



MICHIGAN LAW REVISION COMMISSION

P.O. Box 30036, LANSING, MI 48909-7536

Web Site: <http://council.legislature.mi.gov/mlrcf.html>

MEMORANDUM

Date: August 7, 2014

To: Interested Public - Invitation for Public Comment

From: Tony Derezinski, Vice-Chair
Michigan Law Revision Commission

Re: CSG Sentencing Study Summary of Legislative Recommendations and Draft Legislation

On May 13, 2014, the Council of State Governments Justice Center (CSG) presented a report to the Michigan Law Revision Commission titled "Applying a Justice Reinvestment Approach to Improve Michigan's Sentencing System".¹ Based on the findings in this Report, CSG has prepared: (1) a Summary of Legislative Recommendations; and (2) Draft Legislation that would implement the recommendations.

The Michigan Law Revision Commission is making the Summary and Draft Legislation prepared by CSG available for public review and comment. It is important to emphasize that: (1) the recommendations have NOT been adopted by the Law Revision Commission; and (2) the draft legislation has NOT been prepared by the Legislative Services Bureau, and these are NOT bills that are ready to be introduced in the Legislature. Rather, the Law Revision Commission is making CSG's summary and draft legislation available to the public as part of the ongoing process of soliciting and receiving public comment prior to the adoption of recommendations to the Legislature by the Law Revision Commission.

Written responses by organizations (consolidated) and individuals may be submitted to the MLRC Executive Secretary, Jane Wilensky (jwilensky@comcast.net) by August 29. Requests for clarification may be directed to Carl Reynolds at the CSG Justice Center (creynolds@csf.org).

Thank you for your interest in this project. We look forward to receiving your comments.

Attachments

¹ See report on May 13, 2014 and other presentations over the preceding year at: <http://council.legislature.mi.gov/mlrcf.html>.

CSG - SUMMARY OF LEGISLATIVE RECOMMENDATIONS

Introduction

The CSG Justice Center Report concluded that Michigan's sentencing system could be more consistent, cost-effective, and impactful at reducing crime.² At first glance, the sentencing guidelines provide the illusion of precision, offering a complex, detailed scoring process (see Background below). Ultimately, however, the guidelines do not provide enough actual guidance, with their wide sentencing ranges and wide 'straddle cell' zones where any disposition can occur. This lack of guidance results in significant disparity, even for identical cases as defined by the guidelines, and particularly by geography, from county to county. It also fails to promote offender accountability and provide a framework to maximize recidivism reduction. Those problems are compounded by an inconsistent effort to identify existing funding opportunities for programs designed to reduce recidivism and ultimately bolster public safety.

Although the accompanying legislation is divided into individual bills, the recommendations are designed as an indivisible and interdependent body of changes to Michigan's sentencing policy intended to make sentencing more predictable and consistent, while reducing "justice by geography." These recommendations also are expected to:

- Reduce volatility in the prison population by tying it more closely to sentencing than to release.
- Result in fewer sentences to jail, subsequently creating savings for the 12 counties operating jails.
- Increase public safety by allowing fewer unsupervised releases from jail, promoting greater accountability for violations while under supervision, and developing more targeted resources for reducing recidivism.
- Result in long-term improvement to the state's criminal justice system by establishing better information for policymakers and promoting greater overall vigilance.

Summary

The recommendations are organized into eight separate bills, amending several different chapters of the Code of Criminal Procedure and the Corrections Code, as well as the Community Corrections Act and other laws. At their core, the recommendations refine and build upon the current sentencing guidelines by creating three distinct possibilities for sentences and three distinct components into each individual sentence to jail or prison.

The eight bills are:

1. Sentencing Rules

- A. Require the courts and Michigan Department of Corrections (MDOC) to track and report victim restitution collection.
- B. Require that sentences to prison include a judicially imposed minimum and a maximum for the initial term, with the maximum set in a range between 1.5 and 2 times the minimum.
- C. Require a choice between using prior convictions for scoring criminal history under the guidelines, and using them for habitual offender sentencing.
- D. Spell out sentencing rules under the distinct zones in the sentencing grids in bill (1) for sentencing to prison, jail, and intermediate sanctions.
- E. For sentences to jail and prison that include three terms of time, provide for the:
 - "Initial term" of imprisonment in jail or prison, with a minimum and a maximum,
 - "Supervision term" to begin after release, and
 - "Sanction term," available to be used for sanctioning noncompliance while on supervision.

² The Justice Center also noted in testimony the question, currently before the Supreme Court of Michigan, whether the Offense Variable feature of the guidelines violates the right to a jury, as recently interpreted by the Supreme Court of the United States, by lifting the floor of the punishment range pursuant to judicial fact findings. (See leave grant at: http://publicdocs.courts.mi.gov:81/sct/public/orders/20140611_s149073_59_149073_2014-06-11_or.pdf.) These proposals do not address that issue, but with due caution, the MLRC is alerting the Legislature and the Legislative Services Bureau to the litigation.

- F. Provide for some sentences to intermediate sanctions without jail, but with a potential sanction term in jail.
- G. Provide the judiciary with a specific option to sentence some prison-bound defendants to jail.
- H. Provide statutory “mitigating factors” (reasons for leniency) to enhance the exercise of judicial discretion and ultimately depart from presumptive jail or prison sentences.
- I. Repeal the so-called “Tanner rule,” an unnecessary statute limiting judges to a prison sentence that is no more than two-thirds of the statutory maximum.
- J. Create a criminal justice policy commission to monitor sentencing and advise the Legislature on related policy, guided by a statement of policy on the purposes of sentencing.

Code of Criminal Procedure Chapter IX (MCL sections 769.1a, 769.11, 769.8, 769.10, 769.11, 769.12, 769.31, {New} 769.32, {New} 769.33, and 769.34)

2. Sentencing Grids

- A. Allow the risk of recidivism to guide decisions about length of supervision, as embodied in the Prior Record Variable score under the guidelines.
- B. Create distinct zones in the sentencing grids for sentencing to prison, jail, and intermediate sanctions, and eliminate “straddle cells,” so that most cases will have a predictable result.
- C. Revise the grid ranges in general according to the following rules:
 - Narrow prison sentencing ranges (no more than 100% difference between the top and the bottom) and shape the ranges in yearly increments when possible, in a logical progression as severity increases.
 - Make all sentences that allow jail time to be for zero to 12 months to maximize discretion for that level of sentencing, and to end the fiction of up to 17 month jail sentences in the current grids.
 - Use numbers that are used in practice, such as 18 months (1.5 years) instead of 19.

Code of Criminal Procedure Chapter XVII Part 6 (MCL sections 769.61-769.69)

3. Probation

- A. Provide for Swift and Sure Sanctions Probation (SSSP) as a commonly used condition by setting out criteria for using SSSP with felony probationers.
- B. Create a distinction between low and high severity supervision violations, with corresponding short and longer terms of confinement as sanctions.
- C. Provide for a general-purpose, first-time offender diversion and discharge.
- D. Remove the requirement that a probation officer recommend a sentence in the pre-sentence investigation, and add a requirement that the officer inform the court whether the defendant fits the criteria for SSSP.

Code of Criminal Procedure Chapter XI (MCL sections 771.2, 771.3, {New} 771.3g, and 771.4)

4. Violations

- A. Change the SSSP program from a grant-funded voluntary concept into a statewide feature of felony supervision.
- B. Provide probation officers with authority to impose short sanctions for low severity violations of supervision, unless the authority is withheld by the judge.
- C. Require the MDOC to promote rules to guide probation officers when imposing sanctions.
- D. Provide requirements for judges who handle probation violations outside of the SSSP model.

Code of Criminal Procedure Chapter XIA (MCL sections 771A.2, 771A.3, and {New} 771A.4)

5. Prison Release and Return

- A. Provide for delayed release from prison after the initial, minimum prison term is served for serious and persistent institutional misconduct.
- B. Provide for revocation of parole for high-severity violations with graduated use, in 90-day increments, of the sanction term.

Corrections Code (MCL sections 791.251, {New} 791.266a, and 791.240a)

6. Community Corrections and Reentry

A. Focus programs and services to be funded on recidivism reduction; require MDOC to engage in a data-driven and collaborative process to determine the resources needed in each locality to deliver community corrections and reentry programs.

B. Include reentry programs under the renewed umbrella of the community corrections funding and process.

Community Corrections Act, PA 511 (MCL sections 791.404, 791.407, 791.408, and 791.411)

7. Drug Offenses

A. Bring second-offense, drug-crime enhancement into alignment with general second-offense enhancement.

B. For drug-offense enhancement, require a choice between using prior convictions for scoring criminal history under the guidelines and using them for habitual-offender sentencing.

Public Health Code (MCL section 333.7413)

8. Victimization Survey

A. Require the Crime Victim Services Commission to conduct a victimization survey, which would report results to the Governor, Attorney General, Supreme Court, and Legislature.

Crime Victims Compensation Board (MCL section 18.353)