

# 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.<sup>1</sup> 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;<sup>2</sup> rearrest rates for parolees declined by 20 percent from 2008 to 2011;<sup>3</sup> and the prison population dropped 15 percent between 2006 and 2012.<sup>4</sup>

Despite these achievements, however, high costs and crime persist, and the prison population is starting to increase once again.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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

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

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

<sup>3</sup> 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.

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

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

<sup>6</sup> 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.

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<sup>7</sup> 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.<sup>8</sup>

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

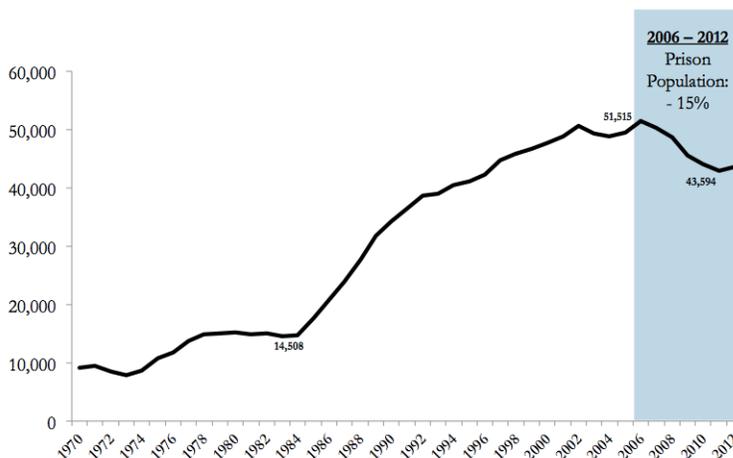
<sup>8</sup> Paul Maloney, Hilda Gage, Mark Murray, and Carlo Ginotti. *Report of the Michigan Sentencing Guidelines Commission*, (Lansing: Michigan Sentencing Commission, December 2, 1997).

decisions.<sup>9</sup> 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.<sup>10</sup>

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.

<sup>9</sup> 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.

<sup>10</sup> 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.<sup>11</sup> 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.”<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup>

<sup>11</sup> 1902 Public Act (PA) 1901, J.R. no. 11.

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

<sup>13</sup> 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.

<sup>14</sup> 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).

## 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.<sup>15</sup> 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).<sup>16</sup>

**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.

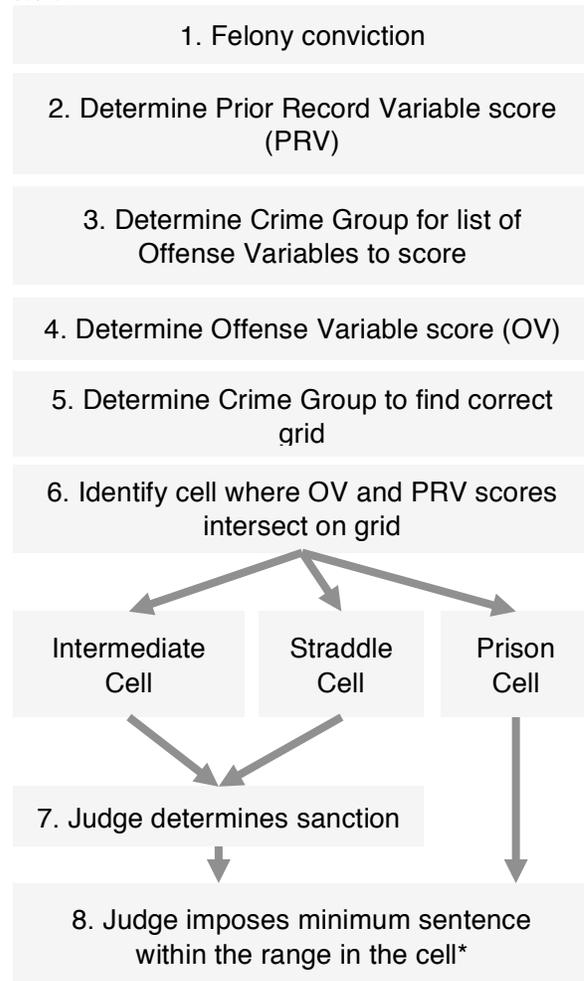
**Cells:** There are 258 total cells across the sentencing grids, with 3 types of cells:

- **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

<sup>15</sup> 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.

<sup>16</sup> 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.**

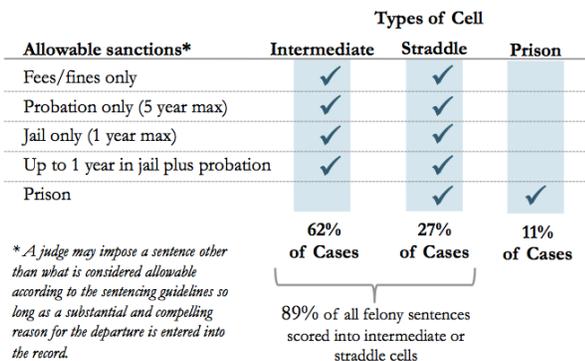
To sentence someone convicted of a crime, the court conducts an elaborate calculation to make a precise determination about where a person belongs among the many cells in the guidelines.

- 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.<sup>17</sup>

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.

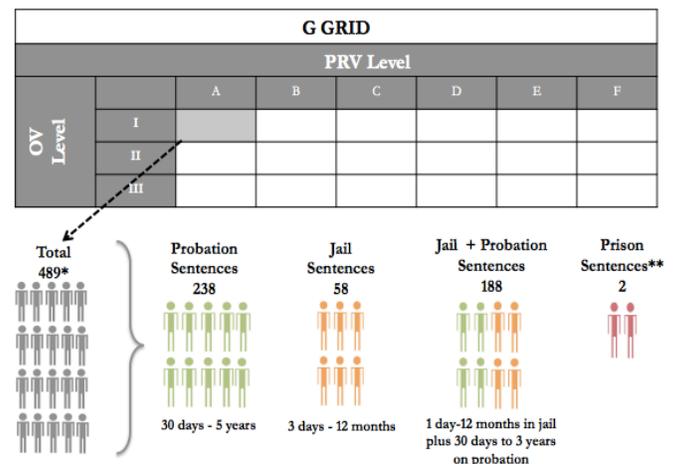
- Most cases fall into guidelines cells that allow for a wide variation of sentencing options, ranging from jail, probation, fines or community service, and many of these cells also allow for prison. [See Figure 2]

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



<sup>17</sup> CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data.

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.<sup>18</sup> [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

<sup>18</sup> 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.<sup>19</sup>

- 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.<sup>20</sup>

**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.<sup>21</sup>
- 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.<sup>22</sup> [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.<sup>23</sup>
- 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.

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

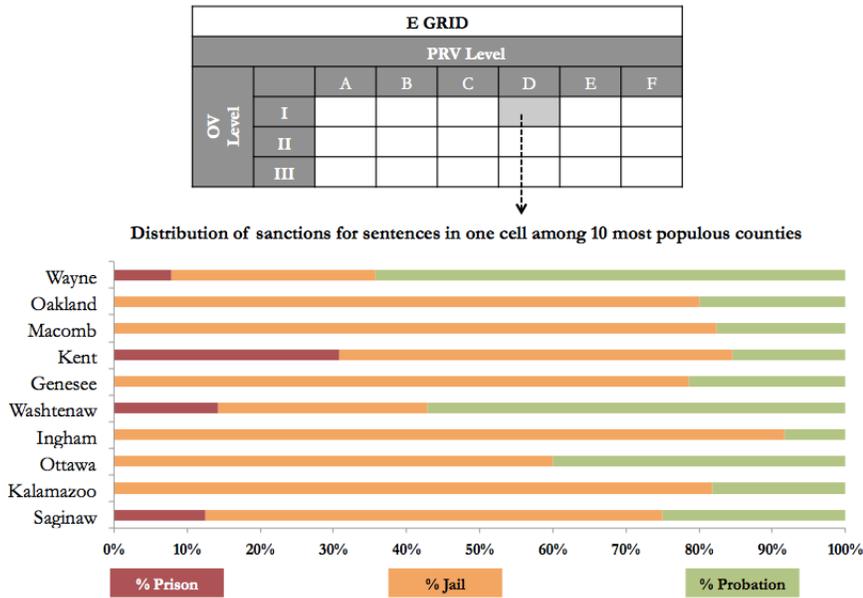
<sup>20</sup> *Ibid*.

<sup>21</sup> CSG Justice Center analysis of Michigan Felony Sentencing Guidelines.

<sup>22</sup> 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.

<sup>23</sup> 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.<sup>24</sup>
- 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.<sup>25</sup>
- 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.<sup>26</sup>
- 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.<sup>27</sup> 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.<sup>28</sup>

**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.<sup>29</sup>
- 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.<sup>30</sup>
- 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.

<sup>24</sup> CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data.

<sup>25</sup> *Ibid.*

<sup>26</sup> *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.

<sup>27</sup> CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data.

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

<sup>29</sup> MCL 769.28 *et seq.*

<sup>30</sup> MCL 51.282 *et seq.*

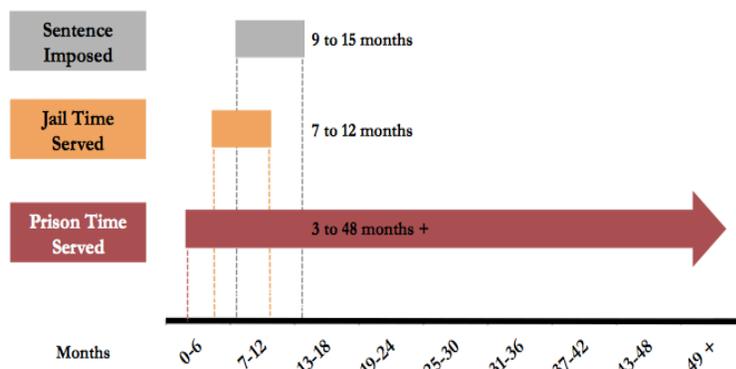
- The range of time that falls under the parole board’s discretion is usually 300 to 400 percent longer than the minimum sentence.<sup>31</sup>
- The differences between jail and prison release policies mean that two individuals who receive comparable sentence lengths—one sentenced to prison and the 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.<sup>32</sup> [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.<sup>33</sup>
- 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.<sup>34</sup>

- 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.<sup>35</sup>
- 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).<sup>36</sup> [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.<sup>37</sup>

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



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

<sup>32</sup> *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.”

<sup>33</sup> CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data.

<sup>34</sup> *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

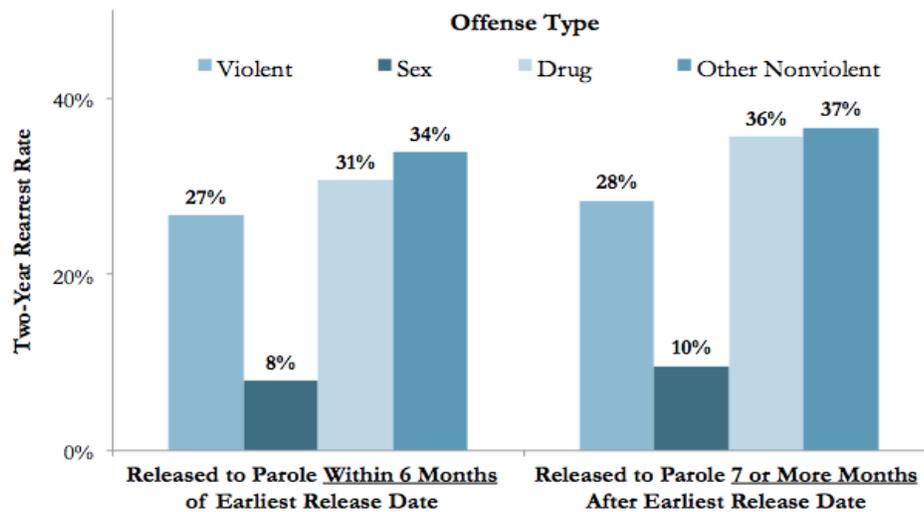
exceeded 150% in the early and mid-2000s when the number of inmates beyond their earliest release date was at all-time highs.

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

<sup>36</sup> 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.

<sup>37</sup> 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.<sup>38</sup>

<sup>38</sup> 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.

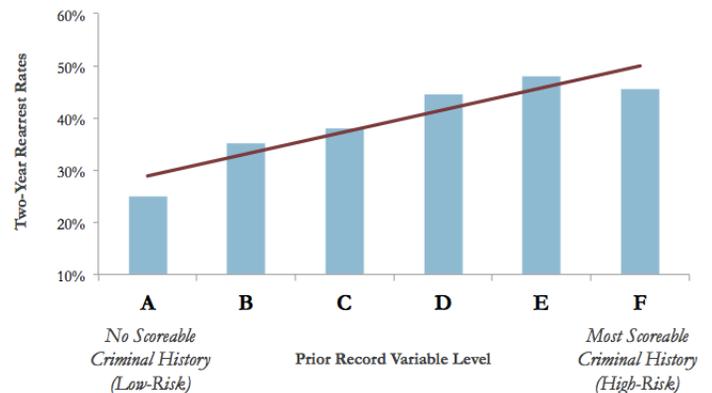
The sentencing guidelines do not guide or account for risk in making decisions about which people should receive probation, or the length of probation terms.

- 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.<sup>39</sup>
- 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.<sup>40</sup> [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.<sup>41</sup>
- 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.<sup>42</sup>
- 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.<sup>43</sup>

- 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.<sup>44</sup>

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



<sup>39</sup> MCL 771.4.

<sup>40</sup> 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.

<sup>41</sup> CSG Justice Center analysis of MDOC CY2008-2012 felony sentencing data.

<sup>42</sup> *Ibid.*

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

<sup>44</sup> 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.<sup>45</sup>

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.<sup>46</sup>

#### 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.<sup>47</sup>

The establishment of an SSSPP program is optional, initiated by courts with judges and practitioners willing to participate in and administer the program.<sup>48</sup> Interested courts may apply for funding from the State Court Administrative Office, which administers approximately \$6 million for SSSPP programs statewide annually.<sup>49</sup> 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.<sup>50</sup>

<sup>45</sup> 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](http://www.michigan.gov/documents/corrections/The_Michigan_Prisoner_Reentry_Initiative_A_Success_Story_334863_7.pdf)

<sup>46</sup> Memorandum by Joe Summers, "Governor Snyder and MDOC Dismantle Michigan Prisoner ReEntry Initiative," Washtenaw County Prisoner ReEntry Program; Lester Graham, "Snyder 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>

<sup>47</sup> 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>.

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

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.* For a complete list of SSSP 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.<sup>51</sup>

- 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.<sup>52</sup>
- 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.<sup>53</sup>
- 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.<sup>54</sup>

#### 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.<sup>55</sup>
- 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.<sup>56</sup>

- 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.<sup>57</sup>
- 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.<sup>58</sup>

#### 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.<sup>59</sup>
- 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.<sup>60</sup>
- 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.<sup>61</sup>
- 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.

<sup>51</sup> 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.

<sup>52</sup> CSG Justice Center focus group with MDOC personnel on July 22, 2013.

<sup>53</sup> 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).

<sup>54</sup> 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.

<sup>55</sup> *MDOC Data Fact Sheet*, December 31, 2012.

<sup>56</sup> 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.

<sup>57</sup> *Ibid.*

<sup>58</sup> CSG Justice Center analysis of MDOC CY2008-CY2012 felony sentencing data.

<sup>59</sup> 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.

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

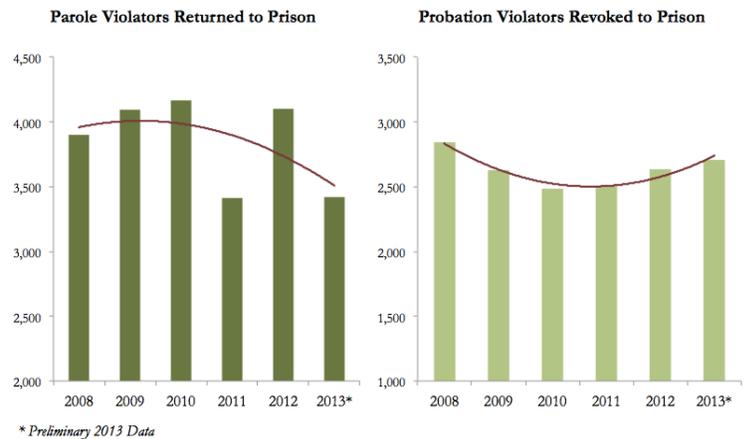
<sup>61</sup> CSG Justice Center focus group with Michigan probation agents, September 10, 2013.

- 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.<sup>62</sup>

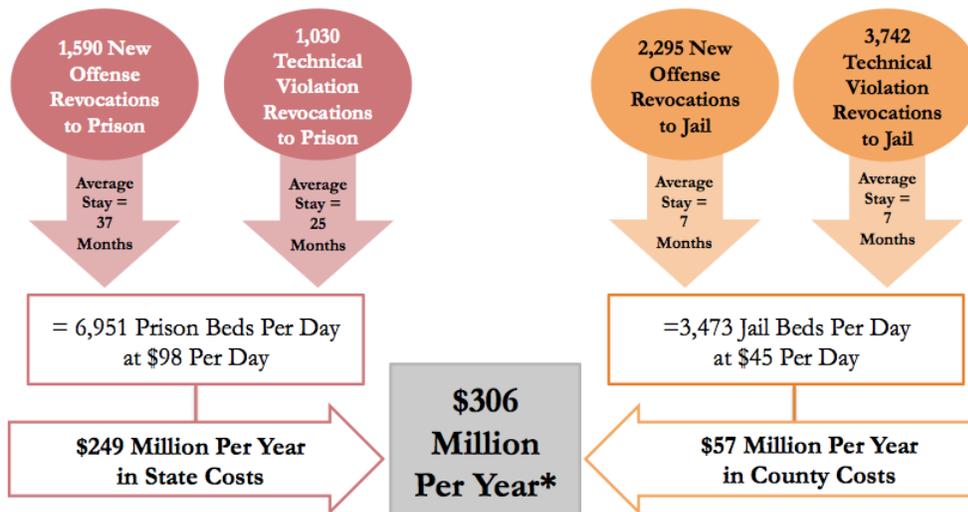
**Probationer revocations create significant costs for state and local governments.**

- Between 2008 and 2013, the number of probationers revoked to prison has trended upward while revocations to prison for parolees have trended downward.<sup>63</sup> [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.<sup>64</sup> [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

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

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

<sup>64</sup> 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.<sup>65</sup>
- 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.<sup>66</sup>
- Combining pre-release programming with services provided post-release, MDOC invests \$2,328 per parolee each year, whereas the state spends \$596 per probationer.<sup>67</sup>

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).<sup>68</sup>
- 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.<sup>69</sup>
- As of March 2014, only 296 of more than 10,000 high-risk probationers were enrolled in SSSPP.<sup>70</sup>

<sup>65</sup> 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.

<sup>66</sup> 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.

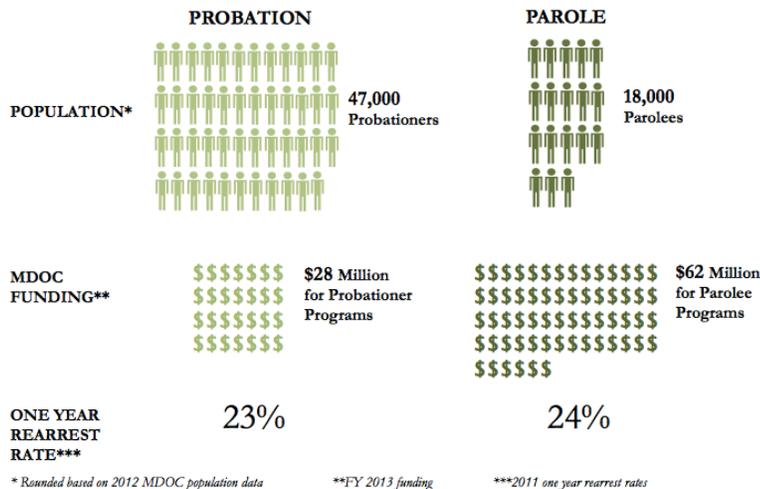
<sup>67</sup> Email and phone correspondence between CSG Justice Center and the Budget Office of MDOC between December 10-11<sup>th</sup>, 2013.

<sup>68</sup> 1988 PA 511, MCL 791.401 *et seq.*

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

<sup>70</sup> *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.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup>

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.<sup>74</sup> 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.<sup>75</sup>

## 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.***

<sup>71</sup> 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](http://www.michigan.gov/corrections/0,4551,7-119-1435_58683_49414-222911--,00.html)

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

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

<sup>74</sup> CSG Justice Center focus group with MDOC Administration on November 12, 2013.

<sup>75</sup> *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).<sup>76</sup>
- 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.<sup>77</sup> [See Figure 11]

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

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

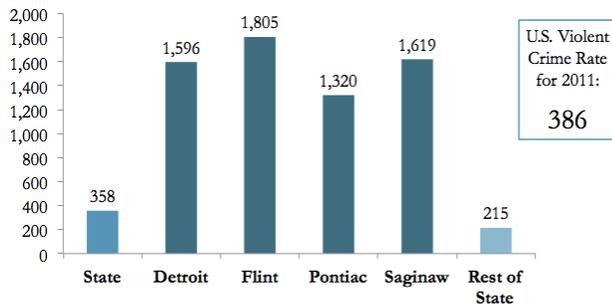
**Law enforcement resources have diminished and stakeholders are concerned that rates of unreported and unsolved crimes remain high.**

- 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).<sup>78</sup>
- 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.<sup>79</sup>
- 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.<sup>80</sup>

**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.<sup>81</sup>
- 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.<sup>82</sup>

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.*

<sup>78</sup> Michigan State Police Incident Based Crime online data tool.

<sup>79</sup> John Barnes. "Fever 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](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](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.

<sup>80</sup> 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.

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

<sup>82</sup> 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](http://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](http://csgjusticecenter.org).

**Bureau of Justice Assistance  
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