

*Sentencing
Guidelines
and
Justice
Reinvestment
Study*

A Special Report

by the

Michigan

Law

Revision

Commission

Term Members:

RICHARD D. MCLELLAN,
Chairperson

ANTHONY DEREZINSKI,
Vice Chairperson

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Michigan Law Revision Commission

SPECIAL REPORT
2014

Sentencing Guidelines and Justice Reinvestment Study

MICHIGAN LAW REVISION COMMISSION

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November 2014

The Honorable Rick Snyder
Governor of the State of Michigan
George Romney Building
Lansing, Michigan 48909

The Honorable Randy Richardville
Senate Majority Leader
P.O. Box 30036
Lansing, Michigan 48909

The Honorable Jase Bolger
Speaker of the House
P.O. Box 30014
Lansing, Michigan 48909-7514

Dear Governor Snyder, Senator Richardville, and Speaker Bolger:

At your request, the Michigan Law Revision Commission worked with the Council of State Governments Justice Center (CSG) to undertake a comprehensive review of Michigan's Sentencing Guidelines and make recommendations about needed reforms. The goals of the project were to recommend legislative changes that would improve public safety in a cost-effective way and increase offender accountability. The Special Report 2014: Sentencing Guidelines and Justice Reinvestment Study is provided for your review and consideration.

The Special Report includes: (1) the Report submitted in May 2014 by CSG titled, "Applying a Justice Reinvestment Approach to Improve Michigan's Sentencing System: Summary Report of Analysis and Policy Options", that describes their findings, policy options and recommendations; (2) House Bills 5928-5931, which were introduced on November 6, 2014; and (3) two memos prepared by CSG that describe the evolution of the two versions of draft legislation prepared by CSG, which were substantially revised before the introduction of the House Bills to reflect the comments of the many individuals and stakeholders that participated in the process. The entire record of this project, including CSG presentations, CSG draft legislation, and public comments, can be found on the Michigan Law Revision Commission's website, <http://council.legislature.mi.gov/CouncilAdministrator/mlrc>.

The Commission recommends that the laws be updated and that the Legislature use this Special Report as a guide but, recognizing the ongoing work of the many interested individuals and stakeholders, does not recommend any specific version of draft legislation.

Sincerely,

Richard D. McLellan
Chair

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Applying a Justice Reinvestment Approach to Improve Michigan's Sentencing System

Summary Report of Analyses and Policy Options

Overview

In Michigan, one out of every five state dollars is spent on corrections.¹ While policymakers look for ways to contain the high costs of corrections, victims, law enforcement, and prosecutors have urged caution against letting fiscal concerns trump efforts to reduce crime and protect the public. Everyone seems to agree, however, that the state should be getting a much greater return on the significant investments taxpayers currently make in the criminal justice system.

Michigan has analyzed these problems in recent years and implemented various strategies, from statewide reentry programs to reduce recidivism, to law enforcement efforts to deter crime in cities plagued by violence. Michigan has achieved measurable progress: reported violent crime is down 15 percent from 2008 to 2012;² rearrest rates for parolees declined by 20 percent from 2008 to 2011;³ and the prison population dropped 15 percent between 2006 and 2012.⁴

Despite these achievements, however, high costs and crime persist, and the prison population is starting to increase once again.⁵ Counties struggle with costly jail populations. Rates of violent crime in four Michigan cities are three to five times greater than the national average, and victim service providers assert that reported crime statistics do not fully capture the incidence of victimization or the impact of reduced law enforcement resources across the state.⁶

As a result of these persistent problems, in January 2013, state leaders decided to look at sentencing in Michigan. Enacted in 1998, the state's sentencing guidelines have been modified here and there over the past 15 years, but after the Sentencing Commission that created and recommended the guidelines was dissolved in 1997, policymakers could not track how the system was contributing to public safety, recidivism trends, and state and local spending. Governor Rick Snyder, Chief Justice Robert Young, legislative leaders from both parties, and other state policymakers asked the Council of State Governments Justice Center (CSG Justice Center) to use a justice reinvestment approach to study the state's sentencing system, which would include an exhaustive data-driven analysis and would contemplate not just the courts, but jail, probation, prison, and parole as well. Furthermore, Michigan state leaders wanted to ensure that every interest group with a stake in the criminal justice system was engaged in this analysis.⁷

Technical assistance provided by the CSG Justice Center was made possible in partnership with the State of Michigan, The Pew Charitable Trusts, and the U.S. Department of Justice's Bureau of Justice Assistance.

State policymakers also charged the Michigan Law Revision Commission (MLRC) to partner with the CSG Justice Center in this effort. The MLRC, a bipartisan group of legislators and appointed members, was created by the state legislature in 1965 to "examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms." The MLRC was selected to lead this effort because the Commission has the statutory charge and is experienced in reviewing Michigan laws and recommending needed reforms to the legislature. Over the course of their work, CSG Justice Center staff

¹ Robin Risko, *Corrections Background Briefing*, (Lansing: House Fiscal Agency, Michigan House of Representatives, December 2013).

² Michigan State Police, *Michigan Incident Crime Reporting, 2008-12*, (Lansing: Michigan State Police, 2008-2012).

³ The Council of State Governments Justice Center (CSG Justice Center) analysis of Michigan Department of Corrections (MDOC) CY2008-2012 prison release data and Michigan State Police CY1951-2013 criminal history records.

⁴ Michigan Department of Corrections *2006-2011 Statistical Reports*, (Lansing: MDOC, 2006-2011); Michigan Department of Corrections *2008-2012 Intake Profiles*, (Lansing: MDOC, 2008-2012).

⁵ Robin Risko, *Corrections Background Briefing*, Michigan Department of Corrections *2008-2012 Intake Profiles*.

⁶ Michigan State Police Incident Based Crime online data tool; Federal Bureau of Investigation's Uniform Crime Report online data tool; CSG Justice Center focus group with Michigan victim service providers, November 8, 2013.

⁷ Policymakers are currently considering a number of issues affecting the state's criminal justice system, including elderly inmates, corrections operations and contracting, and people convicted as juveniles serving life sentences. This project, however, and the findings and policy options contained in this report do not address these issues.

worked alongside and regularly reported to the MLRC on their findings.

To guide its analysis, the CSG Justice Center examined whether the sentencing guidelines are achieving their three intended goals of proportionality, consistency, and public safety, as outlined in the Sentencing Commission's final report 15 years ago.⁸

Michigan's sentencing policies were designed to improve the degree of proportionality in sentencing. Put another way, people with extensive criminal histories who commit serious crimes should serve considerable time in prison, whereas the response to a first-time defendant who commits a less serious crime should be less severe. To evaluate whether sentencing laws were achieving this goal, the CSG Justice Center reviewed sentencing outcomes for people who were convicted of similar crimes but whose histories with the criminal justice system were significantly different.

Michigan's sentencing policies were also intended to ensure consistent sentencing outcomes. For example, a key principle of the guidelines is that two people convicted of the same crime with similar criminal histories should generally receive the same sentence, and that sentence should be comparable regardless of where in the state the person is convicted. The CSG Justice Center's approach to determining whether the sentencing guidelines were achieving this objective was to examine the extent to which people convicted of similar crimes and had comparable criminal histories received the same sentence from one county to the next.

Finally, Michigan's sentencing policies sought to improve public safety by ensuring that the terms of the sentence minimize the likelihood that a person will reoffend when he or she returns to the community. To determine how effectively the sentencing system is meeting this objective, the CSG Justice Center compared rearrest rates among people with similar characteristics who received different types of sentences, and for different lengths of time. The CSG Justice Center also assessed how parole, probation, and community-based treatment resources are allocated, and whether these community supervision tools are as effective as they can be.

In carrying out this project, the CSG Justice Center analyzed 7.5 million individual data records, representing more than 200,000 individuals within ten state databases, including: criminal arrest histories; felony sentencing; prison admissions and releases; probation and parole supervision; risk assessments and community corrections programming; and parole release

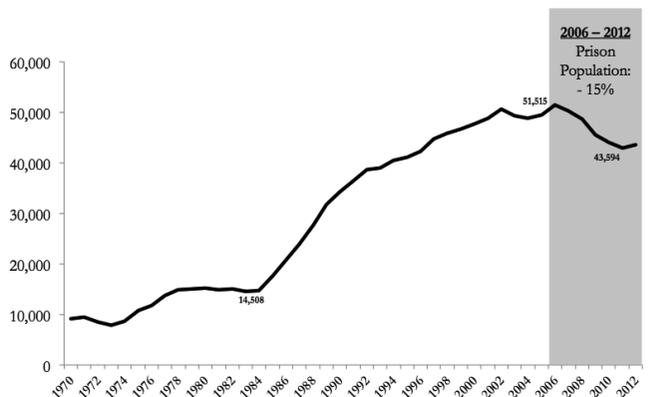
⁸ Paul Maloney, Hilda Gage, Mark Murray, and Carlo Ginotti. *Report of the Michigan Sentencing Guidelines Commission*, (Lansing: Michigan Sentencing Commission, December 2, 1997).

decisions.⁹ To understand the context behind the numbers, the CSG Justice Center conducted over 100 in-person meetings and 200 conference calls with prosecutors, judges, victim advocates, MDOC staff and administrators, legislators, law enforcement officers, county leaders, and more.

This report provides a summary of Michigan's challenges, and policy options for further development. The MLRC will review these findings and work with the CSG Justice Center to recommend needed reforms to the state legislature, with additional consideration by state leaders including Governor Snyder, members of the judiciary, and other key stakeholders.¹⁰

After completing this analysis and working extensively with Michigan's stakeholders, the CSG Justice Center's findings indicate that Michigan can improve its sentencing system to achieve more consistency and predictability in sentencing outcomes, stabilize and lower costs for the state and counties, and direct resources to reduce recidivism and improve public safety.

FIGURE 1: MICHIGAN'S PRISON POPULATION, 1970-2012



Source: 2006-2011 Statistical Reports, MI Dept. of Corrections; 2008-2012 Intake Profiles, MI Dept. of Corrections.

⁹ Throughout the process, stakeholders correctly noted that a person's final sentence may not reflect all circumstances of the case, such as the original charge or the entirety of their criminal history.

¹⁰ A technical appendix will be made available on the CSG Justice Center website, which represents the full scope of research and analysis conducted over the entire project.

Summary

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

	FINDINGS	POLICY OPTIONS
1	People with similar criminal histories who are convicted of similar crimes receive significantly different sentences.	Structure sanctions in the guidelines to produce more consistent sentences.
2	After a person is sentenced, it remains unclear how much time they will actually serve.	Make the length of time a person will serve in prison more predictable at sentencing.

Public Safety and Cost: Key changes to the sentencing system can help reduce recidivism and costs to taxpayers.

	FINDINGS	POLICY OPTIONS
3	Supervision resources are not prioritized to reduce recidivism.	Use risk of re-offense to inform probation and post-release supervision.
4	High rates of recidivism generate unnecessary costs.	Hold people accountable and increase public safety for less cost.
5	Funds to reduce recidivism are not targeted to maximize the effectiveness of programs and services.	Concentrate funding on those programs most likely to reduce recidivism.

Evaluation and Monitoring: Michigan state and local officials need better tools to monitor and assess the effectiveness of the sentencing system.

	FINDINGS	POLICY OPTIONS
6	Policymakers and practitioners do not have an effective mechanism to track sentencing and corrections outcomes.	Monitor changes to the state’s sentencing practices, along with their impact.
7	Data currently collected do not sufficiently measure victimization or the extent to which restitution is collected.	Survey levels of statewide victimization, and track assessment and collection of restitution.

Sentencing Systems in Different States

Prior to the 1970s, state legislatures established limits on maximum sentences that could be imposed on a person convicted of a crime. Judges, in turn, sentenced people not to a fixed term, but instead to a range, such as one to ten years in prison. This indeterminate approach to sentencing vested authority in a parole board to determine the release date.

Over the past 40 years, legislatures in every state have been increasingly prescriptive about when someone should be sentenced to prison—and how much time someone convicted of a particular type of crime must serve in prison and/or under community supervision. Just how much latitude the sentencing laws give the judge – and how much discretion is left to the executive branch to set the release date from prison – depends on the state. In some states, the system still is largely reminiscent of the indeterminate era. Other states have moved to a determinate sentencing model, abolishing their parole boards, adopting sentencing guidelines that limit judicial discretion, or incorporating both these changes to their sentencing system. According to the little research conducted to date, whether a state adopts an indeterminate or determinate approach, in and of itself, does not foretell the number of people a state sends to prison, how long they stay there, or how well they do when they are released.

When the CSG Justice Center is asked to use a justice reinvestment approach to help a state analyze its sentencing system, staff typically look for opportunities to increase public safety and to reduce state spending. In doing so, staff recognize that no two state's approaches to sentencing are alike. The unique approach each state takes to sentencing shapes that state's statutory policy, case law, administrative policy, and the way multiple government agencies spanning the legislature, judiciary, and executive interface. Consequently, CSG Justice Center staff are careful to craft policy options that reflect a respect and appreciation for the history and the core goals of the state's existing sentencing system.

Michigan has a long tradition of indeterminate sentencing, dating back to the state constitution of 1903.¹¹ When the state overhauled its sentencing system in 1998, it adopted guidelines (largely based on guidelines first established by the judiciary in 1984) to structure jail sentences and minimum prison sentences. Among those states that adopted sentencing guidelines, Michigan is unique in that it retained parole and gave the parole board the latitude to hold any person sentenced to prison up to the maximum allowed by statute.

Michigan's Sentencing Guidelines: Background

In 1998, the Michigan legislature enacted sentencing guidelines to provide judges with recommendations for the minimum term of a sentence for individuals convicted of felony crimes. The guidelines were developed by a Sentencing Commission, which was formed in 1994 by the legislature with the charge to “develop sentencing guidelines which provide protection for the public, are proportionate to the seriousness of the offense and the offender's prior record, and which reduce disparity in sentencing throughout the state.”¹² The guidelines created by the Commission were based on judicial guidelines that were developed by the Supreme Court of Michigan in 1984, which in turn were based on a 1979 analysis of Michigan sentencing.

The Commission intended to provide ongoing monitoring and recommendations regarding the guidelines, and to define specific terms for probation revocations and guide the supervision violations process. The last formal meeting of the Sentencing Commission, however, was in 1997, and the Commission subsequently dissolved when the terms of the members expired. The Commission was officially disbanded by the legislature in 2002.¹³

Michigan is one of 21 states that use guidelines to help determine felony sentencing. Of those states, some use their guidelines on a voluntary basis while other states, including Michigan, have presumptive guidelines, meaning most sentences are presumed to adhere to what is prescribed in the guidelines.¹⁴

¹² Paul Maloney, Hilda Gage, Mark Murray, and Carlo Ginotti. *Report of the Michigan Sentencing Guidelines Commission*.

¹³ Sheila Robertson Deming “Michigan's Sentencing Guidelines”, *Michigan Bar Journal* 79, no. 6 (June 2000):

<http://www.michbar.org/journal/article.cfm?articleID=92&volumeID=8>; CSG Justice Center interview with former staff member of the Michigan House Republican Policy Office, June 5, 2013; 2002 PA 31.

¹⁴ Don Stemen, Andres Rengifo, and James Wilson. “Of Fragmentation and Ferment: The Impact of State Sentencing Policies on Incarceration Rates, 1975-2002: Final Report to the National Institute of Justice.” (New York: Vera Institute of Justice and Fordham University, August 2005).

¹¹ 1902 Public Act (PA) 1901, J.R. no. 11.

Michigan's Sentencing Guidelines: Process

Michigan's felony sentencing guidelines provide a scoring system that is used to determine the recommended minimum sentence range for a person convicted of a particular felony.¹⁵ 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 (Grid H).¹⁶

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 (PRV) 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 (HO) 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 their 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.

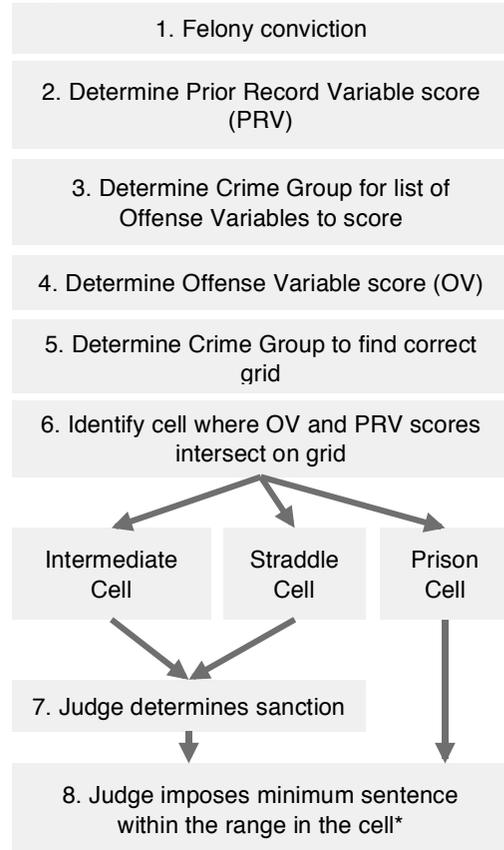
Cells: There are 258 total cells across the sentencing grids, with 3 types of cells:

- **Presumptive Prison Cells:** These cells call for a recommended sentence that exceeds a minimum of one year of prison. Any sentence 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. Any 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 HO enhancement to a case.

Process: Steps to determine a person's sentencing guidelines score:



*Range within cell may expand, depending on use of habitual offender (HO) sentencing enhancements

¹⁵ The scope of this project as well as the analysis in this report are focused on sentencing and criminal justice systems as they pertain to felony cases and convictions. Michigan's misdemeanor cases are sentenced under a separate system.

¹⁶ Per state law (Michigan Compiled Laws (MCL) 750.316), conviction for first-degree murder carries penalty of life without possibility of parole and no lesser sentence may be imposed.

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 personal 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 1,032.¹⁷

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.

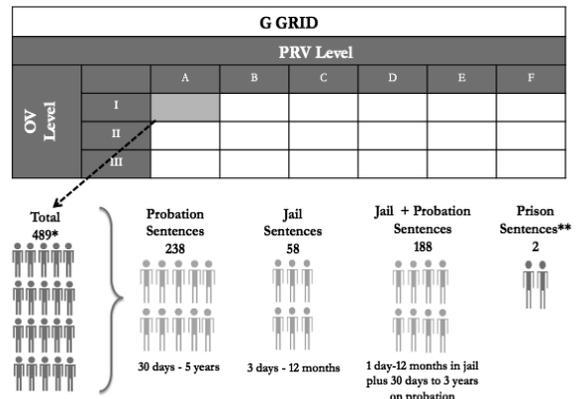
- Most cases fall into guidelines cells that allow for a wide variation of sentencing options, ranging from jail, probation, fines or community service, and many of these cells also allow for prison. [See Figure 2]

FIGURE 2: FELONY SENTENCES BY CELL AND SANCTION TYPE, 2012

Allowable sanctions*	Types of Cell		
	Intermediate	Straddle	Prison
Fees/fines only	✓	✓	
Probation only (5 year max)	✓	✓	
Jail only (1 year max)	✓	✓	
Up to 1 year in jail plus probation	✓	✓	
Prison		✓	✓
	62% of Cases	27% of Cases	11% of Cases
	89% of all felony sentences scored into intermediate or straddle cells		

* A judge may impose a sentence other than what is considered allowable according to the sentencing guidelines so long as a substantial and compelling reason for the departure is entered into the record.

FIGURE 3: FELONY SENTENCES FOR INDIVIDUALS IN ONE CELL, 2012



* 3 sentences were for fines only.

**Prison sentences for this cell were a 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 Offense Variable (OV) and Prior Record Variable (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.¹⁸ [See Figure 3]

Many guidelines cells include a wide range of 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.

- In one of the most commonly used straddle cells in the guidelines, sentences can range between as little

¹⁷ CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data.

¹⁸ *Ibid*; The two prison sentences were a result of judicial departures from the guidelines, and three sentences were for fines only.

as 10 months in jail or as much as 23 months in prison.¹⁹

- 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.²⁰

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

- Habitual offender (HO) 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 HO 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, HO enhancements also allow for counting much of an individual’s criminal history a second time.

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 different cells within each grid, regardless of the specific characteristics of the case. In Grid E, 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 to 24 months.²¹
- 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.
- 402 people statewide had a sentencing score in 2012 that placed them in the same guidelines cell on Grid E. 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. For people convicted in Kent County, one third were sentenced to prison, while in Kalamazoo, Ottawa, Ingham, Genesee, Macomb, and Oakland counties no one received prison terms.²² [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.²³
- 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.

¹⁹ *Ibid*; The sentences in this guidelines cell do not include cases with habitual offender sentencing enhancements.

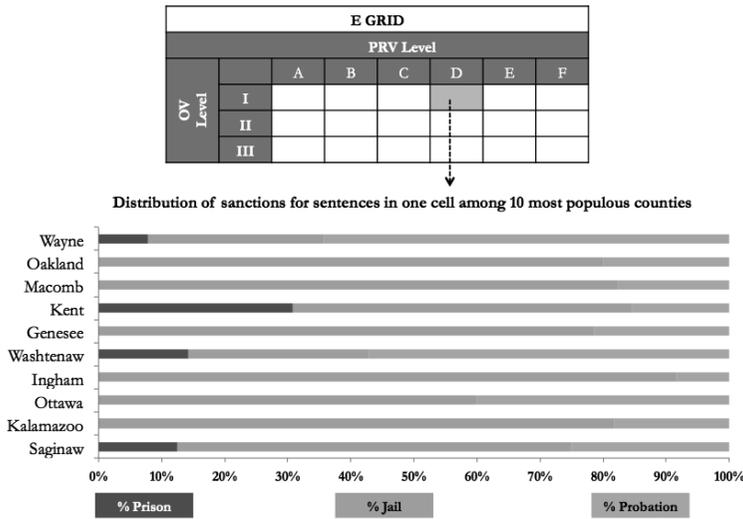
²⁰ *Ibid*.

²¹ CSG Justice Center analysis of Michigan Felony Sentencing Guidelines.

²² CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data; The cases in this guidelines cell constitute non-habitualized, new felony cases, meaning they were not involved with Michigan’s criminal justice system at the time of the underlying offense.

²³ CSG Justice Center electronic survey of Michigan judges, January 2014. 54 judges completed the survey; CSG Justice Center focus group meetings with Michigan judges, September 2013. CSG Justice Center electronic survey of Michigan prosecutors, August 2013. 111 prosecutors completed the survey.

FIGURE 4: FELONY SENTENCES IN ONE CELL ACROSS 10 MOST POPULOUS COUNTIES, 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.
- Discretion should remain both for judges to establish sentence lengths tailored to individual cases within narrowed ranges, and for prosecutors 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.

Truth in Sentencing

Michigan's truth in sentencing system requires individuals to serve the entire minimum sentence in prison prior to being considered for parole. "Disciplinary time," or bad time, is accumulated for misconduct while in prison. This disciplinary time is not formally added to the minimum sentence, but the parole board must consider the amount of time each person has accumulated when it considers parole. There is no system for individuals to accumulate "good time" for complying with prison rules.

FINDING 2

After a person is sentenced, it remains unclear how much time they will actually serve.

Under the existing system, the sentencing guidelines provide a detailed process to determine a person's minimum sentence, but there is no similar process to establish the maximum sentence.

- Michigan's sentencing guidelines only define the minimum prison sentence; the maximum sentence is set by statute and the parole board determines the final length of stay in prison.
- Among states with sentencing guidelines, Michigan is unique in that it defines a minimum without also defining a maximum sentence within its guidelines.

The lengths of imposed minimum prison sentences are increasing.

- More than one-third of all people sentenced to prison in 2012 were ordered to serve a minimum sentence that was at least twice as long as that required by law.²⁴
- Almost three-quarters of felony sentences to prison in 2012 received minimum sentences that were 110 to 500+ percent higher than the lowest possible minimum sentence.²⁵
- The average length of imposed minimum prison sentences increased across all grids and almost all cell types between 2008 and 2012, resulting in average minimum sentences that are 2.7 months longer in 2012 than they were in 2008.²⁶
- It is not immediately clear what has caused the longer imposed minimum sentences in recent years. Legislative changes to penalties within the guidelines have had minimal system-wide impacts on sentence length, and across the guidelines people

have not been convicted of more serious crimes nor received more consecutive sentences.²⁷ Instead, the increase is most likely due to the wide ranges of possible minimum sentences built into the guidelines.

- The costs of these longer sentences, however, are clear. At the daily rate of \$98 per prison bed occupied, the 2.7 month increase in the average length of imposed minimum prison sentences between 2008 and 2012 cost the state an additional \$70 million per year.²⁸

Two people with similar criminal histories convicted of similar crimes can spend much different lengths of time incarcerated, depending on whether they are sentenced to jail or prison.

- Michigan law stipulates that a person may serve no longer than one year in jail. This means that when a judge sentences an individual to jail, there is a de facto ceiling of one year that the person will serve.²⁹
- After the judge sentences a person to jail for up to one year, the county sheriff may reduce the length of time someone serves. State statute provides sheriffs with the discretion to award people in jail with "good time" credits of up to 1 day for every 6 served. Nearly every sheriff (96 percent) who responded to a statewide survey reported they award "good time" to people who comply with jail policies.³⁰
- Michigan's "truth in sentencing" law (see "Truth in Sentencing" box) requires that a person incarcerated in prison serve no less than their minimum sentences, with no equivalent "good time" credits. Once the minimum sentence is served, the parole board ultimately decides the remaining length of time a person serves, up to the statutory maximum.

²⁴ CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data.

²⁵ *Ibid.*

²⁶ *Ibid.*; Not all felony cases fall under Michigan's sentencing guidelines. For example, first-degree murder and felony firearms offenses fall outside of the guidelines. Sentence lengths increased in all nine of the grids across almost all of the cell types. The sentence lengths increased within the grids between 2008-2012, by the following percentages: Murder 2 Grid increased by 31.8 months, or 11.4 percent; Grid A increased by 11.3 months, or 9.4 percent; Grid B increased by 4.5 months or 8.3 percent; Grid C increased by .4 months, or .9 percent; Grid D increased by 1.5 months, or 5.5 percent; Grid E increased by 1.2 months, or 6.2 percent; Grid F increased by .2 months, or 1.3 percent; Grid G increased by 1.3 months, or 7.7 percent; and Grid H increased by .8 months, or 5.1 percent.

²⁷ CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data.

²⁸ *Ibid.*; These figures are meant to reflect current MDOC budget costs, and not necessarily potential savings.

²⁹ MCL 769.28 *et seq.*

³⁰ MCL 51.282 *et seq.*

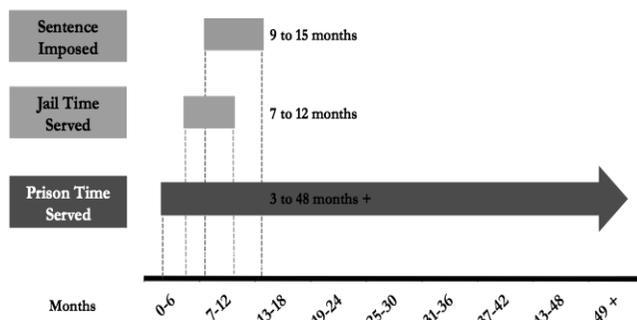
- The range of time that falls under the parole board’s discretion is usually 300 to 400 percent longer than the minimum sentence.³¹
- The differences between jail and prison release policies mean that two individuals who receive comparable sentence lengths—one sentenced to prison and the other to jail—are likely to be incarcerated for very different lengths of time. In 2012, of all people who received sentences from 9 to 15 months in either jail or prison, those sentenced to jail served between 7 and 12 months. In contrast, people who were sentenced to prison ended up serving as few as 3 and as many as 48 months or longer.³² [See Figure 5]

The significant variations in sentencing outcomes across Michigan increase state and local expenditures in corrections without achieving corresponding public safety benefits.

- As the sentencing system is applied differently from one county to the next, the implications for state and local expenditures also vary. For example, in counties where a larger percentage of people are sentenced to jail, such as Ingham or Ottawa, the county likely bears a larger financial burden in jail costs than in those counties with higher rates of prison sentences, like Kent, or probation sentences, like Wayne.³³
- The amount of time people spend in prison beyond their minimum sentence is determined by parole board decisions rather than the sentencing guidelines. MDOC staff indicate that in recent years, prison inmates served, on average, 140 percent of their minimum sentence before they were released to parole. As of 2012, most parole-eligible people served approximately 125 percent of their minimum sentence.
- These variations in time served carry the potential for enormous corrections costs. The annual additional cost of people serving an average of 125 percent above their minimum sentence is \$300 million. If parole approval practices were to revert back to releasing people after serving, on average, 140 percent of their sentence, the longer time served would equal an additional annual cost of \$200 million.³⁴

- Some stakeholders argue that the longer time people serve in prison protects the public for at least the additional period of time they remain incarcerated.³⁵
- Parolee rearrest data showed, however, that rearrest rates for people released within six months of their earliest possible release date are not significantly different than the rates for those who are held for longer, across all offense categories (violent, sex, drug, and other non-violent).³⁶ [See Figure 6]
- The declining parolee rearrest rates in Michigan, even as the average percentage of time served decreased in recent years, suggest that additional time spent in prison does not necessarily improve recidivism outcomes. This finding is supported by similar conclusions in studies conducted by national experts.³⁷

FIGURE 5: RANGES OF POSSIBLE TIME SERVED FOR NEW FELONY CASES SENTENCED TO JAIL OR PRISON TERMS OF 9 TO 15 MONTHS



³¹ CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing and CY2008-2012 prison release data.

³² *Ibid*; Those people with prison sentences who served less than the minimum 9 month imposed sentence did so as a result of their participation in MDOC’s Special Alternative Incarceration (SAI) program, commonly referred to as “boot camp.”

³³ CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data.

³⁴ *Ibid*; Bob Schneider, *Corrections Background Briefing*, (Lansing: House Fiscal Agency, Michigan House of Representatives, December 2012). Email correspondence between MDOC and CSG Justice Center on March 18, 2014. Time served beyond earliest release date (ERD) was not formally tracked until 2009. However, it is likely that percent of minimum sentence served to first release for truth in sentencing prison inmates

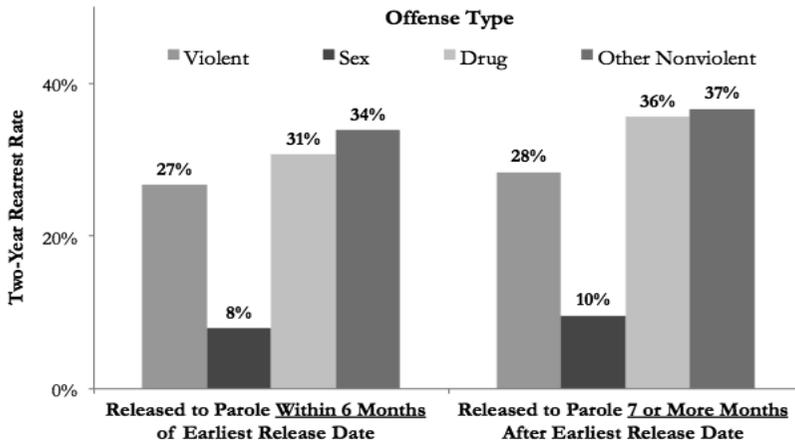
exceeded 150% in the early and mid-2000s when the number of inmates beyond their earliest release date was at all-time highs.

³⁵ CSG Justice Center focus group with Prosecuting Attorneys Association of Michigan attorneys, December 6, 2013

³⁶ CSG Justice Center analysis of Michigan State Police CY1951-2013 criminal history records and MDOC CY2008-2012 prison release and CY2007-2013 COMPAS risk/needs data.

³⁷ Adam Gelb, Ryan King and Felicity Rose, *Time Served: The High Cost, Low Return of Longer Prison Terms*. (Washington: Pew Center on the States, Public Safety Performance Project, June 2012); Jeremy Travis, Bruce Western, and Steve Redburn, editors. *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington: National Research Council, Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, 2014).

FIGURE 6: TWO-YEAR REARREST RATES FOR PEOPLE RELEASED FROM PRISON IN 2010 TO PAROLE WITHIN OR AFTER SIX MONTHS OF THEIR EARLIEST RELEASE DATE*



*Excludes Parole Violator Admissions

POLICY OPTION 2

Make the length of time a person will serve in prison more predictable at sentencing.

Truth in sentencing should be enhanced by establishing minimum and maximum periods of incarceration (within the statutory maximum) at sentencing.

- The maximum period of incarceration established at sentencing should be specific to each individual case rather than defaulting to the most severe penalty allowed by statute.
- The difference between minimum and maximum prison sentences should be narrow enough to provide greater predictability about time served, while still allowing for consideration of institutional behavior in final release decisions.
- Probation sentences should specify a maximum period of incarceration in jail or prison that can be applied as a sanction in response to probation violations.

Increased predictability in time served will provide more certainty at sentencing to victims, the public, and people convicted of felonies.

Understanding Risk Assessment

Risk assessment tools help users sort individuals into low-, medium-, and high-risk groups. They are designed to gauge the likelihood that an individual will come in contact with the criminal justice system, either through a new arrest and conviction or reincarceration for violating the terms of supervision. These tools usually consist of 10 to 30 questions that are designed to ascertain an individual's history of criminal behavior, attitudes and personality, and life circumstances. Risk assessments can be administered at any time during a person's contact with the criminal justice system—from first appearance in court through presentencing, placement on probation, admission to a correctional facility, the period prior to release, and during post-release supervision. These assessments are similar to actuarial tools used by an insurance company to rate risk: they predict the likelihood of future outcomes according to their analysis of past activities (e.g., criminal history) and present conditions (such as behavioral health or addiction). Objective risk assessments have been shown to be more reliable than any professional's individual judgment. Too often, these judgments are no more than "gut" reactions that vary from expert to expert about the same individual.³⁸

³⁸ Christopher Lowenkamp and Edward Latessa, "Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders," *Topics in Community Corrections*, (2004) 3-8; Edward Latessa, "The Challenge of Change: Correctional Programs and Evidence-Based Practices," *Criminology and Public Policy*, vol. 3, no. 4 (2004), 547-560; *The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime, and Corrections Spending*, (New York: CSG Justice Center, January 2011).

Public Safety and Cost: Key changes to the sentencing system can help reduce recidivism and costs to taxpayers.

FINDING 3

Supervision resources are not prioritized to reduce recidivism.

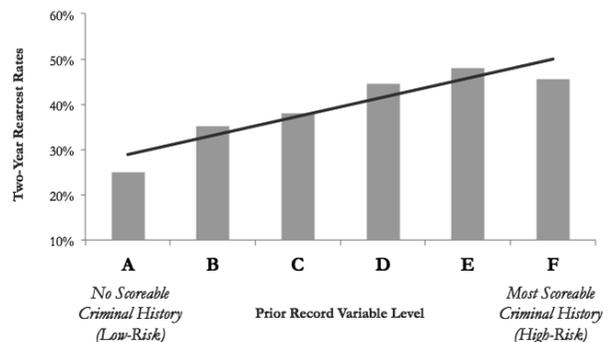
The sentencing guidelines do not guide or account for risk in making decisions about which people should receive probation, or the length of probation terms.

- The range of minimum sentences in each guidelines cell applies only to jail and prison terms, and not to the lengths of probation or parole supervision terms that people receive.
- Michigan law dictates that probation can be imposed for up to five years for people convicted of felonies, regardless of the cell into which they are scored, and the actual terms imposed are guided by judicial discretion and not the guidelines.³⁹
- Because criminal history is a strong predictive risk factor (see “Understanding Risk Assessment” box), PRV scores based on criminal history are correlated with risk of rearrest. Data analysis shows that people with more extensive criminal histories, and corresponding higher PRV scores, are also more likely to be rearrested in the future.⁴⁰ [See Figure 7]
- Even with the use of this risk assessment tool built into the sentencing guidelines system, the sentencing process does not use PRV scores to guide whether or not a person should receive probation supervision, or for how long they should be supervised.
- In 2012, 16 percent of people with high PRV scores and who were at a high risk of reoffending were sentenced to jail without a requirement of probation supervision following their release.⁴¹
- The majority of people with no criminal history received a jail sentence in 2012, despite their far lower risk of being rearrested. The cost of incarcerating rather than supervising these low-risk people was \$12.5 million for counties.⁴²
- Research shows that sentencing low-risk probationers to lengthy supervision terms may increase their likelihood of committing new crimes.

Conversely, intensive supervision resources have a stronger effect on reducing criminal behavior for higher risk people.⁴³

- Instead of prioritizing probation resources for high-risk people who are most likely to benefit from supervision, in 2012 Michigan assigned similar lengths of probation to low- and high-risk people, 24 and 30 months, respectively.⁴⁴

FIGURE 7: TWO-YEAR REARREST RATES FOR ALL PROBATION AND JAIL SENTENCES BY PRIOR RECORD VARIABLE LEVEL, 2010



³⁹ MCL 771.4.

⁴⁰ CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data and Michigan State Police CY1951-2013 criminal history records. There were some people released from prison within the 2008-2013 study period who had criminal histories dating as far back as 1951.

⁴¹ CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data.

⁴² *Ibid.*

⁴³ *Ibid.*, Edward Latessa and Christopher Lowenkamp, *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders.*

⁴⁴ CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data and Michigan State Police CY1951-2013 criminal history records.

POLICY OPTION 3

Use risk of reoffense to inform probation and post-release supervision.

Use risk of reoffense to inform the use, conditions, and length of supervision terms and violation responses at the time of sentencing.

- Most felony convictions should include a period of probation or post-release supervision, established at sentencing.
- Supervision terms should account for risk by basing probation and post-release supervision lengths on PRV score.

Targeting supervision based on risk of reoffense will better utilize current resources to hold individuals accountable and reduce recidivism.

Prisoner Reentry

In 2005, the Michigan Prisoner Reentry Initiative (MPRI) was created to address the state's rising prison population and corrections costs, by increasing parole approval rates while lowering parolee recidivism and revocation rates. MPRI sought to achieve its goals by assessing parole-eligible individuals for their criminogenic risks and needs, and providing them with appropriate prison and community-based programming to reduce their likelihood of reoffending.

MPRI originally consisted of three phases, beginning one year prior to the date of a person's minimum sentence, with the individual beginning to prepare for reentry, and continuing until they were discharged from parole supervision. As of December 2011, the MDOC attributed a 30-percent improvement in parole outcomes as a result of MPRI, which translated into 5,193 fewer returns to prison between 2005-2011.⁴⁵

Two audits conducted in 2011 and 2012 concluded that the MDOC did not have sufficient oversight or controls over MPRI spending and outcomes. In response, MDOC took more control over programming and funding, and the MDOC Field Operations co-chair was given executive power over all major local program decisions.

In 2011, MPRI became Prisoner Reentry and was moved to another division within MDOC under a new leadership structure. In September 2013, MDOC announced that funding for community-based reentry services would be reduced from \$22.7 million to \$13.8 million, beginning in October 2014.⁴⁶

Swift and Sure Sanctions Probation Program

Established by statute in 2012, the Swift and Sure Sanctions Probation Program (SSSPP) provides intensive probation supervision for high-risk individuals convicted of felonies who also have a history of probation violations or failures. SSSPP programs are designed to offer an alternative to traditional supervision by empowering probation agents (in participating jurisdictions) to respond to supervision violations by swiftly imposing small amounts of jail time. This approach is meant to take corrective action before probationers have committed multiple violations. Research shows that programs based on the principles that emphasize swiftness and certainty rather than severity in response to initial supervision violations result in reduced recidivism among probationers, thereby avoiding longer term and more costly sentences.⁴⁷

The establishment of an SSSPP program is optional, initiated by courts with judges and practitioners willing to participate in and administer the program.⁴⁸ Interested courts may apply for funding from the State Court Administrative Office, which administers approximately \$6 million for SSSPP programs statewide annually.⁴⁹ The SSSPP program is better funded than other state specialty courts programs, but enrollment remains modest. As of March 2014, just 12 of Michigan's 57 circuit courts were operating SSSPP programs, with only 296 of more than 10,000 high-risk probationers enrolled.⁵⁰

⁴⁵ MDOC, "Michigan Prisoner Reentry: A Success Story." To view the publication, see

http://www.michigan.gov/documents/corrections/The_Michigan_Prisoner_Reentry_Initiative_A_Success_Story_334863_7.pdf

⁴⁶ Memorandum by Joe Summers, "Governor Snyder and MDOC Dismantle Michigan Prisoner ReEntry Initiative," Washtenaw County Prisoner ReEntry Program; Lester Graham, "Sydney Administration to Cut Program That Has Saved Hundreds of Millions in Prison Costs." *Investigative*. (Ann Arbor/Detroit, Michigan: Michigan Radio, September 9, 2013). <http://michiganradio.org/post/snyder-administration-cut-program-has-saved-hundreds-millions-prison-costs>

⁴⁷ Memorandum by Erik Jonasson, "Drug Treatment Courts and Swift and Sure Sanctions Program," Michigan House Fiscal Agency, September 18, 2012; Angela Hawken, Ph.D. and Mark Kleiman, Ph.D., "Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE. (December 2, 2009), accessed March 2, 2014, <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.

⁴⁸ CSG Justice Center focus group with the Michigan State Court Administrative Office staff, March 20, 2014.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.* For a complete list of SSSPP programs, see <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Pages/Swift-and-Sure-Sanctions-Probation-Program.aspx>

FINDING 4

High recidivism rates generate unnecessary costs.

Rearrest rates for parolees have declined as supervision practices have improved and investments in reentry programs have increased.⁵¹

- In 2005, MDOC implemented the Michigan Prisoner Reentry Initiative (MPRI), adopting evidence-based practices and collaborating with program service providers to assist parolees as they transition back to their communities (see “Prisoner Reentry”).
- MDOC implemented strategies to assess parolees for their risk of reoffending near the time of release, to use this information to guide supervision plans, and to train field agents in best practices for supervising parolees based on their specific criminogenic risks and needs.⁵²
- Between 2005 and 2012, the annual budget for reentry services for parolees increased from \$33 million to \$96 million. MDOC has adopted the application of evidence-based principles by targeting the most intensive supervision for parolees with the highest risk of reoffending.⁵³
- For parolees released in 2011, the proportion who were rearrested within one year is 20 percent lower than the one year rearrest rate for parolees released in 2008.⁵⁴

The state has not experienced similar reductions in recidivism among its larger probation population.

- There are 49,176 felony probationers in Michigan, almost three times as many as the state’s 18,218 parolees.⁵⁵
- Unlike the case with parolees, probationer rearrest rates in 2011 have not changed since 2008. In 2011, parolees and probationers were rearrested at almost the same rate within one year of their release, 23 percent and 24 percent respectively.⁵⁶

- While the rates are similar, the much larger probation population in Michigan means probationer recidivism has a greater impact on crime and arrests. Comparing people who began serving on probation and parole in 2011, the number of probationer rearrests within one year for felony crimes was more than double the number for parolees, across all offense types, including violent crime.⁵⁷
- If probation rearrest rates were to decline by 20 percent, as they did for parole, there would have been approximately 1,500 fewer arrests statewide between 2008 and 2011.⁵⁸

The guidelines do not provide direction about probation revocations.

- The Sentencing Commission intended to add definitions related to probation violations into the sentencing guidelines, but was unable to do so before it dissolved in 1998.⁵⁹
- When someone violates the conditions of his or her supervision, the use and length of confinement as a response depends on where the person’s case originally fell in the sentencing grid, and not the nature of the violation itself.
- Prosecutors express dismay over what they perceive to be arbitrary decisions as to how many and what type of violations result in probation revocation hearings.⁶⁰
- Probation agents acknowledge differences in violation responses, but they express frustration at trying to follow directions from individual judges while still adhering to MDOC policies dictating violation responses.⁶¹
- For many people placed on probation, the amount of time they can actually serve for a revocation can be limited. For example if the time they served in jail prior to conviction equals the amount allowed in the underlying sentence, the judge cannot return that person to jail as a sanction for violating the terms of supervision.

⁵¹ Though arrest and reported crime rates may be insufficient to explain the overall prevalence of crime and incidence of victimization, they are currently the only and most comprehensive methods in Michigan by which to measure public safety, particularly in regards to probation and parole recidivism rates.

⁵² CSG Justice Center focus group with MDOC personnel on July 22, 2013.

⁵³ CSG Justice Center analysis of MDOC FY2004-2014 Budget and Expenditure Information; Thomas H. McTavish, C.P.A., *Performance Audit of the Michigan Prison Reentry Initiative*. (Lansing: MDOC, February 2012).

⁵⁴ CSG Justice Center analysis of MDOC CY2008-2012 prison release data and Michigan State Police CY1951-2013 criminal history records; The 20 percent reduction was the result of a 6-point drop in the one-year rearrest rates for parolees between 2008 and 2011.

⁵⁵ MDOC *Data Fact Sheet*, December 31, 2012.

⁵⁶ CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data, CY2008-2012 prison release data and Michigan State Police CY1951-2013 criminal history records.

⁵⁷ *Ibid.*

⁵⁸ CSG Justice Center analysis of MDOC CY2008-CY2012 felony sentencing data.

⁵⁹ Paul Maloney, Hilda Gage, Mark Murray, and Carlo Ginotti. *Report of the Michigan Sentencing Guidelines Commissions*; Anne Yantus, “Sentence Creep: Increasing Penalties in Michigan and the Need for Sentencing Reform,” 47 *University of Michigan J L Reform* (2014), 645-696.

⁶⁰ CSG Justice Center focus group with Prosecuting Attorneys Association of Michigan, January 23, 2014.

⁶¹ CSG Justice Center focus group with Michigan probation agents, September 10, 2013.

- Variations in probation revocations among people with similar risk scores also indicate inconsistent violation response practices. Among the 10 most populous counties, the 2012 revocation rate for low-risk probationers ranged from 2 percent to 22 percent. Revocation rates for medium- and high-risk probationers also varied, ranging from 6 to 41 percent for medium-risk probationers, and 7 to 61 percent for high-risk probationers.⁶²

Probationer revocations create significant costs for state and local governments.

- Between 2008 and 2013, the number of probationers revoked to prison has trended upward while revocations to prison for parolees have trended downward.⁶³ [See Figure 8]
- The state spends almost \$250 million annually to confine revoked probationers for an average of 25 to 37 months in prison, and counties spend another \$57 million annually to confine revoked probationers for an average of 7 months in jail.⁶⁴ [See Figure 9]

FIGURE 8: PAROLE AND PROBATION VIOLATORS RETURNED TO PRISON, 2008-2013

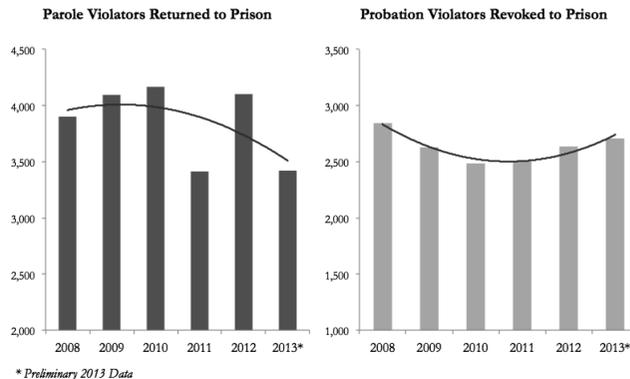
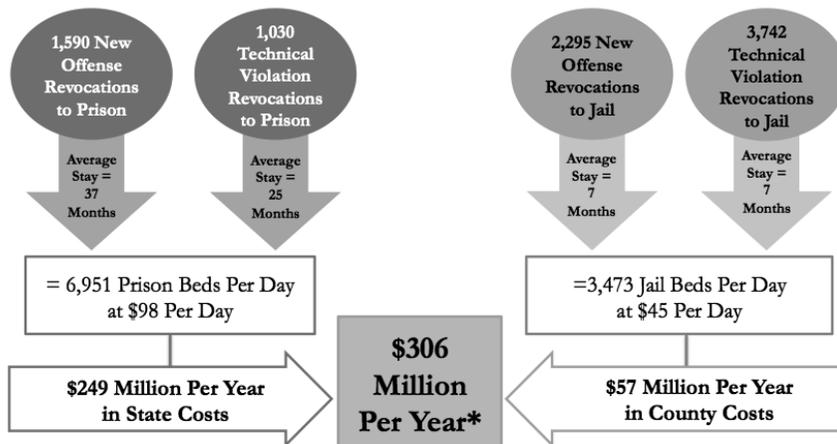


FIGURE 9: ASSOCIATED COSTS FOR PROBATION REVOCATIONS, 2008-2012



* Estimated Average Annual Cost Based on 2008-2012 Trends

⁶² CSG Justice Center analysis of MDOC CY2008-2012 prison terminations and CY2007-2013 COMPAS risk/needs data.

⁶³ 2008-2012 MDOC Intake profiles; 2006-2011 MDOC Statistical Reports; MDOC Data Fact Sheet, January 2014.

⁶⁴ CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing, CY2008-CY2012 prison admission and CY2008-CY2012 prison release data; Bob Schneider Corrections Background Briefing; These figures are meant to reflect current MDOC budget costs, and not necessarily potential savings.

POLICY OPTION 4

Hold people accountable and increase public safety for less cost.

Incorporate swift and certain principles in community supervision practices and set clear parameters around length of confinement as a response to parole and probation revocation.

- Strengthen responses to probation supervision violations by granting probation agents the authority and resources to supervise all felony probationers under the principles of swift and certain violation responses.
- Hold probationers and parolees who violate the terms of their supervision more accountable by establishing sanction periods at the time of their original sentencing.

Establishing and implementing swift and certain violation responses will improve accountability, reduce costs and increase public safety.

FINDING 5

Funds to reduce recidivism are not targeted to maximize the effectiveness of programs and services.

Although there are three times as many people on probation as there are on parole in Michigan, the state spends far less money on recidivism reduction programs targeting probationers as it does for parolees.

- In 2013, state funding for programs and services for felony probationers was \$28 million, distributed through the Office of Community Corrections (OCC), while programs and services for parolees received almost \$62 million in state funding.⁶⁵
- MDOC spent \$80 million on prison-based programs in 2013, with the goal of preparing people for successful reentry. Combined with the funding for parolee reentry services, MDOC devotes more than \$147 million per year to reduce recidivism among people on parole.⁶⁶
- Combining pre-release programming with services provided post-release, MDOC invests \$2,328 per parolee each year, whereas the state spends \$596 per probationer.⁶⁷

Services and programs for probationers do not sufficiently focus on the goal of reducing recidivism.

- The Community Corrections Act requires that programs receiving state community corrections funding lower the prison commitment rate, but does not similarly require these programs to have an impact on recidivism (see “Community Corrections” box).⁶⁸
- Although the State Community Corrections Board and OCC staff have explored strategies to encourage local boards to fund evidence-based reentry programs that focus on recidivism reduction, without a statutory requirement, their leverage is limited.
- Michigan’s Swift and Sure Sanctions Probation Program (SSSPP) incorporates evidence-based practices to supervise and respond to violations of probation supervision in a swift and certain manner (see “Swift and Sure Sanctions Probation Program”). The program, however, reaches just a small fraction of the probation population that could benefit, which significantly limits its statewide impact.⁶⁹
- As of March 2014, only 296 of more than 10,000 high-risk probationers were enrolled in SSSPP.⁷⁰

⁶⁵ MDOC Data Fact Sheet, December 31, 2012; Email correspondence between CSG Justice Center and the Fiscal Management Office of MDOC on December 18, 2013; Neither figure includes the cost of probation or parole supervision.

⁶⁶ MDOC Data Fact Sheet, December 31, 2012; Email correspondence between CSG Justice Center and the Fiscal Management Office of MDOC on December 18, 2013; MDOC prison programs with the goal of changing criminal behavior focus on addressing criminal thinking and attitudes, substance abuse, violence prevention, social support, and employment readiness.

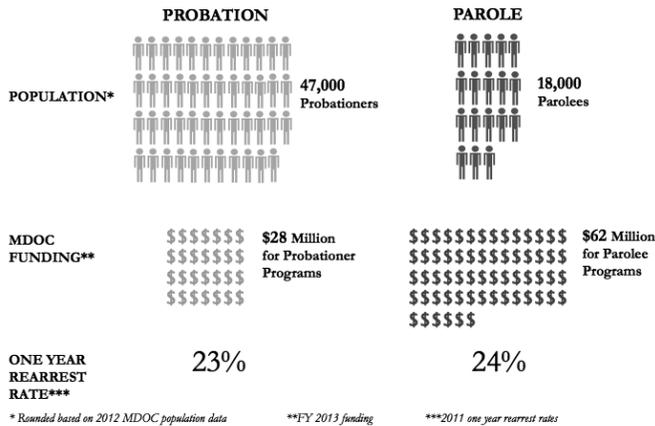
⁶⁷ Email and phone correspondence between CSG Justice Center and the Budget Office of MDOC between December 10-11th, 2013.

⁶⁸ 1988 PA 511, MCL 791.401 *et seq.*

⁶⁹ MCL 771A.1 *et seq.*; Email correspondence between CSG Justice Center and the Michigan State Court Administrative Office on March 20, 2014.

⁷⁰ *Ibid.*

FIGURE 10: POPULATION, FUNDING, AND REARREST RATES FOR FELONY PROBATIONERS AND PAROLEES



Community Corrections

The Michigan Community Corrections Act is known as Public Act (PA) 511. PA 511’s goal was to reduce prison commitment rates by providing state funding for community-based sanctions and services.⁷¹ To achieve this goal, the Office of Community Corrections (OCC) administers state grants for which local governments may apply.

A key feature of community corrections in Michigan is the local control over which programs to fund and which populations to target. Since 2003, the OCC has emphasized that local community corrections advisory boards (CCABs) target people convicted of felonies (specifically those whose guidelines scores place them in straddle cells) and felony probation violators.⁷² The OCC also encourages CCABs to incorporate evidence-based practices and strategies in their planning and funding decisions, including the use of risk assessments to target services based on criminogenic risk and needs. CCABs are encouraged, but not required to focus on reducing recidivism, as well as prison commitment rates.⁷³

Because the stated objective within PA 511 is to reduce prison commitment rates, the OCC and the State Community Corrections Board cannot require that local boards focus on recidivism reduction or evidence-based practices.⁷⁴ While the State Board may set new goals for funding applications, previous attempts to include recidivism reduction in these goals were unsuccessful due to a lack of consensus around a single definition for recidivism.⁷⁵

POLICY OPTION 5

Concentrate funding on those programs most likely to reduce recidivism.

Focus resources and measure performance based on the goals of reduced recidivism and improved public safety.

- Adopt definitions and measures for evaluating the success of corrections and judicial efforts to reduce recidivism, ensuring that rearrest rates are part of the definition.
- Funding that MDOC administers and makes available for probation and parole programs and services should be prioritized to do the following:
 - Reallocate and increase program funding based on the criminogenic needs of people who will most benefit from the programs.
 - Support programs that adopt evidence-based practices and strategies for reducing recidivism.
 - Evaluate community-based programs based on goals and metrics for reducing recidivism.
 - Encourage local innovation, testing new strategies, and increased local capacity to deliver services.

Reallocating existing funds and reinvesting potential savings from other policy options toward recidivism reduction goals will increase public safety.

⁷¹ For more information on the Michigan Office of Community Corrections, see http://www.michigan.gov/corrections/0,4551,7-119-1435_58683_49414-222911--,00.html

⁷² Michigan Department of Corrections *Field Operations Administration, Office of Community Corrections Biannual Report*, (Lansing: Michigan Department of Corrections, March 2014).

⁷³ CSG Justice Center focus group with MDOC Administration on November 12, 2013; MDOC, *Field Operations Administration, Office of Community Corrections Biannual Report*.

⁷⁴ CSG Justice Center focus group with MDOC Administration on November 12, 2013.

⁷⁵ *Ibid.*

Evaluation and Monitoring:

Michigan needs better tools to monitor and assess the effectiveness of the sentencing system.

FINDING 6

Policymakers and practitioners do not have an effective mechanism to track sentencing and corrections outcomes.

Policymakers are not informed about the impacts of the sentencing guidelines, or how changes to the guidelines will affect the criminal justice system in the future.

- Following the dissolution of the Sentencing Commission in 1998, Michigan has not had an entity or mechanism to routinely monitor the guidelines' impact on the larger criminal justice system.
- Most other states with sentencing guidelines maintain sentencing commissions to provide oversight and recommendations to state policymakers.
- The Michigan legislature frequently modifies the guidelines, but no routine, independent analysis is conducted to assess the impact of these changes on public safety, the state budget, or the criminal justice system.

POLICY OPTION 6

Monitor changes to the state's sentencing practices, along with their impact.

Establish a body and standards to independently and collaboratively monitor sentencing and system performances.

- Establish a permanent criminal justice policy commission, sentencing commission, or a comparable presence in Michigan to monitor the impacts of modifications to the guidelines system, and provide policymakers with guidance related to sentencing and the effective implementation of criminal justice policies.
- Ensure appropriate stakeholder representation by including the following perspectives: victims, law enforcement, prosecution, defense, judges, counties, community corrections, probation, jail, corrections, reentry, and possibly academic experts. Work with the legislature to analyze and make recommendations on sentencing and other relevant criminal justice policies.

Consistent monitoring of sentencing changes and impacts will inform continuous improvements and smart policies.

FINDING 7

Data currently collected do not sufficiently measure victimization or inform the extent to which restitution is collected.

Arrest and reported crime rates have decreased statewide in recent years, but crime persists in particular communities.

- Between 2008 and 2011, arrests for violent crime declined statewide by 11 percent, along with decreased arrest rates for property crimes (9 percent), simple assault (2 percent), weapons (18 percent) and operating under the influence (23 percent).⁷⁶
- Although arrest rates have declined statewide, crime continues to plague specific parts of the state. In the four cities of Detroit, Flint, Pontiac, and Saginaw, the 2012 violent crime rate was between three and almost five times higher than the national average.⁷⁷ [See Figure 11]

⁷⁶ Michigan Supreme Court *Annual Statistical Supplemental Reports on Statewide Filing and Disposition Trends*, (Lansing: Michigan Supreme Court,; *Michigan Incident Crime Reporting, 2008-11*.

⁷⁷ Michigan State Police Incident Based Crime online data tool; Federal Bureau of Investigation's Uniform Crime Report online data tool.

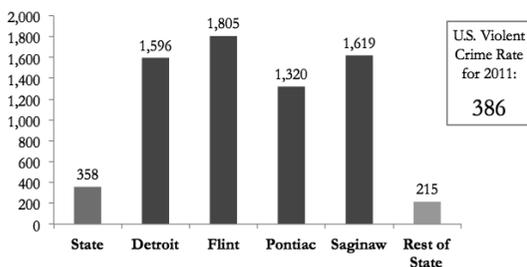
Law enforcement resources have diminished and stakeholders are concerned that rates of unreported and unsolved crimes remain high.

- In 2011, 43 percent of reported crimes resulted in arrests across the state. These rates were far lower, however, in the high crime cities of Saginaw (25 percent), Pontiac (25 percent), Detroit (20 percent), and Flint (10 percent).⁷⁸
- At the same time, Michigan has experienced a decrease in law enforcement resources, with a loss of 4,000 sworn officers between 2001 and 2013 statewide. In some high-crime areas, such as Flint, where the police department lost nearly half of its sworn officers from 2003 to 2012, resources diminished as crime increased.⁷⁹
- Given these trends, victim advocates and law enforcement leadership question whether arrest and reported crime statistics fully capture the rate of crime and victimization, especially with a steady demand for victims' services across the state and fewer law enforcement officers available to fully investigate and prevent crime.⁸⁰

Although payment of restitution is a top priority for crime victims, little is known about how frequently or successfully restitution is collected.

- The Crime Victims Rights Act (CVRA) of 1985 established that restitution collection is the responsibility of the court that orders the restitution. No single agency, however, is charged with tracking and enforcing restitution orders.⁸¹
- In recent years staff from the State Court Administrative office (SCAO) and the Attorney General's office have collaborated to improve how restitution collection data are tracked. Still, because the data are generated by county courts, and the commitment and ability of each court to collect and report these data varies, it is unknown how many victims are receiving the restitution payments they deserve.⁸²

FIGURE 11: REPORTED VIOLENT CRIME RATES IN MICHIGAN PER 100,000 PEOPLE, 2011



POLICY OPTION 7

Survey levels of statewide victimization and track restitution collection.

Collect information about rates of victimization beyond traditional crime reporting data.

- Construct and administer a statewide victimization survey to better estimate the total level of crime (including crimes not reported to the police) and track this information over time.

Establish restitution collection as a performance measure for the courts and MDOC.

- Adopt restitution collection as a court and MDOC performance measure with regard to successfully collecting payments among probationers, prison inmates, and parolees.

More comprehensive information on victimization and restitution will better inform policy and funding decisions to assist crime victims.

⁷⁸ Michigan State Police Incident Based Crime online data tool.

⁷⁹ John Barnes. "Fewer cops, less crime: MLive investigation finds Michigan safer even as police numbers decline," *MLive*, August 28, 2013, accessed April 28, 2014, http://www.mlive.com/news/index.ssf/2013/08/less_cops_less_crime_mlive_inv.html; *Michigan Commission on Law Enforcement Standards: Law Enforcement Population Trends*, Michigan Commission on Law Enforcement Standards, March 2013, accessed April 30, 2014, http://www.michigan.gov/documents/mcoles/LEOPop_03-31-14_452292_7.pdf; CSG Justice Center focus group with Flint community members and law enforcement leaders on September 16, 2013.

⁸⁰ CSG Justice Center focus group with Michigan Domestic and Sexual Violence Prevention and Treatment Board victim service providers on November 8, 2014; CSG Justice Center meetings with the Michigan Sheriff's Association in May and August 2013.

⁸¹ William Van Regenmorter Crime Victim's Rights act, 1985 PA 87(MCL 780.751 *et seq.*); Const 1988, art 1, § 24.

⁸² CSG Justice Center interview with State Court Administrative Office on January 27, 2013; CSG Justice Center interview with the Michigan Attorney General's Office staff on October 18, 2013.

To learn more about the justice reinvestment strategy in Michigan and other states, please visit: csgjusticecenter.org/jr



The Council of State Governments Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. It provides practical, nonpartisan advice and evidence-based, consensus-driven strategies to increase public safety and strengthen communities. To learn more about the Council of State Governments Justice Center, please visit csgjusticecenter.org.

**Bureau of Justice Assistance
U.S. Department of Justice**

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HOUSE BILL No. 5928

November 6, 2014, Introduced by Rep. Haveman and referred to the Committee on Appropriations.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 1a, 1/, 34, and 35 of chapter IX (MCL 769.1a, 769.1/, 769.34, and 769.35), section 1a as amended by 2009 PA 27, section 1/ as added by 2005 PA 325, section 34 as amended by 2002 PA 666, and section 35 as added by 1998 PA 317, and by adding sections 32a and 33a to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER IX

Sec. 1a. (1) As used in this section:

(a) "Crime victim services commission" means that term as described in section 2 of 1976 PA 223, MCL 18.352.

(b) "Victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of

1 the commission of a felony, misdemeanor, or ordinance violation.
2 For purposes of subsections (2), (3), (6), (8), (9), and (13),
3 victim includes a sole proprietorship, partnership, corporation,
4 association, governmental entity, or any other legal entity that
5 suffers direct physical or financial harm as a result of a felony,
6 misdemeanor, or ordinance violation.

7 (2) Except as provided in subsection (8), when sentencing a
8 defendant convicted of a felony, misdemeanor, or ordinance
9 violation, the court shall order, in addition to or in lieu of any
10 other penalty authorized by law or in addition to any other penalty
11 required by law, that the defendant make full restitution to any
12 victim of the defendant's course of conduct that gives rise to the
13 conviction or to the victim's estate.

14 (3) If a felony, misdemeanor, or ordinance violation results
15 in damage to or loss or destruction of property of a victim of the
16 felony, misdemeanor, or ordinance violation or results in the
17 seizure or impoundment of property of a victim of the felony,
18 misdemeanor, or ordinance violation, the order of restitution may
19 require that the defendant do 1 or more of the following, as
20 applicable:

21 (a) Return the property to the owner of the property or to a
22 person designated by the owner.

23 (b) If return of the property under subdivision (a) is
24 impossible, impractical, or inadequate, pay an amount equal to the
25 greater of subparagraph (i) or (ii), less the value, determined as of
26 the date the property is returned, of that property or any part of
27 the property that is returned:

1 (i) The fair market value of the property on the date of the
2 damage, loss, or destruction. However, if the fair market value of
3 the property cannot be determined or is impractical to ascertain,
4 then the replacement value of the property shall be utilized in
5 lieu of the fair market value.

6 (ii) The fair market value of the property on the date of
7 sentencing. However, if the fair market value of the property
8 cannot be determined or is impractical to ascertain, then the
9 replacement value of the property shall be utilized in lieu of the
10 fair market value.

11 (c) Pay the cost of the seizure or impoundment, or both.

12 (4) If a felony, misdemeanor, or ordinance violation results
13 in physical or psychological injury to a victim, the order of
14 restitution may require that the defendant do 1 or more of the
15 following, as applicable:

16 (a) Pay an amount equal to the cost of actual medical and
17 related professional services and devices relating to physical and
18 psychological care.

19 (b) Pay an amount equal to the cost of actual physical and
20 occupational therapy and rehabilitation.

21 (c) Reimburse the victim or the victim's estate for after-tax
22 income loss suffered by the victim as a result of the felony,
23 misdemeanor, or ordinance violation.

24 (d) Pay an amount equal to the cost of psychological and
25 medical treatment for members of the victim's family that has been
26 incurred as a result of the felony, misdemeanor, or ordinance
27 violation.

1 (e) Pay an amount equal to the cost of actual homemaking and
2 child care expenses incurred as a result of the felony,
3 misdemeanor, or ordinance violation.

4 (5) If a felony, misdemeanor, or ordinance violation resulting
5 in bodily injury also results in the death of a victim, the order
6 of restitution may require that the defendant pay an amount equal
7 to the cost of actual funeral and related services.

8 (6) If the victim or the victim's estate consents, the order
9 of restitution may require that the defendant make restitution in
10 services in lieu of money.

11 (7) If the victim is deceased, the court shall order that the
12 restitution be made to the victim's estate.

13 (8) The court shall order restitution to the crime victim
14 services commission or to any individuals, partnerships,
15 corporations, associations, governmental entities, or other legal
16 entities that have compensated the victim or the victim's estate
17 for a loss incurred by the victim to the extent of the compensation
18 paid for that loss. The court shall also order restitution for the
19 costs of services provided to persons or entities that have
20 provided services to the victim as a result of the felony,
21 misdemeanor, or ordinance violation. Services that are subject to
22 restitution under this subsection include, but are not limited to,
23 shelter, food, clothing, and transportation. However, an order of
24 restitution shall require that all restitution to a victim or a
25 victim's estate under the order be made before any restitution to
26 any other person or entity under that order is made. The court
27 shall not order restitution to be paid to a victim or victim's

1 estate if the victim or victim's estate has received or is to
2 receive compensation for that loss, and the court shall state on
3 the record with specificity the reasons for its action. If an
4 entity entitled to restitution under this subsection for
5 compensating the victim or the victim's estate cannot or refuses to
6 be reimbursed for that compensation, the restitution paid for that
7 entity shall be deposited by the state treasurer in the crime
8 victim's rights fund created under section 4 of 1989 PA 196, MCL
9 780.904, or its successor fund.

10 (9) Any amount paid to a victim or a victim's estate under an
11 order of restitution shall be set off against any amount later
12 recovered as compensatory damages by the victim or the victim's
13 estate in any federal or state civil proceeding and shall reduce
14 the amount payable to a victim or a victim's estate by an award
15 from the crime victim services commission made after an order of
16 restitution under this section.

17 (10) If not otherwise provided by the court under this
18 subsection, restitution shall be made immediately. However, the
19 court may require that the defendant make restitution under this
20 section within a specified period or in specified installments.

21 (11) If the defendant is placed on probation or paroled or the
22 court imposes a conditional sentence under section 3 of this
23 chapter, any restitution ordered under this section shall be a
24 condition of that probation, parole, or sentence. The court may
25 revoke probation or impose imprisonment under the conditional
26 sentence and the parole board may revoke parole if the defendant
27 fails to comply with the order and if the defendant has not made a

1 good-faith effort to comply with the order. In determining whether
2 to revoke probation or parole or impose imprisonment, the court or
3 parole board shall consider the defendant's employment status,
4 earning ability, and financial resources, the willfulness of the
5 defendant's failure to pay, and any other special circumstances
6 that may have a bearing on the defendant's ability to pay.

7 (12) A defendant who is required to pay restitution and who is
8 not in willful default of the payment of the restitution may at any
9 time petition the sentencing judge or his or her successor to
10 modify the method of payment. If the court determines that payment
11 under the order will impose a manifest hardship on the defendant or
12 his or her immediate family, the court may modify the method of
13 payment.

14 (13) An order of restitution entered under this section
15 remains effective until it is satisfied in full. An order of
16 restitution is a judgment and lien against all property of the
17 defendant for the amount specified in the order of restitution. The
18 lien may be recorded as provided by law. An order of restitution
19 may be enforced by the prosecuting attorney, a victim, a victim's
20 estate, or any other person or entity named in the order to receive
21 the restitution in the same manner as a judgment in a civil action
22 or a lien.

23 (14) Notwithstanding any other provision of this section, a
24 defendant shall not be imprisoned, jailed, or incarcerated for a
25 violation of probation or parole or otherwise for failure to pay
26 restitution as ordered under this section unless the court or
27 parole board determines that the defendant has the resources to pay

1 the ordered restitution and has not made a good-faith effort to do
2 so.

3 (15) In each case in which payment of restitution is ordered
4 as a condition of probation, the probation officer assigned to the
5 case shall review the case not less than twice yearly to ensure
6 that restitution is being paid as ordered. The final review shall
7 be conducted not less than 60 days before the probationary period
8 expires. If the probation officer determines that restitution is
9 not being paid as ordered, the probation officer shall file a
10 written report of the violation with the court on a form prescribed
11 by the state court administrative office. The report shall include
12 a statement of the amount of the arrearage and any reasons for the
13 arrearage known by the probation officer. The probation officer
14 shall immediately provide a copy of the report to the prosecuting
15 attorney. If a motion is filed or other proceedings are initiated
16 to enforce payment of restitution and the court determines that
17 restitution is not being paid or has not been paid as ordered by
18 the court, the court shall promptly take action necessary to compel
19 compliance.

20 (16) If a defendant who is ordered to pay restitution under
21 this section is remanded to the jurisdiction of the department of
22 corrections, the court shall provide a copy of the order of
23 restitution to the department of corrections when the defendant is
24 ordered remanded to the department's jurisdiction.

25 **(17) IT IS THE INTENT OF THE LEGISLATURE THAT THE MICHIGAN**
26 **SUPREME COURT IMPLEMENT MEASUREMENT OF RESTITUTION ASSESSMENT AND**
27 **COLLECTION AS A COURT PERFORMANCE MEASURE FOR CIRCUIT COURTS AND**

1 **DISTRICT COURTS.**

2 Sec. 1l. If a prisoner under the jurisdiction of the department
 3 of corrections has been ordered to pay any sum of money as
 4 described in section 1k and the department of corrections receives
 5 an order from the court on a form prescribed by the state court
 6 administrative office, the department of corrections shall deduct
 7 50% of the funds received by the prisoner in a month over \$50.00
 8 and promptly forward a payment to the court as provided in the
 9 order when the amount exceeds \$100.00, or the entire amount if the
 10 prisoner is paroled, is transferred to community programs, or is
 11 discharged on the maximum sentence. The department of corrections
 12 shall give an order of restitution under section 20h of the
 13 corrections code of 1953, 1953 PA 232, MCL 791.220h, or the **WILLIAM**
 14 **VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.751
 15 to 780.834, priority over an order received under this section. **THE**
 16 **DEPARTMENT OF CORRECTIONS SHALL TRACK AND REPORT PRISONER**
 17 **RESTITUTION COLLECTION AS A PERFORMANCE MEASURE.**

18 **SEC. 32A. (1) A CRIMINAL JUSTICE POLICY COMMISSION IS CREATED**
 19 **IN THE LEGISLATIVE COUNCIL. BEFORE MARCH 1, 2015, THE GOVERNOR**
 20 **SHALL APPOINT THE COMMISSION MEMBERS DESCRIBED IN SUBDIVISIONS (D)**
 21 **TO (M). THE COMMISSION CONSISTS OF THE ALL OF THE FOLLOWING**
 22 **MEMBERS:**

23 **(A) TWO INDIVIDUALS WHO ARE MEMBERS OF THE SENATE, CONSISTING**
 24 **OF THE CHAIRPERSON AND THE MINORITY VICE-CHAIRPERSON OF THE SENATE**
 25 **JUDICIARY COMMITTEE OR THE CHAIRPERSON'S OR MINORITY VICE-**
 26 **CHAIRPERSON'S DESIGNEE, WHO MUST BE MEMBERS OF THAT COMMITTEE.**

27 **(B) TWO INDIVIDUALS WHO ARE MEMBERS OF THE HOUSE OF**

1 REPRESENTATIVES, CONSISTING OF THE CHAIRPERSON AND THE MINORITY
2 VICE-CHAIRPERSON OF THE HOUSE OF REPRESENTATIVES JUDICIARY
3 COMMITTEE OR THE CHAIRPERSON'S OR MINORITY VICE-CHAIRPERSON'S
4 DESIGNEE, WHO MUST BE MEMBERS OF THAT COMMITTEE.

5 (C) THE ATTORNEY GENERAL, OR HIS OR HER DESIGNEE, REPRESENTING
6 CRIME VICTIMS.

7 (D) ONE INDIVIDUAL WHO IS A CIRCUIT COURT JUDGE, APPOINTED
8 FROM A LIST OF 3 NAMES SUBMITTED BY THE MICHIGAN JUDGES
9 ASSOCIATION.

10 (E) ONE INDIVIDUAL WHO IS A DISTRICT COURT JUDGE, APPOINTED
11 FROM A LIST OF 3 NAMES SUBMITTED BY THE MICHIGAN DISTRICT JUDGES
12 ASSOCIATION.

13 (F) ONE INDIVIDUAL WHO REPRESENTS THE PROSECUTING ATTORNEYS OF
14 THIS STATE, APPOINTED FROM A LIST OF 3 NAMES SUBMITTED BY THE
15 PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN.

16 (G) ONE INDIVIDUAL WHO REPRESENTS CRIMINAL DEFENSE ATTORNEYS,
17 APPOINTED FROM A LIST OF 3 NAMES SUBMITTED BY THE CRIMINAL DEFENSE
18 ATTORNEYS OF MICHIGAN.

19 (H) ONE INDIVIDUAL APPOINTED FROM A LIST OF 3 NAMES SUBMITTED
20 BY THE MICHIGAN SHERIFF'S ASSOCIATION.

21 (I) ONE INDIVIDUAL APPOINTED FROM A LIST OF 3 NAMES SUBMITTED
22 BY THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF CORRECTIONS.

23 (J) ONE INDIVIDUAL WHO REPRESENTS ADVOCATES OF ALTERNATIVES TO
24 INCARCERATION.

25 (K) ONE INDIVIDUAL WHO IS A MENTAL HEALTH EXPERT.

26 (L) ONE INDIVIDUAL APPOINTED FROM A LIST OF 3 NAMES SUBMITTED
27 BY THE MICHIGAN ASSOCIATION OF COUNTIES.

1 (M) ONE INDIVIDUAL WHO REPRESENTS COMMUNITY CORRECTIONS
2 AGENCIES.

3 (2) THE GOVERNOR SHALL DESIGNATE 1 MEMBER OF THE CRIMINAL
4 JUSTICE POLICY COMMISSION AS CHAIRPERSON.

5 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
6 COMMISSION MEMBERS SHALL BE APPOINTED FOR TERMS OF 4 YEARS. OF THE
7 MEMBERS FIRST APPOINTED UNDER SUBSECTION (1) (C) TO (M), 4 MEMBERS
8 SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL SERVE FOR 3 YEARS, AND 3
9 MEMBERS SHALL SERVE FOR 4 YEARS. THE MEMBERS OF THE COMMISSION
10 APPOINTED UNDER SUBSECTION (1) (A) AND (B) SHALL BE APPOINTED FOR
11 TERMS OF 2 YEARS.

12 (4) A VACANCY ON THE COMMISSION CAUSED BY THE EXPIRATION OF A
13 TERM OR A RESIGNATION OR DEATH SHALL BE FILLED IN THE SAME MANNER
14 AS THE ORIGINAL APPOINTMENT. A MEMBER APPOINTED TO FILL A VACANCY
15 CAUSED BY A RESIGNATION OR DEATH SHALL BE APPOINTED FOR THE BALANCE
16 OF THE UNEXPIRED TERM.

17 (5) A COMMISSION MEMBER SHALL NOT RECEIVE A SALARY FOR BEING A
18 COMMISSION MEMBER BUT SHALL BE REIMBURSED FOR HIS OR HER
19 REASONABLE, ACTUAL, AND NECESSARY EXPENSES INCURRED IN THE
20 PERFORMANCE OF HIS OR HER DUTIES AS A COMMISSION MEMBER.

21 (6) THE COMMISSION MAY ESTABLISH SUBCOMMITTEES THAT MAY
22 CONSIST OF INDIVIDUALS WHO ARE NOT MEMBERS OF THE COMMISSION,
23 INCLUDING, BUT NOT LIMITED TO, EXPERTS IN MATTERS OF INTEREST TO
24 THE COMMISSION.

25 (7) THE COMMISSION'S BUSINESS SHALL BE CONDUCTED AT PUBLIC
26 MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA
27 267, MCL 15.261 TO 15.275.

1 (8) A QUORUM CONSISTS OF A MAJORITY OF THE MEMBERS OF THE
2 SENTENCING COMMISSION. ALL COMMISSION BUSINESS SHALL BE CONDUCTED
3 BY NOT LESS THAN A QUORUM.

4 (9) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR
5 RETAINED BY THE COMMISSION IN THE PERFORMANCE OF AN OFFICIAL
6 FUNCTION SHALL BE MADE AVAILABLE TO THE PUBLIC IN COMPLIANCE WITH
7 THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

8 (10) THE LEGISLATIVE COUNCIL SHALL PROVIDE THE COMMISSION WITH
9 SUITABLE OFFICE SPACE, STAFF, AND NECESSARY EQUIPMENT.

10 SEC. 33A. (1) THE CRIMINAL JUSTICE POLICY COMMISSION SHALL DO
11 ALL OF THE FOLLOWING:

12 (A) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
13 REGARDING STATE AND LOCAL SENTENCING AND RELEASE POLICIES AND
14 PRACTICES FOR FELONIES AND THE USE OF PRISONS AND JAILS.

15 (B) COLLECT AND ANALYZE INFORMATION CONCERNING HOW MISDEMEANOR
16 SENTENCES AND THE DETENTION OF DEFENDANTS PENDING TRIAL AFFECT
17 LOCAL JAILS.

18 (C) CONDUCT ONGOING RESEARCH REGARDING THE EFFECTIVENESS OF
19 THE SENTENCING GUIDELINES IN ACHIEVING THE PURPOSES SET FORTH IN
20 SUBDIVISION (F).

21 (D) IN COOPERATION WITH THE DEPARTMENT OF CORRECTIONS,
22 COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS REGARDING
23 THE POPULATIONS AND CAPACITIES OF STATE AND LOCAL CORRECTIONAL
24 FACILITIES, THE IMPACT OF THE SENTENCING GUIDELINES AND OTHER LAWS,
25 RULES, AND POLICIES ON THOSE POPULATIONS AND CAPACITIES, AND THE
26 EFFECTIVENESS OF EFFORTS TO REDUCE RECIDIVISM. MEASUREMENT OF
27 RECIDIVISM SHALL INCLUDE, AS APPLICABLE, ANALYSIS OF ALL OF THE

1 FOLLOWING:

2 (i) REARREST RATES, RESENTENCE RATES, AND RETURN TO PRISON
3 RATES.

4 (ii) ONE-, 2-, AND 3-YEAR INTERVALS AFTER EXITING PRISON OR
5 JAIL AND AFTER ENTERING PROBATION.

6 (iii) THE STATEWIDE LEVEL, AND BY LOCALITY AND DISCRETE PROGRAM,
7 TO THE EXTENT PRACTICABLE.

8 (E) IN COOPERATION WITH THE STATE COURT ADMINISTRATOR,
9 COLLECT, ANALYZE, AND COMPILE DATA REGARDING THE EFFECT OF
10 SENTENCING GUIDELINES ON THE CASELOAD, DOCKET FLOW, AND CASE
11 BACKLOG OF THE TRIAL AND APPELLATE COURTS OF THIS STATE.

12 (F) DEVELOP MODIFICATIONS TO THE SENTENCING GUIDELINES. ANY
13 MODIFICATIONS TO THE SENTENCING GUIDELINES SHALL ACCOMPLISH ALL OF
14 THE FOLLOWING:

15 (i) PROVIDE FOR THE PROTECTION OF THE PUBLIC.

16 (ii) CONSIDER OFFENSES INVOLVING VIOLENCE AGAINST A PERSON OR
17 SERIOUS AND SUBSTANTIAL PECUNIARY LOSS AS MORE SEVERE THAN OTHER
18 OFFENSES.

19 (iii) BE PROPORTIONATE TO THE SERIOUSNESS OF THE OFFENSE AND THE
20 OFFENDER'S PRIOR CRIMINAL RECORD.

21 (iv) REDUCE SENTENCING DISPARITIES BASED ON FACTORS OTHER THAN
22 OFFENSE CHARACTERISTICS AND OFFENDER CHARACTERISTICS AND ENSURE
23 THAT OFFENDERS WITH SIMILAR OFFENSE AND OFFENDER CHARACTERISTICS
24 RECEIVE SUBSTANTIALLY SIMILAR SENTENCES.

25 (v) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF
26 IMPRISONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH
27 INTERMEDIATE SANCTIONS ARE PROPER.

1 (vi) ESTABLISH SENTENCE RANGES FOR IMPRISONMENT THAT ARE WITHIN
2 THE MINIMUM AND MAXIMUM SENTENCES ALLOWED BY LAW FOR THE OFFENSES
3 TO WHICH THE RANGES APPLY.

4 (vii) MAINTAIN SEPARATE SENTENCE RANGES FOR CONVICTIONS UNDER
5 THE HABITUAL OFFENDER PROVISIONS IN SECTIONS 10, 11, 12, AND 13 OF
6 THIS CHAPTER, WHICH MAY INCLUDE AS AN AGGRAVATING FACTOR, AMONG
7 OTHER RELEVANT CONSIDERATIONS, THAT THE ACCUSED HAS ENGAGED IN A
8 PATTERN OF PROVEN OR ADMITTED CRIMINAL BEHAVIOR.

9 (viii) ESTABLISH SENTENCE RANGES THAT THE COMMISSION CONSIDERS
10 APPROPRIATE.

11 (ix) CONSIDER THE NECESSITY FOR LOCAL CORRECTIONS SYSTEM
12 CAPACITY AND MAINTAIN FUNDING TO ENSURE THAT CAPACITY.

13 (g) CONSIDER THE SUITABILITY AND IMPACT OF OFFENSE VARIABLE
14 SCORING WITH REGARD TO PHYSICAL AND PSYCHOLOGICAL INJURY TO VICTIMS
15 AND VICTIMS' FAMILIES.

16 (2) IN DEVELOPING MODIFICATIONS TO THE SENTENCING GUIDELINES,
17 THE COMMISSION SHALL SUBMIT TO THE LEGISLATURE A PRISON AND JAIL
18 IMPACT REPORT RELATING TO ANY MODIFICATIONS TO THE SENTENCING
19 GUIDELINES. THE REPORT SHALL INCLUDE THE PROJECTED IMPACT ON TOTAL
20 CAPACITY OF STATE AND LOCAL CORRECTIONAL FACILITIES.

21 (3) MODIFICATIONS TO SENTENCING GUIDELINES SHALL INCLUDE
22 RECOMMENDED INTERMEDIATE SANCTIONS FOR EACH CASE IN WHICH THE UPPER
23 LIMIT OF THE RECOMMENDED MINIMUM SENTENCE RANGE IS 18 MONTHS OR
24 LESS.

25 (4) THE COMMISSION MAY RECOMMEND MODIFICATIONS TO ANY LAW,
26 ADMINISTRATIVE RULE, OR POLICY THAT AFFECTS SENTENCING OR THE USE
27 AND LENGTH OF INCARCERATION. THE RECOMMENDATIONS SHALL REFLECT ALL

1 OF THE FOLLOWING POLICIES:

2 (A) TO RENDER SENTENCES IN ALL CASES WITHIN A RANGE OF
3 SEVERITY PROPORTIONATE TO THE GRAVITY OF OFFENSES, THE HARMS DONE
4 TO CRIME VICTIMS, AND THE BLAMEWORTHINESS OF OFFENDERS.

5 (B) WHEN REASONABLY FEASIBLE, TO ACHIEVE OFFENDER
6 REHABILITATION, GENERAL DETERRENCE, INCAPACITATION OF DANGEROUS
7 OFFENDERS, RESTORATION OF CRIME VICTIMS AND COMMUNITIES, AND
8 REINTEGRATION OF OFFENDERS INTO THE LAW-ABIDING COMMUNITY.

9 (C) TO RENDER SENTENCES NO MORE SEVERE THAN NECESSARY TO
10 ACHIEVE THE APPLICABLE PURPOSES IN SUBDIVISIONS (A) AND (B).

11 (D) TO PRESERVE JUDICIAL DISCRETION TO INDIVIDUALIZE SENTENCES
12 WITHIN A FRAMEWORK OF LAW.

13 (E) TO PRODUCE SENTENCES THAT ARE UNIFORM IN THEIR REASONED
14 PURSUIT OF THE PURPOSES IN SUBSECTION (1).

15 (F) TO ELIMINATE INEQUITIES IN SENTENCING AND LENGTH OF
16 INCARCERATION ACROSS POPULATION GROUPS.

17 (G) TO ENCOURAGE THE USE OF INTERMEDIATE SANCTIONS.

18 (H) TO ENSURE THAT ADEQUATE RESOURCES ARE AVAILABLE FOR
19 CARRYING OUT SENTENCES IMPOSED AND THAT RATIONAL PRIORITIES ARE
20 ESTABLISHED FOR THE USE OF THOSE RESOURCES.

21 (I) TO PROMOTE RESEARCH ON SENTENCING POLICY AND PRACTICES,
22 INCLUDING ASSESSMENTS OF THE EFFECTIVENESS OF CRIMINAL SANCTIONS AS
23 MEASURED AGAINST THEIR PURPOSES.

24 (J) TO INCREASE THE TRANSPARENCY OF THE SENTENCING AND
25 CORRECTIONS SYSTEM, ITS ACCOUNTABILITY TO THE PUBLIC, AND THE
26 LEGITIMACY OF ITS OPERATIONS.

27 (5) THE COMMISSION SHALL SUBMIT ANY RECOMMENDED MODIFICATIONS

1 TO THE SENTENCING GUIDELINES OR TO OTHER LAWS, ADMINISTRATIVE
2 RULES, OR POLICIES TO THE SENATE MAJORITY LEADER, THE SPEAKER OF
3 THE HOUSE OF REPRESENTATIVES, AND THE GOVERNOR.

4 (6) BY DECEMBER 1, 2015, THE COMMISSION SHALL SUBMIT TO THE
5 LEGISLATURE, THE GOVERNOR, AND THE MICHIGAN SUPREME COURT A REPORT
6 ON THE IMPLEMENTATION OF LEGISLATIVE POLICIES ADOPTED IN 2014
7 AFFECTING THE CRIMINAL JUSTICE SYSTEM. THE REPORT SHALL INCLUDE,
8 BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

9 (A) EDUCATION OF PRACTITIONERS ON CHANGES IN LEGISLATIVE
10 POLICY.

11 (B) THE LENGTH OF PROBATION SUPERVISION TERMS IMPOSED.

12 (C) THE NUMBER OF PROBATIONERS SUBJECT TO SWIFT AND SURE
13 SANCTIONS PROBATION.

14 (D) THE NUMBER OF NONCOMPLIANCE, RISK, AND MAJOR RISK
15 SANCTIONS IMPOSED ON THE PROBATION POPULATION.

16 (E) NONCOMPLIANCE AND RISK SANCTIONS IMPOSED ON THE PAROLE
17 SUPERVISION POPULATION.

18 (F) PAROLE GUIDELINE DECISIONS.

19 (G) VICTIM RESTITUTION COLLECTION DATA IN THE COURTS AND THE
20 DEPARTMENT OF CORRECTIONS.

21 (H) IMPLEMENTATION OF REVISIONS TO THE COMMUNITY CORRECTIONS
22 ACT, 1988 PA 511, MCL 791.401 TO 791.414.

23 Sec. 34. (1) The sentencing guidelines promulgated by order of
24 the Michigan supreme court do not apply to felonies enumerated in
25 part 2 of chapter XVII committed on or after January 1, 1999.

26 (2) Except as otherwise provided in this subsection or for a
27 departure from the appropriate minimum sentence range provided for

1 under subsection (3), the minimum sentence imposed by a court of
2 this state for a felony enumerated in part 2 of chapter XVII
3 committed on or after January 1, 1999 shall be within the
4 appropriate sentence range under the version of those sentencing
5 guidelines in effect on the date the crime was committed. Both of
6 the following apply to minimum sentences under this subsection:

7 (a) If a statute mandates a minimum sentence for an individual
8 sentenced to the jurisdiction of the department of corrections, the
9 court shall impose sentence in accordance with that statute.

10 Imposing a mandatory minimum sentence is not a departure under this
11 section. If a statute mandates a minimum sentence for an individual
12 sentenced to the jurisdiction of the department of corrections and
13 the statute authorizes the sentencing judge to depart from that
14 minimum sentence, imposing a sentence that exceeds the recommended
15 sentence range but is less than the mandatory minimum sentence is
16 not a departure under this section. If the Michigan vehicle code,
17 1949 PA 300, MCL 257.1 to 257.923, mandates a minimum sentence for
18 an individual sentenced to the jurisdiction of the department of
19 corrections and the Michigan vehicle code, 1949 PA 300, MCL 257.1
20 to 257.923, authorizes the sentencing judge to impose a sentence
21 that is less than that minimum sentence, imposing a sentence that
22 exceeds the recommended sentence range but is less than the
23 mandatory minimum sentence is not a departure under this section.

24 (b) The court shall not impose a minimum sentence, including a
25 departure, that exceeds 2/3 of the statutory maximum sentence.

26 (3) A court may depart from the appropriate sentence range
27 established under the sentencing guidelines set forth in chapter

1 XVII if the court has a substantial and compelling reason for that
2 departure and states on the record the reasons for departure. All
3 of the following apply to a departure:

4 (a) The court shall not use an individual's gender, race,
5 ethnicity, alienage, national origin, legal occupation, lack of
6 employment, representation by appointed legal counsel,
7 representation by retained legal counsel, appearance in propria
8 persona, or religion to depart from the appropriate sentence range.

9 (b) The court shall not base a departure on an offense
10 characteristic or offender characteristic already taken into
11 account in determining the appropriate sentence range unless the
12 court finds from the facts contained in the court record, including
13 the presentence investigation report, that the characteristic has
14 been given inadequate or disproportionate weight.

15 (4) Intermediate sanctions shall be imposed under this chapter
16 as follows:

17 (a) If the upper limit of the recommended minimum sentence
18 range for a defendant determined under the sentencing guidelines
19 set forth in chapter XVII is 18 months or less, the court shall
20 impose an intermediate sanction unless the court states on the
21 record a substantial and compelling reason to sentence the
22 individual to the jurisdiction of the department of corrections. An
23 intermediate sanction may include a jail term that does not exceed
24 the upper limit of the recommended minimum sentence range or 12
25 months, whichever is less, **AND A SUBSEQUENT TERM OF PROBATION**
26 **SUPERVISION AT LEAST EQUAL TO THE JAIL TERM.**

27 (b) If an attempt to commit a felony designated in offense

1 class H in part 2 of chapter XVII is punishable by imprisonment for
2 more than 1 year, the court shall impose an intermediate sanction
3 upon conviction of that offense absent a departure.

4 (c) If the upper limit of the recommended minimum sentence
5 exceeds 18 months and the lower limit of the recommended minimum
6 sentence is 12 months or less, the court shall sentence the
7 offender as follows absent a departure:

8 (i) To imprisonment with a minimum term within that range.

9 (ii) To an intermediate sanction that may include a term of
10 imprisonment of not more than 12 months **AND A SUBSEQUENT TERM OF**
11 **PROBATION SUPERVISION AT LEAST EQUAL TO THE TERM OF IMPRISONMENT.**

12 (5) If a crime has a mandatory determinant penalty or a
13 mandatory penalty of life imprisonment, the court shall impose that
14 penalty. This section does not apply to sentencing for that crime.

15 (6) As part of the sentence, the court may also order the
16 defendant to pay any combination of a fine, **ALLOWABLE** costs, or
17 applicable assessments. The court shall order payment of
18 restitution as provided by law.

19 (7) If the trial court imposes on a defendant a minimum
20 sentence that is longer or more severe than the appropriate
21 sentence range, as part of the court's advice of the defendant's
22 rights concerning appeal, the court shall advise the defendant
23 orally and in writing that he or she may appeal the sentence as
24 provided by law on grounds that it is longer or more severe than
25 the appropriate sentence range.

26 (8) All of the following shall be part of the record filed for
27 an appeal of a sentence under this section:

1 (a) An entire record of the sentencing proceedings.

2 (b) The presentence investigation report. Any portion of the
3 presentence investigation report exempt from disclosure by law
4 shall not be a public record.

5 (c) Any other reports or documents the sentencing court used
6 in imposing sentence.

7 (9) An appeal of a sentence under this section does not stay
8 execution of the sentence.

9 (10) If a minimum sentence is within the appropriate
10 guidelines sentence range, the court of appeals shall affirm that
11 sentence and shall not remand for resentencing absent an error in
12 scoring the sentencing guidelines or inaccurate information relied
13 upon in determining the defendant's sentence. A party shall not
14 raise on appeal an issue challenging the scoring of the sentencing
15 guidelines or challenging the accuracy of information relied upon
16 in determining a sentence that is within the appropriate guidelines
17 sentence range unless the party has raised the issue at sentencing,
18 in a proper motion for resentencing, or in a proper motion to
19 remand filed in the court of appeals.

20 (11) If, upon a review of the record, the court of appeals
21 finds the trial court did not have a substantial and compelling
22 reason for departing from the appropriate sentence range, the court
23 shall remand the matter to the sentencing judge or another trial
24 court judge for resentencing under this chapter.

25 (12) Time served on the sentence appealed under this section
26 is considered time served on any sentence imposed after remand.

27 Sec. 35. (1) The department of corrections shall operate a

1 jail reimbursement program that provides funding to counties for
2 housing **FELONY** offenders in county jails who otherwise would have
3 been sentenced to prison **AND UNDER BOTH OF THE FOLLOWING:**

4 (A) SECTION 4(1)(B) AND (C) OF CHAPTER XI.

5 (B) SECTION 40A OF THE CORRECTIONS CODE OF 1953, 1953 PA 232,
6 MCL 791.240A.

7 (2) The ~~criteria for reimbursement, including but not limited~~
8 ~~to criteria for determining those offenders who otherwise would~~
9 ~~have been sentenced to prison, and the rate of reimbursement shall~~
10 be established in the annual appropriations acts for the department
11 of corrections **AND SHALL NOT BE LESS THAN \$35.00 PER DIEM PER**
12 **OFFENDER SERVING A SANCTION FOR A PAROLE OR PROBATION VIOLATION.**
13 **THE DEPARTMENT OF CORRECTIONS SHALL SUBMIT TO THE LEGISLATURE A**
14 **PROJECTED BUDGET TO ADDRESS COUNTY EXPENSES FOR HOUSING FELONY**
15 **OFFENDERS IN COUNTY JAILS, AND THE LEGISLATURE SHALL FUND THE**
16 **BUDGET AS PROVIDED BY LAW.**

17 Enacting section 1. This amendatory act does not take effect
18 unless Senate Bill No. ____ or House Bill No. 5930 (request no.
19 06303'14) of the 97th Legislature is enacted into law.

HOUSE BILL No. 5929

November 6, 2014, Introduced by Rep. Haveman and referred to the Committee on Appropriations.

A bill to amend 1988 PA 511, entitled
"Community corrections act,"
by amending sections 2, 3, 4, 5, 7, 8, and 11 (MCL 791.402,
791.403, 791.404, 791.405, 791.407, 791.408, and 791.411).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "City advisory board" means a community corrections
3 advisory board created by a city ~~pursuant to~~ **UNDER** sections 6 and
4 7.

5 (b) "City-county advisory board" means a community corrections
6 advisory board created by a county and the largest city by
7 population within that county ~~pursuant to~~ **UNDER** sections 6 and 7.

8 (c) "Community corrections program" means a program that is

1 operated by or contracted for by a city, county, or group of
2 counties, or is operated by a nonprofit service agency, and ~~is an~~
3 ~~alternative to incarceration in a state correctional facility or~~
4 ~~jail.~~ THAT OFFERS SANCTIONS, SERVICES, OR BOTH, INSTEAD OF
5 INCARCERATION IN PRISON, AND WHICH ARE LOCALLY OPERATED AND SPAN A
6 CONTINUUM OF PROGRAMMING OPTIONS FROM PRETRIAL THROUGH POST-
7 ADJUDICATION.

8 (d) "County advisory board" means a community corrections
9 advisory board created by a county ~~pursuant to~~ UNDER sections 6 and
10 7.

11 (e) "Department" means the department of corrections.

12 (F) "EVIDENCE-BASED PRACTICES" MEANS A DECISION-MAKING PROCESS
13 THAT INTEGRATES THE BEST AVAILABLE RESEARCH, CLINICIAN EXPERTISE,
14 AND CLIENT CHARACTERISTICS.

15 (G) "KEY PERFORMANCE INDICATOR" MEANS A MEASURE THAT CAPTURES
16 THE PERFORMANCE OF A CRITICAL VARIABLE TO EXPAND AND IMPROVE
17 COMMUNITY-BASED CORRECTIONS PROGRAMS TO PROMOTE OFFENDER SUCCESS,
18 ENSURE ACCOUNTABILITY, ENHANCE PUBLIC SAFETY, AND REDUCE
19 RECIDIVISM.

20 (H) "MODERATE TO HIGH RISK" MEANS THAT THE INDIVIDUAL ASSESSED
21 HAS SCORED IN THE MODERATE TO HIGH RANGE OF RISK USING AN
22 ACTUARIAL, OBJECTIVE, VALIDATED RISK AND NEED ASSESSMENT
23 INSTRUMENT.

24 (I) ~~(f)~~—"Nonprofit service agency" means a nonprofit
25 organization that provides treatment, guidance, training, or other
26 rehabilitative services to individuals, families, or groups in such
27 areas as health, education, vocational training, special education,

1 social services, psychological counseling, alcohol and drug
 2 treatment, community service work, victim restitution, and
 3 employment.

4 (J) ~~(g)~~-"Office" means the office of community alternatives
 5 **CORRECTIONS** created in section 3.

6 (K) ~~(h)~~-"Plan" means a comprehensive corrections plan
 7 submitted by a county, city, or regional advisory board ~~pursuant to~~
 8 **UNDER** section 8.

9 (L) ~~(i)~~-"Regional advisory board" means a community corrections
 10 advisory board created by a group of 2 or more counties ~~pursuant to~~
 11 **UNDER** sections 6 and 7.

12 (M) ~~(j)~~-"State board" means the state community corrections
 13 **ADVISORY** board created in section 3.

14 Sec. 3. (1) An office of community alternatives ~~CORRECTIONS~~ is
 15 created within the department. ~~The EXCEPT AS OTHERWISE PROVIDED IN~~
 16 **THIS SUBSECTION, THE** office shall exercise its powers and duties
 17 including budgeting and management as an autonomous entity,
 18 independent of the director of the department. The office ~~shall~~
 19 ~~consist~~ **CONSISTS** of ~~the board and an executive director,~~
 20 **ADMINISTRATOR** and ~~such~~ staff as the ~~executive director~~ **OF THE**
 21 **DEPARTMENT** may appoint to carry out the duties of the office. ~~The~~
 22 ~~executive director shall be appointed by the board, and shall carry~~
 23 ~~out the duties of the office subject to the policies established by~~
 24 ~~the board.~~ **THE DIRECTOR OF THE DEPARTMENT OR HIS OR HER DESIGNEE MAY**
 25 **APPOINT THE ADMINISTRATOR OF THE OFFICE OR MAY ADMINISTER THE**
 26 **ASSIGNED FUNCTIONS IN OTHER WAYS TO PROMOTE EFFICIENT**
 27 **ADMINISTRATION.**

1 (2) A state community corrections **ADVISORY** board is created in
2 the office **OF COMMUNITY CORRECTIONS**. The **STATE COMMUNITY**
3 **CORRECTIONS ADVISORY** board ~~shall act as the policy making body for~~
4 ~~the office, as provided in this act.~~ **MAY CONDUCT ACTIVITIES IT**
5 **CONSIDERS NECESSARY TO ADVISE THE DIRECTOR OF THE DEPARTMENT IN**
6 **MATTERS RELATED TO COMMUNITY CORRECTIONS.**

7 (3) ~~Not later than 90 days after the effective date of this~~
8 ~~act, the~~ **THE** governor shall appoint, and the senate shall confirm,
9 the 13 members of the state board as follows:

10 (a) One member ~~shall be~~ **WHO IS** a county sheriff.

11 (b) One member ~~shall be~~ **WHO IS** a chief of a city police
12 department.

13 (c) One member ~~shall be~~ **WHO IS** a judge of the circuit court.
14 ~~or recorder's court.~~

15 (d) One member ~~shall be~~ **WHO IS** a judge of the district court.

16 (e) One member ~~shall be~~ **WHO IS** a county commissioner.

17 (f) One member ~~shall be~~ **WHO IS** a member of city government.

18 (g) One member ~~shall represent~~ **WHO REPRESENTS** an existing
19 community alternatives program.

20 (h) One member ~~shall be~~ **WHO IS** the director of the department
21 of corrections or his or her designee.

22 (i) One member ~~shall be~~ **WHO IS** a county prosecutor.

23 (j) One member ~~shall be~~ **WHO IS** a criminal defense attorney.

24 (k) Three members ~~shall be~~ **WHO ARE** representatives of the
25 general public.

26 (4) The governor shall ensure fair geographic representation
27 of the state board membership and that minority persons and women

1 are fairly represented.

2 (5) Members of the state board shall serve for terms of 4
3 years each, except that of the members first appointed, 5 shall
4 serve for terms of 4 years each, 4 shall serve for terms of 3 years
5 each, and 4 shall serve for terms of 2 years each.

6 (6) A vacancy on the state board ~~shall be~~ **IS** filled in the
7 same manner as the original appointment.

8 (7) Members of the state board shall serve without
9 compensation, but **THE DEPARTMENT** shall ~~be reimbursed by the~~
10 ~~department~~ **REIMBURSE THE MEMBERS** for actual and necessary expenses
11 incurred in attending meetings.

12 (8) The governor shall annually appoint a chairperson from
13 among the members of the board. **THE CHAIRPERSON SHALL NOT SERVE**
14 **MORE THAN 2 CONSECUTIVE TERMS.**

15 Sec. 4. (1) The state board shall do all of the following:

16 (a) ~~Develop and establish goals, offender eligibility~~
17 ~~criteria, and program guidelines for community corrections~~
18 ~~programs.~~ **ADOPT A VARIETY OF KEY PERFORMANCE INDICATORS THAT PROMOTE**
19 **OFFENDER SUCCESS, ENSURE THE EFFECTIVE MONITORING OF OFFENDERS, AND**
20 **EVALUATE COMMUNITY CORRECTIONS PROGRAMS. PERFORMANCE INDICATORS**
21 **MUST BE RELEVANT TO THIS ACT AND MUST BE REVIEWED ON AN ANNUAL**
22 **BASIS. AT LEAST 1 OF THE KEY PERFORMANCE MEASURES MUST BE**
23 **RECIDIVISM. THERE MAY BE MULTIPLE RECIDIVISM MEASURES TO ACCOUNT**
24 **FOR ACCESSIBILITY TO STATE AND NATIONAL DATABASES, LOCAL ABILITY TO**
25 **COLLECT DATA, AND THE RESOURCES NEEDED TO COLLECT THIS DATA.**

26 (b) Adopt minimum program standards, policies, and rules for
27 community corrections programs. **THE PROGRAM STANDARDS MUST INCLUDE**

1 EVIDENCE-BASED PRACTICES. PROGRAM ELIGIBILITY MUST INCLUDE MODERATE
 2 TO HIGH RISK OFFENDERS REGARDLESS OF CRIME CLASS OR ADJUDICATION
 3 STATUS.

4 (c) Adopt an application process and procedures for funding
 5 community corrections programs, including the format for
 6 comprehensive corrections plans.

7 ~~(d) Adopt criteria for community corrections program~~
 8 ~~evaluations.~~ REVIEW, AT LEAST ONCE EVERY 3 YEARS, THE ACTUARIAL,
 9 OBJECTIVE, VALIDATED RISK AND NEED ASSESSMENT INSTRUMENTS TO ENSURE
 10 THAT THEY CONTINUE TO MEET THE NEEDS AND REQUIREMENTS OF COMMUNITY
 11 CORRECTIONS.

12 ~~(e) Hire an executive director, who shall serve at the~~
 13 ~~pleasure of the board.~~ RECOMMEND FUNDING FOR COMMUNITY CORRECTIONS
 14 TO THE DIRECTOR OF THE DEPARTMENT BASED ON PROGRAM PERFORMANCE,
 15 UTILIZATION, TARGETING OF APPROPRIATE OFFENDERS, AND ADHERENCE TO
 16 EVIDENCE-BASED PRACTICES.

17 (F) RESEARCH, REVIEW, AND MAKE RECOMMENDATIONS REGARDING THE
 18 USE OF PERFORMANCE-BASED CONTRACTS WITHIN COMMUNITY CORRECTIONS.

19 Sec. 5. The office shall do all of the following:

20 (a) Provide technical assistance and training to cities,
 21 counties, regions, or nonprofit service agencies in developing,
 22 implementing, evaluating, and operating community corrections
 23 programs.

24 ~~(b) Enter into~~ ON BEHALF OF THE DEPARTMENT, PROCESS agreements
 25 ~~with~~ BETWEEN THE DEPARTMENT AND city, county, city-county, or
 26 regional advisory boards or nonprofit service agencies for the
 27 operation of community corrections programs by those boards or

1 agencies, and monitor compliance with those agreements.

2 (c) Act as an information clearinghouse regarding community
3 corrections programs for cities, counties, regions, or nonprofit
4 service agencies that receive funding under this act.

5 (D) PROVIDE COMMUNITY CORRECTIONS ADVISORY BOARDS ANNUALLY
6 WITH INFORMATION REQUIRED TO DEVELOP COMPREHENSIVE PLANS AND
7 PROGRAMMING, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING
8 FOR A CITY OR COUNTY, AS APPLICABLE:

9 (i) THE TOTAL NUMBER OF FELONY DISPOSITIONS.

10 (ii) THE TOTAL NUMBER OF PROBATION VIOLATORS.

11 (iii) THE SENTENCING RESULTS OF ALL FELONY DISPOSITIONS AND
12 PROBATION VIOLATORS.

13 (iv) FOR EACH SENTENCED FELON AND SENTENCED PROBATION VIOLATOR,
14 DEMOGRAPHIC INFORMATION, INCLUDING, BUT NOT LIMITED TO, AGE, RACE,
15 AND SEX.

16 (v) FOR EACH SENTENCED FELON AND PROBATION VIOLATOR, THE
17 RESULT OF THE RISK AND NEEDS ASSESSMENT THAT DETAILS THE FELON'S OR
18 PROBATION VIOLATOR'S RISK AND NEEDS LEVELS.

19 (E) ~~(d)~~—Review and approve local plans and proposals pursuant
20 ~~to~~ UNDER sections 8 and 10.

21 (F) AUDIT PROGRAMS TO ASSURE THAT THEY MEET MINIMUM PROGRAM
22 STANDARDS, INCLUDING OFFENDER ELIGIBILITY AND COMPLIANCE WITH
23 EVIDENCE-BASED PRACTICES.

24 (G) ~~(e)~~—In instances of substantial noncompliance, halt
25 funding to cities, counties, regions, or agencies, except that
26 before halting funding, the office shall do both of the following:

27 (i) Notify the city, county, region, or agency of the

1 allegations and allow 30 days for a response.

2 (ii) If an agreement is reached concerning a remedy, allow 30
3 days following that agreement for the remedy to be implemented.

4 Sec. 7. (1) A county advisory board, regional advisory board,
5 city-county advisory board, or city advisory board ~~shall consist~~
6 **CONSISTS** of the following:

7 (a) One member ~~shall be~~ **WHO IS** a county sheriff, or his or her
8 designee.

9 (b) One member ~~shall be~~ **WHO IS** a chief of a city police
10 department, or his or her designee.

11 (c) One member ~~shall be~~ **WHO IS** a judge of the circuit court or
12 his or her designee.

13 (d) One member ~~shall be~~ **WHO IS** a judge of the district court
14 or his or her designee.

15 (e) One member ~~shall be~~ **WHO IS** a judge of the probate court or
16 his or her designee.

17 (f) One member ~~shall be~~ **WHO IS** a county commissioner or city
18 councilperson. ~~In the case of~~ **FOR** a regional advisory board or a
19 city-county advisory board, 1 county commissioner or councilperson
20 from each participating city and county shall serve as a member.

21 (g) ~~One member shall be~~ **AT LEAST 1 AND NOT MORE THAN 3 MEMBERS**
22 selected from ~~1 of~~ the following service areas: mental health,
23 public health, substance abuse, employment and training, or
24 community alternative programs.

25 (h) One member ~~shall be~~ **WHO IS** a county prosecuting attorney
26 or his or her designee.

27 (i) One member ~~shall be~~ **WHO IS** a criminal defense attorney **AND**

1 **WHO MAY BE A LOCAL PUBLIC DEFENDER.**

2 (j) One member ~~shall be~~ **WHO IS** from the business community.

3 (k) One member ~~shall be~~ **WHO IS** from the communications media.

4 (l) One member ~~shall be~~ **WHO IS** either a circuit court probation
5 agent or a district court probation officer.

6 (m) One member ~~shall be a representative of the general~~

7 ~~public.~~ **WHO IS AFFILIATED WITH THE APPLICABLE WORKFORCE INVESTMENT**
8 **BOARD.**

9 (2) ~~In the case of~~ **FOR** a county or regional advisory board,
10 ~~the members shall be appointed by the county board or boards of~~
11 ~~commissioners~~ **SHALL APPOINT THE MEMBERS.** ~~In the case of~~ **FOR** a city
12 advisory board, ~~the members shall be appointed by the city council~~
13 **SHALL APPOINT THE MEMBERS.** ~~In the case of~~ **FOR** the city-county
14 advisory board, ~~the members shall be appointed by the county board~~
15 ~~of commissioners and the city council~~ **SHALL APPOINT THE MEMBERS.** In
16 appointing the members of an advisory board, the county and city
17 shall ensure that minority ~~persons~~ **INDIVIDUALS** and women are fairly
18 represented.

19 (3) Before an appointment is made under this section, the
20 appointing authority shall publish advance notice of the
21 appointments and shall request that the names of ~~persons~~
22 **INDIVIDUALS** interested in being considered for appointment be
23 submitted to the appointing authority.

24 Sec. 8. (1) A county, city, city-county, or regional advisory
25 board, on behalf of the city, county, or counties it represents,
26 may apply for funding and other assistance under this act by
27 submitting to the office a comprehensive corrections plan that

1 meets the requirements of this section, and the criteria,
2 standards, rules, and policies developed by the state board
3 ~~pursuant to UNDER~~ section 4.

4 (2) ~~The plan shall be developed by the A county, city, city-~~
5 ~~county, or regional advisory board and shall include DEVELOP A PLAN~~
6 **THAT INCLUDES** all of the following for the county, city, or
7 counties represented by the advisory board:

8 (a) A system for the development, implementation, and
9 operation of community corrections programs and an explanation of
10 how the state prison commitment rate for the city, county, or
11 counties will be reduced, and how the public safety will be
12 ~~maintained, ENHANCED,~~ as a result of implementation of the
13 comprehensive corrections plan. ~~The plan shall include, where~~
14 ~~appropriate, provisions that detail how the city, county, or~~
15 ~~counties plan to substantially reduce, within 1 year, the use of~~
16 ~~prison sentences for felons for which the state felony sentencing~~
17 ~~guidelines upper limit for the recommended minimum sentence is 12~~
18 ~~months or less as validated by the department of corrections.~~
19 Continued funding in the ~~second and subsequent years shall be IS~~
20 contingent upon substantial compliance with this subdivision.

21 (b) A data analysis of the local criminal justice system
22 ~~including a basic description of jail utilization detailing such~~
23 ~~areas as sentenced versus unsentenced inmates, sentenced felons~~
24 ~~versus sentenced misdemeanants, and any use of a jail~~
25 ~~classification system. The analysis also shall include a basic~~
26 ~~description of offenders sentenced to probation and to prison and a~~
27 ~~review of the rate of commitment to the state corrections systems~~

1 ~~from the city, county, or counties for the preceding 3 years. The~~
 2 ~~analysis also shall compare actual sentences with the sentences~~
 3 ~~recommended by the state felony sentencing guidelines.~~ **THAT**
 4 **INDICATES THE SPECIFICATION OF OFFENDER TARGETING AND THE SERVICES**
 5 **NEEDED FOR THE TARGET POPULATION.**

6 ~~(c) An analysis of the local community corrections programs~~
 7 ~~used at the time the plan is submitted and during the preceding 3~~
 8 ~~years, including types of offenders served and funding levels.~~

9 **PROGRAM DESCRIPTIONS THAT DETAIL THE USE OF AN OBJECTIVE,**
 10 **STANDARDIZED ASSESSMENT TOOL OR TOOLS TO DETERMINE APPLICABLE**
 11 **PROGRAMMING THROUGH THE USE OF TARGETED INTERVENTIONS THAT ADDRESS**
 12 **THE RISK AND NEEDS OF THE TARGET POPULATION.**

13 ~~—— (d) A system for evaluating the effectiveness of the community~~
 14 ~~corrections program, which shall utilize the criteria developed~~
 15 ~~pursuant to section 4(d).~~

16 **(D)** ~~(e)~~ The identity of any designated subgrant recipient.

17 **(E)** ~~(f)~~ In the case of ~~FOR~~ a regional or city-county plan,
 18 provisions for the appointment of 1 fiscal agent to coordinate the
 19 financial activities pertaining to the grant award.

20 (3) The county board or boards of commissioners of the county
 21 or counties represented by a county, city-county, or regional
 22 advisory board, or the city council of the city represented by a
 23 city or city-county advisory board, shall approve the proposed
 24 comprehensive corrections plan prepared by their advisory board.
 25 ~~before the plan is submitted to the office pursuant to subsection~~
 26 ~~(1).~~

27 (4) ~~This section is intended to encourage the participation in~~

1 ~~community corrections programs of offenders who would likely be~~
 2 ~~sentenced to imprisonment in a state correctional facility or jail,~~
 3 ~~would not increase the risk to public safety, have not demonstrated~~
 4 ~~a pattern of violent behavior, and do not have a criminal record~~
 5 ~~that indicates a pattern of violent offenses.~~ A COMMUNITY

6 CORRECTIONS PROGRAM MUST DO ALL OF THE FOLLOWING:

7 (A) PROVIDE APPROPRIATE SANCTIONS AND SERVICES AS SENTENCING
 8 OPTIONS, INCLUDING INCARCERATION, COMMUNITY SUPERVISION, AND
 9 PROGRAMMING SERVICES FOR ELIGIBLE OFFENDERS.

10 (B) PROVIDE IMPROVED LOCAL SERVICES FOR INDIVIDUALS INVOLVED
 11 IN THE CRIMINAL JUSTICE SYSTEM WITH THE GOAL OF REDUCING THE
 12 OCCURRENCE OF REPEAT CRIMINAL OFFENSES THAT RESULT IN A TERM OF
 13 INCARCERATION OR DETENTION IN JAIL OR PRISON.

14 (C) ENSURE THE USE OF EVIDENCE-BASED PRACTICES TO PROTECT
 15 PUBLIC SAFETY AND REHABILITATE THE OFFENDER.

16 (D) PROMOTE LOCAL CONTROL AND MANAGEMENT OF COMMUNITY
 17 CORRECTIONS PROGRAMS.

18 (E) ENHANCE, INCREASE, AND SUPPORT THE STATE AND COUNTY
 19 PARTNERSHIP IN THE MANAGEMENT OF OFFENDERS.

20 Sec. 11. (1) The office shall authorize payments from ~~unds~~
 21 MONEY appropriated to the office for community corrections programs
 22 to cities, counties, regions, or agencies for the community
 23 corrections programs described in the plan submitted ~~pursuant to~~
 24 UNDER section 8 ~~or the proposal submitted pursuant to section 10~~ if
 25 the plan or proposal is approved by the office.

26 (2) Of the total funding recommended for the implementation of
 27 the comprehensive corrections plan, not more than 30% may be used

1 by the city, county, or counties for administration.

2 (3) The ~~fun~~~~ds~~~~-~~**MONEY** provided to a city, county, or counties
3 under this section ~~shall~~~~-~~**MUST** not supplant current spending by the
4 city, county, or counties for community corrections programs.

HOUSE BILL No. 5930

November 6, 2014, Introduced by Rep. Haveman and referred to the Committee on Appropriations.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 2, 4, and 14 of chapter XI and sections 2, 3, and 5 of chapter XIA (MCL 771.2, 771.4, 771.14, 771A.2, 771A.3, and 771A.5), section 2 of chapter XI as amended by 2010 PA 351, section 4 of chapter XI as amended by 1998 PA 520, section 14 of chapter XI as amended by 2012 PA 27, and sections 2, 3, and 5 of chapter XIA as added by 2012 PA 616.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XI

1
2 Sec. 2. (1) Except as provided in section 2a of this chapter,
3 if the defendant is convicted for an offense that is not a felony,
4 the probation period ~~shall~~ **MAY** not exceed 2 years. Except as

1 provided in section 2a of this chapter, if the defendant is
2 convicted of a felony, the probation period ~~shall~~**MAY** not exceed 5
3 years.~~THE FOLLOWING, AS APPLICABLE:~~

4 (A) FIVE YEARS IF THE APPLICABLE PRIOR RECORD VARIABLE SCORE
5 CALCULATED UNDER PART 5 OF CHAPTER XVII IS 25 OR GREATER OR IF
6 SUBDIVISION (B) IS OTHERWISE INAPPLICABLE.

7 (B) TWO YEARS IF THE APPLICABLE PRIOR RECORD VARIABLE SCORE
8 CALCULATED UNDER PART 5 OF CHAPTER XVII IS LESS THAN 25 AND NEITHER
9 OF THE FOLLOWING APPLY:

10 (i) THE COURT DETERMINES THAT A PERIOD OF UP TO 5 YEARS IS
11 NECESSARY BECAUSE OF VICTIM RESTITUTION ORDERED.

12 (ii) THE CONVICTION IS FOR ANY OF THE FOLLOWING:

13 (A) A FELONY UNDER CHAPTER LXXVI OF THE MICHIGAN PENAL CODE,
14 1931 PA 328, MCL 750.520A TO 750.520N.

15 (B) A FELONY UNDER SECTION 411H, 411I, OR 411S OF THE MICHIGAN
16 PENAL CODE, 1931 PA 328, MCL 750.411H, 750.411I, AND 750.411S.

17 (C) A FELONY AS TO WHICH THE VICTIM AND THE DEFENDANT HAD A
18 RELATIONSHIP DESCRIBED IN SECTION 81(2) OF THE MICHIGAN PENAL CODE,
19 1931 PA 328, MCL 750.81.

20 (2) The court shall, by order ~~to be filed or~~ entered in the
21 ~~cause~~**CASE** as the court ~~may direct~~**DIRECTS** by general rule or in
22 each case, fix and determine the period and conditions of
23 probation. The order is part of the record in the ~~cause~~**CASE**. The
24 court may amend the order in form or substance at any time.

25 (3) A defendant who was placed on probation under section 1(4)
26 of this chapter as it existed before March 1, 2003 for an offense
27 committed before March 1, 2003 is subject to the conditions of

1 probation specified in section 3 of this chapter, including payment
 2 of a probation supervision fee as prescribed in section 3c of this
 3 chapter, and to revocation for violation of these conditions, but
 4 the probation period ~~shall~~**MAY** not be reduced other than by a
 5 revocation that results in imprisonment or as otherwise provided by
 6 law.

7 (4) If an individual is placed on probation for a listed
 8 offense ~~enumerated~~**AS THAT TERM IS DEFINED** in section 2 of the sex
 9 offenders registration act, 1994 PA 295, MCL 28.722, the
 10 individual's probation officer shall register the individual or
 11 accept the individual's registration as provided in that act.

12 (5) Subsection (1) does not apply to a juvenile placed on
 13 probation and committed under section 1(3) or (4) of chapter IX to
 14 an institution or agency described in the youth rehabilitation
 15 services act, 1974 PA 150, MCL 803.301 to 803.309.

16 Sec. 4. (1) It is the intent of the legislature that the
 17 ~~granting of probation is a matter of grace conferring no vested~~
 18 ~~right to its continuance.~~**PURPOSES OF PROBATION ARE TO HOLD**
 19 **OFFENDERS ACCOUNTABLE FOR MAKING RESTITUTION TO ENSURE COMPLIANCE**
 20 **WITH THE COURT'S JUDGMENT, TO EFFECTIVELY REHABILITATE OFFENDERS BY**
 21 **DIRECTING THEM TO SPECIALIZED TREATMENT OR EDUCATION PROGRAMS, AND**
 22 **TO PROTECT THE PUBLIC SAFETY.** If during ~~the~~**A** probation period the
 23 sentencing court ~~determines~~**IS NOTIFIED** that the probationer is
 24 ~~likely again to engage in an offensive or criminal course of~~
 25 ~~conduct or that the public good requires revocation of probation,~~
 26 ~~the court may revoke probation. All probation orders are revocable~~
 27 ~~in any manner the court that imposed probation considers applicable~~

1 ~~either for~~ **HAS COMMITTED** a violation or attempted violation of a
2 probation condition, ~~or for any other type of antisocial conduct or~~
3 ~~action on the probationer's part for which the court determines~~
4 ~~that revocation is proper in the public interest. Hearings~~ **THE**
5 **COURT MAY HOLD A HEARING ON SANCTION OR REVOCATION. THE HEARING** on
6 the **SANCTION OR** revocation ~~shall be summary and informal and IS~~ not
7 subject to the rules of evidence or of pleadings applicable in
8 criminal trials, **AND THE COURT SHALL CONDUCT THE HEARING IN A**
9 **SUMMARY AND INFORMAL MANNER.** In its probation order or by general
10 rule, the court may provide for the apprehension, detention, and
11 confinement of a probationer accused of violating a probation
12 condition or conduct inconsistent with the public good. The method
13 of hearing and presentation of charges are within the court's
14 discretion, except that the probationer is entitled to a written
15 copy of the charges constituting the claim that he or she violated
16 probation and to a probation **SANCTION OR** revocation hearing. The
17 court may investigate and enter a disposition of the probationer as
18 the court determines best serves the public interest, ~~—~~**SUBJECT TO**
19 **ALL OF THE FOLLOWING:**

20 (A) **IF THE COURT DETERMINES THAT THE PROBATIONER HAS COMMITTED**
21 **OR ATTEMPTED A FIRST NONCOMPLIANCE VIOLATION, THE COURT SHALL**
22 **SANCTION THE PROBATIONER TO 1 OR MORE NONCONFINEMENT RESPONSES.**

23 (B) **IF THE COURT DETERMINES THAT THE PROBATIONER HAS COMMITTED**
24 **OR ATTEMPTED A SECOND THROUGH FIFTH NONCOMPLIANCE VIOLATION, THE**
25 **COURT MAY SANCTION THE PROBATIONER BY CONFINEMENT IN THE COUNTY**
26 **JAIL FOR UP TO 3 DAYS.**

27 (C) **IF THE COURT DETERMINES THAT THE PROBATIONER HAS COMMITTED**

1 OR ATTEMPTED A RISK VIOLATION, THE COURT MAY SANCTION THE
 2 PROBATIONER BY CONFINEMENT IN THE COUNTY JAIL FOR UP TO 30 DAYS.

3 (D) If ~~a~~THE COURT DETERMINES THAT THE PROBATIONER HAS
 4 COMMITTED OR ATTEMPTED A THIRD RISK VIOLATION OR A MAJOR RISK
 5 VIOLATION, THE COURT MAY REVOKE THE ~~probation order is revoked, the~~
 6 ~~court may~~AND sentence the probationer in the same manner and to
 7 the same penalty as the court might have done if the probation
 8 order had never been made. TIME SPENT IN CONFINEMENT UNDER THIS
 9 SECTION MUST BE CREDITED TOWARD THE SENTENCE IMPOSED, AND IF THE
 10 PROBATIONER IS ON PROBATION FOR MULTIPLE JUDGMENTS, THE CREDIT MUST
 11 BE APPLIED TO EACH SENTENCE.

12 (2) This section does not apply to a juvenile placed on
 13 probation and committed under section 1(3) or (4) of chapter IX to
 14 an institution or agency described in the youth rehabilitation
 15 services act, 1974 PA 150, MCL 803.301 to 803.309.

16 (3) ALL VIOLATIONS ALLEGED AT A SINGLE HEARING ON SANCTION OR
 17 REVOCATION CONSTITUTE 1 VIOLATION FOR PURPOSES OF DETERMINING THE
 18 SANCTION.

19 (4) AS USED IN THIS SECTION, "MAJOR RISK VIOLATION",
 20 "NONCOMPLIANCE VIOLATION", "NONCONFINEMENT VIOLATION",
 21 "NONCONFINEMENT RESPONSE", AND "RISK VIOLATION" MEAN THOSE TERMS AS
 22 DEFINED IN SECTION 2 OF CHAPTER XIA.

23 Sec. 14. (1) Before the court sentences a person charged with
 24 a felony, ~~or~~a person who is a licensee or registrant under article
 25 15 of the public health code, 1978 PA 368, MCL 333.16101 to
 26 333.18838, as described in section 1(14) of chapter IX, ~~and~~OR, if
 27 directed by the court, ~~in any other case in which a person is~~

1 charged with a misdemeanor within the jurisdiction of the court,
2 the probation officer shall inquire into the antecedents,
3 character, and circumstances of the person, and shall report in
4 writing to the court.

5 (2) A presentence investigation report prepared under
6 subsection (1) ~~shall~~**MUST** not include any address or telephone
7 number for the home, workplace, school, or place of worship of any
8 victim or witness, or a family member of any victim or witness,
9 unless an address is used to identify the place of the crime or to
10 impose conditions of release from custody that are necessary for
11 the protection of a named individual. Upon request, any other
12 address or telephone number that would reveal the location of a
13 victim or witness or a family member of a victim or witness ~~shall~~
14 **MUST** be exempted from disclosure unless an address is used to
15 identify the place of the crime or to impose conditions of release
16 from custody that are necessary for the protection of a named
17 individual. A presentence investigation report prepared under
18 subsection (1) ~~shall~~**MUST** include all of the following:

19 (a) An evaluation of and a prognosis for the person's
20 adjustment in the community based on factual information contained
21 in the report.

22 (b) If requested by a victim, any written impact statement
23 submitted by the victim under the William Van Regenmorter crime
24 victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

25 (c) A specific written recommendation for ~~disposition based on~~
26 ~~the evaluation and other information as prescribed by the assistant~~
27 ~~director of the department of corrections in charge of probation.~~**A**

1 TERM AND THE APPROPRIATE CONDITIONS OF PROBATION SUPERVISION
2 FOLLOWING JAIL CONFINEMENT, IF APPLICABLE, OR THE APPROPRIATE
3 CONDITIONS OF PROBATION SUPERVISION, IF PROBATION IS GRANTED.

4 (d) A statement prepared by the prosecuting attorney as to
5 whether consecutive sentencing is required or authorized by law.

6 (e) For a person to be sentenced under the sentencing
7 guidelines set forth in chapter XVII, all of the following:

8 (i) For each conviction for which a consecutive sentence is
9 authorized or required, the sentence grid in part 6 of chapter XVII
10 that contains the recommended minimum sentence range.

11 (ii) Unless otherwise provided in subparagraph (i), for each
12 crime having the highest crime class, the sentence grid in part 6
13 of chapter XVII that contains the recommended minimum sentence
14 range.

15 (iii) Unless otherwise provided in subparagraph (i), the
16 computation that determines the recommended minimum sentence range
17 for the crime having the highest crime class.

18 (iv) A specific statement as to the applicability of
19 intermediate sanctions, as defined in section 31 of chapter IX.

20 ~~(v) The recommended sentence.~~

21 (f) If a person is to be sentenced for a felony or for a
22 misdemeanor involving the illegal delivery, possession, or use of
23 alcohol or a controlled substance, a statement that the person is
24 licensed or registered under article 15 of the public health code,
25 1978 PA 368, MCL 333.16101 to 333.18838, if applicable.

26 (g) Diagnostic opinions that are available and not exempted
27 from disclosure under subsection (3).

1 (h) A statement as to whether the person has provided the
2 identification documents referenced in subsection (9)(b).

3 (3) The court may exempt from disclosure in the presentence
4 investigation report information or a diagnostic opinion that might
5 seriously disrupt a program of rehabilitation or sources of
6 information obtained on a promise of confidentiality. If a part of
7 the presentence investigation report is not disclosed, the court
8 shall state on the record the reasons for its action and inform the
9 defendant and his or her attorney that information has not been
10 disclosed. The action of the court in exempting information from
11 disclosure is subject to appellate review. Information or a
12 diagnostic opinion exempted from disclosure under this subsection
13 ~~shall~~**MUST** be specifically noted in the presentence investigation
14 report.

15 (4) If a prepared presentence investigation report is amended
16 or altered before sentencing by the supervisor of the probation
17 officer who prepared the report or by any other person who has the
18 authority to amend or alter a presentence investigation report, the
19 probation officer may request that the court strike his or her name
20 from the report and the court shall comply with that request.

21 (5) The court shall permit the prosecutor, the defendant's
22 attorney, and the defendant to review the presentence investigation
23 report before sentencing.

24 (6) At the time of sentencing, either party may challenge, on
25 the record, the accuracy or relevancy of any information contained
26 in the presentence investigation report. The court may order an
27 adjournment to permit the parties to prepare a challenge or a

1 response to a challenge. If the court finds on the record that the
2 challenged information is inaccurate or irrelevant, that finding
3 ~~shall-MUST~~ be made a part of the record, the presentence
4 investigation report ~~shall-MUST~~ be amended, and the inaccurate or
5 irrelevant information ~~shall-MUST~~ be stricken accordingly before
6 the report is transmitted to the department of corrections.

7 (7) A copy of the report described under subsection (5) and
8 the amended report described under subsection (6) ~~shall-MUST~~ be
9 provided to the prosecutor and the defendant's attorney or the
10 defendant if he or she is not represented by an attorney. The copy
11 of the report described under subsection (5) ~~shall-MUST~~ be provided
12 not less than 2 business days before sentencing unless that period
13 is waived by the defendant. The prosecutor and the defendant's
14 attorney or the defendant if he or she is not represented by an
15 attorney have the right to retain a copy of the report and the
16 amended report provided under this subsection.

17 (8) On appeal, the defendant's attorney, or the defendant if
18 proceeding pro se, ~~shall-MUST~~ be provided with a copy of the
19 presentence investigation report and any attachments to the report
20 with the exception of any information exempted from disclosure by
21 the court under subsection (3).

22 (9) If the person is committed to a state correctional
23 facility, both of the following apply:

24 (a) A copy or amended copy of the presentence investigation
25 report and, if a psychiatric examination of the person has been
26 made for the court, a copy of the psychiatric report ~~shall-MUST~~
27 accompany the commitment papers. If the person is sentenced by fine

1 or imprisonment or placed on probation or other disposition of his
2 or her case is made by the court, a copy or amended copy of the
3 presentence investigation report, including a psychiatric
4 examination report made in the case, ~~shall~~**MUST** be filed with the
5 department of corrections.

6 (b) The person ~~shall~~**MUST** be provided notification that
7 provides an explanation of the importance of obtaining an
8 operator's license or state personal identification card upon
9 release from incarceration and lists the personal identification
10 documents described in section 34c of the corrections code of 1953,
11 1953 PA 232, MCL 791.234c, necessary for obtaining an operator's
12 license or state personal identification card. The notification
13 also ~~shall~~**MUST** contain a request that the person obtain and
14 provide those documents to the department of corrections. The
15 notification also ~~shall~~**MUST** state that the department of
16 corrections will retain in the file maintained for the person any
17 identification documents provided by the person until he or she is
18 released from secure confinement. Any identification documents
19 previously provided by the person ~~shall~~**MUST** accompany the
20 commitment papers.

21 (10) A prisoner under the jurisdiction of the department of
22 corrections ~~shall~~**MUST** be provided with a copy of any presentence
23 investigation report in the department's possession about that
24 prisoner, except for information exempted from disclosure under
25 subsection (3), not less than 30 days before a parole interview is
26 conducted under section 35 of the corrections code of 1953, 1953 PA
27 232, MCL 791.235.

CHAPTER XIA

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Sec. 2. As used in this chapter:

(A) "ABSCONDING FROM SUPERVISION" MEANS BEING APPREHENDED BY A LAW ENFORCEMENT OR PROBATION OFFICER, OR BEING ARRESTED FOR A NEW CRIME OUTSIDE OF THIS STATE.

(B) ~~(a)~~ "Circuit OF THE CIRCUIT court" includes a unified trial court ~~having~~ THAT HAS jurisdiction over probationers.

(C) "FAILURE TO REPORT" MEANS FAILURE TO REPORT TO THE PROBATION OFFICER WHEN REQUIRED AND TO TURN HIMSELF OR HERSELF IN WITHIN 7 DAYS AFTER A WARRANT FOR HIS OR HER APPREHENSION HAS BEEN ISSUED.

(D) "MAJOR RISK VIOLATION" MEANS EITHER OF THE FOLLOWING:

(i) THE VIOLATION OF A PROTECTIVE ORDER.

(ii) AN OFFENSE AGAINST A PERSON THAT IS A VIOLATION OF SECTION 83, 84, 86, 88, 89, 317, 321, 349, 349A, 350, 397, 520B, 520C, 520D, 520G(1), 529, OR 529A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89, 750.317, 750.321, 750.349, 750.349A, 750.350, 750.397, 750.520B, 750.520C, 750.520D, 750.520G, 750.529, AND 750.529A.

(E) "NONCOMPLIANCE VIOLATION" MEANS A FAILURE TO REPORT OR OTHER VIOLATION OF A CONDITION OF SUPERVISION THAT IS NOT A RISK VIOLATION OR A MAJOR RISK VIOLATION.

(F) "NONCONFINEMENT RESPONSE" MEANS A VIOLATION RESPONSE THAT DOES NOT RESULT IN IMPRISONMENT IN THE CUSTODY OF THE DEPARTMENT OR THE COUNTY JAIL, INCLUDING ANY OF THE FOLLOWING:

(i) EXTENSION OF THE PERIOD OF SUPERVISION WITHIN THE PERIOD PROVIDED BY LAW.

1 (ii) ADDITIONAL REPORTING AND COMPLIANCE REQUIREMENTS.

2 (iii) TESTING FOR THE USE OF DRUGS OR ALCOHOL.

3 (iv) COUNSELING OR TREATMENT FOR BEHAVIORAL HEALTH PROBLEMS,
4 INCLUDING FOR SUBSTANCE USE.

5 (G) ~~(b)~~-"Probationer" means an individual placed on probation
6 for committing a felony.

7 (H) "RISK VIOLATION" MEANS A VIOLATION OF A CONDITION OF
8 SUPERVISION THAT IS ANY OF THE FOLLOWING:

9 (i) CONTACT WITH A SPECIFICALLY PROHIBITED PERSON, OR PROXIMITY
10 TO A SPECIFICALLY PROHIBITED BUSINESS OR LOCATION.

11 (ii) AN ARREST FOR DOMESTIC VIOLENCE OR OTHER THREATENING,
12 STALKING, OR ASSAULTIVE BEHAVIOR THAT IS NOT A VIOLATION OF A
13 PROTECTIVE ORDER.

14 (iii) AN ARREST FOR AN UNADJUDICATED NEW FELONY THAT IS NOT A
15 MAJOR RISK VIOLATION.

16 (iv) ABSCONDING FROM SUPERVISION.

17 (v) THE PROBATIONER'S SIXTH OR SUBSEQUENT NONCOMPLIANCE
18 VIOLATION.

19 Sec. 3. It is the intent of the legislature ~~to create a~~
20 ~~voluntary state program~~ to fund swift and sure probation
21 supervision ~~at the local level based upon~~ **ON** the immediate
22 detection of probation violations and **THE** prompt ~~the~~ imposition of
23 sanctions and remedies to address those violations. In furtherance
24 of this intent, the state swift and sure sanctions program ~~is~~
25 ~~created with the following objectives:~~ **MUST BE IMPLEMENTED AND**
26 **MAINTAINED AS PROVIDED IN THIS CHAPTER AS FOLLOWS:**

27 (a) Probationers are to be sentenced with prescribed terms of

1 probation meeting the objectives of this chapter. Probationers are
2 to be aware of their probation terms as well as the consequences
3 for violating the terms of their probation.

4 (b) Probationers are to be closely monitored and every
5 detected violation is to be promptly addressed by the court.

6 (c) Probationers are to be arrested as soon as a violation has
7 been detected and are to be promptly taken before a judge for a
8 hearing on the violation **UNLESS THE VIOLATION IS A NONCOMPLIANCE**
9 **VIOLATION AND THE PROBATIONER WAIVES A HEARING AFTER BEING**
10 **PRESENTED WITH A VIOLATION REPORT.**

11 (d) Continued violations are to be addressed by increasing
12 sanctions and remedies as necessary to achieve results. **AT A**
13 **MINIMUM, PROBATIONERS MAY BE CONFINED FOR THE PERIOD DESIGNATED IN**
14 **THE VIOLATION REPORT, UP TO 3 DAYS, ON THE EXECUTION BY THE**
15 **PROBATIONER OF A WAIVER OF RIGHTS.**

16 (e) To the extent possible and considering local resources,
17 probationers subject to swift and sure probation under this chapter
18 ~~shall~~ **MUST** be treated uniformly throughout ~~the~~ **THIS** state.

19 Sec. 5. (1) A ~~program of swift and sure probation supervision~~
20 ~~funded under section 4~~ **JUDGE** shall do all of the following **IF SWIFT**
21 **AND SURE PROBATION APPLIES TO A PROBATIONER:**

22 (a) ~~Require the court to inform~~ **INFORM** the probationer in
23 person of the requirements of his or her probation and the
24 sanctions and remedies that may apply to probation violations.

25 (b) Require the probationer to initially meet in person with a
26 probation agent or probation officer and as otherwise required by
27 the court.

1 (c) Provide for an appearance before the judge **OR ANOTHER**
 2 **JUDGE** for any probation violation as soon as possible but within 72
 3 hours after the violation is reported to the court unless **THE**
 4 **PROBATIONER WAIVES A HEARING OR** a departure from the 72-hour
 5 requirement is authorized for good cause as determined by criteria
 6 established by the state court administrative office.

7 (d) Provide for the immediate imposition of sanctions and
 8 remedies ~~approved by the state court administrative office to~~
 9 ~~effectively address probation violations. The sanctions and~~
 10 ~~remedies approved under this subdivision may include, but need not~~
 11 ~~be limited to, 1 or more of the following:~~ **AS PROVIDED IN SECTION**
 12 **4(1) OF CHAPTER XI.**

13 ~~—— (i) Temporary incarceration in a jail or other facility~~
 14 ~~authorized by law to hold probation violators.~~

15 ~~—— (ii) Extension of the period of supervision within the period~~
 16 ~~provided by law.~~

17 ~~—— (iii) Additional reporting and compliance requirements.~~

18 ~~—— (iv) Testing for the use of drugs and alcohol.~~

19 ~~—— (v) Counseling and treatment for emotional or other mental~~
 20 ~~health problems, including for substance abuse.~~

21 ~~—— (vi) Probation revocation.~~

22 (2) The state court administrative office may, under the
 23 supervision of the supreme court, do any of the following regarding
 24 programs funded under this chapter:

25 (a) Establish general eligibility requirements for offender
 26 participation.

27 (b) Require courts and offenders to enter into written

1 participation agreements.

2 (c) Create recommended and mandatory sanctions and remedies
3 for use by participating courts.

4 (d) Establish criteria for deviating from recommended and
5 mandatory sanctions and remedies ~~when~~**IF** necessary to address
6 special circumstances.

7 (e) Establish a system for determining sanctions and remedies
8 that should or may be imposed under subdivision (c) and for
9 alternative sanctions and remedies under subdivision (d).

HOUSE BILL No. 5931

November 6, 2014, Introduced by Rep. Haveman and referred to the Committee on Appropriations.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 11a, 20g, 33, 33e, 35, 39a, and 40a (MCL 791.211a, 791.220g, 791.233, 791.233e, 791.235, 791.239a, and 791.240a), section 11a as amended by 1998 PA 204, section 20g as amended by 2000 PA 211, section 33 as amended by 1998 PA 320, section 33e as added by 1992 PA 181, section 35 as amended by 2012 PA 24, section 39a as added by 1982 PA 314, and section 40a as amended by 2006 PA 532.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11a. (1) The director of corrections may enter into
2 contracts on behalf of this state as the director considers
3 appropriate to implement the participation of this state in the
4 interstate corrections compact ~~pursuant to~~ **ENTERED INTO UNDER 1994**
5 **PA 92, MCL 3.981 TO 3.984, UNDER** article III of **SECTION 3 OF** the

1 interstate corrections compact, 1994 PA 92, MCL 3.983. The
2 contracts may authorize confinement of prisoners in, or transfer of
3 prisoners from, correctional facilities under the jurisdiction of
4 the department of corrections. A contract ~~shall~~**MAY** not authorize
5 the confinement of a prisoner who is in the custody of the
6 department in an institution of a state other than a state that is
7 a party to the interstate corrections compact. When transferring
8 prisoners to institutions of other states under this section, the
9 director shall endeavor to ensure that the transfers do not
10 disproportionately affect groups of prisoners according to race,
11 religion, color, creed, or national origin.

12 (2) The director of corrections shall first determine, on the
13 basis of an inspection made by his or her direction, that an
14 institution of another state is a suitable place for confinement of
15 prisoners committed to his or her custody before entering into a
16 contract permitting that confinement, and shall, at least annually,
17 redetermine the suitability of that confinement. In determining the
18 suitability of an institution of another state, the director shall
19 determine that the institution maintains standards of care and
20 discipline not incompatible with those of this state and that all
21 inmates confined in that institution are treated equitably,
22 regardless of race, religion, color, creed, or national origin.

23 (3) In considering transfers of prisoners out-of-state
24 ~~pursuant to~~**UNDER** the interstate corrections compact ~~due to~~**ENTERED**
25 **INTO UNDER 1994 PA 92, MCL 3.981 TO 3.984, BECAUSE OF** bed space
26 needs, the department shall do all of the following:

27 (a) Consider first prisoners who volunteer to transfer ~~as long~~

1 ~~as~~**IF** they meet the eligibility criteria for ~~such~~**THE** transfer.

2 (b) Provide law library materials including Michigan Compiled
3 Laws, Michigan state and federal cases, and U.S. sixth circuit
4 court cases.

5 (c) Not transfer a prisoner who has a significant medical or
6 mental health need.

7 (d) Use objective criteria in determining which prisoners to
8 transfer.

9 (4) Unless a prisoner consents in writing, a prisoner
10 transferred under the interstate corrections compact ~~due to~~**BECAUSE**
11 **OF** bed space needs ~~shall~~**MAY** not be confined in another state for
12 more than 1 year.

13 (5) A prisoner who is transferred to an institution of another
14 state under this section ~~shall~~**MUST** receive all of the following
15 while in the receiving state:

16 (a) Mail services and access to the court.

17 (b) Visiting and telephone privileges.

18 (c) Occupational and vocational programs such as GED-ABE and
19 appropriate vocational programs for his or her level of custody.

20 (d) Programs such as substance ~~abuse~~**USE** programs, sex
21 offender programs, and life skills development.

22 **(E) HIGH SCHOOL EQUIVALENCY TRAINING AND CERTIFICATION.**

23 **(F) ~~(e)~~**Routine and emergency health care, dental care, and
24 mental health services.

25 (6) ~~One year after April 13, 1994 and annually after that~~
26 ~~date,~~**BY APRIL 13 OF EACH YEAR**, the department shall report all of
27 the following to the senate and house committees responsible for

1 legislation concerning corrections and to the appropriations
2 subcommittees on corrections:

3 (a) The number of prisoners transferred to or from
4 correctional facilities in this state ~~pursuant to~~ **UNDER** the
5 interstate corrections compact **ENTERED INTO UNDER 1994 PA 92, MCL**
6 **3.981 TO 3.984.**

7 (b) The cost to the state of the transfers described in
8 subdivision (a).

9 (c) The reasons for the transfers described in subdivision
10 (a).

11 Sec. 20g. (1) The department may establish a youth
12 correctional facility which ~~shall~~ **MUST** house only prisoners
13 committed to the jurisdiction of the department who are 19 years of
14 age or less. If the department establishes or contracts with a
15 private vendor for the operation of a youth correctional facility,
16 following intake processing in a department operated facility, the
17 department shall house all male prisoners who are 16 years of age
18 or less at the youth correctional facility unless the department
19 determines that the prisoner should be housed at a different
20 facility for reasons of security, safety, or because of the
21 prisoner's specialized physical or mental health care needs.

22 (2) Except as provided in subsection (3), a prisoner who is 16
23 years of age or less and housed at a youth correctional facility
24 shall only be placed in a general population housing unit with
25 prisoners who are 16 years of age or less.

26 (3) A prisoner who becomes 17 years of age while being housed
27 at a youth correctional facility and who has a satisfactory prison

1 record may remain in a general population housing unit for no more
2 than 1 year with prisoners who are 16 years of age or less.

3 (4) Except as provided in subsection (3), a prisoner who is 16
4 years of age or less and housed at a youth correctional facility
5 shall not ~~be allowed to be~~ in the proximity of a prisoner who is 17
6 years of age or more without the presence and direct supervision of
7 custody personnel in the immediate vicinity.

8 (5) The department may establish and operate the youth
9 correctional facility or may contract on behalf of the state with a
10 private vendor for the construction or operation, or both, of the
11 youth correctional facility. If the department contracts with a
12 private vendor to construct, rehabilitate, develop, renovate, or
13 operate any existing or anticipated facility ~~pursuant to~~ **UNDER** this
14 section, the department shall require a written certification from
15 the private vendor regarding all of the following:

16 (a) If practicable to efficiently and effectively complete the
17 project, the private vendor shall follow a competitive bid process
18 for the construction, rehabilitation, development, or renovation of
19 the facility, and this process ~~shall~~ **MUST** be open to all Michigan
20 residents and firms. The private vendor shall not discriminate
21 against any contractor on the basis of its affiliation or
22 nonaffiliation with any collective bargaining organization.

23 (b) The private vendor shall make a good faith effort to
24 employ, if qualified, Michigan residents at the facility.

25 (c) The private vendor shall make a good faith effort to
26 employ or contract with Michigan residents and firms to construct,
27 rehabilitate, develop, or renovate the facility.

1 (6) If the department contracts with a private vendor for the
2 operation of the youth correctional facility, the department shall
3 require by contract that the personnel employed by the private
4 vendor in the operation of the facility be certified as
5 correctional officers to the same extent as would be required if
6 those personnel were employed in a correctional facility operated
7 by the department. The department also shall require by contract
8 that the private vendor meet requirements specified by the
9 department regarding security, protection of the public,
10 inspections by the department, programming, liability and
11 insurance, conditions of confinement, educational services required
12 under subsection (11), and any other issues the department
13 considers necessary for the operation of the youth correctional
14 facility. The department shall also require that the contract
15 include provisions to protect the public's interest if the private
16 vendor defaults on the contract. Before finalizing a contract with
17 a private vendor for the construction or operation of the youth
18 correctional facility, the department shall submit the proposed
19 contract to the standing committees of the senate and the house of
20 representatives having jurisdiction of corrections issues, the
21 corrections subcommittees of the standing committees on
22 appropriations of the senate and the house of representatives, and,
23 with regard to proposed construction contracts, the joint committee
24 on capital outlay. A contract between the department and a private
25 vendor for the construction or operation of the youth correctional
26 facility ~~shall be~~ **IS** contingent upon appropriation of the required
27 funding. If the department contracts with a private vendor under

1 this section, the selection of that private vendor ~~shall~~**MUST** be by
2 open, competitive bid.

3 (7) The department shall not site a youth correctional
4 facility under this section in a city, village, or township unless
5 the local legislative body of that city, village, or township
6 adopts a resolution approving the location.

7 (8) A private vendor operating a youth correctional facility
8 under a contract under this section shall not do any of the
9 following, unless directed to do so by the department policy:

10 (a) Calculate inmate release and parole eligibility dates.

11 (b) Award good time or disciplinary credits, or impose
12 disciplinary time.

13 (c) Approve inmates for extensions of limits of confinement.

14 (9) The youth correctional facility ~~shall~~**MUST** be open to
15 visits during all business hours, and during nonbusiness hours
16 unless an emergency prevents it, by any elected state senator or
17 state representative.

18 (10) Once each year, the department shall report on the
19 operation of the facility. ~~Copies of~~**THE DEPARTMENT SHALL SUBMIT**
20 the report ~~shall be submitted~~ to the chairpersons of the house and
21 senate committees responsible for legislation on corrections or
22 judicial issues, and to the clerk of the house of representatives
23 and the secretary of the senate.

24 (11) Regardless of whether the department itself operates the
25 youth correctional facility or contracts with a private vendor to
26 operate the youth correctional facility, all of the following
27 educational services ~~shall~~**MUST** be provided for juvenile prisoners

1 housed at the facility who have not earned a high school diploma or
2 received a general education certificate (GED):

3 (a) The department or private vendor shall require that a
4 prisoner whose academic achievement level is not sufficient to
5 allow the prisoner to participate effectively in a program leading
6 to the attainment of a ~~GED certificate~~ ~~participate in classes that~~
7 ~~will prepare him or her to participate effectively in the GED~~
8 ~~program,~~ **HIGH SCHOOL EQUIVALENCY CERTIFICATION**, and shall provide
9 those classes in the facility.

10 (b) The department or private vendor shall require that a
11 prisoner who successfully completes classes described in
12 subdivision (a), or whose academic achievement level is otherwise
13 sufficient, participate in classes leading to the attainment of a
14 ~~GED certificate,~~ **HIGH SCHOOL EQUIVALENCY CERTIFICATION**, and shall
15 provide those classes.

16 (12) Neither the department nor the private vendor shall seek
17 to have the youth correctional facility authorized as a public
18 school academy under the revised school code, 1976 PA 451, MCL
19 380.1 to 380.1852.

20 (13) A private vendor that operates the youth correctional
21 facility under a contract with the department shall provide written
22 notice of its intention to discontinue its operation of the
23 facility. This subsection does not authorize or limit liability for
24 a breach or default of contract. If the reason for the
25 discontinuance is that the private vendor intends not to renew the
26 contract, the notice ~~shall~~ **MUST** be delivered to the director of the
27 department at least 1 year before the contract expiration date. If

1 the discontinuance is for any other reason, the notice ~~shall~~**MUST**
2 be delivered to the director of the department at least 6 months
3 before the date ~~on which~~**THAT** the private vendor will discontinue
4 its operation of the facility. This subsection does not authorize
5 or limit liability for a breach or default of contract.

6 Sec. 33. (1) The grant of a parole is subject to all of the
7 following:

8 (a) ~~A EXCEPT AS OTHERWISE PROVIDED IN SECTION 33E, A~~ prisoner
9 shall ~~not~~ be given liberty on parole ~~until~~**WHEN THE PRISONER HAS**
10 **SERVED THE MINIMUM SENTENCE IMPOSED BY THE COURT. A PRISONER SHALL**
11 **NOT BE GIVEN LIBERTY ON PAROLE IF** the board has reasonable
12 assurance, ~~after consideration of all of the facts and~~
13 ~~circumstances, including the prisoner's mental and social attitude,~~
14 **A SUBSTANTIAL AND COMPELLING REASON TO CONCLUDE** that the prisoner
15 **IF RELEASED** will ~~not~~ become a menace to society or to the public
16 safety. **THIS SUBDIVISION DOES NOT APPLY TO ANY OF THE FOLLOWING**
17 **PRISONERS:**

18 (i) **A PRISONER SENTENCED FOR A FELONY FOR WHICH THE MAXIMUM**
19 **PENALTY IS IMPRISONMENT FOR LIFE.**

20 (ii) **A PRISONER WHO HAS PENDING FELONY CHARGES OR DETAINERS.**

21 (iii) **A PRISONER WHO WAS INTERVIEWED BY THE PAROLE BOARD AND**
22 **DENIED PAROLE UNDER SECTION 33E.**

23 (b) Except as provided in section 34a, a parole shall not be
24 granted to a prisoner other than a prisoner subject to disciplinary
25 time until the prisoner has served the minimum term imposed by the
26 court less allowances for good time or special good time to which
27 the prisoner may be entitled by statute, except that a prisoner

1 other than a prisoner subject to disciplinary time is eligible for
2 parole before the expiration of his or her minimum term of
3 imprisonment ~~whenever~~ **IF** the sentencing judge, or the judge's
4 successor in office, gives written approval of the parole of the
5 prisoner before the expiration of the minimum term of imprisonment.

6 (c) Except as provided in section 34a, and notwithstanding ~~the~~
7 ~~provisions of~~ subdivision (b), a parole ~~shall~~ **MAY** not be granted to
8 a prisoner other than a prisoner subject to disciplinary time
9 sentenced for the commission of a crime described in section 33b(a)
10 to (cc) until the prisoner has served the minimum term imposed by
11 the court less an allowance for disciplinary credits as provided in
12 section 33(5) of 1893 PA 118, MCL 800.33. A prisoner described in
13 this subdivision is not eligible for special parole.

14 (d) Except as provided in section 34a, a parole ~~shall~~ **MAY** not
15 be granted to a prisoner subject to disciplinary time until the
16 prisoner has served the minimum term imposed by the court.

17 (e) A prisoner shall not be released on parole until the
18 parole board has satisfactory evidence that arrangements have been
19 made for such honorable and useful employment as the prisoner is
20 capable of performing, for the prisoner's education, or for the
21 prisoner's care if the prisoner is mentally or physically ill or
22 incapacitated. **THE PAROLE BOARD SHALL IMPOSE CONDITIONS OF PAROLE**
23 **REQUIRING EACH PRISONER TO PARTICIPATE IN PROGRAMMING IDENTIFIED BY**
24 **THE DEPARTMENT AND DESIGNED TO ADDRESS THE PRISONER'S BEHAVIORAL,**
25 **EDUCATIONAL, AND SOCIAL NEEDS.**

26 (f) A prisoner whose minimum term of imprisonment is 2 years
27 or more shall not be released on parole unless he or she has either

1 earned a high school diploma or ~~earned its equivalent in the form~~
2 ~~of a general education development (GED)~~ **A HIGH SCHOOL EQUIVALENCY**
3 certificate. The director of the department may waive the
4 restriction imposed by this subdivision ~~as to any~~ **FOR A** prisoner
5 who is over the age of 65 or who was gainfully employed immediately
6 before committing the crime for which he or she was incarcerated.
7 The department of corrections may also waive the restriction
8 imposed by this subdivision ~~as to any~~ **FOR A** prisoner who has a
9 learning disability, who does not have the necessary proficiency in
10 English, or who for some other reason that is not the fault of the
11 prisoner is unable to successfully complete the requirements for a
12 high school diploma or a ~~general education development~~ **HIGH SCHOOL**
13 **EQUIVALENCY** certificate. If the prisoner does not have the
14 necessary proficiency in English, the department of corrections
15 shall provide English language training for that prisoner necessary
16 for the prisoner to begin working toward the completion of the
17 requirements for a general education development certificate. This
18 subdivision applies to prisoners sentenced for crimes committed
19 after December 15, 1998. In providing an educational program
20 leading to a high school degree or ~~general education development~~
21 **HIGH SCHOOL EQUIVALENCY** certificate, the department shall give
22 priority to prisoners sentenced for crimes committed on or before
23 December 15, 1998.

24 (G) **A PRISONER WHO IS SENTENCED ON OR AFTER THE EFFECTIVE DATE**
25 **OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION WHO IS NOT PLACED**
26 **ON PAROLE UPON SERVICE OF HIS OR HER MINIMUM SENTENCE UNDER SECTION**
27 **33E SHALL BE PLACED ON PAROLE NOT LATER THAN 9 MONTHS BEFORE THE**

1 **EXPIRATION OF THE PRISONER'S MAXIMUM SENTENCE TO ENSURE A PERIOD OF**
2 **INTENSIVE SUPERVISION IN THE COMMUNITY.**

3 (2) Paroles-in-custody to answer warrants filed by local or
4 out-of-state agencies, or immigration officials, are permissible if
5 an accredited agent of the agency filing the warrant calls for the
6 prisoner to be paroled in custody.

7 (3) ~~Pursuant to~~ **UNDER** the administrative procedures act of
8 1969, 1969 PA 306, MCL 24.201 to 24.328, the parole board may
9 promulgate rules not inconsistent with this act with respect to
10 conditions to be imposed upon prisoners paroled under this act.

11 Sec. 33e. (1) The department shall develop parole guidelines
12 that are consistent with section 33(1)(a) ~~and that shall~~ **TO** govern
13 the exercise of the parole board's discretion ~~pursuant to~~ **UNDER**
14 sections 34 and 35 as to the release of prisoners on parole under
15 this act. The purpose of the parole guidelines ~~shall be~~ **IS** to
16 assist the parole board in making release decisions that enhance
17 the public safety.

18 (2) In developing the parole guidelines, the department shall
19 consider factors including, but not limited to, the following:

20 (a) The offense for which the prisoner is incarcerated at the
21 time of parole consideration.

22 (b) The prisoner's institutional program performance.

23 (c) The prisoner's institutional conduct.

24 (d) The prisoner's prior criminal record. As used in this
25 subdivision, "prior criminal record" means the recorded criminal
26 history of a prisoner, including all misdemeanor and felony
27 convictions, probation violations, juvenile adjudications for acts

1 that would have been crimes if committed by an adult, parole
2 failures, and delayed sentences.

3 (e) Other relevant factors as determined by the department, if
4 not otherwise prohibited by law.

5 (3) In developing the parole guidelines, the department may
6 consider both of the following factors:

7 (a) The prisoner's statistical risk screening.

8 (b) The prisoner's age.

9 (4) The department shall ensure that the parole guidelines do
10 not create disparities in release decisions based on race, color,
11 national origin, gender, religion, or disability.

12 (5) The department shall promulgate rules ~~pursuant to~~ **UNDER**
13 the administrative procedures act of 1969, ~~Act No. 306 of the~~
14 ~~Public Acts of 1969, being sections 24.201 to 24.328 of the~~
15 ~~Michigan Compiled Laws, which shall 1969 PA 306, MCL 24.201 TO~~
16 **24.328, THAT** prescribe the parole guidelines. ~~The department shall~~
17 ~~submit the proposed rules to the joint committee on administrative~~
18 ~~rules not later than April 1, 1994. Until the rules take effect,~~
19 ~~the director shall require that the parole guidelines be considered~~
20 ~~by the parole board in making release decisions. After the rules~~
21 ~~take effect, the director shall require that the parole board~~
22 ~~follow the parole guidelines.~~

23 (6) The parole board ~~may depart from the parole guidelines by~~
24 ~~denying parole to a prisoner who has a high probability of parole~~
25 ~~as determined under the parole guidelines or by granting parole to~~
26 ~~a prisoner who has a low probability of parole as determined under~~
27 ~~the parole guidelines. A departure under this subsection shall be~~

1 ~~for substantial and compelling reasons stated in writing. The~~
2 ~~parole board shall not use a prisoner's gender, race, ethnicity,~~
3 ~~alienage, national origin, or religion to depart from the~~
4 ~~recommended parole guidelines.~~ SHALL RELEASE A PRISONER WHO SCORES
5 HIGH OR AVERAGE PROBABILITY OF RELEASE UPON SERVICE OF THE
6 PRISONER'S MINIMUM SENTENCE, UNLESS 1 OF THE FOLLOWING
7 CIRCUMSTANCES IS PRESENT:

8 (A) THE PRISONER HAS AN INSTITUTIONAL MISCONDUCT SCORE LOWER
9 THAN -1.

10 (B) THERE IS OBJECTIVE AND VERIFIABLE EVIDENCE OF
11 POSTSENTENCING CONDUCT NOT ALREADY SCORED IN THE PAROLE GUIDELINES
12 THAT DEMONSTRATES THAT THE PRISONER WOULD PRESENT A HIGH RISK TO
13 PUBLIC SAFETY IF RELEASED.

14 (C) THE PRISONER HAS A PENDING FELONY CHARGE OR DETAINER.

15 (D) THE RELEASE OF THE PRISONER WOULD OTHERWISE BE BARRED BY
16 LAW.

17 (7) THE PAROLE BOARD SHALL CONDUCT A REVIEW OF A PRISONER WHO
18 HAS BEEN DENIED RELEASE UNDER SUBSECTION (6) AS FOLLOWS:

19 (A) IF THE PRISONER SCORED HIGH OR AVERAGE PROBABILITY OF
20 RELEASE, CONDUCT A REVIEW NOT LESS THAN ANNUALLY.

21 (B) IF THE PRISONER SCORED LOW PROBABILITY OF RELEASE, CONDUCT
22 A REVIEW NOT LESS THAN EVERY 2 YEARS UNTIL A SCORE OF HIGH OR
23 AVERAGE PROBABILITY IS ATTAINED.

24 (8) THE PAROLE BOARD MAY DEFER A RELEASE UPON THE SERVICE OF
25 THE PRISONER'S MINIMUM SENTENCE UNDER SUBSECTION (6) FOR UP TO 4
26 MONTHS TO ALLOW THE PRISONER TO COMPLETE A TREATMENT PROGRAM THAT
27 IS REASONABLY NECESSARY TO REDUCE THE RISK TO PUBLIC SAFETY FROM

1 **THE PRISONER'S RELEASE.**

2 (9) ~~(7)~~—Not less than once every 2 years, the department shall
3 review the correlation between the implementation of the parole
4 guidelines and the recidivism rate of paroled prisoners, and shall
5 submit to the joint committee on administrative rules **AND THE**
6 **CRIMINAL JUSTICE POLICY COMMISSION** any proposed revisions to the
7 administrative rules that the department considers appropriate
8 after conducting the review.

9 Sec. 35. (1) The release of a prisoner on parole shall be
10 granted solely upon the initiative of the parole board. The parole
11 board may grant a parole without interviewing the prisoner —
12 ~~However, beginning January 26, 1996, the parole board may grant a~~
13 ~~parole without interviewing the prisoner only if, after evaluating~~
14 the prisoner according to the parole guidelines, the parole board
15 determines that the prisoner has a high probability of being
16 paroled and the parole board therefore intends to parole the
17 prisoner. Except as provided in subsection (2), a prisoner ~~shall~~
18 **MAY** not be denied parole without an interview before 1 member of
19 the parole board. The interview ~~shall~~ **MUST** be conducted at least 1
20 month before the expiration of the prisoner's minimum sentence less
21 applicable good time and disciplinary credits for a prisoner
22 eligible for good time and disciplinary credits, or at least 1
23 month before the expiration of the prisoner's minimum sentence for
24 a prisoner subject to disciplinary time. The parole board shall
25 consider any statement made to the parole board by a crime victim
26 under the William Van Regenmorter crime victim's rights act, 1985
27 PA 87, MCL 780.751 to 780.834, or under any other provision of law.

1 The parole board shall not consider any of the following factors in
2 making a parole determination:

3 (a) A juvenile record that a court has ordered the department
4 to expunge.

5 (b) Information that is determined by the parole board to be
6 inaccurate or irrelevant after a challenge and presentation of
7 relevant evidence by a prisoner who has received a notice of intent
8 to conduct an interview as provided in subsection (4). This
9 subdivision applies only to presentence investigation reports
10 prepared before April 1, 1983.

11 (2) Beginning January 26, 1996, if, after evaluating a
12 prisoner according to the parole guidelines, the parole board
13 determines that the prisoner has a low probability of being paroled
14 and the parole board therefore does not intend to parole the
15 prisoner, the parole board is not required to interview the
16 prisoner before denying parole to the prisoner.

17 (3) The parole board may consider but shall not base a
18 determination to deny parole solely on either of the following:

19 (a) A prisoner's marital history.

20 (b) Prior arrests not resulting in conviction or adjudication
21 of delinquency.

22 (4) If an interview is to be conducted, the prisoner shall be
23 sent a notice of intent to conduct an interview at least 1 month
24 before the date of the interview. The notice ~~shall~~**MUST** state the
25 specific issues and concerns that ~~shall~~**WILL** be discussed at the
26 interview and that may be a basis for a denial of parole. ~~A denial~~
27 ~~of~~**THE PAROLE BOARD SHALL NOT DENY** parole ~~shall not be based on~~

1 reasons other than those stated in the notice of intent to conduct
2 an interview except for good cause stated to the prisoner at or
3 before the interview and in the written explanation required by
4 subsection (12). ~~This subsection does not apply until April 1,~~
5 ~~1983.~~

6 (5) Except for good cause, the parole board member conducting
7 the interview shall not have cast a vote for or against the
8 prisoner's release before conducting the current interview. Before
9 the interview, the parole board member who is to conduct the
10 interview shall review pertinent information relative to the notice
11 of intent to conduct an interview.

12 (6) A prisoner may waive the right to an interview by 1 member
13 of the parole board. The waiver of the right to be interviewed
14 ~~shall~~ **MUST** be **IN WRITING AND** given not more than 30 days after the
15 notice of intent to conduct an interview is issued. ~~and shall be~~
16 ~~made in writing.~~ During the interview held ~~pursuant to~~ **UNDER** a
17 notice of intent to conduct an interview, the prisoner may be
18 represented by an individual of his or her choice. The
19 representative ~~shall~~ **MAY** not be another prisoner or an attorney. A
20 prisoner is not entitled to appointed counsel at public expense.
21 The prisoner or representative may present relevant evidence in
22 support of release.

23 (7) At least 90 days before the expiration of the prisoner's
24 minimum sentence less applicable good ~~time~~ and disciplinary credits
25 for a prisoner eligible for good time or disciplinary credits, or
26 at least 90 days before the expiration of the prisoner's minimum
27 sentence for a prisoner subject to disciplinary time, or the

1 expiration of a 12-month continuance for any prisoner, **THE**
2 **APPROPRIATE INSTITUTIONAL STAFF SHALL PREPARE** a parole eligibility
3 report. ~~shall be prepared by appropriate institutional staff. The~~
4 parole eligibility report ~~shall be~~ **IS** considered pertinent
5 information for purposes of subsection (5). The report ~~shall~~ **MUST**
6 include all of the following:

7 (a) A statement of all major misconduct charges of which the
8 prisoner was found guilty and the punishment served for the
9 misconduct.

10 (b) The prisoner's work and educational record while confined.

11 (c) The results of any physical, mental, or psychiatric
12 examinations of the prisoner that may have been performed.

13 (d) Whether the prisoner fully cooperated with ~~the~~ **THIS** state
14 by providing complete financial information as required under
15 section 3a of the state correctional facility reimbursement act,
16 1935 PA 253, MCL 800.403a.

17 (e) Whether the prisoner refused to attempt to obtain
18 identification documents under section 34c, if applicable.

19 (f) For a prisoner subject to disciplinary time, a statement
20 of all disciplinary time submitted for the parole board's
21 consideration under section 34 of 1893 PA 118, MCL 800.34.

22 (8) The preparer of the report shall not include a
23 recommendation as to release on parole.

24 (9) Psychological evaluations performed at the request of the
25 parole board to assist it in reaching a decision on the release of
26 a prisoner may be performed by the same person who provided the
27 prisoner with therapeutic treatment, unless a different person is

1 requested by the prisoner or parole board.

2 (10) The parole board may grant a medical parole for a
3 prisoner determined to be physically or mentally incapacitated. A
4 decision to grant a medical parole ~~shall~~**MUST** be initiated ~~upon~~**ON**
5 the recommendation of the bureau of health care services and ~~shall~~
6 **MAY** be reached only after a review of the medical, institutional,
7 and criminal records of the prisoner.

8 (11) The department shall ~~submit~~**FILE** a petition to the
9 appropriate court under section 434 of the mental health code, 1974
10 PA 258, MCL 330.1434, for any prisoner being paroled or being
11 released after serving his or her maximum sentence whom the
12 department considers to be a person requiring treatment. The parole
13 board shall require mental health treatment as a special condition
14 of parole for any parolee whom the department has determined to be
15 a person requiring treatment whether or not the petition filed for
16 that prisoner is granted by the court. As used in this subsection,
17 "person requiring treatment" means that term as defined in section
18 401 of the mental health code, 1974 PA 258, MCL 330.1401.

19 (12) When the parole board makes a final determination not to
20 release a prisoner, **THE PAROLE BOARD SHALL PROVIDE** the prisoner
21 ~~shall be provided~~ with a written explanation of the reason for
22 denial and, if appropriate, specific recommendations for corrective
23 action the prisoner may take to facilitate release.

24 (13) This section does not apply to the placement on parole of
25 a person in conjunction with special alternative incarceration
26 under section 34a(7).

27 Sec. 39a. (1) Within 10 days after an arrest for an alleged

1 violation of parole, the parolee ~~shall be~~ **IS** entitled to a
2 preliminary hearing to determine ~~whether~~ **IF** there is probable cause
3 to believe that the conditions of parole have been violated or a
4 fact-finding hearing held ~~pursuant to~~ **UNDER** section 40a.

5 (2) **WITHIN 3 DAYS AFTER AN ARREST FOR AN ALLEGED VIOLATION OF**
6 **PAROLE, THE PAROLE OFFICER MAY WITHDRAW THE WARRANT AND RELEASE THE**
7 **PRISONER TO PAROLE SUPERVISION IF THE OFFICER DETERMINES, AND A**
8 **SUPERVISOR CONFIRMS, THAT THE PAROLED PRISONER COMMITTED ONLY A**
9 **NONCOMPLIANCE VIOLATION. TIME SERVED UNDER THIS SUBSECTION MAY NOT**
10 **BE CREDITED UNLESS CUMULATIVE CONFINEMENT UNDER THIS SUBSECTION**
11 **EQUALS 30 DAYS, AT WHICH POINT THE 30 DAYS AND ANY FUTURE**
12 **CONFINEMENT UNDER THIS SUBSECTION MUST BE CREDITED.**

13 (3) ~~(2) Prior to~~ **BEFORE** the preliminary hearing, the accused
14 parolee ~~shall~~ **MUST** be given written notice of the charges, time,
15 place, and purpose of the preliminary hearing.

16 (4) ~~(3)~~ At the preliminary hearing, the accused parolee is
17 entitled to the following rights:

18 (a) Disclosure of the evidence against him or her.

19 (b) The right to testify and present relevant witnesses and
20 documentary evidence.

21 (c) The right to confront and cross-examine adverse witnesses
22 unless the person conducting the preliminary hearing finds on the
23 record that a witness may be subjected to risk of harm if his or
24 her identity is revealed.

25 (5) ~~(4)~~ A preliminary hearing may be postponed beyond the 10-
26 day time limit on the written request of the parolee, but ~~shall~~ **MAY**
27 not be postponed by the department.

1 (6) ~~(5)~~—If a preliminary hearing is not held ~~pursuant to~~ **UNDER**
 2 subsection (1), an accused parolee ~~shall~~ **MUST** be given written
 3 notice of the charges against him or her, the time, place, and
 4 purpose of the fact-finding hearing and a written summary of the
 5 evidence to be presented against him or her.

6 (7) ~~(6)~~—If a preliminary hearing is not held ~~pursuant to~~ **UNDER**
 7 subsection (1), an accused parolee may not be found guilty of a
 8 violation based on evidence that was not summarized in the notice
 9 provided ~~pursuant to~~ **UNDER** subsection ~~(5)~~ ~~(6)~~ except for good cause
 10 stated on the record and included in the written findings of fact
 11 provided to the parolee.

12 (8) **AS USED IN THIS SECTION, "NONCOMPLIANCE VIOLATION" MEANS**
 13 **THAT TERM AS DEFINED IN SECTION 40A.**

14 Sec. 40a. (1) After a prisoner is released on parole, the
 15 prisoner's parole order is subject to **SANCTIONS OR** revocation at
 16 the discretion of the **DEPARTMENT AND** parole board for cause as
 17 provided in this section **AND SECTION 39A.**

18 (2) If a paroled prisoner who is required to register ~~pursuant~~
 19 ~~to~~ **UNDER** the sex offenders registration act, 1994 PA 295, MCL
 20 28.721 to 28.736, willfully violates that act, the parole board
 21 shall revoke the parole. If a prisoner convicted of violating or
 22 conspiring to violate section 7401(2) (a) (i) or (ii) or 7403(2) (a) (i)
 23 or (ii) of the public health code, 1978 PA 368, MCL 333.7401 and
 24 333.7403, is released on parole and violates or conspires to
 25 violate article 7 of the public health code, 1978 PA 368, MCL
 26 333.7101 to 333.7545, and that violation or conspiracy to violate
 27 is punishable by imprisonment for 4 or more years, or commits a

1 violent felony during his or her release on parole, parole shall be
2 revoked.

3 (3) Within 45 days after a paroled prisoner has been returned
4 or is available for return to a state correctional facility under
5 accusation of a parole violation other than conviction for a felony
6 or misdemeanor punishable by imprisonment under the laws of this
7 state, the United States, or any other state or territory of the
8 United States, the prisoner is entitled to a fact-finding hearing
9 on the charges before 1 member of the parole board or an attorney
10 hearings officer designated by the chairperson of the parole board.
11 The fact-finding hearing ~~shall~~**MUST** be conducted only after the
12 accused parolee has had a reasonable amount of time to prepare a
13 defense. The fact-finding hearing may be held at a state
14 correctional facility or at or near the location of the alleged
15 violation.

16 (4) If, before a fact-finding hearing begins, the accused
17 parolee alleges that he or she is indigent and requests that an
18 attorney be appointed to represent him or her, the parole board
19 member or attorney hearings officer who will conduct the hearing
20 shall determine ~~whether~~**IF** the accused parolee is indigent. If the
21 accused parolee is determined to be indigent, the parole board
22 member or hearings officer shall ~~cause the appointment of~~**APPOINT**
23 an attorney to represent the accused parolee at the fact-finding
24 hearing. The **DEPARTMENT SHALL PAY THE** cost of the appointed
25 attorney ~~shall be paid~~ from the department's general operating
26 budget.

27 (5) An accused parolee ~~shall~~**MUST** be given written notice of

1 the charges against him or her and the time, place, and purpose of
2 the fact-finding hearing. At the fact-finding hearing, the accused
3 parolee may be represented by a retained attorney or an attorney
4 appointed under subsection (4) and is entitled to the following
5 rights:

6 (a) Full disclosure of the evidence against him or her.

7 (b) To testify and present relevant witnesses and documentary
8 evidence.

9 (c) To confront and cross-examine adverse witnesses unless the
10 person conducting the fact-finding hearing finds on the record that
11 a witness is subject to risk of harm if his or her identity is
12 revealed.

13 (d) To present other relevant evidence in mitigation of the
14 charges.

15 (6) A fact-finding hearing may be postponed for cause beyond
16 the 45-day time limit on the written request of the parolee, the
17 parolee's attorney, or, if a postponement of the preliminary parole
18 violation hearing required under section 39a has been granted
19 beyond the 10-day time limit, by the parole board.

20 (7) The director or a deputy director designated by the
21 director ~~shall~~**MUST** be notified in writing if the preliminary
22 parole violation hearing is not conducted within the 10-day time
23 limit, and the hearing ~~shall~~**MUST** be conducted as soon as possible.
24 The director or a deputy director designated by the director ~~shall~~
25 **MUST** be notified in writing if the fact-finding hearing is not
26 conducted within the 45-day time limit, and the hearing ~~shall~~**MUST**
27 be conducted as soon as possible. A parolee held in custody shall

1 not be released pending disposition of either hearing.

2 (8) If the evidence presented is insufficient to support the
3 allegation that a parole violation occurred, the parolee ~~shall~~**MUST**
4 be reinstated to parole status.

5 (9) If the parole board member or hearings officer conducting
6 the fact-finding hearing determines from a preponderance of the
7 evidence that a parole violation has occurred, the parole board
8 member or hearings officer shall present the relevant facts to the
9 parole board and make a recommendation as to the disposition of the
10 charges.

11 (10) If a preponderance of the evidence supports the
12 allegation that a parole violation occurred, the parole board may
13 **IMPOSE A SANCTION OR** revoke parole. ~~and~~**THE PAROLE BOARD SHALL**
14 **PROVIDE** the parolee ~~shall be provided~~ with a written statement of
15 the findings of fact and the reasons for the determination within
16 **THE SANCTION PERIOD OR WITHIN** 60 days after the paroled prisoner
17 has been returned or is available for return to a state
18 correctional facility, **AS APPLICABLE. THE PRISONER MUST BE**
19 **SANCTIONED WITH CONFINEMENT IN THE COUNTY JAIL, AND THEN PLACED ON**
20 **PAROLE AGAIN NOT MORE THAN 30 DAYS FOLLOWING THE DATE ON WHICH THE**
21 **DETERMINATION OF A FIRST OR SECOND RISK VIOLATION OCCURS. THE**
22 **PAROLE BOARD MAY REVOKE PAROLE TO THE CUSTODY OF THE DEPARTMENT FOR**
23 **THE THIRD DETERMINATION OF A RISK VIOLATION OR FOR A FIRST**
24 **DETERMINATION OF A MAJOR RISK VIOLATION, AND PLACE THE PRISONER ON**
25 **PAROLE AGAIN.**

26 (11) ~~A~~**THE PAROLE BOARD MAY REVOKE THE PAROLE OF A** parolee who
27 is ordered to make restitution under the William Van Regenmorter

1 crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or
 2 the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69,
 3 or to pay an assessment ordered under section 5 of 1989 PA 196, MCL
 4 780.905, as a condition of parole ~~may have his or her parole~~
 5 ~~revoeked by the parole board if the parolee fails to~~ **DOES NOT** comply
 6 with the order and if the parolee has not made a good faith effort
 7 to comply with the order. In determining whether to revoke parole,
 8 the parole board shall consider the parolee's employment status,
 9 earning ability, and financial resources, the willfulness of the
 10 parolee's failure to comply with the order, and any other special
 11 circumstances that may have a bearing on the parolee's ability to
 12 comply with the order.

13 **(12) IF A PRISONER HAS TURNED HIMSELF OR HERSELF IN WITHIN 7**
 14 **DAYS AFTER A WARRANT HAS BEEN ISSUED, THE PAROLE BOARD SHALL NOT**
 15 **SANCTION OR REVOKE PAROLE FOR ABSCONDING SUPERVISION.**

16 (13) ~~(12)~~As used in this section: ~~,"violent~~

17 **(A) "ABSCONDING SUPERVISION" MEANS BEING APPREHENDED BY A LAW**
 18 **ENFORCEMENT OR PAROLE OFFICER, OR BEING ARRESTED FOR A NEW CRIME**
 19 **OUTSIDE OF THIS STATE. IF THE PRISONER HAS TURNED HIMSELF OR**
 20 **HERSELF IN WITHIN 7 DAYS AFTER A WARRANT HAS BEEN ISSUED, HE OR SHE**
 21 **SHALL NOT BE SANCTIONED OR REVOKED FOR ABSCONDING SUPERVISION.**

22 **(B) "MAJOR RISK VIOLATION" MEANS EITHER OF THE FOLLOWING:**

23 **(i) THE VIOLATION OF A PROTECTIVE ORDER.**

24 **(ii) AN ALLEGED VIOLATION OF SECTION 83, 84, 86, 88, 89, 317,**
 25 **321, 349, 349A, 350, 397, 520B, 520C, 520D, 520G(1), 529, OR 529A**
 26 **OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.83, 750.84,**
 27 **750.86, 750.88, 750.89, 750.317, 750.321, 750.349, 750.349A,**

1 750.350, 750.397, 750.520B, 750.520C, 750.520D, 750.520G, 750.529,
2 AND 750.529A.

3 (C) "NONCOMPLIANCE VIOLATION" MEANS A VIOLATION THAT IS NOT A
4 RISK VIOLATION OR A MAJOR RISK VIOLATION.

5 (D) "RISK VIOLATION" MEANS 1 OR MORE OF THE FOLLOWING:

6 (i) CONTACT WITH A SPECIFICALLY PROHIBITED PERSON, OR PROXIMITY
7 TO A SPECIFICALLY PROHIBITED LOCATION.

8 (ii) AN ARREST FOR DOMESTIC VIOLENCE OR OTHER THREATENING OR
9 ASSAULTIVE BEHAVIOR.

10 (iii) AN ARREST FOR A NEW FELONY.

11 (iv) ABSCONDING SUPERVISION.

12 (v) THE PRISONER'S SIXTH OR SUBSEQUENT NONCOMPLIANCE
13 VIOLATION.

14 (E) "VIOLENT felony" means that term as defined in section 36.

**Summarizing the Shift in Policies from CSG's
First Draft of Legislation to the Second
October 2014**

**Michigan Justice Reinvestment
First Draft Concepts, Second Draft Revisions, and Jail Impacts**

Introduction

In 2013, Michigan leaders requested that the Council of State Governments (CSG) Justice Center examine how Michigan could cost-effectively improve public safety and increase offender accountability, and to report findings to the Michigan Law Revision Commission (MLRC). After extensive data analysis and stakeholder engagement across the state, the CSG Justice Center issued a report in May. Throughout the summer, the CSG Justice Center worked with the MLRC to gather input from stakeholders regarding specific policy options that could address the challenges identified in the May report. In August the MLRC made a first draft of legislation publicly available and requested additional written feedback.

This first bill draft contained a number of new policies aimed at reforming Michigan's sentencing guidelines, how supervision resources are allocated, and the amount of time people serve in prison, as well as implementing new mechanisms to gather information on crime and restitution. The MLRC received a number of comments, some in great detail, on the first draft. This is a testament to the commitment of stakeholders in the state, and to the value of transparency in policy development. While some stakeholders supported aspects of the first draft's proposed sentencing changes, most expressed concern that changes to the state's sentencing system should be more extensively discussed and considered over time.

The original proposed changes to the state's sentencing guidelines may be best considered over a longer period of time, and under the auspices of a commission with that charge. The second draft, therefore, no longer contains proposals to change the sentencing grids, provide mitigating factors, allow a first time offender waiver, set supervision and sanction terms at sentencing, and have judges set maximum sentences.

The key policies that remain in the second draft reflect those challenges that Michigan can and should act to address in 2014, to ensure that the state's criminal justice system is better able to hold offenders accountable, reduce crime, and allocate scarce resources more precisely.

Key Issues

Certainty in Prison Time. The second draft would build on the existing "truth in sentencing" concept in Michigan by increasing the certainty of prison release upon serving the minimum sentence, unless there is evidence of defined, appropriate reasons to deny release at that time. In essence, the proposal is to codify current practices and bring structure to decisions at the back end of the system, comparable to the structure that Michigan has already imposed, through sentencing guidelines, on the front end.

Habitual Enhancement. The second draft, like the first, limits habitual enhancements to using only those prior convictions that have not been, or are not able to be, factored into the PRV score. A conforming amendment is added to section 771.21.

Probation Terms. The second draft does not suggest supervision terms by grid column, as proposed in the first draft. Targeting supervision remains a resource concern, and supervision terms are slightly more targeted in the second draft by allowing supervision terms up to 2 years, with longer probation terms allowed for those needing more time to fulfill restitution, or those with a PRV score of 25 (column D) or higher-- a PRV score that will also allow sentencing the offender to the Swift and Sure Sanctions Probation program (SSSP).

Responses to Supervision Violations. The second draft significantly refines the first draft approach to sanctioning violations, by removing a reference to retroactivity, and removing the statutory delegation of authority to probation officers. Instead, judicial hearings will be required, unless they are waived, before confinement is imposed upon a probation violator. The current grant program will remain in place to support increased judicial workloads. The second draft also continues the theme of increasing the certainty of violation response by lowering the potential severity (and cost) of the response, both through SSSP and explicit sanctions for probation and parole that are based on the severity of the violation (see below for more information on jail impacts of SSSP and violation sanctions).

Community Corrections & Reentry. The second draft, like the first, is an effort to describe in law how the executive branch handles the tension between local control and quality assurance when the state pays for reentry and community corrections services. Additional suggestions have been provided but are not taken into account in the second draft; further development of this portion of the proposal will be forthcoming.

Monitoring and Evaluation. The second draft maintains but refines the focus on measuring victim restitution collection, a system performance measure that is all the more important with increasing local pressure to collect other costs from defendants. The victimization survey proposal is also more fully described, and the criminal justice policy commission is maintained, but reconciled with the emerging consensus on HB 5078.

Policy Impacts in General

The second draft maintains focus on cost-effectiveness and reducing recidivism to increase public safety. Impacts of the policy shifts should be anticipated in several areas: crime and recidivism reduction, population impacts (supervision, jail, and prison), and cost impacts.

The primary purpose and anticipated impact of the policies is on crime and recidivism reduction, with particular focus on the probation population of almost 50,000. Increased resources and attention to recidivism reduction programs, and more effective violation response sanctions should produce beneficial results in the same way that Michigan's focus on prisoner reentry has produced 20 percent lower arrest rates in that population.

The policies will affect the populations of people who receive supervision, jail and prison, and how long they remain in those sanctions. The first draft's presumptive grid zones were analyzed

based on 2012 felony sentencing data and would have resulted in significantly fewer defendants initially sentenced to jail, and supervised instead. The second draft does not pursue presumptive grid zones so sentence dispositions should be unaffected by the remaining policies. Some notable shifts should be anticipated and to some degree can be modeled:

- The **probation supervision** population may be slightly reduced over time by policies that encourage shorter terms for lower risk offenders. A greater proportion of the probation population will be on more intensive supervision through robust implementation of SSSP.
- **Jail demand** will decrease through use of SSSP and shorter sanctions in response to violations of supervision. Demand will increase from shifting some violation sanctions to jails from prison, but overall demand can be kept at or below current levels by trading certainty for severity of sanctions (see detail below).
- **Prison demand** will decrease somewhat from shorter sanctions in response to violations.
- **Prison growth** will be avoided by increasing the certainty of prison time. The current average minimum sentence is 46 months, and the average maximum is 175 months; those translate to 33,000 beds versus 127,000 beds. Stability between those extremes is essential and it can be achieved at or below the current size of the system.

Cost impacts are also anticipated, by virtue of population shifts and policy choices. In addition to proposed statutory amendments, efforts are underway to develop specific budgetary impacts of the changes in policy in concert with the impact modeling. The major impacts expected are:

- Savings to county jails and the state corrections system due to reduced lengths of stay for supervision violations.
- Cost avoidance due to increased certainty of prison time.
- Investment in SSSP implementation by corrections and the courts.
- Investment in community-based recidivism reduction programs.
- Potential investment, depending on jail impact, in the County Jail Reimbursement Program, underscoring the intention to hold counties harmless from changes to sentencing policy.

Jail Impact of SSSP and Violation Sanctions

SSSP. Michigan has about 48,000 people on probation, 10,000 of whom are at high risk of violating their conditions of supervision or committing new crimes. These proposed policies focus on the public safety implications of that reality, along with the jail impact.

Consider the use of 300 jail beds statewide with these choices: (1) send 600 violators to jail for 6 months each (which is about the time they spend now when they are revoked to jail) and ignore many other violations due to lack of jail space; (2) sanction 36,000 violators for their first supervision violation for 3 days each; or (3) sanction 18,000 violators twice for 3 days each. These policies are pushing toward the latter scenarios, emphasizing the importance of a certain response to violation, which conforms to the known psychology of punishment and behavior change, and allows Michigan to hold more offenders accountable for supervision violations.

To model impact it is useful to examine the experience in Washington State, where a policy of swift and certain sanctions was implemented statewide. In their 2013 report to the legislature, the

Washington Department of Corrections notes: “What DOC experienced is what was expected: that there would be a significant decrease in the use of confinement beds, an increase in the number of arrests, and a significant decrease in the number of hearing processes. From the technical assistance provided by BJA, DOC has learned that these trends are similar to those found by other locations that have implemented the swift and certain principles.”¹

The following assumptions for violation dynamics are more aggressive, to avoid underestimating jail impact, than the reality observed in Washington:

- 48,000 felony probationers on active supervision
- 75% will have one low-severity or “compliance” violation (followed by a non-custodial sanction)
- 40% (of the 48,000) will have a second compliance violation (followed by a 3-day jail sanction)
- 25% (of the 48,000) will have a third compliance violation (followed by a 3-day jail sanction)
- 15% (of the 48,000) will have a fourth compliance violation (followed by a 3-day jail sanction)
- 5% (of the 48,000) will have a fifth compliance violation (followed by a 3-day jail sanction)

Those assumptions yield 40,800 instances of imposing a 3-day jail sanction over the course of a year. Based on the seasonal flow of violations and responses spaced more or less evenly throughout the year, the number of jail beds needed to accommodate such sanctioning is equal to demand for approximately 335 *jail beds* throughout the state on a given day. (Obviously, the geographic distribution of those beds would need to be correlated with where the probationers are being sanctioned. It is assumed that this kind of distribution can continue to be accommodated through contractual arrangements.) That usage can be subsidized by the County Jail Reimbursement Program, but may also be mitigated by the policy for sanctioning high severity offenders, discussed next.

Violation sanction limits. The policy would impose a limit on violation sanction confinement in response to serious or “risk” violations of supervision conditions. Three policy scenarios are presented in the table below: a sixty day sanction for both probation and parole (60-60), a forty-five day sanction for both probation and parole (45-45), and a thirty day sanction for both probation and parole (30-30).

¹ “Community Corrections Practices; 2013 Report to the Legislature As required by Second Engrossed Second Substitute Senate Bill 6204, 2012,” Washington DOC, December 1, 2013

**Impacts* of Sanction Limits on
Technical Parole and Probation Violators**

Scenario			All Sanctions Served in Jails						
			CY2015	CY2016	CY2017	CY2018	CY2019	CY2020	CY2021
60-60	Prison Impact	Bed	-1,399	-2,061	-2,497	-2,536	-2,573	-2,618	-2,663
	Jail Impact	Bed	790	190	460	589	602	612	623
45-45	Prison Impact	Bed	-1,399	-2,061	-2,497	-2,536	-2,573	-2,618	-2,663
	Jail Impact	Bed	641	-145	17	108	113	117	122
30-30	Prison Impact	Bed	-1,399	-2,061	-2,497	-2,536	-2,573	-2,618	-2,663
	Jail Impact	Bed	492	-481	-426	-373	-376	-378	-379

** Impact totals reflect end of calendar year bed impacts and should not be added across years.*
Again note that this depiction assumes that all sanctions will be served in county jail. Regardless of what that sanction length looks like the impact to the prisons is the same across all scenarios. Consequently, the differential impacts associated with each scenario are seen in the impacts to the jails.

The significant decrease in jail impact from CY2015 to CY2016 in all three scenarios is due to an assumed 18-month phase-in for the probation impacts to account for the fact that most probation violations on ‘day one’ will be comprised of those sentenced to probation prior to the effective date of the policy. Within 18 months of the effective date, the pool of probation violators will be comprised almost exclusively of those sentenced to probation on or after the effective date of the policy.

Jail impacts increase from CY2016 to CY2017-18 due to the impact during that time of violators looping back into the system for subsequent sanctions.

Summary Tables Comparing 1st and 2nd Drafts

In order to update stakeholders in more detail on the second draft, the tables below reflect changes to individual policies, organized by the first draft summary of 8 different pieces of legislation.

1. Sentencing Rules

	First Draft Concept	Stakeholder Concerns	Changes Based on Stakeholder Concerns
	(New to second draft)	Local government concern that jail populations will be exacerbated by changes to sentencing structure and increased use of jails for supervision violation sanctions.	<i>Added amendments to the County Jail Reimbursement Program, underscoring the intention to (at a minimum) hold counties harmless from changes to sentencing policy including violation sanction responses.</i>
1.A	Require the courts and Michigan Department of Corrections (MDOC) to track and report victim restitution collection.	SCAO concern over the legislature dictating performance measures to the third branch. MDOC concern/misunderstanding about the scope of the obligation.	<i>Revised court amendment to voice legislative intent that the Supreme Court develop restitution performance measures for courts. MDOC amendment is clarified as applying only to those sentenced to prison.</i>
1.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.	PAAM/AG concern that statutory maximums would be nullified, and (along with SCAO) that tying maximum to the minimum increases vulnerability to a “right to a jury” challenge. (Note: see Appendix: The “Lockridge Issue”) SADO/CDAM/CAPPS/ACLU concern that 2X the minimum would still allow too long a “tail” of parole board discretion, suggestion that the maximum be 1.5X minimum or 5 years more than the minimum whichever is less.	<i>Removed the concept of setting a maximum at sentencing.</i>

	First Draft Concept	Stakeholder Concerns	Changes Based on Stakeholder Concerns
1.C	Require a choice between using prior convictions for scoring criminal history under the guidelines, and using them for habitual offender sentencing.	<p>PAAM concern over loss of discretion to utilize habitual enhancement.</p> <p>AG concern that enhancement only affects the maximum so “double counting” is not a problem. (Note: enhancement affects both the “min-max” and the statutory maximum.)</p> <p>SCAO concern that amendments are ambiguous without a corresponding amendment to PRV scoring statute (777.21). SADO/CDAM/CAPPS/ACLU concern regarding court decisions in <i>People v Trudeau</i> and <i>People v Lamb</i>, which interpreted 769.12(5)(a) to mean that prisoners otherwise eligible for good time could not have the credits they earned applied to their minimums unless the sentencing court approved; suggestion to eliminate subsection (5) to put habitual offenders in the same position as all other prisoners for purposes of receiving whatever good conduct credits are available.</p>	<p><i>Added an amendment to 777.21 to clarify the requirement that PRV scoring should not include offenses used as prior convictions for purposes of habitual enhancement.</i></p> <p><i>This suggestion was not incorporated, pending further discussion and clarification of the implications.</i></p>
1.D	Spell out sentencing rules under the distinct zones in the sentencing grids for sentencing to prison, jail, and intermediate sanctions.	Judicial/defense/prosecution/AG concern that presumptive zones allow for insufficient discretion to tailor sentences. Offenses of a very different nature are together on the same grid and the straddle cells accommodate for that reality in the guidelines.	<i>Restored the straddle cell zones in all grids by not amending grids at all.</i>

	First Draft Concept	Stakeholder Concerns	Changes Based on Stakeholder Concerns
1.E	<p>For sentences to jail and prison that include three terms of time, provide for the:</p> <p>“Initial term” of imprisonment in jail or prison, with a minimum and a maximum,</p> <p>“Supervision term” to begin after release, and</p> <p>“Sanction term,” available to be used for sanctioning noncompliance while on supervision.</p>	<p>PAAM concern about the additional complexity required by this concept.</p> <p>AG concern that short supervision terms will not allow for restitution completion.</p> <p>SADO/CDAM/CAPPS/ACLU concern that judicial supervision terms could be very long if not capped and parole board has the better option of determining the appropriate length of parole supervision at the point of release.</p> <p>SADO/CDAM/CAPPS/ACLU concern that across-the-board sanction terms for everyone sentenced on a particular grid does not accomplish the goal of limiting exposure to long revocation for technical violations since minimums allowed within a grid vary so widely; suggestion for a combination of percentages with an absolute maximum.</p> <p>MDSVPTB concern with domestic violence/sexual assault/stalking offenders serving their full sanction terms.</p>	<p><i>Revisions related to three sentencing components are removed from the second draft.</i></p> <p><i>As noted above, revised to require maximum to be no more than the statutory maximum.</i></p> <p><i>Removed judicially-established supervisions terms for prison sentences so the parole board would continue to set supervision term.</i></p> <p><i>Revised intermediate sanction sentencing instructions to allow/encourage judges to set a post-jail supervision term equal to the jail sentence.</i></p> <p><i>Removed sanction term concept.</i></p>
1.F	<p>Provide for some sentences to intermediate sanctions without jail, but with a potential sanction term in jail.</p>	<p>MDSVPTB/PAAM/victim concern that “jail lockout cells” would make felony punishment lower than misdemeanor punishment; specific concerns with OUI and domestic violence offenses.</p>	<p><i>Grids are not amended in the second draft, and intermediate sanction sentencing instructions are restored to the status quo except for the language allowing/encouraging judge to set a supervision term to equal the jail term in jail-bound cases.</i></p>

	First Draft Concept	Stakeholder Concerns	Changes Based on Stakeholder Concerns
1.G	Provide the judiciary with a specific option to sentence some prison-bound defendants to jail.	Local government concern over population / cost impact to jails and counties.	<i>Removed from the second draft.</i>
1.H	Provide statutory “mitigating factors” (reasons for leniency) to enhance the exercise of judicial discretion.	SADO/CDAM/CAPPS/ACLU support for concept but with suggestions for refinement. SCAO concerns with unintended consequences and need for refinement of the concept. PAAM/AG/victim concern with entire concept and individual language of factors.	<i>Removed the proposed “mitigating factors,” which were intended to promote discretion to depart but are less critical due to the restoration of straddle cells.</i>
1.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.	No comments received specific to this concept.	<i>Tanner rule restored in the second draft.</i>
1.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.	SADO/CDAM/CAPPS/ACLU concern that HB 5078 language is already worked out.	<i>Revised by merging ideas with consensus previously reached on HB 5078.</i>

2. Sentencing Grids

	First Draft Concept	Stakeholder Concerns	Changes Based on Stakeholder Concerns
2.A	<p>Allow the risk of recidivism to guide decisions about length of supervision, as embodied in the Prior Record Variable score under the guidelines.</p>	<p>MDOC concern that COMPAS score is a better predictor than PRV score.</p> <p>AG concern that short supervision terms will not allow for restitution completion.</p>	<p><i>Removed the “supervision guide” concept embedded in the grids and based on Prior Record Variable score.</i></p> <p><i>Instead, the pre-sentence investigation (PSI) statute is amended by repealing the requirement that officers recommend a sentence, but adding a requirement that they propose the length and conditions of supervision, based on risk, and stating that risk assessment at sentencing may not be used to determine whether or how long to incarcerate.</i></p>
2.B	<p>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.</p>	<p>Judicial/defense/prosecution/AG concern that presumptive zones allow for insufficient discretion to tailor sentences. Offenses of a very different nature are together on the same grid and the straddle cells accommodate for that reality in the guidelines.</p>	<p><i>Restored straddle cell zones in all grids by not amending grids at all.</i></p>

	First Draft Concept	Stakeholder Concerns	Changes Based on Stakeholder Concerns
2.C	<p>Revise the grid ranges in general according to the following rules:</p> <ul style="list-style-type: none"> ○ Narrow prison sentencing ranges 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, and 24 instead of 23. 	<p>SADO/CDAM/CAPPS/ACLU concern that M2 and A grids should also be revised in keeping with the rest of the first draft proposal.</p> <p>PAAM/MJA concern with reducing judicial discretion by narrowing ranges.</p> <p>AG concern with narrowing ranges because Michigan already has a low rate of sentencing to imprisonment. (Note: the changes to ranges would not affect the proportion of sentences to prison.)</p>	<p><i>Second draft does not amend grids.</i></p>

3. Probation

	First Draft Concept	Stakeholder Concerns	Changes Based on Stakeholder Concerns
3.A	Provide for Swift and Sure Sanctions Probation (SSSP) as a commonly used condition by setting out criteria for using SSSP with felony probationers.	SADO/CDAM/CAPPS/ACLU support in general but concern with allowing probation officer to both recommend placement and then have delegated authority to sanction.	<i>Revised by maintain the probation officer recommendation feature but then to require prompt judicial determinations of violations.</i>
3.B	Create a distinction between low and high severity supervision violations, with corresponding short and longer terms of confinement as sanctions.	PAAM concern with lack of increasing severity of sanction responses.	<i>Not revised as research indicates certainty of sanction is the key rather than ramping up the severity.</i>
3.C	Provide for a general-purpose, first-time offender diversion and discharge.	SADO/CDAM/CAPPS/ACLU support the concept and had suggestions for refinement. SCAO provided suggestions for refinement. PAAM/AG opposed to the concept.	<i>Removed the “first time offender waiver” provision from second draft, as insufficiently foreshadowed earlier in the process.</i>
3.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.	See concern and revision noted in 3.A.	

4. Violations

	First Draft Concept	Stakeholder Concerns	Changes Based on Stakeholder Concerns
4.A	Change the SSSP program from a grant-funded voluntary concept into a statewide feature of felony supervision.	No specific concerns noted.	<i>SSSP grant program reinstated and re-purposed to provide for increased judicial activity on violation dockets.</i>
4.B	Provide probation officers with authority to impose short sanctions for low severity violations of supervision, unless the authority is withheld by the judge.	MJA and SADO/CDAM/CAPPS/ACLU concern with due process issue around delegated authority.	<i>Revised to require prompt judicial determinations of violations.</i>
4.C	Require the MDOC to promulgate rules to guide probation officers when imposing sanctions.	MLRC concern with resorting to rulemaking.	<i>Revised to provide for guidance in statute rather than by rulemaking.</i>
4.D	Provide requirements for judges who handle probation violations outside of the SSSP model.	No specific concerns noted.	<i>Revised to reflect judicial determinations as the default option.</i>

5. Prison Release and Return

	First Draft Concept	Stakeholder Concerns	Changes Based on Stakeholder Concerns
5.A	Provide for delayed release from prison after the initial, minimum prison term is served for serious and persistent institutional misconduct.	<p>AG concern with avoiding victim protest aspect of current parole process.</p> <p>SADO/CDAM/CAPPS/ACLU support for concept but concern with description of institutional misconduct; suggestion for tying the decision to parole guidelines.</p>	<p><i>Revised by integrating with the parole statutes to create greater certainty of prison length of stay for those with high or average probability of parole release.</i></p>
5.B	Provide for revocation of parole for high-severity violations with graduated use, in 90-day increments, of the sanction term.	<p>SADO/CDAM/CAPPS/ACLU support for concept but concern with lack of distinction between low and high severity violations and responses.</p>	<p><i>Revised to divide parole sanctions into high(“risk”) and low (“noncompliance”) severity violations, similar to proposal for probation violations. Noncompliance violations may lead to progressive community-based sanctions or up to three days jail confinement. First and second risk violations entail sanctions up to 30 days and the third risk violation allows for full revocation..</i></p>

6. Community Corrections and Reentry

	First Draft Concept	Stakeholder Concerns	Changes Based on Stakeholder Concerns
6.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.	Community corrections officials and MACCAB concerns with loss of local control, potential loss of resources, and removal of emphasis on jail monitoring as a purpose for community corrections funding. MCCD provided Issue Brief and proposed Community Partnership Recidivism Reduction Act as a possible substitute for the first draft language and for the existing PA 511 in totality.	<i>Revisions pending joint discussion with community corrections representatives and MDOC to arrive at compromise that achieves goals of targeting resources to reduce recidivism, and bureaucratic efficiency, with need for community buy-in.</i>
6.B	Include reentry programs under the renewed umbrella of the community corrections funding and process.	Community corrections officials/MACCAB/ MCCD concerns with loss of local control and merging perceived successful program (community corrections) with struggling program (reentry).	<i>(see above)</i>

7. Drug Offenses

	Policy Proposal	Stakeholder Concerns	Changes Based on Stakeholder Concerns
7.A	Bring second-offense, drug-crime enhancement into alignment with general second-offense enhancement.	No concerns noted.	(unchanged)
7.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.	No concerns noted.	(unchanged)

8. Victimization Survey

	First Draft Concept	Stakeholder Concerns	Stakeholder Reactions
8.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.	SCAO concern that purpose and meaning of “victimization survey” is unclear and if it involves re-contacting known victims it could be a re-victimization.	<i>Revised to define purpose and what is meant by “victimization survey,” and stipulate that it does not mean re-contacting victims.</i>

Progress of Legislative Proposals November 2014

Michigan Justice Reinvestment Memorandum to the Michigan Law Revision Commission Meeting Date November 5, 2014

Introduction

This final memorandum advises the MLRC on the progress of legislative proposals that date back to the May, 2014 report of the Council of State Governments Justice Center. Since publishing this report, CSG staff have traveled to Michigan seven times to present at regional meetings of stakeholders across the state and speak with Michigan’s leaders and practitioners in over fifty meetings and nearly 150 phone calls.¹ This inclusive process culminated in the wide circulation of a first draft of legislation for public comment, then a scaled-back second draft, then stakeholder meetings to refine some of the concepts in the second draft and turn them into bills from the Legislative Service Bureau (LSB).

Bill Drafts

The summaries below describe LSB requests for bills that will be provided to the MLRC prior to the November 5 meeting, in the form of bluebacks that are currently in production. Below is a table summarizing all of the requests made to LSB for this project, which provides an organizational frame for the remainder of this section.

Request #	LSB Description	Draft 1 Received	Draft 2 Received
6301	Criminal procedure; sentencing; jail reimbursement program; modify	10/7/14	10/17/14
6302	Corrections; prisoners; criteria for basis of minimum sentence range; modify	10/3/14	10/17/14
6303	Criminal procedure; probation; fixing period and conditions of probation; modify	10/6/14	10/21/14
6304	Criminal procedure; probation; probation swift and sure sanctions act; modify	10/6/14	N/A
6305	Corrections; parole; criteria for placement on parole; modify	10/20/14	N/A
6306	Health; substance abuse; sentencing for individual convicted of a second drug offense violation; modify	9/22/14	N/A
6307	Corrections; alternatives; criteria for community corrections program eligibility; modify	9/26/14	10/24/14
6308	Crime victims; compensation; powers and duties for crime victims services commission; modify	9/22/14	N/A

¹ The May report came after a year of work including six public presentations to the MLRC, analysis of millions of records, and more than 100 in-person meetings and 200 conference calls with, among others, prosecutors, judges, victim advocates, defense attorneys, MDOC staff and administrators, legislators, law enforcement officers, and county leaders.

Request 6301

This bill originally encompassed four disparate objectives within Chapter IX of the Code of Criminal Procedure: (1) monitoring victim restitution as a performance measure for courts and corrections; (2) altering the rules for the use of habitual enhancement; (3) creating a sentencing or criminal justice policy commission; and (4) updating the county jail reimbursement program to provide greater certainty to counties for reimbursement. The blueback version is unchanged as to topics (1) and (4) but otherwise reflects various inputs from stakeholders. The use of habitual enhancement (2) was negotiated among defense, prosecution and judicial stakeholders, moving away from the original concept of eliminating the ‘double counting’ of prior criminal history and toward a less dramatic expansion of sentence ranges when habitual enhancement is used. While negotiations continue, no agreement has been reached as of this date. The sentencing commission (3) language has been amended to reflect ideas that were already negotiated in HB 5078, and to charge the commission with specific tasks of monitoring the implementation of the legislation summarized in this memorandum.

Request 6302

This request is no longer in play. It provided a conforming amendment for the concept, in 6301, of eliminating ‘double counting’ prior criminal convictions, i.e., using them only for purposes of PRV scoring, or habitual enhancement, but not both.

Request 6303

This bill amends probation law (Chapters XI and XIA, Code of Criminal Procedure) and had three original objectives: (1) expand Swift and Sure Sanctions Probation (SSSP) to a statewide operational level; (2) guide probation supervision terms to be longer for certain situations; and (3) provide for a ‘sanction regimen’ based on gradations of the severity of the technical supervision violation, emphasizing certainty of sanction over severity. The blueback version continues to pursue (2) and (3) but in light of concerns by sheriffs and counties, (1) is no longer pursued, though the SSSP statute is amended to provide important definitions for the sanction regimen. The blueback also addresses concerns regarding the kinds of cases that receive longer terms of probation – providing longer terms for domestic and sexual violence cases – and concerns about allowing full revocation for supervision violations of a more severe nature -- arrest for serious crimes, and violation of a protective order.

Request 6304

This request is no longer in play. The bill draft replicated some of the material in request 6303.

Request 6305

This bill amends the Corrections Code with two objectives: (1) provide for greater certainty of parole under the existing parole guidelines; and (2), as with probation, address concerns about allowing full revocation for supervision violations of a more severe nature -- arrest for serious crimes, and violation of a protective order. This draft has been negotiated among defense, prosecution and judicial stakeholders and is still under discussion as of this date.

Request 6306

This request may no longer be in play. The bill draft amended the Public Health Code and was conceptually linked to the habitual enhancement provisions in 6301 that have not been resolved in negotiations.

Request 6307

This bill amends the Community Corrections Act, 1988 PA 511, and began with the following objectives: (1) moving away from the purpose of reducing the “prison commitment rate” and toward the purpose of recidivism reduction; (2) requiring a gap analysis to arrive at appropriate funding levels for programs at the front end of the justice system; and (3) suggesting that localities consider including prison reentry in their community corrections planning. Alternate proposals were submitted by the Michigan Council on Crime and Delinquency, and by the Michigan Association of Community Corrections Advisory Boards. A compromise was reached that updates PA 511 to be more operationally relevant and provide greater emphasis on evidence-based practices to reduce recidivism.

Request 6308 – Crime Victims Compensation Act

This request is no longer in play. The bill draft would have required the Crime Victims Compensation Board to contract for a periodic victimization survey, a concept that was not opposed by stakeholder groups, but victim advocates suggested that any additional resources for victims could be better spent.

Jail Population Impacts

Ultimately, the objective is greater public safety through lower recidivism. The key for Michigan is leveraging certainty of sanctions for many people instead of severe sanctions for a few. Consider the use of 300 jail beds statewide, with three choices for responding to technical violations among a probation population of 48,000: (1) revoke 600 violators to jail for 6 months each; (2) sanction 18,000 violators twice apiece for 3 days each; or (3) sanction 600 violators with one month apiece and 6,000 violators twice apiece for 3 days each. The policies push toward the latter scenarios, emphasizing the importance of certainty over severity of response, and allowing Michigan to hold more offenders accountable for supervision violations.

Jails would experience impacts from both types of violation sanctions in the proposals, 3 day and 30-day sanctions. Wider use of 3 day swift and certain responses will tend to emulate the recent experience in Washington state: “a significant decrease in the use of confinement beds, an increase in the number of arrests, and a significant decrease in the number of hearing processes.”²

The followings assumptions, based on the Washington experience but inflated to avoid underestimating the impact on counties, yield 40,800 instances of imposing a 3-day jail sanction over the course of a year. Based on the seasonal flow of violations and responses spaced more or less evenly throughout the year, the number of jail beds needed to accommodate such sanctioning is equal to demand for approximately 335 jail beds throughout the state on a given day.

- 75% of 48,000 probationers will have one “noncompliance” violation and a non-custodial sanction
- 40% will have a second compliance violation (followed by a 3-day jail sanction)
- 25% will have a third compliance violation (followed by a 3-day jail sanction)

² “Community Corrections Practices; 2013 Report to the Legislature As required by Second Engrossed Second Substitute Senate Bill 6204, 2012,” Washington Department of Corrections, December 1, 2013.

- 15% will have a fourth compliance violation (followed by a 3-day jail sanction)
- 5% will have a fifth compliance violation (followed by a 3-day jail sanction)

With regard to 30-day sanctions, jail population is decreased by shorter sanctions applied to those who previously went to jail, and increased by sending violators to jail who previously went to prison. The following table shows a net decrease in jail average daily population statewide. Analysis of sentencing patterns in the ten largest counties showed that all except Wayne would experience a decrease, a manageable problem through cooperation with MDOC.

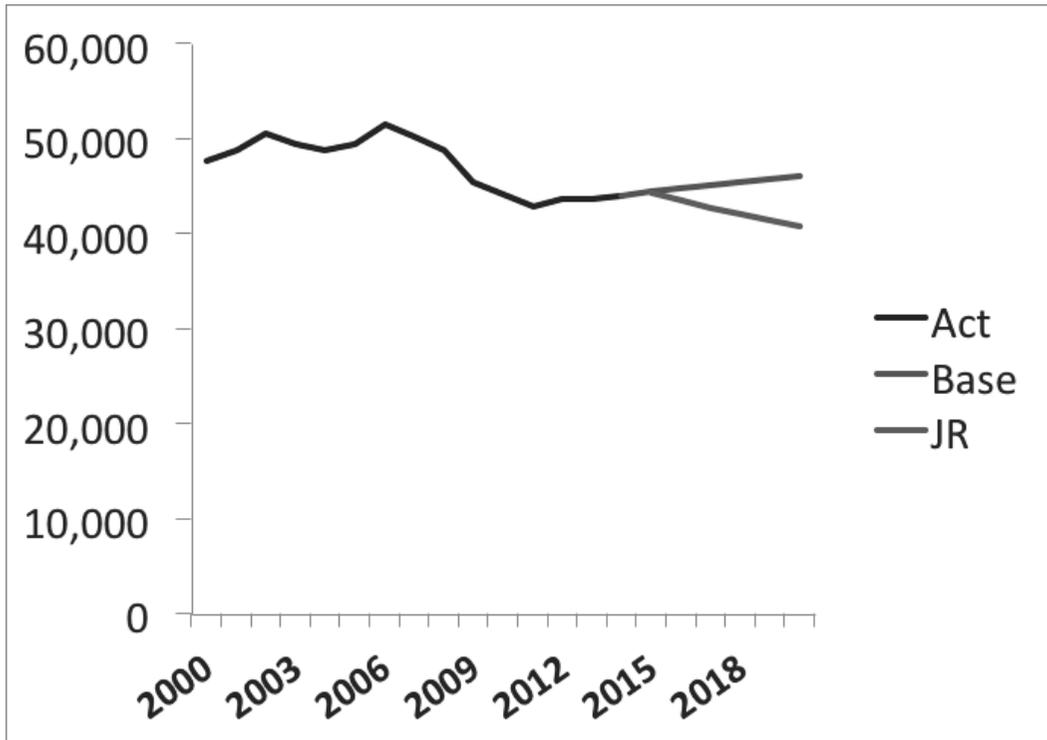
Year End	2015	2016	2017	2018	2019	2020
Probation Violator (formerly to Jails)	-177	-812	-796	-703	-704	-711
Probation Violator (formerly to MDOC)	37	110	139	143	146	150
Parole Violator (formerly to MDOC)	632	221	218	219	220	222
Combination Impact Total	492	-481	-439	-341	-338	-339

Prison Population Impacts

Three policies would reduce pressure on the state’s prison population. Parole changes proposed in 6305 would have the largest impact, as shown in the table below. However, 6305 is still the subject of negotiations, which will likely reduce the impact. Technical violator sanction policies for probation (6303) and parole (6305) would also decrease pressure on the prison population.

Year End	2015	2016	2017	2018	2019	2020
Parole	-10	-316	-1,045	-1,930	-2,771	-3,653
Probation Violator	-98	-760	-1,158	-1,029	-990	-1,014
Parole Violator	0	-1	-32	-132	-244	-380
Combination Total	-108	-1,077	-2,235	-3,091	-4,005	-5,047

The combination of prison population impacts would change the expected growth in the system to look something like the red line below, instead of the blue line.



These impacts would likely generate cost savings for the state. The Department of Corrections estimates a marginal savings of \$4000 per prisoner; i.e., 104 fewer prisoners would save \$432,000. Much larger savings per prisoner are possible when prison wings or entire units can be closed. 1,000 beds could translate to \$18,000,000 in savings, and 2,000 beds could save \$30,000,000-\$40,000,000.

Under the policies depicted, it is possible to achieve a more just and effective distribution of Michigan's correctional resources. Decreased prison pressure and cost for the state would support reinvestments to further improve public safety. Until the policies themselves are fully resolved, savings cannot be fully determined, and reinvestments cannot be appropriated. Engagement and commitment of stakeholders to pursuing these reinvestments will be the final step in the justice reinvestment process in 2014. The obvious choices for consideration are:

- Probation supervision and court staffing to support closer attention to violations.
- Community corrections funding to bolster recidivism-reduction programs, as well as pretrial innovations to reduce pressure on jails.
- Jail reimbursement to reassure sheriffs and counties that they will not be shafted by changes in sentencing policy.
- Victim services such as a model program of restorative justice.

