is to be revoked in response to a violation, the court may sentence the probationer for the original offense charged, using current sentencing guidelines. The court also has discretion to impose lesser sanctions. As in the first draft, the second-draft Recommendations would amend the current statute to limit judicial discretion in imposing sanctions for probation violations, distinguishing between “risk violations” and “noncompliance violations.” (These were designated as “high and low severity” probation violations in the first draft). The definition of “risk violations” has been amended as follows in the second draft:
 - ~~Use or possession of weapons, ammunition or explosives,~~
 - Contact with a SPECIFICALLY prohibited person, OR PROXIMITY TO A SPECIFICALLY PROHIBITED business or location (MDSVPTB staff are unsure how this would apply to stalking),
 - ARREST FOR domestic violence (no definition provided) or other threatening, STALKING or assaultive behavior (MDSVPTB staff are uncertain how this would apply to sexual assault),
 - Arrest for AN UNADJUDICATED new felony,
 - ABSCONDING SUPERVISION, or
 - The 6th or subsequent NONCOMPLIANCE violation

First and second risk violations would be sanctioned by up to 30 days in the county jail. Time served must be credited toward the sentence imposed for the offense. The court may revoke probation upon a third risk violation.

A “noncompliance violation” would be defined as “failure to report or any other violation of a condition of supervision that is not a risk violation.” A first noncompliance violation would be sanctioned with “one or more nonconfinement responses” under the second-draft Recommendations. “A nonconfinement response” would be defined as “any violation response that does not result in imprisonment in the custody of the Department [of Corrections] or the county jail.” A second through fifth noncompliance violation may be sanctioned by up to 3 days confinement in the county jail.

The foregoing limitations on judicial discretion do not account for situations where the offender’s first or second “risk” violation is so egregious that a 30-day jail term is not sufficient to protect the victim or others (e.g., attempted strangulation of the victim). Failures to report and other “noncompliance” violations may also indicate a high risk in particular cases, making confinement an important tool for ensuring victim safety.

Thank you for your consideration of the Board’s concerns. I’d like to again express the Board’s appreciation for the opportunity to participate in the process to date, and for the improvements that have already been made to the second draft. The Board is not opposed to sentencing guidelines reform, and looks forward to the opportunity to continue working on proposals that will improve the guidelines while attending to victim concerns with safety and offender accountability.

If you have any questions about the comments in this letter or would like further discussion of any of the issues raised, please feel free to contact me or Mary Lovik, an attorney in my office. My telephone number is

517-241-5114, and my email address is caind@michigan.gov. Ms. Lovik's telephone number is 517-241-7591, and her email address is lovikm@michigan.gov.

Yours truly,

A handwritten signature in blue ink that reads "Debi Cain". The signature is written in a cursive style with a large initial 'D'.

Debi Cain

CC: MDSVPTB members
Karyn Ferrick
Angela Madden