

# proposed minutes

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## **Criminal Justice Policy Commission (CJPC) Meeting**

4:00 p.m. • Thursday, September 26, 2019

Legislative Council Conference Room • 3<sup>rd</sup> Floor of the Boji Tower Building

124 W. Allegan Street • Lansing, MI

### **Members Present:**

Dr. Amanda Burgess-Proctor, Chair (via teleconference)  
Linus Banghart-Linn  
Ronald Bretz (via teleconference)  
Honorable Chuck Goedert (via teleconference)  
D.J. Hilson (via teleconference)  
Kyle Kaminski  
Sheryl Kubiak (via teleconference)  
Sheriff Michelle LaJoye-Young (via teleconference)  
Barbara Levine (via teleconference)  
Senator Peter Lucido (via teleconference)  
Kenneth Mitchell (via teleconference)  
Senator Sylvia Santana (via teleconference)  
Jennifer Strange (via teleconference)  
Honorable Paul Stutesman (via teleconference)  
Andrew Verheek (via teleconference)

### **Members Excused:**

Representative Beau LaFave  
Representative Isaac Robinson

### **I. Convening of Meeting and Roll Call**

The Chair called the meeting to order at 4:01 p.m. and asked the clerk to take the roll. A quorum was present and absent members were excused. Commissioner Kubiak and Senator Santana joined the meeting shortly after roll call was taken.

### **II. Approval of the September 18, 2019 Criminal Justice Policy Commission Meeting Minutes**

The Chair asked members if there were any additions, corrections, or edits to the proposed September 18, 2019 CJPC meeting minutes. There were none. **Commissioner Hilson moved, supported by Commissioner Kaminski, to approve the minutes of the September 18, 2019 Criminal Justice Policy Commission meeting as proposed. There was no further discussion.**

**The motion prevailed with a vote of 14-0-0.**

### **FAVORABLE ROLL CALL:**

**YEAS: Commissioners Burgess-Proctor, Banghart-Linn, Bretz, Goedert, Hilson, Kaminski, Kubiak, LaJoye-Young, Levine, Lucido, Mitchell, Strange, Stutesman, Verheek.**

**NAYS: None.**

**PASS: None.**

### **III. Vote of Final Summary Report and Recommendations**

The Chair brought forward the consideration of the adoption of the Final Summary Report and Recommendations which was tabled at the last meeting and opened a discussion of the proposed Final Summary Report and Recommendations which includes the changes discussed at the last meeting (see attached). **Commissioner Bretz moved, supported by Commissioner Levine, to adopt the Final Summary Report and Recommendations as presented.** Discussion followed.

Commissioner Hilson commented he personally recognizes the data supports the fact that there are disparities in sentencing and funding issues need to be explored; however, he is concerned that the proposed report suggests changes to the number of straddle cells will reduce disparities. He asked that a letter he and Sheriff LaJoye-Young prepared be included in the meeting records as an explanation of his no vote (see attached). Judge Goedert added that he strongly supports Commissioner Hilson's request to have a dissenting letter included in the meeting minutes. Sheriff LaJoye-Young echoed Commissioner Hilson's comments and noted that she is very much in support of diving deeper into the disparities. Commissioner Mitchell stated he is supportive of the final report as presented and requested that a letter he and Stephan Currie, Executive Director of the Michigan Association of Counties, prepared be included in the meeting minutes (see attached). Commissioner Kubiak and Chair Burgess-Proctor provided further

clarification and pointed out that the final report does not make a recommendation to reduce the number of straddle cells.

**Commissioner Kaminski, supported by Judge Goedert, called the question and the Chair asked the clerk to proceed with a roll call on the motion to adopt the Final Summary Report and Recommendations as presented.**

**The motion prevailed with a vote of 13-2-0.**

**FAVORABLE ROLL CALL:**

**YEAS: Commissioners Burgess-Proctor, Banghart-Linn, Bretz, Goedert, Kaminski, Kubiak, Levine, Lucido, Mitchell, Santana, Strange, Stutesman, Verheek.**

**NAYS: Hilson, LaJoye-Young.**

**PASS: None.**

The Chair announced that the cover letter approved at the last meeting and the Final Summary Report and Recommendations adopted at today's meeting will be distributed to the members of the Legislature and the Governor.

**IV. Public Comments**

The Chair asked if there were any public comments. There were no public comments.

**V. Adjournment**

There being no further business before the Commission and seeing no objection, the Chair adjourned the meeting, the time being 4:23 p.m.

CRIMINAL  
JUSTICE  
POLICY  
COMMISSION

Evaluation of  
Straddle Cell  
Sentencing  
in Michigan

Summary Report and  
Recommendations



Final Report  
September 26, 2019

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## EXECUTIVE SUMMARY

This report summarizes the findings of, and offers recommendations based on, straddle cell sentencing analyses completed by the Criminal Justice Policy Commission (CJPC). Across three reports, the CJPC examined straddle cell sentencing for class D (December 2018), class E (June 2019), and class B and C (July 2019) felonies. Collectively, our analyses examined 18,841 felony convictions for individuals sentenced between 2012 and 2017. We used logistic regressions to determine whether there are disparities in the rate at which straddle cell offenders were sentenced to prison versus intermediate sanctions. The goal of this report is to inform the Legislature about the persistent straddle cell sentencing disparities the CJPC identified, to offer the Legislature recommendations aimed at reducing these disparities, and to guide a discussion about the role of straddle cells in the state’s sentencing guidelines.

### STRADDLE CELL SENTENCING DISPARITIES

CJPC analyses found statistically significant sentencing disparities for straddle cell offenders based on several factors, including **offender race, age, gender, employment status, attorney status** (retained vs. appointed), **conviction method** (found guilty vs. pled guilty), **crime group** (type of crime committed), and **circuit court** (see Table 1).

**Table 1: Factors Contributing to Sentencing Disparities by Felony Class**

	Felony Classes		
	B & C	D	E
<b>Race</b> (Black or African American vs. White)	✓		✓
<b>Age</b>	✓	✓	✓
<b>Gender</b> (Female vs. Male)	✓	✓	✓
<b>Employed</b> (Employed vs. Unemployed)	✓	✓	✓
<b>Attorney Status</b> (Retained vs. Appointed)	✓	✓	✓
<b>Conviction Method</b> (Found Guilty vs. Pled Guilty)	✓	✓	✓
<b>Crime Group</b> (e.g., Crimes Against a Person)	✓	✓	✓
<b>Circuit Court</b>	✓	✓	✓
Number of Convictions	2,960	4,823	11,058
Received Prison Sentence (%)	25.7%	30.3%	24.9%

Specifically, our analyses showed that:

- **Younger black straddle cell offenders were significantly more likely** to receive a prison sentence than their younger white counterparts, while **older black straddle cell offenders were significantly less likely** to receive a prison sentence than their older white counterparts. (Note: significant racial disparities were not found for class D felonies.)
- **Female straddle cell offenders were significantly less likely** to receive a prison sentence than male straddle cell offenders.

- **Employed straddle cell offenders were *significantly less likely*** to receive a prison sentence than those who were unemployed.
- **Straddle cell offenders with retained attorneys were *significantly less likely*** to receive a prison sentence than those with appointed attorneys.
- **Straddle cell offenders found guilty at trial were *significantly more likely*** to receive a prison sentence than those who pled guilty. Some disparity is to be expected as plea bargains may be structured to reduce, or remove altogether, the prospect of being sentenced to prison. However, given the magnitude of this difference, these results suggest a strong association between going to trial and greater chances of receiving a prison sentence.
- **Rates of prison sentences differed significantly based on felony class and crime group** (type of crime committed). For example, offenders convicted of a class D controlled substance felony were significantly less likely to receive a prison sentence than offenders convicted of a class D crime against a person.
- **Rates of prison sentences differed significantly between circuit courts.**

The straddle cell sentencing disparities we identified are persistent, statistically significant, and compelling. Documentation of these disparities should prompt closer inspection of Michigan’s sentencing guidelines by lawmakers. After outlining the limitations of our research, we offer recommendations aimed at reducing these disparities, then conclude with a discussion about the role of straddle cells in Michigan’s sentencing guidelines.

## LIMITATIONS

- While our research identifies factors that contribute to the “in-or-out” sentencing decision, we were unable to look at two important factors: differences in sentence length and recidivism rates among straddle cell offenders sentenced to prison and those sentenced to intermediate sanctions. Future research should examine whether straddle cell disparities exist along these domains.
- This report summarizes sentencing disparities identified across all four felony classes we examined. In addition to the factors presented here, in select felony classes we found sentencing disparities according to behavioral and mental health indicators, including drug and alcohol abuse. Readers interested in further discussion of these issues are invited to review our three published reports.

## RECOMMENDATIONS FOR REDUCING SENTENCING DISPARITIES

### Data

- The CJPC recommends that the State Court Administrative Office (SCAO) use existing Michigan Department of Corrections (MDOC) data to **prepare annual, internal administrative straddle cell sentencing reports to inform judicial education and training.**
- The CJPC recommends that **MDOC and SCAO collaborate to identify data sources** and mechanisms for analyzing sentencing agreements among straddle cell cases.

### Funding

- The CJPC recommends **creation of a justice reinvestment fund process that captures criminal justice system savings and reinvests those funds** into existing programs such as Community Corrections, and/or into new programs aimed at diverting straddle cell offenders from prison and into community services available for probationers.

- The CJPC recommends that in making its policy decisions, the Legislature **implement flexible funding systems so that each county can accommodate their system needs accordingly.**

### **System**

- The CJPC recommends **providing supportive services to offenders beginning at the pretrial phase through probation**, including access to mental health and substance abuse programming (for example, through Medicaid) and job placement activities through Workforce Development Agencies and other supports.

## **ROLE OF STRADDLE CELLS IN MICHIGAN’S SENTENCING GUIDELINES**

In light of straddle cell sentencing disparities documented by the CJPC and elsewhere, the Michigan Legislature may wish to consider reducing the number of straddle cells in the state’s sentencing guidelines by redefining them as intermediate sanction cells having presumptive local sentences. Any reduction in straddle cells is expected to have a corresponding impact on counties, as offenders who would have been sentenced to prison presumably would instead receive local sanctions in jails or county-based community corrections agencies. Total elimination of straddle cells, while having the greatest potential impact for reducing sentencing disparities, also has the potential to create the greatest cost and capacity burdens on local governments. In an attempt to balance these considerations, the CJPC has identified two moderate approaches for consideration:

- **Option 1** is to increase the upper limit in the definition of intermediate sanction cells from “18 months or less” to “23 months or less.” This approach would redefine 34 straddle cells across the B-G grids into intermediate sanction cells.
- **Option 2** is to increase the upper limit in the definition of intermediate sanction cells from “18 months or less” to “23 months or less” but *only* for those cells having a lower limit of “less than 10 months.” This approach would redefine 19 straddle cells across the D-G grids into intermediate sanction cells.

### **Straddle cell reduction: Projected impact on local systems**

Growth in locally-sentenced populations would increase counties’ incarceration costs, and jails already operating near or above capacity may not be able to accommodate additional sentences. The lack of statewide data on the costs and capacity of local systems limits our ability to quantify the projected impacts for each county. One existing mechanism that may reduce the financial burden on counties is the County Jail Reimbursement Program (CJRP).

### **Straddle cell reduction: Projected impact on state system**

Reduction in state-sentenced populations would decrease the state’s incarceration costs. Savings realized by the state would be partially offset by an increase in the cost of reimbursements made to counties under the CJRP. Assuming the program’s eligibility and reimbursement rates remain the same, we estimate the total savings for the state will be at least \$17.9 million each year under Option 1 and \$11.7 million under Option 2.

## I. INTRODUCTION

The attached report is provided pursuant to Sec. 33a of Public Act 465 of 2014. The Criminal Justice Policy Commission (CJPC) was tasked with conducting a systematic review of Michigan’s sentencing guidelines. Of particular interest is the ability of the sentencing guidelines to reduce sentencing disparities based on factors other than offense characteristics and offender characteristics, and to ensure that offenders with similar offense and offender characteristics receive substantially similar sentences.

The CJPC has focused its efforts on examining outcomes among straddle cells – that is, convictions for which the sentencing guidelines support either a prison or an intermediate sentence. Straddle cell sentencing was selected for examination because of the large amount of judicial discretion involved in these cases. Using data provided by the Michigan Department of Corrections (MDOC), we examined over 18,000 felony convictions for individuals sentenced between 2012 and 2017. **Our analyses found statistically significant sentencing disparities for straddle cell offenders across several domains.** In three reports published between December 2018 and July 2019, we documented disparities in the rates at which prison sentences are imposed for class B and C, D, and E felonies. This final report summarizes the findings of our three studies and offers specific recommendations to address the sentencing disparities our analyses uncovered. The goal of this report is to inform the Legislature about the persistent straddle cell sentencing disparities the CJPC identified, to offer the Legislature recommendations aimed at reducing these disparities, and to guide a discussion about the role of straddle cells in the state’s sentencing guidelines.

## II. OVERVIEW OF SENTENCING GUIDELINES AND STRADDLE CELLS IN MICHIGAN

Throughout the United States, sentencing guidelines were established to ensure consistency and proportionality in sentencing and to reduce sentencing disparities. Michigan enacted its statutory sentencing guidelines in 1998 under advisement of the Michigan Sentencing Commission. As noted in the Michigan Sentencing Guidelines Manual, “In 2015 the Michigan Supreme Court rendered the previously-mandatory sentencing guidelines advisory only, *People v Lockridge*, 498 Mich 358 (2015).”

Michigan’s sentencing guidelines include three cell classifications:

- Prison cells are those cells for which the minimum sentence recommended exceeds one year of imprisonment.
- Straddle cells are those cells in which the lower limit of the recommended range is one year or less and the upper limit of the recommended range is more than 18 months.
- Intermediate sanction cells are those cells in which the upper limit recommended by the guidelines is 18 months or less.

Unlike prison and intermediate cells in which the sentences are presumptive, for straddle cell convictions, judges have discretion regarding the “in/out” decision - that is, whether a defendant is sentenced to prison or to a community sanction.

In recent years, sentencing experts have urged caution regarding Michigan’s straddle cells. For example, a 2008 study by National Center for State Courts (NCSC)<sup>1</sup> researchers comparing sentencing systems in Michigan, Virginia, and Minnesota identified issues with Michigan’s straddle cells. Especially relevant to the CJPC’s analyses, the study referenced race-based sentencing disparities as a particular concern:

“A potentially troubling factor is the over-representation of black offenders in Straddle Cells. The Straddle Cell was developed to give the judge the maximum possible leeway in determining the location of the sentence – if there is no location guidance from the guidelines, it is possible that race may be playing a role in the decision making” (p. 185).

In light of these and other concerns, the authors proposed reducing the number of straddle cells as a means of enhancing sentencing consistency:

“[C]onsideration should be given to reducing the number of straddle cells. When contemplating the use of straddle cells, the Michigan Sentencing Commission believed they were identifying sets of offenders with a 50/50 chance of receiving a prison sentence. Reducing their number would very likely increase the consistency of sentencing with respect of who goes to prison” (p. 301).

Similarly, a 2014 Council of State Governments (CSG) report<sup>2</sup> likewise recommends that Michigan replace straddle cells with those containing presumptive probation/jail/prison sentences:

“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” (p. 10).

Taken together, the 2008 NCSC report and the 2014 CSG report provide context for the discussion in this report about the role of straddle cells in Michigan’s sentencing guidelines.

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<sup>1</sup> Ostrom, Brian J., Charles W. Ostrom, Roger A. Hanson, and Matthew Kleiman. (2008). *Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States*. Final Report submitted to the National Institute of Justice. Award number 2003-IJ-CX-1015. See also Ostrom, et al. (2008). *Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States*. Washington, DC: National Center for State Courts.

<sup>2</sup> *Applying a Justice Reinvestment Approach to Improve Michigan’s Sentencing System*. (2014). New York, NY: Council of State Governments Justice Center.

### III. FINDINGS OF CJPC STRADDLE CELL REPORTS

#### A. DATA & METHODS

Over three reports, the CJPC examined straddle cell sentencing for class D (December 2018), class E (June 2019), and class B and C (July 2019) felonies. Our three analyses used data from the MDOC about all felony convictions between January 1, 2012 through December 31, 2017. The datasets included offender- and offense-based information used to generate prior record and offense variable scores in the presentence investigation (PSI) reports. In addition, offender demographic characteristics such as gender, age, race, and education level were included. Collectively, our analyses of class B, C, D, and E felonies examined 18,841 convictions.<sup>3</sup>

We used logistic regressions to determine whether there are disparities in the rate at which straddle cell offenders were sentenced to prison versus intermediate sanctions. Regression results describe correlations between certain factors and the probability that an offender is sentenced to prison as opposed to jail and/or probation. These results should not be interpreted as causal. Statistically significant results mean that there are substantial differences in the chance of an offender receiving a prison sentence associated with a given factor.<sup>4</sup>

#### B. FACTORS RELATED TO SENTENCING DISPARITIES

Across class B, C, D, and E felonies, the CJPC identified consistent disparities in straddle cell sentencing based on several factors (see Table 1).

**Table 1: Factors Contributing to Sentencing Disparities by Felony Class**

	Felony Classes		
	<i>B &amp; C</i>	<i>D</i>	<i>E</i>
<b>Race</b> (Black or African American vs. White)	✓		✓
<b>Age</b>	✓	✓	✓
<b>Gender</b> (Female vs. Male)	✓	✓	✓
<b>Employed</b> (Employed vs. Unemployed)	✓	✓	✓
<b>Attorney Status</b> (Retained vs. Appointed)	✓	✓	✓
<b>Conviction Method</b> (Found Guilty vs. Pled Guilty)	✓	✓	✓
<b>Crime Group</b> (e.g., Crimes Against a Person)	✓	✓	✓
<b>Circuit Court</b>	✓	✓	✓
Number of Convictions	2,960	4,823	11,058
Received Prison Sentence (%)	25.7%	30.3%	24.9%

<sup>3</sup> The sample for the previous reports included all individuals sentenced between 2012 and 2017 and scored within a straddle cell for class B, C, D, and E offenses, excluding habitual offenders and those with a special status during the offense. Special statuses include the following: HYTA, Probation, District Court Probation, Delay of Sentence, Parole, Jail, State Prisoner, Bond, Juvenile Court Supervision, Federal Probation, and Federal Parole.

<sup>4</sup> Please see the published CJPC straddle cell reports for complete data and methodological information.

Specifically, our analyses showed that:

- **Younger black straddle cell offenders were *significantly more likely*** to receive a prison sentence than their younger white counterparts, while older black straddle cell offenders were *significantly less likely* to receive a prison sentence than their older white counterparts. [Note: Significant racial disparities were not found for class D felonies.]
- **Female straddle cell offenders were *significantly less likely*** to receive a prison sentence than male straddle cell offenders.
- **Employed straddle cell offenders were *significantly less likely*** to receive a prison sentence than those who were unemployed.
- **Straddle cell offenders with retained attorneys were *significantly less likely*** to receive a prison sentence than those with appointed attorneys.
- **Straddle cell offenders found guilty at trial were *significantly more likely*** to receive a prison sentence than those who pled guilty. Some disparity is to be expected as plea bargains may be structured to reduce, or remove altogether, the prospect of being sentenced to prison. However, given the magnitude of this difference, these results suggest a strong association between going to trial and greater chances of receiving a prison sentence.
- **Rates of prison sentences differed significantly based on felony class and crime group** (type of crime committed). For example, offenders convicted of a class D controlled substance felony were significantly less likely to receive a prison sentence than offenders convicted of a class D crime against a person.
- **Rates of prison sentences differed significantly between circuit courts**, as outlined below.

### C. SENTENCING DISPARITIES BY CIRCUIT

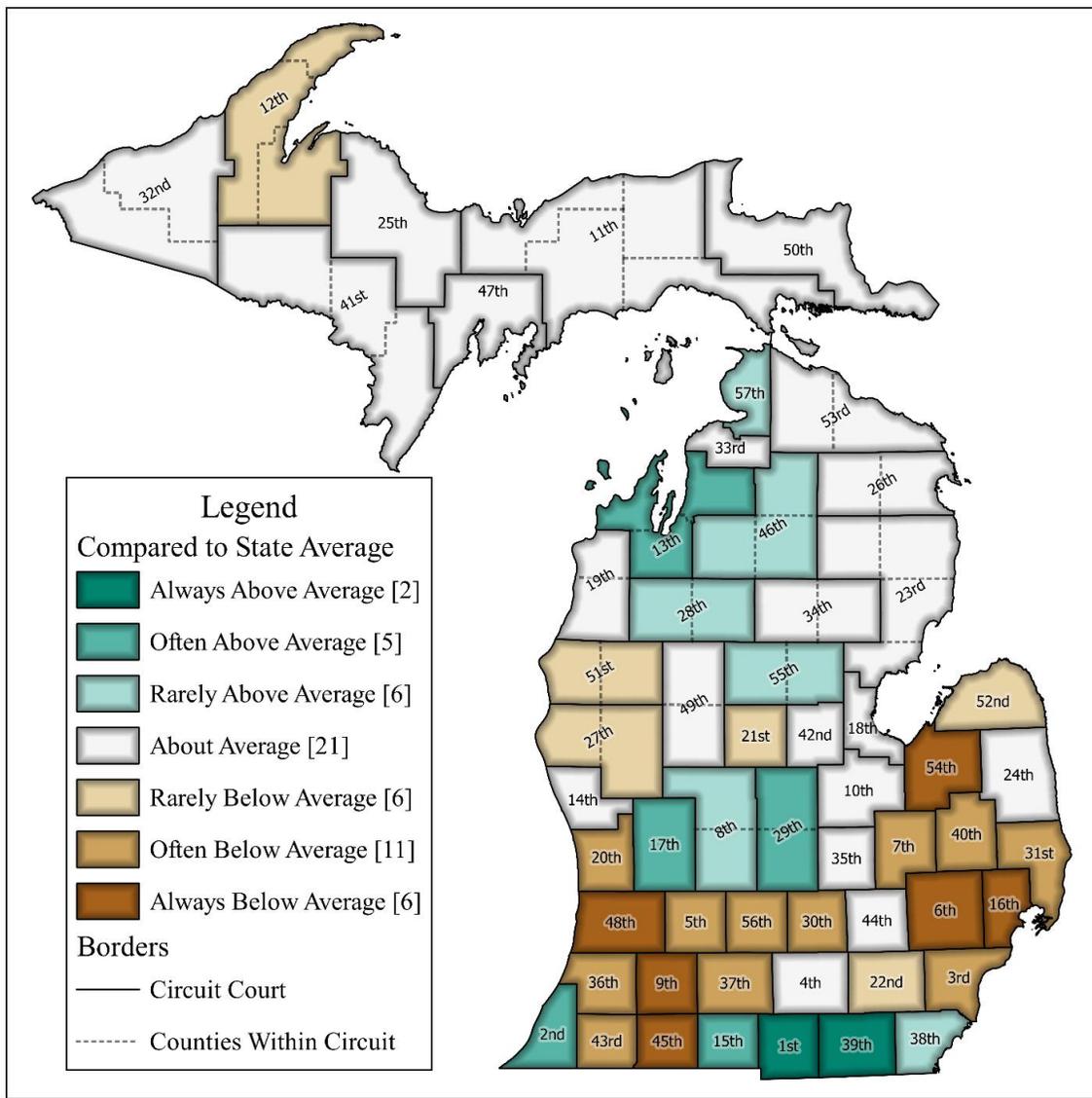
In each of the previous reports, we found significant differences when comparing circuit courts to the statewide average for imposing prison sentences. The table below provides the number of circuits that differed significantly, either above or below, from the rest of the state for each felony class.

**Table 2: Rate of Sentencing Straddle Cell Offenders to Prison**

Felony Class	Number of Circuit Courts				Prison Sentencing Rate		
	Above Average	Near Average	Below Average	Circuits Excluded	State Average	Minimum Rate	Maximum Rate
B & C	2	39	9	7	30.5%	6.3%	80.0%
D	11	30	16	0	35.8%	3.7%	91.4%
E	10	25	22	0	29.0%	7.8%	89.5%

Whether a circuit court differs from the state average for sentencing offenders to prison is not inherently problematic. The average across the state is not meant to represent the “correct rate” of sentencing, but instead is used as a benchmark for making comparisons. However, the presence of circuits far below and far above the average demonstrates vast differences in straddle cell sentencing depending on where offenders are sentenced. Across each felony class we found straddle cell sentencing practices that ranged from *seldomly* sentencing to prison (minimum rates: B&C = 6.3%, D = 3.7%, E = 7.8%) to *nearly always* imposing a prison sentence (maximum rates: B&C = 80%, D = 91.4%, E = 89.5%; see Figure 1). Ultimately, this wide range demonstrates a lack of consistency in straddle cell sentencing, in contradiction to one of the fundamental goals of sentencing guidelines.

**Figure 1: Frequency of Straddle Cell Prison Sentences - Comparing Circuit Courts to State Average<sup>5</sup>**



<sup>5</sup> Figure 1 shows how often circuit courts differed from the state average for sentencing straddle cell offenders to prison. See Table A-1 in the appendix for more detailed comparisons and specific values.

The straddle cell sentencing disparities we identified are persistent, statistically significant, and compelling. Documentation of these disparities should prompt closer inspection of Michigan's sentencing guidelines by lawmakers. After outlining the limitations of our research, we offer recommendations aimed at reducing these disparities then conclude with a discussion about the role of straddle cells in Michigan's sentencing guidelines.

#### IV. LIMITATIONS

While our research identifies factors that contribute to the "in-or-out" sentencing decision, we were unable to look at two important factors: differences in sentence length and recidivism rates among straddle cell offenders sentenced to prison and those sentenced to intermediate sanctions. With respect to recidivism in particular, additional data such as release dates are required to measure recidivism rates. Future research should assess whether disparities exist in sentence length and/or recidivism rates for straddle cell offenders.

In addition, this report summarizes sentencing disparities identified across all four felony classes we examined. In addition to the factors presented here, in select felony classes we found straddle cell sentencing disparities according to behavioral and mental health indicators, including drug and alcohol abuse. That disparities across these domains were not persistent across felony classes could be related to the inherent limitations of self-report data, such as those used by MDOC to assess offenders' history with drug and alcohol abuse. Readers interested in further discussion of these issues are invited to review our three published reports.

#### V. RECOMMENDATIONS FOR REDUCING SENTENCING DISPARITIES

We group our recommendations for reducing straddle cell sentencing disparities into three categories: data-related, funding-related, and system-related.

##### A. DATA RECOMMENDATIONS

Although the sentencing disparities we identified are not driven solely by judicial decisions, it is beneficial for judges to be aware of state- and circuit-wide trends in straddle cell sentencing. **The CJPC recommends that the State Court Administrative Office (SCAO) use existing MDOC data to prepare annual, internal administrative straddle cell sentencing reports to inform judicial education and training.**

One unanswered question arising from our analyses concerns sentencing agreements. It would be helpful to know how many straddle cell defendants entered into sentencing agreements, what kind of sentencing agreements they entered (e.g., Cobbs, Killebrew), and when during the process they entered into those agreements. **The CJPC recommends that MDOC and SCAO collaborate to identify data sources and mechanisms for analyzing sentencing agreements among straddle cell cases.**

## **B. FUNDING RECOMMENDATIONS**

One strategy for ameliorating the impact of straddle cell sentencing disparities is to increase funding for justice reinvestment initiatives. To incentivize community-focused sentencing, access to these funds could be reserved for courts or counties demonstrating a reduction in prison dispositions or disparities within straddle cells. Another strategy is to provide direct assistance (funding, technical expertise, pilot programming, etc.) to circuits or counties in which specific straddle cell offenses have been identified as increasing prison disposition rates or statistically significant disparities, with the goal of reducing the number of offenses that are committed rather than simply seeking to create greater equity amongst offenders at sentencing. **The CJPC recommends creation of a justice reinvestment fund process that captures criminal justice system savings and reinvests those funds into existing programs such as Community Corrections, and/or into new programs aimed at diverting straddle cell offenders from prison and into community services available for probationers.**

We recognize that the impact of any changes in the straddle cell sentencing made as a result of our recommendations may differ greatly across counties. **The CJPC recommends that in making its policy decisions, the Legislature implement flexible funding systems so that each county can accommodate their system needs accordingly.**

## **C. SYSTEM RECOMMENDATIONS**

Our analyses show direct disparities in sentencing related to employment, as well as disparities in other areas (e.g., attorney status) that are closely related to the economic status of the offender. Work should be undertaken to reduce the disparities in these factors prior to sentencing in order to ensure equitable outcomes. **The CJPC recommends providing supportive services to offenders beginning at the pretrial phase through probation, including access to mental health and substance abuse programming (for example, through Medicaid) and job placement activities through Workforce Development Agencies and other supports.**

## VI. ROLE OF STRADDLE CELLS IN MICHIGAN'S SENTENCING GUIDELINES

The mere presence of sentencing disparities does not necessarily indicate a problem for which the Legislature should intervene. As noted, disparities related to conviction method may reflect the fact that plea bargains often are structured to reduce or remove the prospect of a prison sentence. Likewise, it is neither inherently good nor inherently bad for a circuit to sentence straddle cell offenders at a range above or below the state average. Where documented sentencing disparities become potentially problematic is when they are correlated with demographic and extralegal factors that should be unrelated to sentencing decisions. Sentencing disparities based on domains such as race, age, employment status, and sentencing court indicate a failure of sentencing guidelines to achieve their primary function of ensuring consistency in punishment. More troublingly, such disparities call into question fundamental tenets of justice, fairness, and due process.

In light of straddle cell sentencing disparities documented by the CJPC and elsewhere, the Michigan Legislature may wish to consider reducing the number of straddle cells in the state sentencing guidelines by redefining them into intermediate sanction cells having presumptive local sentences. Any reduction in straddle cells is expected to have a corresponding impact on counties, as offenders who would have been sentenced to prison presumably would instead receive local sanctions in jail or under county-based community corrections agencies. Total elimination of straddle cells, while having the greatest potential impact for reducing sentencing disparities, also has the potential to create the greatest cost and capacity burdens for local governments. In an attempt to balance these considerations, the CJPC has identified two moderate approaches for consideration:

- **Option 1** is to increase the upper limit in the definition of intermediate sanction cells from “18 months or less” to “23 months or less.” This approach would redefine 34 straddle cells across the B-G grids into intermediate sanction cells.
- **Option 2** is to increase the upper limit in the definition of intermediate sanction cells from “18 months or less” to “23 months or less” but *only* for those cells having a lower limit of “less than 10 months.” This approach would redefine 19 straddle cells across the D-G grids into intermediate sanction cells.

The CJPC performed additional analyses to estimate whether reduction of straddle cells in any amount would result in a corresponding reduction in sentencing disparities. We analyzed three domains across which we found sentencing disparities: (1) attorney status (retained vs. appointed), (2) race/age, and (3) employment status. As elimination of all straddle cells would remove any opportunity for sentencing disparities to exist, we estimated outcomes for Options 1 and 2.

Both Option 1 and Option 2 are projected to reduce sentencing disparities for attorney status, race/age, and employment status. In some cases, sentencing disparities would remain but would be significantly reduced; in other cases, sentencing disparities would be eliminated entirely. As expected, the disparity reduction would be greater under Option 1 than Option 2 (see Table 3).

**Table 3: Impact of Straddle Cell Recommendations on Sentencing Disparities**

Attorney Status (Retained vs.Appointed)		
Our reports showed that straddle cell offenders with retained attorneys were <u>significantly less likely</u> to receive a prison sentence than those with appointed attorneys.		
Grid	Option 1	Option 2
B & C	Disparity is reduced from 40.9 to 35.3 percentage points (for found guilty at trial only).	N/A. No B or C grid straddle cells are affected, therefore the disparity (40.9 percentage points) is projected to remain the same.
D	All D grid straddle cells would be reclassified as intermediate sanction cells, essentially eliminating the opportunity for straddle-cell sentencing disparities.	Disparity is eliminated (is no longer significant).
E	Disparity is eliminated (is no longer significant).	Disparity is reduced from 3.8 to 2.2 percentage points.
Age and Race (Black vs. White)		
Our reports showed that across class B, C, and E felonies, younger black straddle cell offenders were <u>significantly more likely</u> to receive a prison sentence than their younger white counterparts, while older black straddle cell offenders were <u>significantly less likely</u> to receive a prison sentence than their older white counterparts.		
Grid	Option 1	Option 2
B & C	Racial disparity between younger (age 20) offenders is eliminated (is no longer significant). Racial disparity between older (age 50) offenders remains but is reduced from 16.1 to 12.6 percentage points.	N/A. No B or C grid straddle cells are affected, therefore disparities by race/age are projected to remain the same.
D	All D grid straddle cells would be reclassified as intermediate sanction cells, essentially eliminating the opportunity for straddle-cell sentencing disparities.	N/A. No significant disparities found; disparities remain insignificant under this option.
E	Racial disparities at all ages are eliminated (are no longer significant).	Racial disparity between younger (age 20) offenders is eliminated (is no longer significant). Racial disparity between older (age 50) offenders remains but is reduced from 5.4 to 2.0 percentage points.
Employment Status (Employed vs. Unemployed)		
Our reports showed that employed straddle cell offenders were <u>significantly less likely</u> to receive a prison sentence than those who were unemployed.		
Grid	Option 1	Option 2
B & C	Disparity is reduced from 7.3 to 6.4 percentage points.	N/A. No B or C grid straddle cells are affected, therefore the disparity (7.3 percentage points) is projected to remain the same.
D	All D grid straddle cells would be reclassified as intermediate sanction cells, essentially eliminating the opportunity for straddle-cell sentencing disparities.	Disparity is reduced from 6.1 to 4.5 percentage points.
E	Disparity is reduced from 10.1 to 2.1 percentage points.	Disparity is reduced from 10.1 to 3.8 percentage points.

Development of sound criminal justice policy is a complex endeavor, in part because it must encompass the sometimes competing interests of crime control and prevention, public safety, and justice administration. As noted, any consideration of reducing straddle cells in the state sentencing guidelines must attempt to balance the interests of counties and the state. To help inform legislative discussions, below we outline the projected impact of straddle cell reductions on both local and state systems.

#### A. STRADDLE CELL REDUCTION: PROJECTED IMPACT ON LOCAL SYSTEMS<sup>6</sup>

Reclassification of existing straddle cells to intermediate sanction cells, in any number, presumably would decrease the number of people sentenced to prison and increase the number of people sentenced to jail and/or community-based corrections – thereby shifting incarceration costs from the state to counties. Both financial cost and feasibility must be considered when projecting the impact on local systems.

Growth in locally-sentenced populations would increase counties' incarceration costs. The amount of these additional costs is dependent on the per diem costs for each jail and the number of additional local sentences they receive. Whether a county can absorb additional local sentences is contingent on the current population and jail capacity. Facilities already running near or above capacity may not be able to accommodate even modest increases in local sentences. Although we are able to estimate increases in locally-sentenced populations, the lack of statewide data on the costs and capacity of local systems limits our ability to quantify the projected impacts for each county. To that end, the Michigan Joint Task force on Jails and Pretrial Incarceration<sup>7</sup> currently is assessing the need for and means of collecting and maintaining this information statewide. For lawmakers to consider reducing the number of straddle cells, they must have access to statewide data on jail costs and capacity in order to properly forecast the potential impact on counties.

Mindful of the potential financial impact to counties of any straddle cell reduction, the CJPC examined possible funding sources for counties to recoup any additional expenses related to an increase in their correctional population. We selected for analysis an existing program already familiar to counties: the County Jail Reimbursement Program (CJRP). **Our analyses indicate that the CJRP has promise as a mechanism for ameliorating the financial burden counties might incur from an increase in the number of intermediate sanction cells.** An important caveat is warranted: although the CJRP could lessen the financial impact on counties from additional *eligible offenders*, the program would not address costs from an increase in *ineligible offenders* unless CJRP eligibility criteria were expanded. Below we outline the likely impact of Option 1 and Option 2 on this program and estimate the costs and saving realized by the state.

#### B. STRADDLE CELL REDUCTION: PROJECTED IMPACT ON STATE SYSTEM

Reduction in state-sentenced populations would decrease the state's incarceration costs. Savings realized by the state would be partially offset by an increase in the cost of reimbursements made to counties under the CJRP. From 2012 to 2017, approximately 2,638 straddle cell offenders were sentenced to jail each year. Of these, 1,092 (41.4%) were eligible for CJRP reimbursement. The amount the MDOC reimburses counties is based on the length of the offender's jail sentence and

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<sup>6</sup> The number of straddle cell offenders sentenced to jail annually and the projected increase in local sentences from Option 1 and Option 2 are provided for each county in Table A-4 of the appendix.

<sup>7</sup> See: <http://www.courts.mi.gov/micjreform>

their offense group (1 or 2)<sup>8</sup>. If counties were to request reimbursement for all 1,092 offenders, the cost to the state would be \$10,698,964 annually. However, had the same offenders been sentenced to prison, the cost of incarceration to the department would have been at least \$19,164,786.<sup>9</sup>

**Table 4: Current Yearly Jail Sentences and CJRP Estimates**

Annual Average (2012-2017)	
Jail Total	2,638
Eligible	1,092 (41.4%)
Ineligible	1,546 (58.6%)
Eligible Offenders	1,092
Savings	\$ 19,164,786
Cost	\$ 10,698,964
<b>Net Benefit</b>	<b>\$ 8,465,822</b>

In these circumstances, the net benefit from the program is a savings of \$8,465,822 annually. It is important to note that this scenario assumes the maximum cost of the program (reimbursements) and the minimum savings (foregone incarceration costs). Using these extremes demonstrates that the program is cost effective even under the least ideal conditions. In reality, the benefits from the CJRP are likely much greater, as not all counties seek reimbursement and some of the foregone prison sentences would be longer than a year.

**Table 5: Projected CJRP Impact from Additional Jail Sentences<sup>10</sup>**

	Offenders	Savings	Cost	Net Benefit	
	<b>Total</b>	<b>1,160</b>	<b>\$ 32,366,425</b>	<b>\$ 9,408,483</b>	<b>\$ 22,957,942</b>
Eliminate All	Eligible	564	\$ 14,922,651	\$ 9,408,483	\$ 5,514,168
	Ineligible	596	\$ 17,443,774	\$ -	\$ 17,443,774
	<b>Total</b>	<b>929</b>	<b>\$ 25,445,574</b>	<b>\$ 7,473,375</b>	<b>\$ 17,972,200</b>
Option 1	Eligible	453	\$ 11,921,457	\$ 7,473,375	\$ 4,448,083
	Ineligible	476	\$ 13,524,117	\$ -	\$ 13,524,117
	<b>Total</b>	<b>567</b>	<b>\$ 15,265,698</b>	<b>\$ 4,190,808</b>	<b>\$ 11,074,889</b>
Option 2	Eligible	256	\$ 6,553,013	\$ 4,190,808	\$ 2,362,204
	Ineligible	311	\$ 8,712,685	\$ -	\$ 8,712,685

<sup>8</sup> State reimbursement under the CJRP is \$55.00 per diem per diverted offender for offenders with a straddle cell guideline for a group 1 crime and \$40.00 per diem per diverted offender for offenders with a straddle cell guideline for a group 2 crime. Reimbursements shall be paid for sentences up to a 1-year total.

<sup>9</sup> The estimated savings were calculated using the marginal daily cost of incarceration provided by the MDOC (\$48.09). The shortest possible sentence length, 1 year, was used to determine the minimum savings to the department. In practice, the savings to the department are likely much greater, given that some offenders would have been incarcerated for longer than 1 year.

<sup>10</sup> The additional jail sentences reported in Table 5 represent the number of offenders, previously sentenced to prison, who are expected to receive a jail sentence if the given option for reducing the number of straddle cells was implemented.

Under Option 1, the number of offenders sentenced to jail is expected to increase by 929 per year, with 453 being CJRP eligible. Assuming the offenders diverted from prison receive jail sentences of 1 year, reimbursements to the counties would increase by \$7,473,375 each year. Similarly, the annual savings to the department from the reduced prison population increase by \$25,445,574. If Option 1 is implemented, the net benefit of the CJRP is expected to increase at least by \$17,972,200 annually.

Under Option 2, the number of offenders sentenced to jail is expected to increase by 567 per year, with 256 being CJRP eligible. Again, assuming the offenders diverted from prison receive jail sentences of 1 year, reimbursements to the counties would increase by \$4,190,808 each year, while the department's savings increase by \$15,265,698. If Option 2 is implemented, the net benefit of the CJRP is expected to increase by at least \$11,074,889 annually.

The benefits projected above are in addition to the savings from the scenario in which there is no change to the number of straddle cells (\$8,465,822). The total annual benefit for Option 1 is estimated at \$26,438,022 (\$17,972,200 + \$8,465,822), and the total annual benefit for Option 2 is estimated at \$19,540,711 (\$11,074,889 + \$8,465,822). These projected benefits represent the "worst-case" scenario in which the costs to the CJRP are maximized (by assuming the longest alternative jail sentence) while savings to the MDOC are minimized (by assuming the shortest period of incarceration saved). Realistically, CJRP reimbursement amounts likely would increase less than we project here while the amount saved from avoided prison incarceration would be greater than projected. Of note, the analyses presented here use the current reimbursement rates for straddle cell offenders; any changes to these rates would significantly alter the estimated savings, costs, and net benefits.

## **VII. CONCLUSION**

The CJPC intends this report to serve as a resource for legislative members to determine whether, or how, to examine straddle cells in Michigan's sentencing guidelines. The goal of this report is to inform the Legislature about the persistent straddle cell sentencing disparities the CJPC identified, to offer the Legislature recommendations aimed at reducing these disparities, and to guide a discussion about the role of straddle cells in the state's sentencing guidelines. Documentation of straddle cell sentencing disparities should prompt closer inspection of Michigan's sentencing guidelines by lawmakers. If Michigan's sentencing guidelines are failing to ensure consistency or reduce disparity in sentencing outcomes for straddle cell offenders, as our analyses suggest, it is incumbent upon the Legislature to examine next steps in order to ensure a commitment to principles of equity, fairness, and justice for the people of Michigan.

## VIII. APPENDIX

FIGURE A-1: COUNTIES OF MICHIGAN

FIGURE A-2: CIRCUIT COURTS OF MICHIGAN

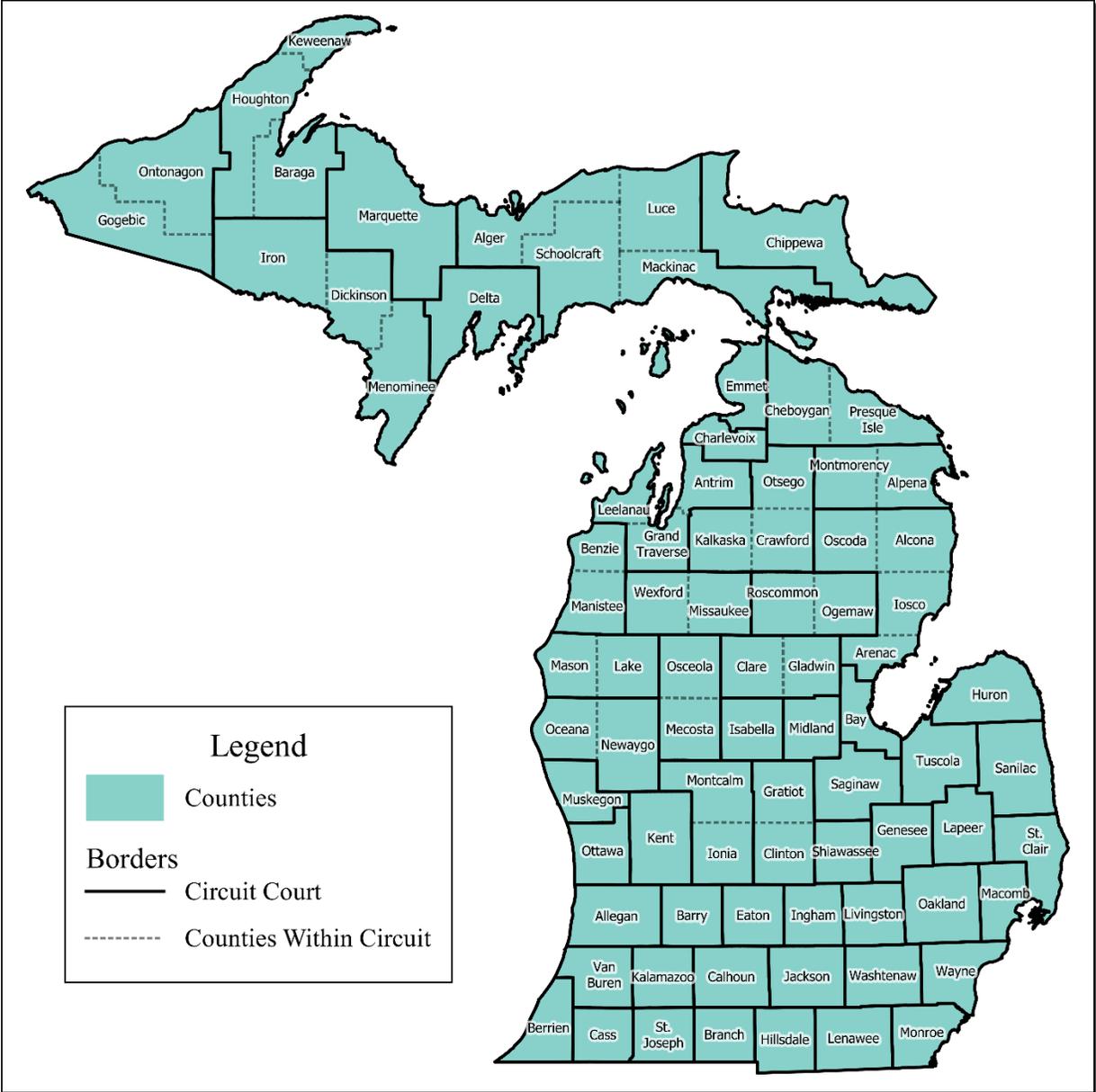
TABLE A-1: DIFFERENCE IN PROBABILITY OF RECEIVING A PRISON SENTENCE  
- COMPARING CIRCUIT COURT TO THE STATE AVERAGE

TABLE A-2: STRADDLE CELLS IMPACTED BY OPTIONS 1 AND 2

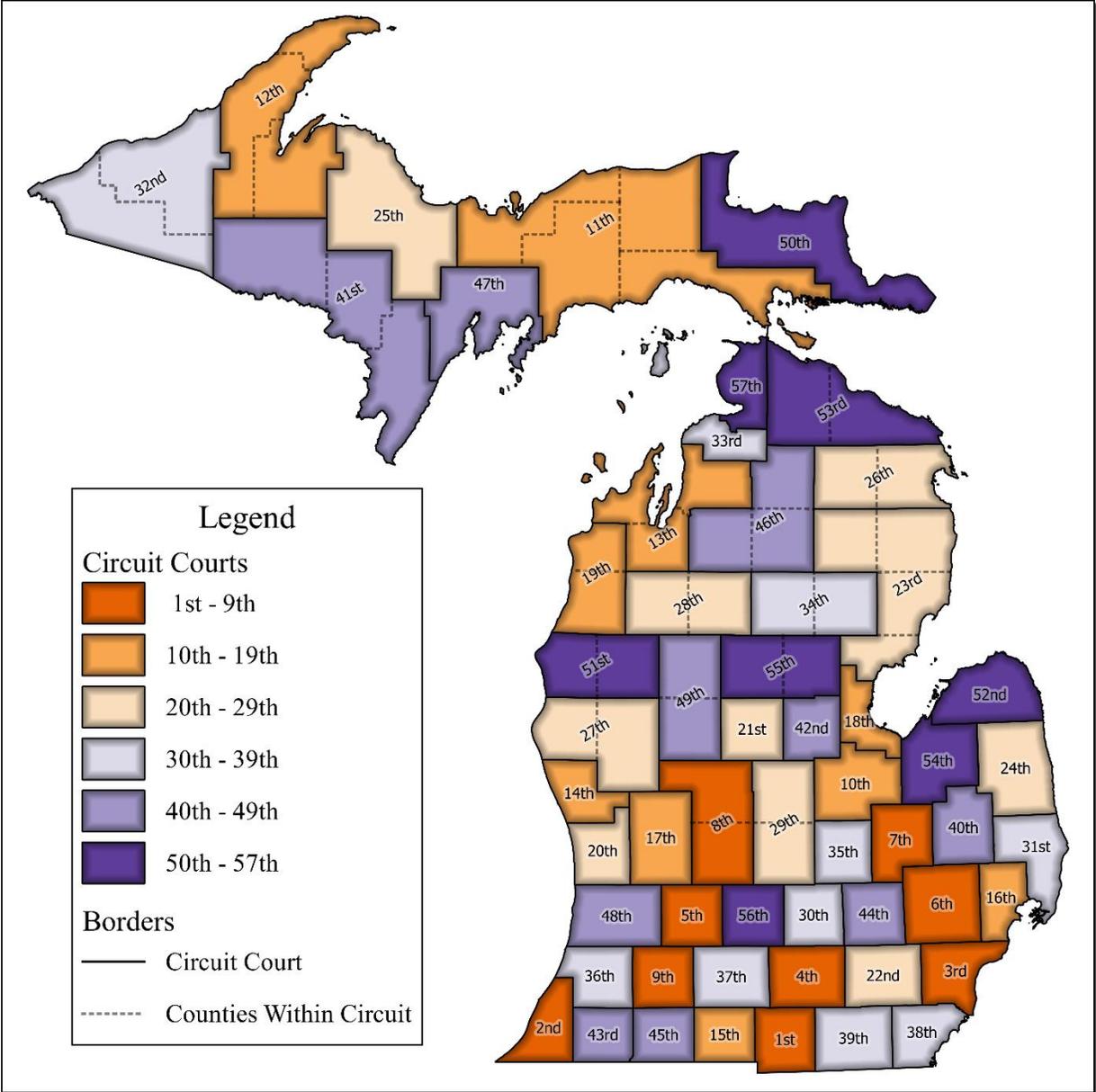
TABLE A-3: ESTIMATED REDUCTION IN DISPARITIES FROM OPTIONS 1 AND 2

TABLE A-4: ESTIMATED INCREASE IN LOCAL SENTENCING FROM OPTIONS 1 AND 2

**FIGURE A-1: COUNTIES OF MICHIGAN**



**FIGURE A-2: CIRCUIT COURTS OF MICHIGAN**



**TABLE A-1: DIFFERENCE IN PROBABILITY OF RECEIVING A PRISON SENTENCE  
- COMPARING CIRCUIT COURT TO THE STATE AVERAGE**

Circuit	B&C Grid (30.5%)		D Grid (35.8%)		E Grid (29.0%)		Counties
	Diff. From Average	Number of Cases	Diff. From Average	Number of Cases	Diff. From Average	Number of Cases	
1	<b>0.431**</b>	<b>8</b>	<b>0.556***</b>	<b>35</b>	<b>0.605***</b>	<b>38</b>	Hillsdale
2	-0.041	54	<b>0.108**</b>	<b>206</b>	<b>0.123***</b>	<b>451</b>	Berrien
3	-0.027	559	<b>-0.126***</b>	<b>1,149</b>	<b>-0.13***</b>	<b>2,849</b>	Wayne
4	-0.016	33	0.078	71	0.035	268	Jackson
5	Excluded from Analysis		<b>-0.238***</b>	<b>25</b>	<b>-0.126**</b>	<b>55</b>	Barry
6	<b>-0.108***</b>	<b>232</b>	<b>-0.095*</b>	<b>129</b>	<b>-0.102***</b>	<b>351</b>	Oakland
7	-0.024	129	<b>-0.178***</b>	<b>249</b>	<b>-0.108***</b>	<b>538</b>	Genesee
8	0.014	27	0	81	<b>0.221***</b>	<b>180</b>	Montcalm and Ionia
9	<b>-0.131**</b>	<b>117</b>	<b>-0.238***</b>	<b>208</b>	<b>-0.191***</b>	<b>344</b>	Kalamazoo
10	-0.073	65	-0.068	62	-0.054	127	Saginaw
11	Excluded from Analysis		0.086	18	-0.052	42	Luce, Mackinac, Schoolcraft, and Alger
12	0.181	4	-0.158	5	<b>-0.179***</b>	<b>36</b>	Houghton, Baraga, and Keweenaw
13	Excluded from Analysis		<b>0.295***</b>	<b>52</b>	<b>0.16***</b>	<b>120</b>	Leelanau, Antrim, and Grand Traverse
14	0.019	65	0.026	65	0.022	141	Muskegon
15	-0.011	13	<b>0.213**</b>	<b>35</b>	<b>0.232***</b>	<b>69</b>	Branch
16	<b>-0.112**</b>	<b>116</b>	<b>-0.062**</b>	<b>378</b>	<b>-0.129***</b>	<b>547</b>	Macomb
17	0.071	154	<b>0.115***</b>	<b>325</b>	<b>0.141***</b>	<b>976</b>	Kent
18	-0.007	16	-0.108	52	-0.043	158	Bay
19	Excluded from Analysis		0.108	15	0.143	30	Benzie and Manistee
20	<b>-0.161**</b>	<b>38</b>	-0.091	71	<b>-0.09***</b>	<b>220</b>	Ottawa
21	Excluded from Analysis		-0.068	31	<b>-0.079*</b>	<b>95</b>	Isabella
22	<b>-0.102*</b>	<b>69</b>	-0.022	128	-0.005	429	Washtenaw
23	-0.129	21	0.005	22	0.002	72	Iosco, Arenac, Alcona, and Oscoda
24	-0.119	5	-0.128	13	0.071	36	Sanilac
25	-0.046	11	0.142	20	-0.098	47	Marquette
26	-0.052	15	0.096	33	-0.065	49	Alpena and Montmorency
27	-0.03	38	-0.001	42	<b>-0.211***</b>	<b>102</b>	Oceana and Newaygo
28	0.181	6	0.121	48	<b>0.117*</b>	<b>91</b>	Wexford and Missaukee
29	0.075	33	<b>0.176**</b>	<b>43</b>	<b>0.127**</b>	<b>108</b>	Graiot and Clinton
30	-0.055	91	<b>-0.193***</b>	<b>115</b>	<b>-0.098***</b>	<b>312</b>	Ingham
31	-0.011	39	<b>-0.157***</b>	<b>104</b>	<b>-0.134***</b>	<b>148</b>	St. Clair
32	0.081	5	0.142	6	0.058	23	Ontonagon and Gogebic
33	0.348	3	0.142	6	0.21	14	Charlevoix
34	<b>-0.248***</b>	<b>14</b>	<b>0.257**</b>	<b>26</b>	0.009	107	Ogemaw and Roscommon
35	0.281	10	0.171	17	0.11	50	Shiawassee
36	-0.095	49	<b>-0.217***</b>	<b>92</b>	<b>-0.129***</b>	<b>137</b>	Van Buren
37	-0.061	31	<b>-0.119***</b>	<b>92</b>	<b>-0.062*</b>	<b>224</b>	Calhoun
38	0.081	30	<b>0.116*</b>	<b>59</b>	0.065	172	Monroe
39	<b>0.481**</b>	<b>5</b>	<b>0.231***</b>	<b>56</b>	<b>0.233***</b>	<b>86</b>	Lenawee
40	Excluded from Analysis		<b>-0.321***</b>	<b>27</b>	<b>-0.152***</b>	<b>94</b>	Lapeer
41	-0.046	11	0.278	11	-0.047	33	Iron, Dickinson, and Menominee
42	0.148	15	-0.108	12	0.014	46	Midland
43	-0.176	14	<b>-0.149***</b>	<b>67</b>	<b>-0.123**</b>	<b>90</b>	Cass
44	-0.081	21	-0.073	28	-0.008	85	Livingston
45	<b>-0.186**</b>	<b>30</b>	<b>-0.187***</b>	<b>99</b>	<b>-0.12***</b>	<b>124</b>	St. Joseph
46	-0.097	9	<b>0.156*</b>	<b>35</b>	0.092	89	Otsego, Crawford, and Kalkaska
47	0.014	6	-0.108	16	0.103	28	Delta
48	<b>-0.176*</b>	<b>21</b>	<b>-0.154***</b>	<b>137</b>	<b>-0.163***</b>	<b>142</b>	Allegan
49	-0.033	21	0.07	49	0.07	128	Osceola and Mecosta
50	0.014	3	0.07	21	0.172	26	Chippewa
51	-0.119	10	0.07	14	<b>-0.115*</b>	<b>40</b>	Mason and Lake
52	0.181	8	-0.177	11	<b>-0.159*</b>	<b>23</b>	Huron
53	Excluded from Analysis		-0.092	15	0.018	52	Cheboygan and Presque Isle
54	<b>-0.236**</b>	<b>12</b>	<b>-0.216***</b>	<b>35</b>	<b>-0.176***</b>	<b>35</b>	Tuscola
55	0.027	26	<b>0.262**</b>	<b>29</b>	-0.03	100	Clare and Gladwin
56	-0.001	22	<b>-0.306***</b>	<b>19</b>	<b>-0.157**</b>	<b>45</b>	Eaton
57	0.181	2	0.07	14	<b>0.182*</b>	<b>36</b>	Emmet

Significance Levels: \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

**TABLE A-2: STRADDLE CELLS IMPACTED BY OPTIONS 1 AND 2**

Class	Cell		Minimum Sentence Range (Months)		Felony Convictions (2012-2017)			Option 1	Option 2	
	PRV	OV	Lower Limit	Upper Limit	Total	Prison	Prison (%)			
<b>B</b>	A	II	12	20	379	75	19.8%	X	✓	
	B	I	12	20	263	39	14.8%	X	✓	
<b>C</b>	A	III	10	19	240	67	27.9%	X	✓	
	A	IV	12	24	313	120	38.3%	✓	✓	
	B	III	12	24	186	61	32.8%	✓	✓	
	C	I	10	19	619	111	17.9%	X	✓	
	C	II	12	24	702	205	29.2%	✓	✓	
	D	I	12	24	258	84	32.6%	✓	✓	
<b>D</b>	A	V	5	23	240	64	26.7%	X	X	
	A	VI	10	23	129	66	51.2%	X	✓	
	B	IV	5	23	154	42	27.3%	X	X	
	B	VI	10	23	106	36	34.0%	X	✓	
	C	III	5	23	394	98	24.9%	X	X	
	C	IV	10	23	368	122	33.2%	X	✓	
	D	II	5	23	997	253	25.4%	X	X	
	D	III	10	23	254	105	41.3%	X	✓	
	E	I	5	23	968	237	24.5%	X	X	
	E	II	10	23	454	180	39.6%	X	✓	
F	I	10	23	759	258	34.0%	X	✓		
<b>E</b>	B	V	5	23	106	19	17.9%	X	X	
	B	VI	7	23	36	14	38.9%	X	X	
	C	IV	5	23	482	131	27.2%	X	X	
	C	V	7	23	248	100	40.3%	X	X	
	C	VI	12	24	83	48	57.8%	✓	✓	
	D	I	5	23	2729	407	14.9%	X	X	
	D	II	7	23	2631	567	21.6%	X	X	
	D	III	10	23	571	182	31.9%	X	✓	
	D	IV	12	24	303	128	42.2%	✓	✓	
	E	I	7	23	1127	251	22.3%	X	X	
	E	II	10	23	1111	361	32.5%	X	✓	
	E	III	12	24	242	110	45.5%	✓	✓	
	F	I	9	23	699	173	24.7%	X	X	
F	II	12	24	690	262	38.0%	✓	✓		
<b>F</b>	C	IV	5	23	150	74	49.3%	X	X	
	D	II	5	23	1111	147	13.2%	X	X	
	D	III	10	23	407	120	29.5%	X	✓	
	D	IV	12	24	66	37	56.1%	✓	✓	
	E	I	5	23	879	80	9.1%	X	X	
	E	II	10	23	478	97	20.3%	X	✓	
	E	III	12	24	158	75	47.5%	✓	✓	
	F	I	10	23	578	73	12.6%	X	✓	
	F	II	12	24	253	63	24.9%	✓	✓	
<b>G</b>	E	III	5	23	431	126	29.2%	X	X	
	F	II	5	23	355	88	24.8%	X	X	
	F	III	7	23	254	80	31.5%	X	X	
<b>Total</b>	<b>45</b>								<b>34 X's</b>	<b>19 ✓'s</b>

Impact on Straddle Cells: "X" = No Longer a Straddle Cell "✓" = Remains a Straddle Cell

**TABLE A-3: ESTIMATED REDUCTION IN DISPARITIES FROM OPTIONS 1 AND 2**

		<i>B &amp; C</i>			<i>D</i>			<i>E</i>		
		Currently	Option 1	Option 2	Currently	Option 1	Option 2	Currently	Option 1	Option 2
<b>Attorney Status</b>	Overall	-1.5	0.6	-1.5	-6.0***	--	-2.2	-3.8***	-0.9	-2.2**
	Retained vs. Appointed									
	Pled Guilty	-0.9	1.1	-0.9	-6.0***	--	-2.2	-3.8***	-0.9	-2.1**
	Found Guilty	-40.9**	-35.3**	-40.9**	-6.5***	--	-3.7	-4.9***	-2.1	-3.6**
<b>Offender's Race</b>	20 Years Old	5.7**	2.5	5.7**	-1.4	--	-0.4	3.5*	0.3	2.0
	Black vs. White									
	35 Years Old	-4.6	-4.5*	-4.6	-1.5	--	-0.4	-1.2	-0.4	-0.3
	50 Years Old	-16.1***	-12.6***	-16.1***	-1.5	--	-0.4	-5.4***	-0.9	-2.0*
<b>Employment</b> (Employed vs. Unemployed)		-7.3***	-6.4***	-7.3***	-6.1***	--	-4.5***	-10.1***	-2.1***	-3.8***
<b>Number of Convictions</b>		2,960	2,935	2,960	4,823	--	4,807	11,058	10,816	10,906
<b>Sentenced to Prison (%)</b>		25.74%	16.01%	25.74%	30.29%	--	15.96%	24.90%	5.07%	10.00%

\* p<0.05, \*\* p<0.01, \*\*\* p<0.001

**TABLE A-4: ESTIMATED INCREASE IN LOCAL SENTENCING FROM OPTIONS 1 AND 2<sup>11</sup>**

Counties	Straddle Cell Convictions Sentenced to Jail	Additional Convictions Sentenced to Jail (per Year)			Rated Design Capacity
	Annual Average 2012-2017	Eliminate All	Option 1	Option 2	
Alcona	6.2	1.0	0.5	0.3	31
Alger	3.2	0.2	0.0	0.0	47
Allegan	56.7	12.2	8.8	4.7	225
Alpena	14.7	5.3	3.8	2.7	69
Antrim	2.5	3.7	2.8	1.7	54
Arenac	1.8	1.5	1.2	0.5	46
Baraga	1.8	0.8	0.3	0.2	26
Barry	21.2	3.5	2.7	1.5	98
Bay	37.8	13.8	11.2	6.5	249
Benzie	1.0	2.0	1.7	1.2	47
Berrien	113.8	76.7	63.8	41.3	341
Branch	13.8	17.3	13.8	8.3	142
Calhoun	59.8	20.8	17.2	9.8	630
Cass	36.8	7.5	6.3	2.8	116
Charlevoix	2.8	2.5	1.8	1.0	89
Cheboygan	7.2	3.3	3.0	2.0	82
Chippewa	9.8	8.5	7.5	4.2	175
Clare	12.5	5.5	5.0	3.2	172
Clinton	13.8	9.2	7.0	4.3	236
Crawford	6.2	3.3	2.8	1.7	51
Delta	9.0	4.8	3.8	2.2	85
Dickinson	3.5	2.2	1.7	0.8	71
Eaton	16.8	4.0	3.0	1.7	374
Emmet	7.0	8.0	6.3	4.0	104
Genesee	127.2	40.0	30.8	17.5	580
Gladwin	9.8	5.5	3.7	1.8	84
Gogebic	6.2	2.2	0.8	0.5	32
Grand Traverse	13.5	16.3	14.2	9.0	168
Gratiot	10.7	9.3	7.3	4.7	70
Hillsdale	4.0	14.8	13.0	9.7	67
Houghton	6.8	0.7	0.3	0.3	28
Huron	8.2	1.8	1.3	1.0	70
Ingham	115.7	31.7	23.5	14.3	569
Ionia	23.8	20.3	15.5	10.7	156
Iosco	10.3	3.5	2.8	2.2	63
Iron	2.8	1.3	1.2	0.5	50
Isabella	36.0	8.8	6.8	4.2	196
Jackson	56.5	27.5	22.5	14.5	185
Kalamazoo	111.8	19.3	13.7	5.7	482
Kalkaska	5.7	4.3	3.8	3.3	61
Kent	186.0	156.8	130.2	84.7	1,285
Keweenaw	0.5	0.0	0.0	0.0	6

Counties	Straddle Cell Convictions Sentenced to Jail	Additional Convictions Sentenced to Jail (per Year)			Rated Design Capacity
	Annual Average 2012-2017	Eliminate All	Option 1	Option 2	
Lake	6.5	1.0	0.8	0.5	48
Lapeer	28.2	3.5	2.5	0.8	123
Leelanau	1.5	2.7	2.0	1.3	80
Lenawee	19.8	19.3	16.0	10.0	287
Livingston	25.0	9.3	7.7	6.2	391
Luce	2.3	1.2	1.2	1.0	0
Mackinac	5.2	1.2	0.8	0.5	28
Macomb	159.3	50.5	41.3	22.7	1,238
Manistee	4.3	3.3	2.7	1.7	68
Marquette	12.3	5.2	3.5	1.7	80
Mason	7.7	3.0	2.3	1.5	110
Mecosta	21.5	10.3	9.0	7.8	97
Menominee	3.7	1.7	1.5	0.3	51
Midland	12.7	5.0	3.5	2.2	274
Missaukee	6.5	3.7	3.3	2.5	40
Monroe	43.2	24.0	19.2	13.8	183
Montcalm	16.0	14.3	11.7	8.0	205
Montmorency	4.8	1.3	1.3	0.3	42
Muskegon	47.3	18.7	14.5	9.8	542
Newaygo	21.2	5.3	3.7	1.7	270
Oakland	121.5	34.7	26.5	14.8	1,032
Oceana	10.7	2.5	2.0	1.0	67
Ogemaw	8.7	4.5	3.7	2.7	124
Ontonagon	1.2	0.5	0.5	0.5	19
Osceola	7.5	7.8	6.3	5.0	77
Oscoda	2.5	1.5	1.5	0.8	0
Otsego	6.8	5.2	4.8	3.2	34
Ottawa	87.2	15.3	13.0	7.3	462
Presque Isle	2.3	1.2	1.2	1.0	23
Roscommon	14.8	8.2	7.3	3.5	96
Saginaw	36.3	15.2	10.8	6.3	513
Sanilac	10.2	4.3	3.5	2.7	175
Schoolcraft	4.2	1.5	1.3	1.2	26
Shiawassee	10.7	7.8	7.3	4.2	132
St. Clair	64.0	13.8	10.2	6.0	507
St. Joseph	59.0	9.3	7.5	2.8	165
Tuscola	12.7	2.0	1.7	1.0	92
Van Buren	53.3	10.8	7.3	3.7	158
Washtenaw	72.5	40.7	30.8	19.2	404
Wayne	389.7	194.5	155.0	87.7	2,896
Wexford	17.3	11.5	9.5	5.8	158
<b>Total</b>	<b>2,638</b>	<b>1,160</b>	<b>929</b>	<b>566</b>	<b>19,029</b>

<sup>11</sup> The rated design capacity for each county was provided by the MDOC: County Jail Capacity Report (Oct. 2018).

To our Fellow Commission Members:

We want to thank the members on the commission for your efforts at the research, data collection, discussions, and wrestling through difficult issues. With more time, we are sure we could have come to a meeting of the minds.

But as the report currently stands, we respectfully cannot support the report for the following reasons:

- As our commission discusses changes to the system, it is important to balance public safety, victims' rights, and fairness and equity for defendants.
- We acknowledge there are disparities in sentencing, and we are committed to working on solutions. But the data is incomplete. We did not get a chance to study prison sentences, diversions, specialty courts, etc., to get a fuller picture of what the disparities may be across the system that occur in order to make recommendations. We have not established a causal relationship between sentencing guidelines and disparity.
- Reasons for disparity can come from many factors, including bias of the actors, lack of training, lack of local services and resources. By only recommending straddle cell changes, we are only focusing on one part of the system—and, given the above factors, may not resolve the disparity. The reasons are complex; the solutions are also complex. Recommending straddle cells become jail bound is not necessarily the solution to disparity, in the same way that recommending straddle cells become prison bound may not address it. Given the discretionary nature of the sentencing guidelines, we do not know the impact of changing the straddle cells on sentencing practices. The fact that there were several issues we were not able to study in the time frame points out the limits of the recommendations.
- County resources and jail/program space are unable to handle these changes. While the report recommends local funding, Andy Verheek and Sheriff LaJoye-Young made the point that funding is volatile. Without the ability to dedicate that stream of funding to local criminal justice programs, the result of the recommendations will increase the burden without solutions.
- Of course, all parts of the criminal justice system can be improved, and training is an important recommendation for law enforcement, prosecuting attorneys, criminal defense, and judges. The improved Michigan Indigent Defense system is another factor that may address bias. • Bottom line, to approach defendants as individuals, we need to trust the discretion of the judges who have heard the local case, have heard the arguments of defense and prosecution, who have heard from the victim, who know their local systems, resources and who represent the local community.

DJ Hilson  
Representing Michigan's Prosecutors

Michelle LaJoye-Young  
Representing Michigan's Sheriffs

**MAC**  
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**Stephan W. Currie, Executive Director**

Sept. 26, 2019

Dr. Amanda Burgess-Proctor  
Chair  
Criminal Justice Policy Commission  
124 W. Allegan St.  
Lansing, MI 48909-7536

Dear Dr. Burgess-Proctor,

The Michigan Association of Counties appreciates the hard work of the Criminal Justice Policy Commission in collecting and evaluating data related to “straddle cell” sentencing in Michigan. All members of the commission represented differing viewpoints and provided valuable information to the process and final report.

While it is disappointing that the commission’s work will end on Sept. 30, we hope a similar group will be created to continue the review of sentencing guidelines, consult with stakeholders and advise legislators.

MAC supports the final report, while acknowledging the concerns of our fellow countywide elected officials. However, MAC’s member-approved policy platforms support court reforms to enhance data collection efforts; funding and new investment in community correction and diversion programs; and investment in pretrial risk assessments and services. Thus, we support the recommendation for reducing sentencing disparities in the final report dated Sept 26.

MAC agrees with the Michigan Sheriffs’ Association and the Prosecuting Attorneys Association of Michigan that county resources and jail capacity issues are major concerns that must be addressed prior to any legislative action on reducing straddle cells by revising the limits. It is imperative that the Legislature consider the limitations of this report and data, funding and system recommendations prior to redefining and/or reducing straddle cells in the state’s sentencing guidelines.

MAC reserves the right to express concerns or opposition to legislative changes to straddle cells in the sentencing guidelines. MAC hopes additional examination of sentencing disparities continue to gain a more comprehensive view of the landscape. It is Michigan’s time in criminal justice reform and this commission has contributed mightily to our understanding of the issue. A fair and equitable system that maintains safety in our communities is the goal.

Sincerely,



Stephan W. Currie  
Executive Director  
MAC



Kenneth Mitchell  
CJPC Member  
Clinton County Commissioner