

final minutes

Criminal Justice Policy Commission Meeting

9:00 a.m. • Wednesday, January 6, 2016

Senate Appropriations Room • 3rd Floor State Capitol Building

100 N. Capitol Avenue • Lansing, MI

Members Present:

Senator Bruce Caswell, Chair
Stacia Buchanan
Senator Patrick Colbeck
Representative Vanessa Guerra
D. J. Hilson
Kyle Kaminski
Sheryl Kubiak
Barbara Levine
Sarah Lightner
Laura Moody
Sheriff Lawrence Stelma
Jennifer Strange
Judge Paul Stutesman
Andrew Verheek
Judge Raymond Voet
Representative Michael Webber

Members Excused:

Senator Bert Johnson

I. Call to Order and Roll Call

The Chair called the meeting to order at 9:00 a.m. and asked the clerk to take the roll. A quorum was present and absent members were excused. Commissioner Levine arrived at 9:10 a.m.

II. Approval of the December 2, 2015 CJPC Meeting Minutes

The Chair asked for a motion to approve the December 2, 2015 Criminal Justice Policy Commission meeting minutes.

Judge Voet moved, supported by Commissioner Lightner, that the minutes of the December 2, 2015 Criminal Justice Policy Commission meeting as proposed be approved. There was no objection. The motion was approved by unanimous consent.

III. Data Subcommittee Update

The Chair called on Commissioner Kubiak to provide an update on the activities of the data subcommittee. Commissioner Kubiak presented information regarding the availability of statewide data to assess recidivism (see attached handout for more details.) She highlighted the deficiencies of the current data sources and noted that the State Police data is sensitive to errors and there is no way to measure recidivism across the state with the current data systems. A period of question and answer followed.

The Chair then called on Senator Colbeck for an update on an action item requested at the December 2 meeting to put together a resource framework the Commission could review and consider with regard to the scope of work expected of the FTEs needed to support the collection and dissemination of data for the Commission. Senator Colbeck proceeded with his data management system presentation (see attached slides for more details.) A discussion followed. Commissioner Levine commented on what punishment is proportional. Commissioner Moody offered comments on consideration of using a rehabilitation or punishment approach and Commissioner Verheek commented on the need for education for stakeholders and the public. With regard to the information on data driven decisions, the Chair offered that safety for citizens needs to be considered as well. Professor Kubiak noted the need to include resources for the analysis and modeling of the data. Judge Stutesman pointed out that the Commission is charged with collecting information on misdemeanors and felonies. Senator Colbeck will take the comments made today and update the presentation. He will then resubmit the revised presentation for the Commission to review.

IV. Council of State Governments Findings and Policy Options

The Chair opened a discussion of revised recommendations #3 and #1 highlighted at the December 2, 2015 CJPC meeting. The Chair noted that a request for feedback was sent out to members in December (written statements submitted are attached to these minutes.)

Recommendation 3:

In order to provide the legislature and Governor with an accurate evidence-based analysis of the criminal justice system in an on-going manner the Criminal Justice Policy Commission makes the following recommendation; It is recommended that the legislature fund 3 permanent research and data collecting positions for the Criminal Justice Policy Commission. This will enable the Commission to provide the legislature and Governor with on-going research and analysis of all facets of the criminal justice system for their use in establishing legislation. It is further recommended that this funding be separate from the Michigan Department of Corrections budget.

The Chair opened a discussion of Recommendation #3 and asked for comments. Issues of the number of staff positions needed and the inclusion of a specific dollar amount were discussed.

Senator Colbeck moved, supported by Representative Guerra, to amend proposed Recommendation 3, after "fund" by deleting "3 permanent research and data collecting positions" and inserting "on-going research, data collection, and data system implementation activities in the amount of \$500,000". There was no further discussion. The motion prevailed by unanimous consent and the amendment was adopted.

Commissioner Verheek moved, supported by Representative Webber, to adopt Recommendation 3, as amended, to read as follows:

In order to provide the legislature and Governor with an accurate evidence-based analysis of the criminal justice system in an on-going manner, the Criminal Justice Policy Commission makes the following recommendation: It is recommended that the legislature fund on-going research, data collection, and data system implementation activities in the amount of \$500,000 for the Criminal Justice Policy Commission. This will enable the Commission to provide the legislature and Governor with on-going research and analysis of all facets of the criminal justice system for their use in establishing legislation. It is further recommended that this funding be separate from the Michigan Department of Corrections budget.

There was no further discussion. The motion prevailed by unanimous consent.

Yeas—16	Senator Caswell	Commissioner Lightner
	Commissioner Buchanan	Commissioner Moody
	Senator Colbeck	Commissioner Stelma
	Representative Guerra	Commissioner Strange
	Commissioner Hilson	Judge Stutesman
	Commissioner Kaminski	Commissioner Verheek
	Commissioner Kubiak	Judge Voet

Nays—0

Recommendation 1:

1. It is the recommendation of the Criminal Justice Policy Commission that recidivism be defined as follows: Recidivism is the re-arrest, re-conviction, or incarceration in prison or jail of an individual within four (4) years of their previous violation. Re-arrest is to include probation and parole violations as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators.

The Chair asked Commissioner Kaminski to explain the changes he proposed. A discussion of using measurements instead of a definition of recidivism, changing the timeline, and specifying the starting point for measuring recidivism followed.

Commissioner Hilson moved, supported by Commissioner Kaminski, to amend proposed Recommendation 1, after "that" by deleting "recidivism be defined as follows: Recidivism is the re-arrest, re-conviction, or incarceration" and inserting "the Commission track and analyze data for three different measures of recidivism—re-arrest recidivism, re-conviction recidivism, and re-incarceration recidivism" and after "within" by deleting "four (4)" and inserting "three (3) and five (5)". There was no further discussion. The motion prevailed by unanimous consent and the amendment was adopted.

Commissioner Hilson moved, supported by Commissioner Moody, to amend proposed Recommendation 1, after “their” by deleting “previous violation” and inserting “release from incarceration, or placement on probation, or conviction, whichever is later”. There was no further discussion. The motion prevailed by unanimous consent and the amendment was adopted.

Commissioner Hilson moved, supported by Commissioner Kaminski, to adopt proposed Recommendation 1, as amended, to read as follows:

- 1. It is the recommendation of the Criminal Justice Policy Commission that the Commission track and analyze data for three different measures of recidivism—re-arrest recidivism, re-conviction recidivism, and re-incarceration recidivism in prison or jail of an individual within three (3) and five (5) years of their release from incarceration, or placement on probation, or conviction, whichever is later. Re-arrest is to include probation and parole violations as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators.**

There was no further discussion. The motion did not pass and the amendment was not adopted.

Commissioner Levine moved, supported by Commissioner Kaminski, to amend proposed Recommendation 1, by deleting “Re-arrest is” and inserting “All measures of recidivism are”. There was no further discussion. The motion prevailed by unanimous consent and the amendment was adopted.

Commissioner Kaminski moved, supported by Commissioner Stelma, to adopt proposed Recommendation 1, as amended, to read as follows:

- 1. It is the recommendation of the Criminal Justice Policy Commission that the Commission track and analyze data for three different measures of recidivism—re-arrest recidivism, re-conviction recidivism, and re-incarceration recidivism in prison or jail of an individual within three (3) and five (5) years of their release from incarceration, or placement on probation, or conviction, whichever is later. All measures of recidivism are to include probation and parole violations as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators.**

There was no further discussion. The motion prevailed by unanimous consent.

Yeas—16	Senator Caswell Commissioner Buchanan Senator Colbeck Representative Guerra Commissioner Hilson Commissioner Kaminski Commissioner Kubiak Commissioner Levine	Commissioner Lightner Commissioner Moody Commissioner Stelma Commissioner Strange Judge Stutesman Commissioner Verheek Judge Voet Representative Webber
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Nays—0

V. Public Comment

Mr. Jim Casha, of Ontario, Canada, spoke as an advocate for children with fetal alcohol syndrome. There were no other public comments.

VI. Commissioners’ Comments

The Chair appointed Commissioner Strange to the Mental Health Subcommittee and designated her co-chair along with Commissioner Lightner. The Chair also stated that the recommendations approved by the Commission will be sent out for review and feedback. There were no other Commissioner comments.

VII. Next CJPC Meeting Date

The next CJPC meeting is scheduled for **Wednesday, February 3, 2016, at 9:00 a.m. in the Senate Appropriations Room, 3rd Floor of the State Capitol Building.**

VIII. Adjournment

There was no further business. The Chair adjourned the meeting at 12:28 p.m.

(Minutes approved at the February 3, 2016 Criminal Justice Policy Commission meeting.)

Exploring the Availability of Statewide Data to Assess Recidivism

The Criminal Justice Policy Commission’s legislative mandate to examine recidivism outcomes, defines recidivism across a span of the criminal justice continuum, from re-arrest to parole violations. The ability of the commission to accomplish these objectives will depend upon a number of things: 1) the availability of data; 2) the ability to link or integrate data; 3) the specific research/assessment questions posed; 4) interest in felony or misdemeanor offenses; and 5) time frame for calculation of recidivism (one time, three years, ongoing). Below is a synopsis of information obtained through a joint meeting of commission members as well as staff from MDOC, SCAO and OPTUM representatives (responsible for the Judicial Data Warehouse).

Recidivism Marker	Data Source(s)	Data Limitations	Possible Next Steps
Arrest/Charge	<p>Michigan State Police Criminal History Data</p> <p>(Note: LEIN data is not publicly available from MSP; law enforcement only)</p>	<ol style="list-style-type: none"> 1) MSP data is not currently linked with MDOC data or Judicial Data Warehouse. 2) In an effort to secure MSP data, a file extraction process is required; requesting agency has to provide identifiers and they are matched with MSP data. 3) Missing data from municipalities; inability to match adequately if there is an error in identifiers. 	<ol style="list-style-type: none"> 1) MDOC and/or JDW could request data from MSP to augment their available data for a pilot. 2) Integration of MSP data with other administrative data would require additional state funding.
Conviction	<p>Judicial Data Warehouse (JDW) has court related data from most district and circuit courts in the state.</p> <p>Reports on both felony and misdemeanor convictions and sentences.</p>	<ol style="list-style-type: none"> 1) JDW does have capacity to link with MDOC data, but data sharing is currently limited to case finding/identification for purposes of restitution, not recidivism tracking. 2) Only tracks ‘Active’ cases (may have 8 years of interface). 3) No juvenile data 4) In courts that do participate, the quality of the data in dependent on the specific court’s data vendor (some extractions processes more successful than others). For example, JIS systems have high reliability while Maximus has low reliability. 5) There are some courts that do not participate; i.e. Washtenaw Circuit, several district courts. 6) Data has to be generated by a person – on a case-by-case basis. A request with identifiers would be necessary to generate report information. 7) 	<ol style="list-style-type: none"> 1) JDW staff/SCAO are willing to work with the Commission to pilot a small area of the state (i.e. 1 county) to test how to track recidivism. This would likely be a prospective study based upon a selected sample of individuals.

Recidivism Marker	Data Source(s)	Data Limitations	Possible Next Steps
Jail or Probation Sentence	<p>Limited: JDW/MDOC have individual level data that may track jail confinement for specific persons.</p> <p>Alternative: County-level jail data</p>	<ol style="list-style-type: none"> 1) JDW captures if someone was sentenced to jail time – but has no way of tracking if or what time was actually served. 2) MDOC disposition data will have similar data to JDW for FELONY offenders only; no dates of admission/exit; also cell or transit data may indicate jail confinement of someone on parole violation if the jail reports it. 3) Extraction of jail data at the county level is cumbersome if extracting from all 80 jails statewide. Also, extracting from one jail and not surrounding counties may provide inaccurate estimates of jail recidivism 	
Prison	MDOC OMS Data	<ol style="list-style-type: none"> 1) MDOC has complete data on admission, parole and discharge from prison. 	
Probation Violation – FELONY ONLY	MDOC-OMNI Data	<ol style="list-style-type: none"> 1) OMNI disposition data will provide information on probation sentences and community supervision. 2) Case/individual specific data collection. 	<ol style="list-style-type: none"> 1) MDOC OMNI disposition data may be the best method for tracking recidivism across a wide scope of recidivism outcomes – however this is limited to FELONY offenders only. 2) May be able to link with MSP arrest/conviction data for a sample (perhaps ongoing?) if a specified amount of time is specified.
Parole Violation	MDOC OMS Data	<ol style="list-style-type: none"> 1) MDOC OMS provides information on parole violations, returns to prison for technical rule violations or new offenses. 2) MDOC also has disposition data that can link parolee to multiple measures of recidivism (i.e. new conviction). Has sample data available from 2011. 	<ol style="list-style-type: none"> 1) Examine MDOC statistical reports in 2011 for indicators used to assess other levels of recidivism.

PATRICK COLBECK
STATE SENATOR
DISTRICT 7



Criminal Justice Data Management System

December 15, 2015

CJ Policy Commission Mission Statement

PATRICK COLBECK
STATE SENATOR
DISTRICT 7



The Criminal Justice Policy Commission was established by Public Act 465 of 2014. The Commission shall do all of the following: Collect, prepare, analyze, and disseminate information regarding state and local sentencing and proposed release policies and practices for felonies and the use of prisons and jails, collect and analyze information concerning how misdemeanor sentences and the detention of defendants pending trial affect local jails, conduct ongoing research regarding the effectiveness of the sentencing guidelines, and in cooperation with the Department of Corrections, collect, analyze, and compile data and make projections regarding the populations and capacities of state and local correctional facilities, the impact of the sentencing guidelines and other laws, rules, and policies on those populations and capacities, and the effectiveness of efforts to reduce recidivism.

CJ Data Management System Goals

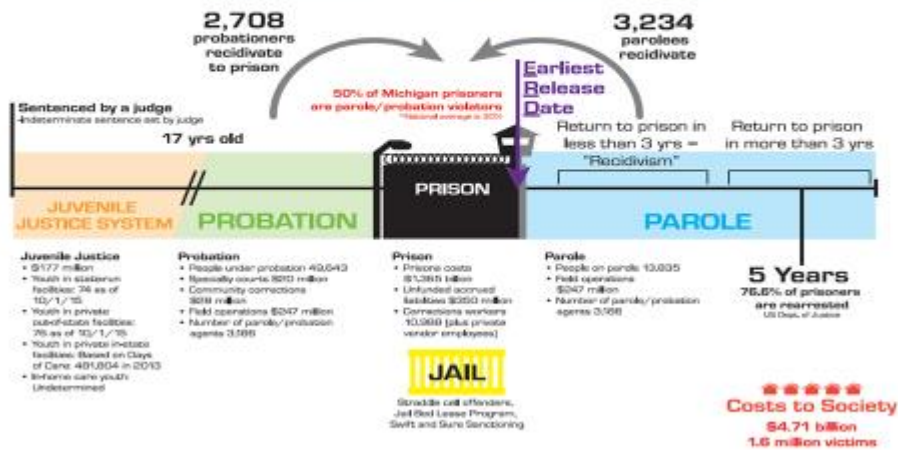


- Define Statement of Work for CJ Research and Data Collection Positions
 - Data Collection Process
 - Define Data Reporting Process
- Define County data requirements
- Define CJ Data System implementation roadmap

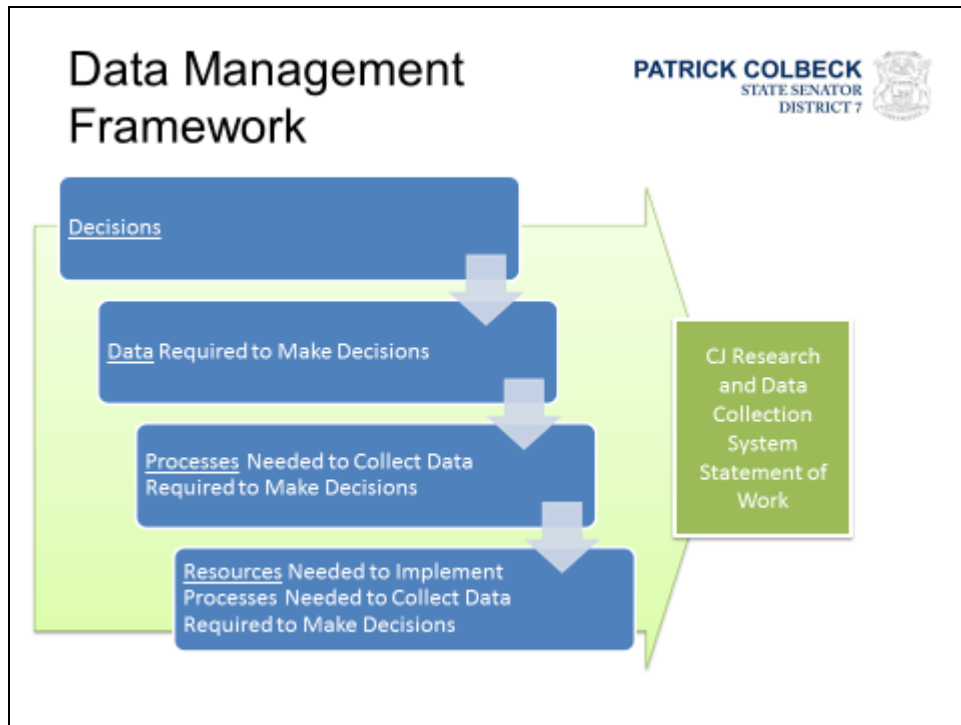
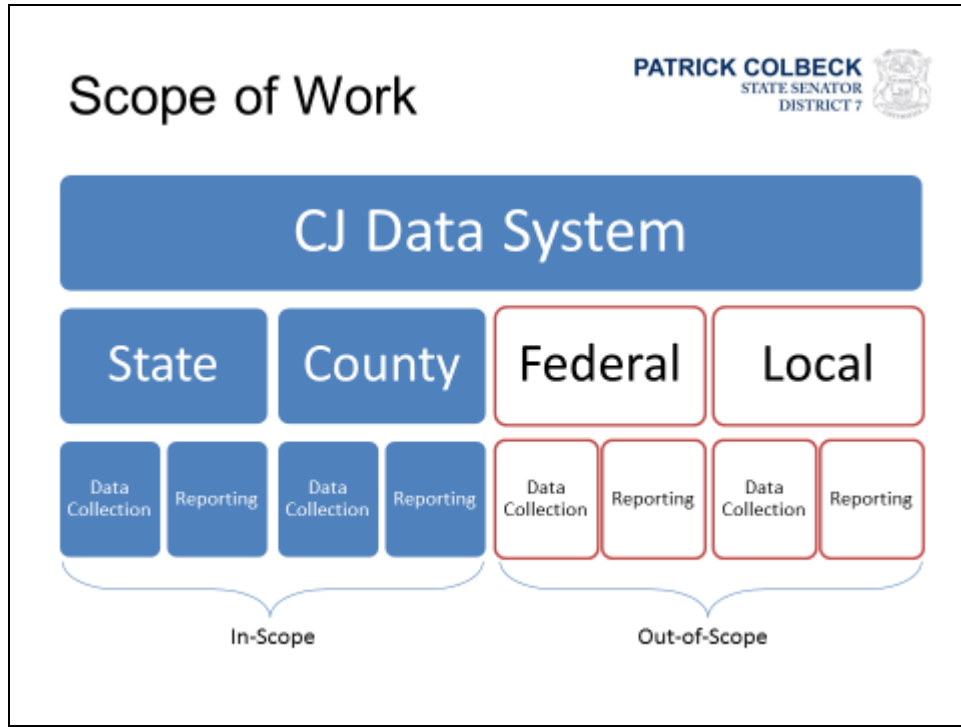
Data Requirements Scope



CRIMINAL JUSTICE TIMELINE



SOURCE: Senator John Proos



Decisions



Data needs should be driven by the decisions that need to be made

What capacity is needed?

- Probation
- Jail
- Prison
- Parole

What rehabilitation programs are most effective?

- Recidivism rates by offense
- Recidivism rates by program
- Programs cost and duration

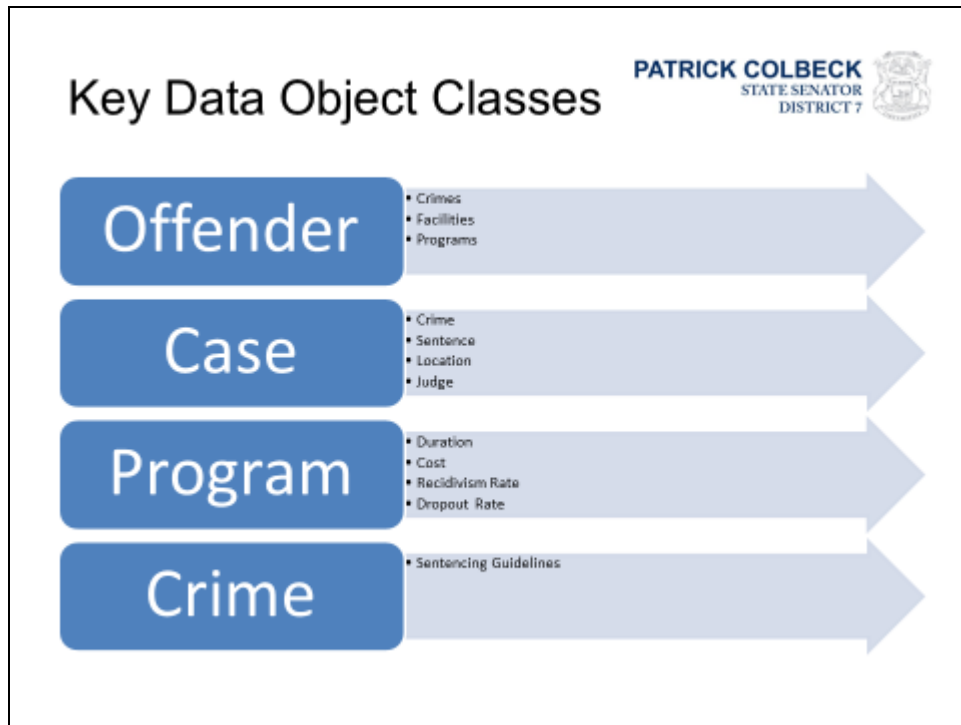
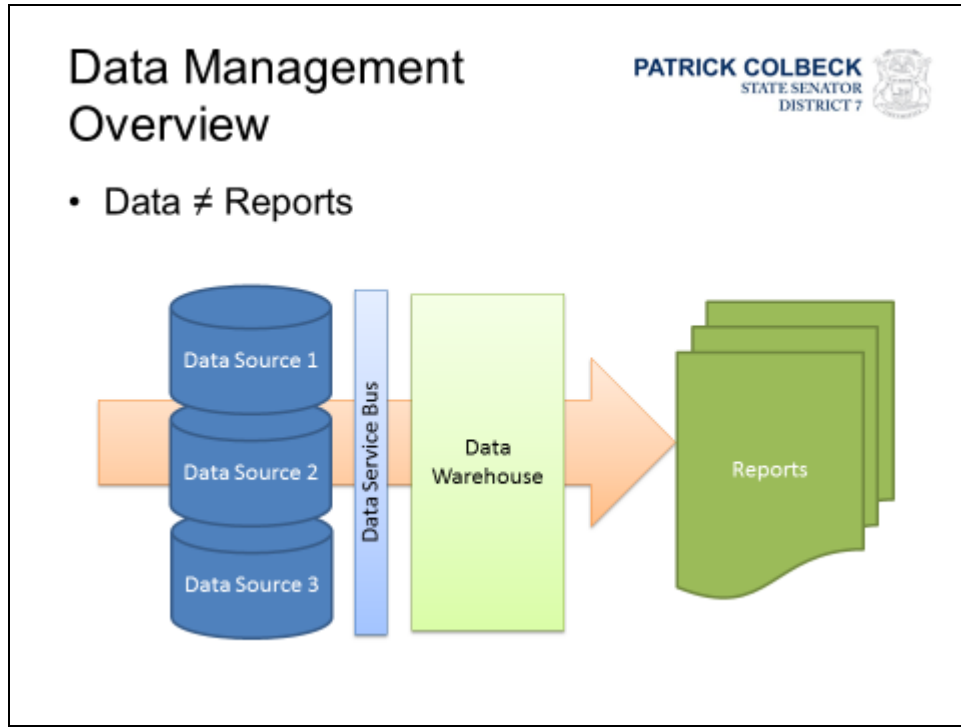
What sentencing reforms would benefit citizens?

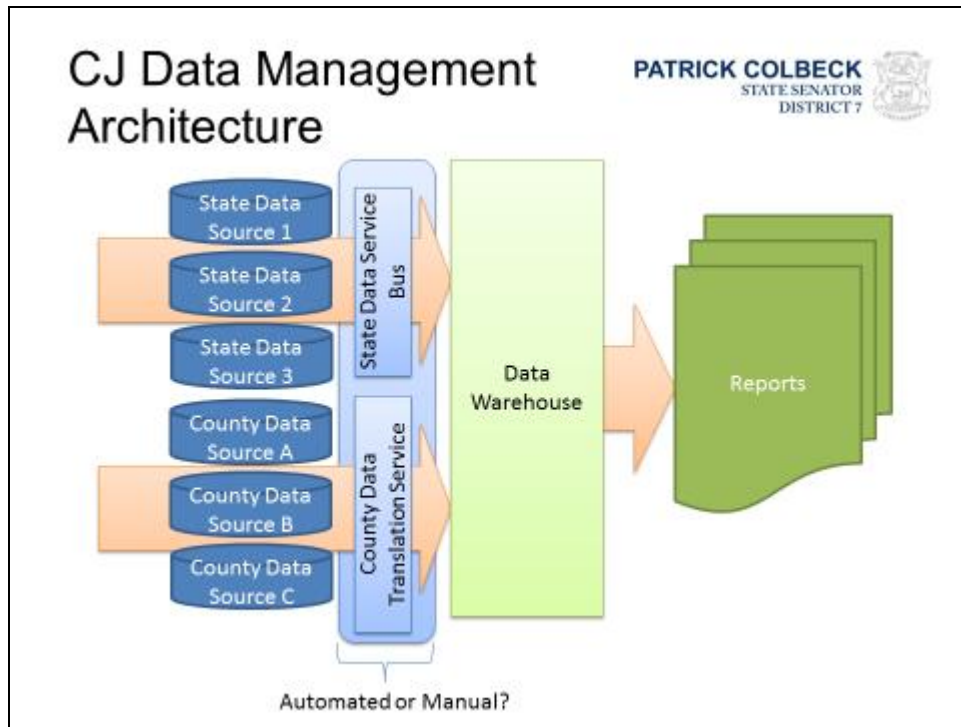
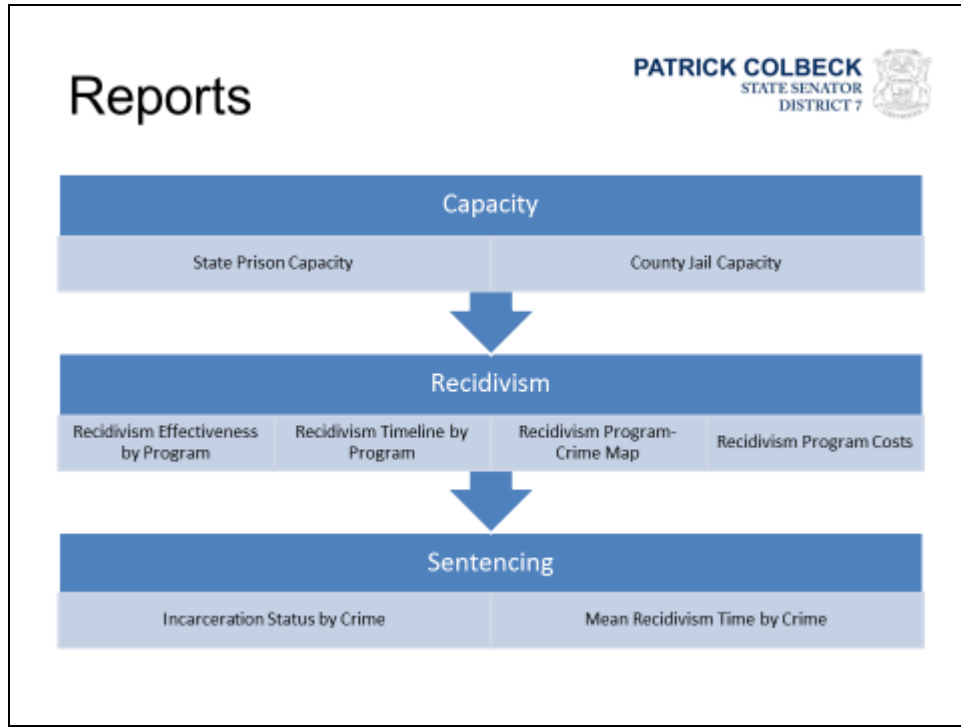
- What sentence duration is necessary to rehabilitate offender?
- What are potential operational impacts of sentencing reforms for all stakeholders in Criminal Justice System?

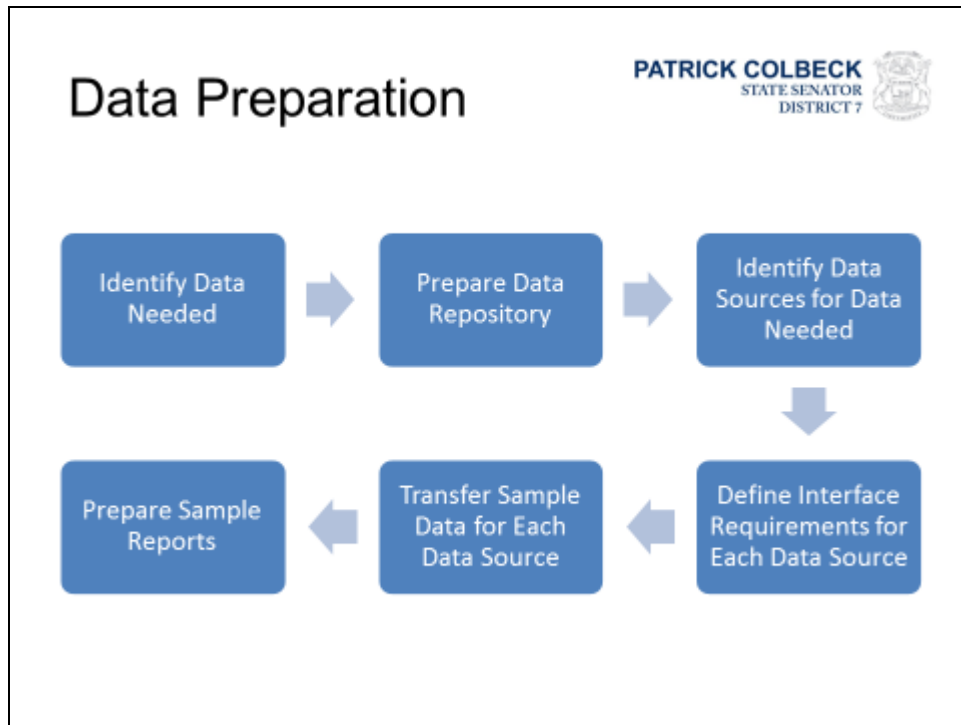
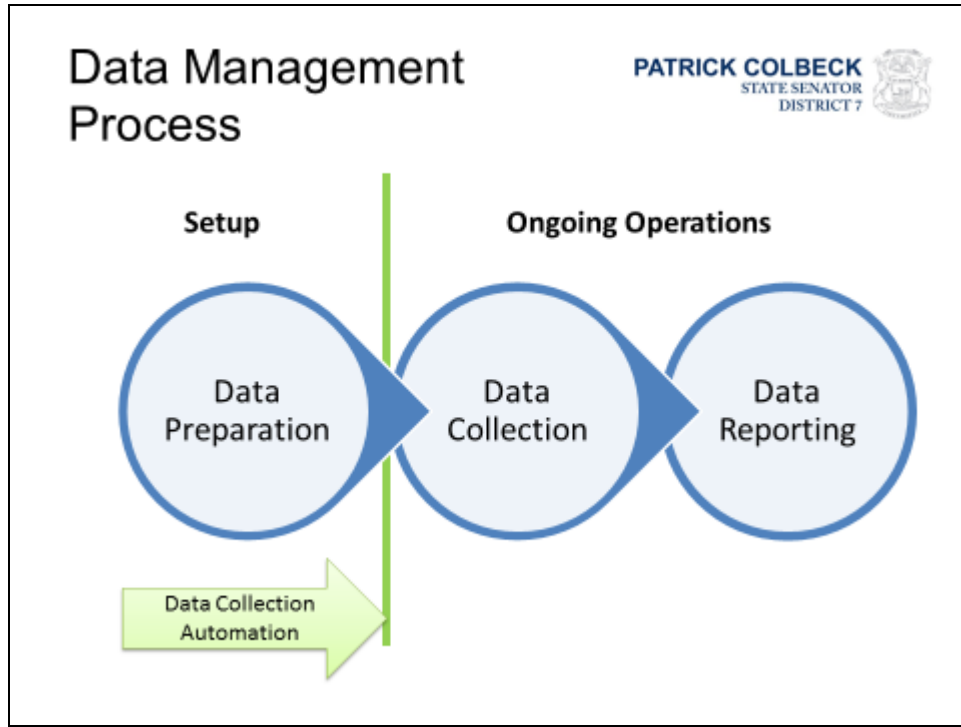
Data Sources

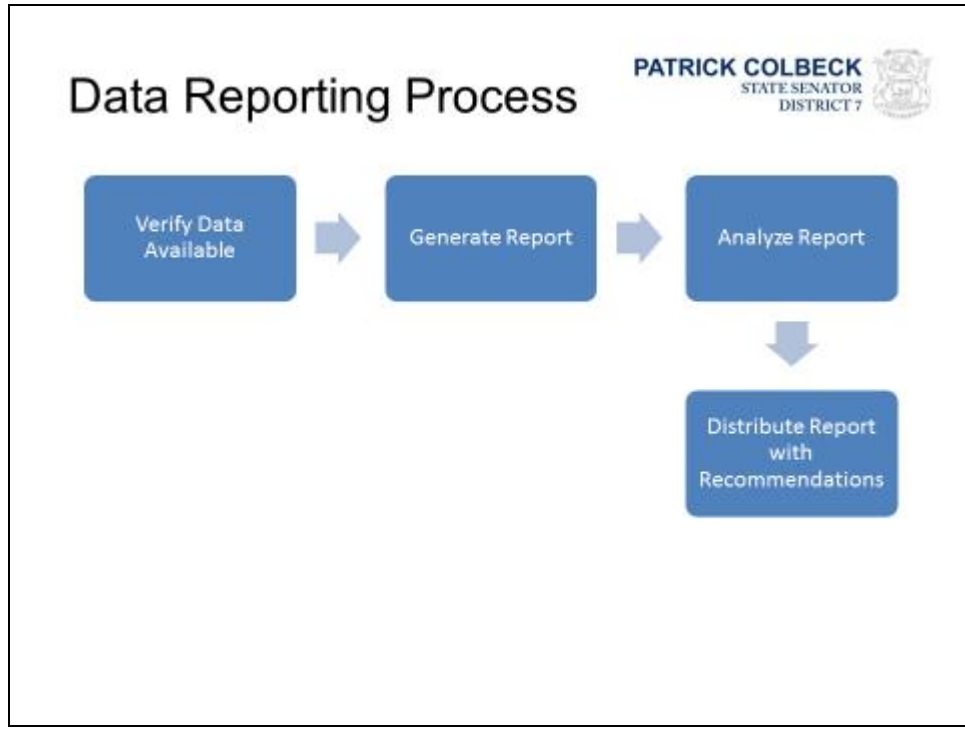
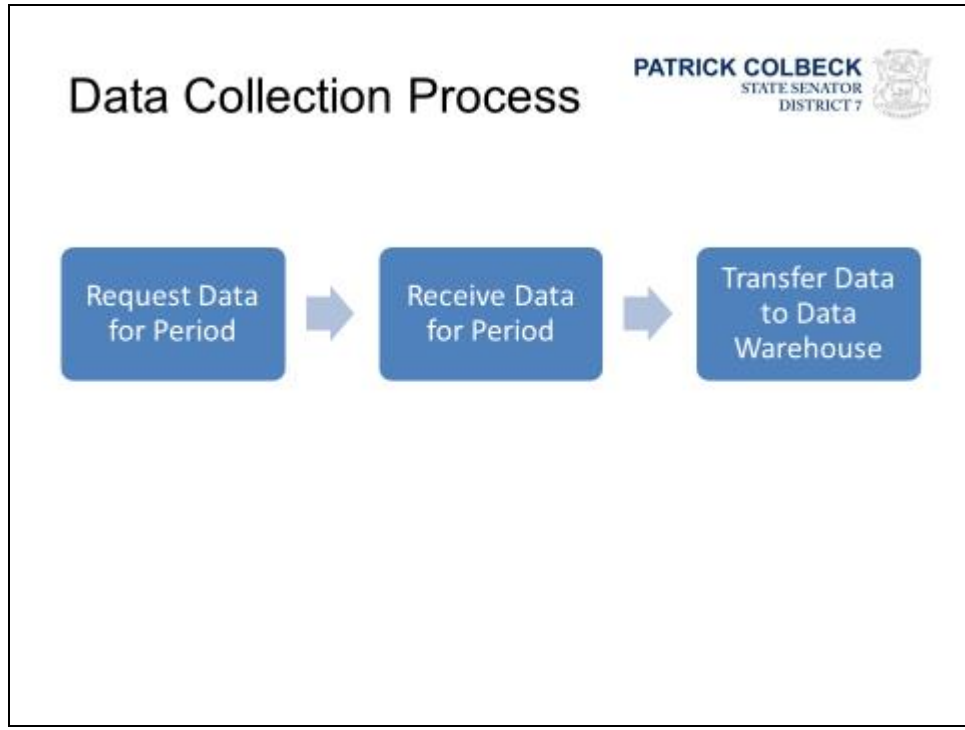


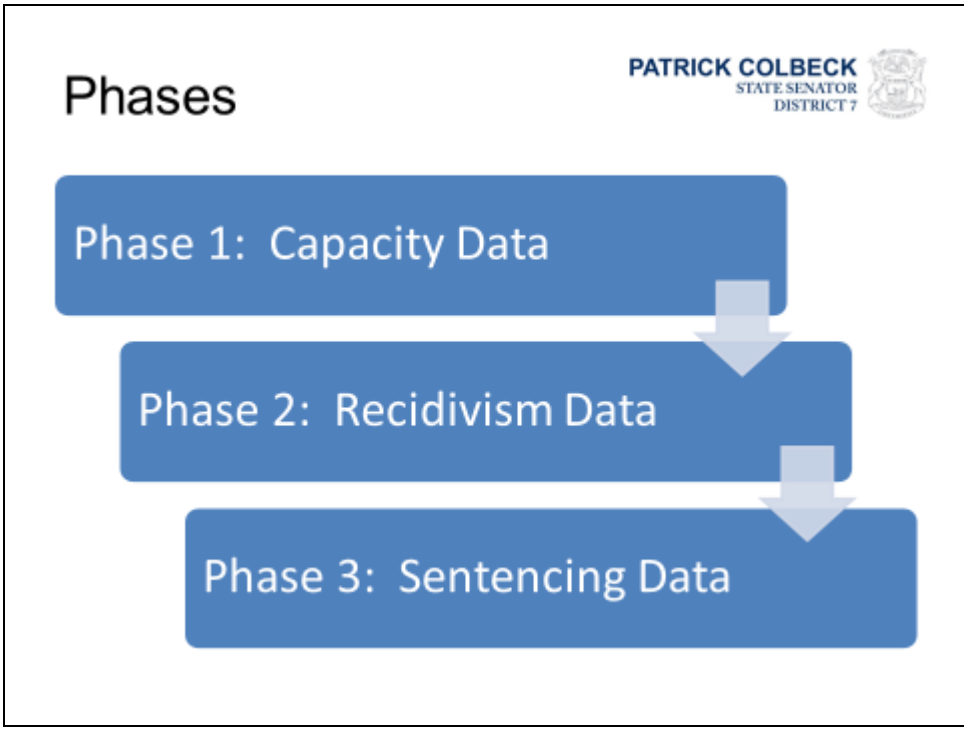
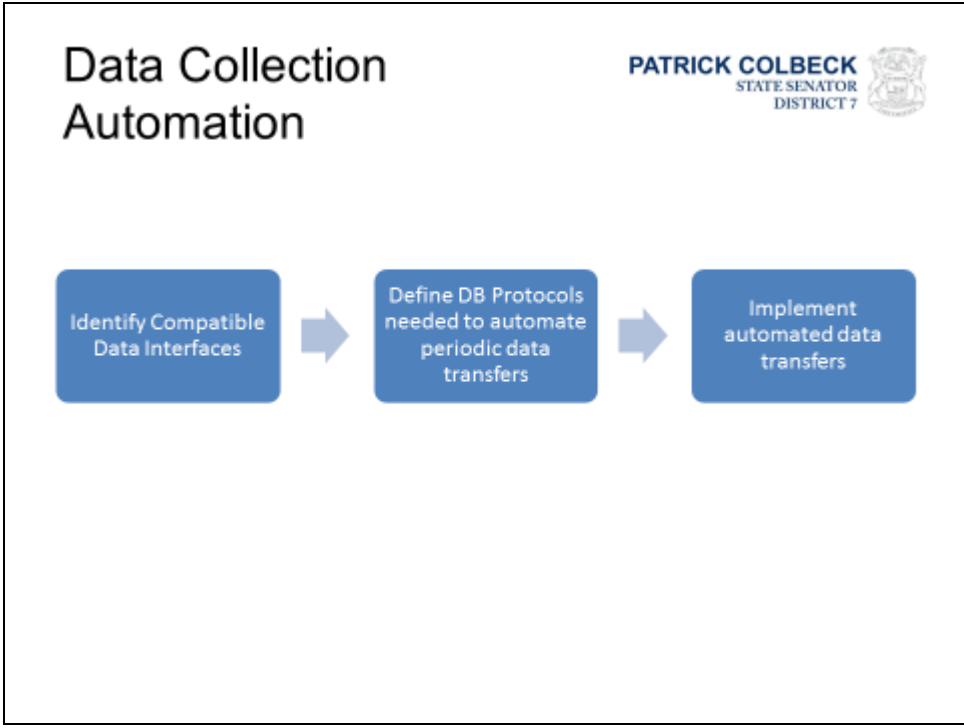
State	County	Local	Federal
<ul style="list-style-type: none">• Judicial Data Warehouse• OMNI• OMS• MDOC• LEIN• MCOLES	<ul style="list-style-type: none">• TBD	<ul style="list-style-type: none">• TBD	<ul style="list-style-type: none">• TBD

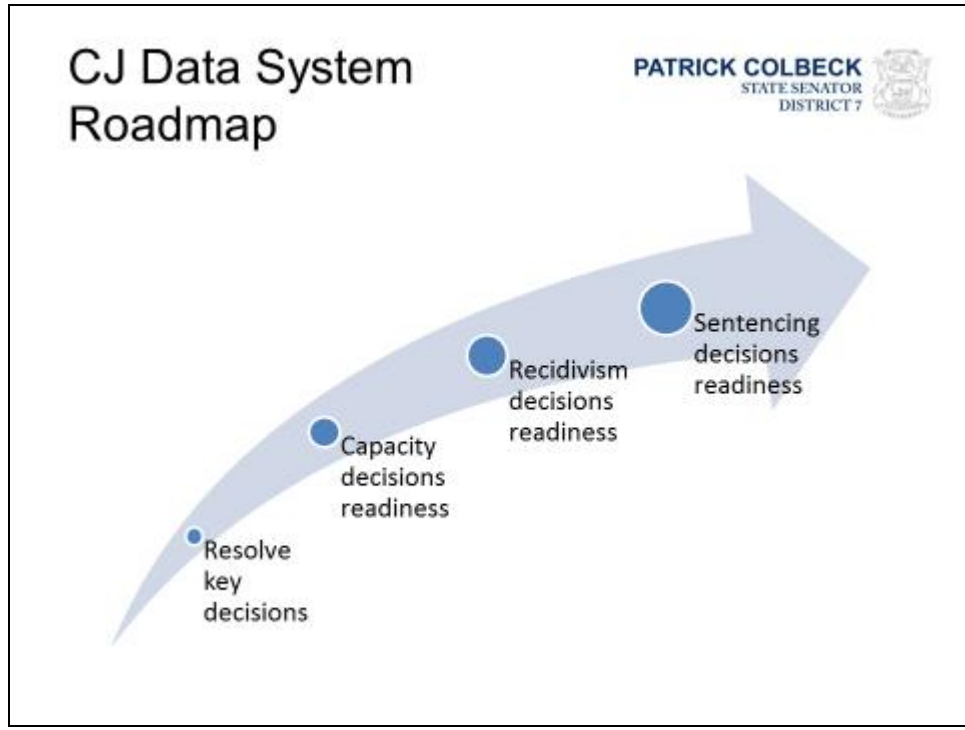
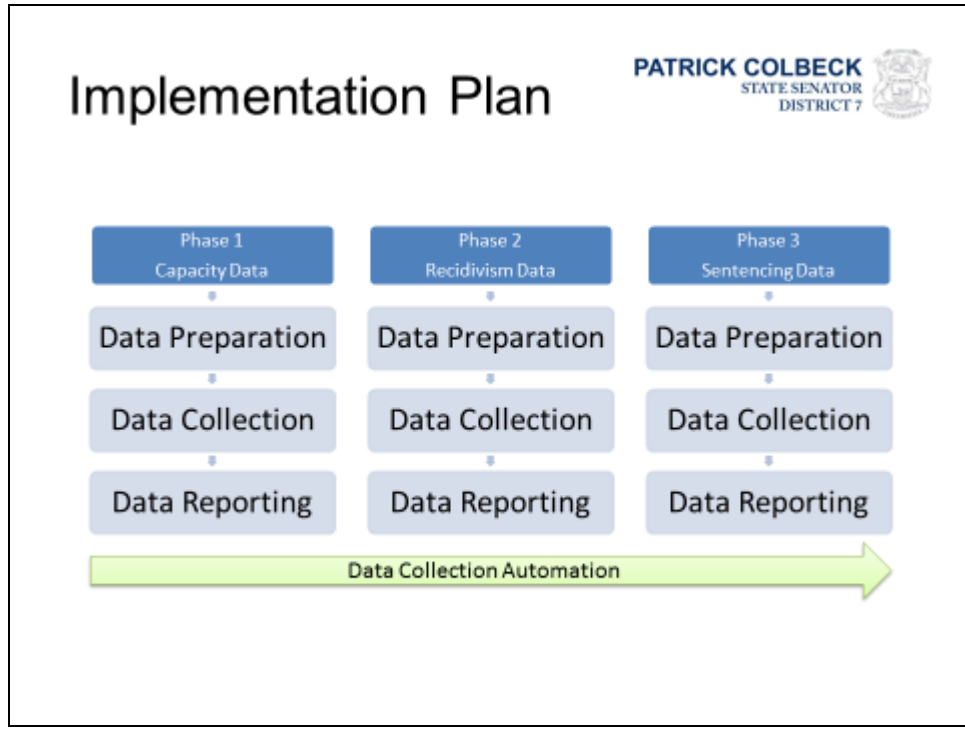


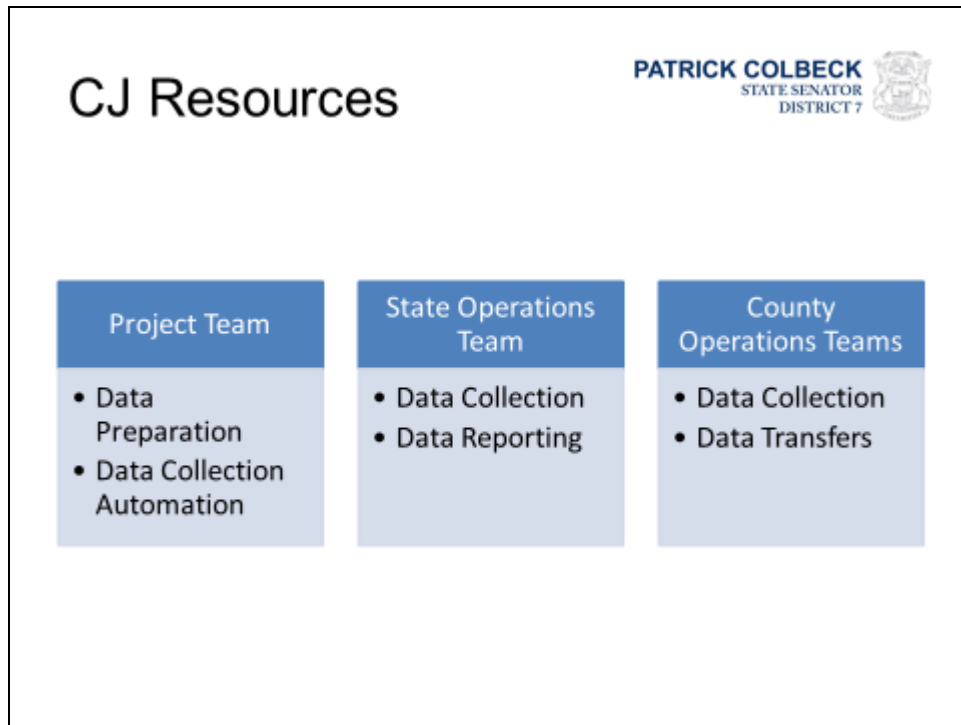
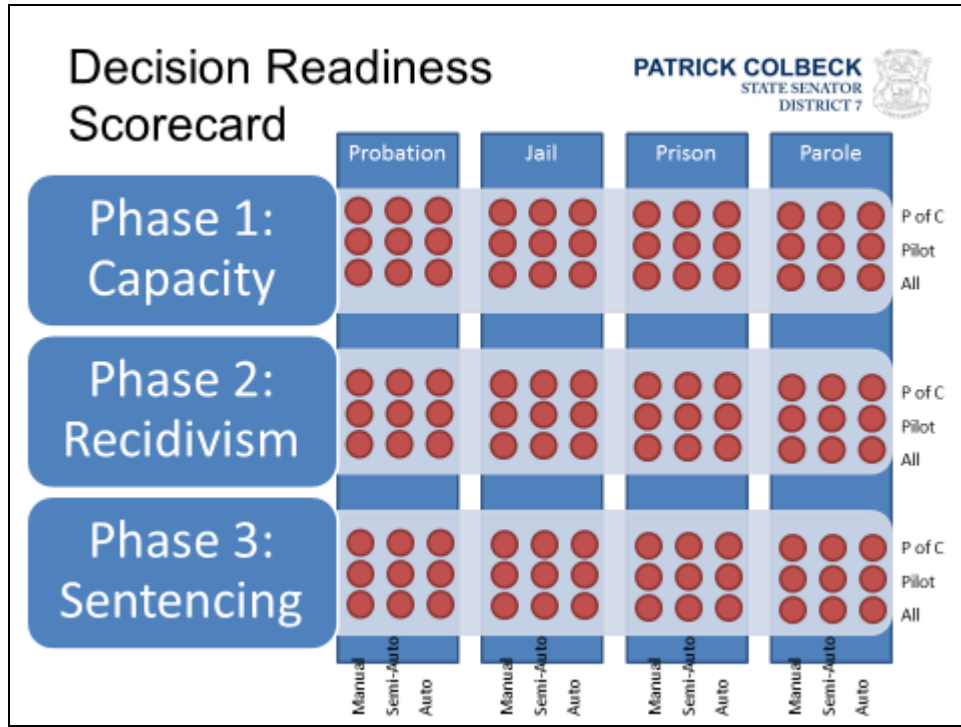














County CJ System Options



Statewide CJ County Data Tracking System	County CJ Data System Standard Data Interface	Flexible Hybrid
<ul style="list-style-type: none"> Replicate best county system currently in operation Offer as free data service from state Web-enabled <p>DEFAULT ASSUMPTION</p>	<ul style="list-style-type: none"> Counties maintain current systems Data exchanged with state on periodic basis Counties upgrade their systems to feature compatible interfaces with state standard 	<ul style="list-style-type: none"> Offer Statewide CJ County system Allow counties to keep their own system if they adopt data exchange interface

Resource Requirements



Team	Total Cost	Phase 1	Phase 2	Phase 3
CJ IS Project Team	\$ 151,800.00	\$ 50,600.00	\$ 50,600.00	\$ 50,600.00
State CJ IS Operations Team	\$ 488,160.00	\$ 162,720.00	\$ 162,720.00	\$ 162,720.00
County CJ IS Operations Team	\$ 488,160.00	\$ 162,720.00	\$ 162,720.00	\$ 162,720.00
	\$ 1,128,120.00	\$ 376,040.00	\$ 376,040.00	\$ 376,040.00

CJ Commission Decisions Needed



- Decisions Supported
- Data Needed for Decisions
- Process Model Validation
- Resource Model Validation
- County CJ System Option
 - Data Interface Requirements

Policy Recommendations



- Request appropriations to form a CJ IS Project Team
 - 1 FTE for DTMB Project Lead
 - Issue RFP for 3rd Party to Implement Multi-Phase Project
 - Phase 1 Data Preparation
 - Phase 2 Data Preparation
 - Phase 3 Data Preparation
- Request appropriations to form a State CJ IS Operations Team
 - 1 FTE for State CJ IS Operations Lead
- Designate Proof of Concept County for County CJ IS Operations Team
- Request appropriations to form a County CJ IS Operations Team
 - 1 FTE for County CJ IS Operations Lead
- Do not start State CJ IS Operations or County CJ IS Operations until Phase 1 Data Preparation has been completed

BACKUP

State CJ Project Team SOW

Deliverables

- State Data Service Bus
- Interfaces
- Reporting System
- County Data Service

Metrics

- Decision Readiness Scorecard
- Project Status
- CJ Report Availability
 - Capacity
 - Recidivism
 - Sentencing

State CJ Operations Team SOW



Deliverables

- Reports

Metrics

- Timeliness
- Accuracy

County CJ Operations Teams SOW



Deliverables

- County Data

Metrics

- Timeliness
- Accuracy

Summary Tab

Component	Total Cost	Phase 1			Phase 2			Phase 3			Manual		Phase 1		Automatic		Manual		Phase 2		Automatic		Manual		Phase 3		Automatic				
		Phase 1	Phase 2	Phase 3	Effort (M-Hrs)	FTE	Cost	Effort (M-Hrs)	FTE	Cost	Effort (M-Hrs)	FTE	Cost	Effort (M-Hrs)	FTE	Cost	Effort (M-Hrs)	FTE	Cost	Effort (M-Hrs)	FTE	Cost	Effort (M-Hrs)	FTE	Cost	Effort (M-Hrs)	FTE	Cost			
CJ IS Project Team	\$ 151,800.00	\$ 50,600.00	\$ 50,600.00	\$ 50,600.00	176	0.1	\$ 17,600.00	200	0.1	\$ 20,000.00	130	0.1	\$ 13,000.00	176	0.088	\$ 17,600.00	200	0.1	\$ 20,000.00	130	0.1	\$ 13,000.00	176	0.1	\$ 17,600.00	200	0.1	\$ 20,000.00	130	0.1	\$ 13,000.00
State CJ IS Operations Team	\$ 488,160.00	\$ 162,720.00	\$ 162,720.00	\$ 162,720.00	1356	0.7	\$ 135,600.00	271.2	0.1	\$ 27,120.00	0	0	\$ -	1356	0.678	\$ 135,600.00	271.2	0.1	\$ 27,120.00	0	0	\$ -	1356	0.7	#####	271.2	0.1	\$ 27,120.00	0	0	\$ -
County CJ IS Operations Team	\$ 488,160.00	\$ 162,720.00	\$ 162,720.00	\$ 162,720.00	1356	0.7	\$ 135,600.00	271.2	0.1	\$ 27,120.00	0	0	\$ -	1356	0.678	\$ 135,600.00	271.2	0.1	\$ 27,120.00	0	0	\$ -	1356	0.7	#####	271.2	0.1	\$ 27,120.00	0	0	\$ -
	\$ 1,128,120.00	\$ 376,040.00	\$ 376,040.00	\$ 376,040.00																											

Assumptions Tab

Data Item	Phase 1	Phase 2	Phase 3	
Number of State Data Sources		6	6	6
Number of County Data Sources		1	1	1
Number of State Reports		1	4	2
Number of County Reports		1	4	2
	P of C	Pilot	All	
Number of Probation Officers	1	4 ?		How many Probation Officer data entry systems?
Number of Parole Officers	1	4 ?		How many Parole Officer data entry systems?
Number of Jails	1	4 ?		
Number of Prisons	1	4 ?		
FTE-Effort Conversion Rate	2000 M-Hrs/Yr			
	100 \$/hr			

Project Tab

		Phase 1: Capacity			Phase 2: Recidivism			Phase 3: Sentencing		
		Manual	Semi-Auto	Auto	Manual	Semi-Auto	Auto	Manual	Semi-Auto	Auto
Data Preparation	Identify Data Needed	16	0	0	16	0	0	16	0	0
	Prepare Data Repository	40	0	0	40	0	0	40	0	0
	Identify Data Sources for Data Needed	40	0	0	40	0	0	40	0	0
	Define Interface Requirements for Each Data Source	40	0	0	40	0	0	40	0	0
	Transfer Sample Data for Each Data Source	24	16	0	24	16	0	24	16	0
	Prepare Sample Reports	16	8	8	16	8	8	16	8	8
	SUBTOTAL	176	24	8	176	24	8	176	24	8
Data Collection Automation	Identify Compatible Data Interfaces	0	40	0	0	40	0	0	40	0
	Define DB Protocols Needed to Automate Periodic Data Transfers	0	120	120	0	120	120	0	120	120
	Implement Automated Data Transfers	0	16	2	0	16	2	0	16	2
	SUBTOTAL	0	176	122	0	176	122	0	176	122
	TOTAL	176	200	130	176	200	130	176	200	130

State Operations Tab

		# Times/Yr	Effort	Phase 1: Capacity			Phase 2: Recidivism			Phase 3: Sentencing		
				Manual	Semi-Auto	Auto	Manual	Semi-Auto	Auto	Manual	Semi-Auto	Auto
Data Collection	Request Data for Period	12	8	96	19.2	0	96	19.2	0	96	19.2	0
	Receive Data for Period	12	40	480	96	0	480	96	0	480	96	0
	Transfer Data to Data Warehouse	12	40	480	96	0	480	96	0	480	96	0
	SUBTOTAL			1056	211.2	0	1056	211.2	0	1056	211.2	0
Data Reporting Process	Verify Data Available	12	8	96	19.2	0	96	19.2	0	96	19.2	0
	Generate Report	12	8	96	19.2	0	96	19.2	0	96	19.2	0
	Analyze Report	12	8	96	19.2	0	96	19.2	0	96	19.2	0
	Distribute Report with Recommendations	12	1	12	2.4	0	12	2.4	0	12	2.4	0
	SUBTOTAL			300	60	0	300	60	0	300	60	0
	TOTAL			1356	271.2	0	1356	271.2	0	1356	271.2	0

County Operations Tab

		# Times/Yr	Effort	Phase 1: Capacity			Phase 2: Recidivism			Phase 3: Sentencing		
				Manual	Semi-Auto	Auto	Manual	Semi-Auto	Auto	Manual	Semi-Auto	Auto
Data Collection	Request Data for Period	12	8	96	19.2	0	96	19.2	0	96	19.2	0
	Receive Data for Period	12	40	480	96	0	480	96	0	480	96	0
	Transfer Data to Data Warehouse	12	40	480	96	0	480	96	0	480	96	0
	SUBTOTAL			1056	211.2	0	1056	211.2	0	1056	211.2	0
Data Reporting Process	Verify Data Available	12	8	96	19.2	0	96	19.2	0	96	19.2	0
	Generate Report	12	8	96	19.2	0	96	19.2	0	96	19.2	0
	Analyze Report	12	8	96	19.2	0	96	19.2	0	96	19.2	0
	Distribute Report with Recommendations	12	1	12	2.4	0	12	2.4	0	12	2.4	0
	SUBTOTAL			300	60	0	300	60	0	300	60	0
	TOTAL			1356	271.2	0	1356	271.2	0	1356	271.2	0

Revised Recommendations from 12/2/15 CJPC Meeting

1. It is the recommendation of the Criminal Justice Policy Commission that recidivism be defined as follows: Recidivism is the re-arrest, re-conviction, or incarceration in prison or jail of an individual within four (4) years of their previous violation. Re-arrest is to include probation and parole violations as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators.

Commissioner Kaminski

I'm uncomfortable with the current definition because I don't think it is clear enough that re-arrest, reconviction, or incarceration should each be treated as separate measures. It should not be the cumulative number of all 3, but rather 3 separate numbers each representing a different aspect of recidivism. Perhaps we should label them as "Re-arrest Recidivism", "Re-conviction Recidivism", and "Re-incarceration Recidivism" to avoid any confusion. While it wouldn't result in the Commission having a single measure, I believe the Commission could agree to all 3 of these definitions and then when discussing reforms, we can examine how a reform impacts each of the 3 agreed upon measures.

I'm aware that the 4 year timeline represents a compromise between 3 years and 5 years, but I think that is the wrong approach. I think we should measure both 3 years and 5 years, since that is consistent with the DOJ. If you move the initial measure from 3 years to 4 years, you delay the data by an entire year. The current MDOC recidivism rate actually represents the results for the 2011 release cohort, because you must allow them to complete the time period before you can compile a number. Using 3 years as the initial time period is consistent with how many states compile this data and the commission can also look at the 5 year data to determine if something significant is happening beyond the 3 years.

Commissioner Kubiak

I have reservations about adding years to an analysis that we may not be able to conduct currently. Perhaps a caveat that clarifies that this is a long-term objective of the commission???

Commissioner Levine

I am a bit concerned about how the choice of a 4-year time period fits with the MDOC's current use of 3 years and the problem this could cause with continuity of analysis. I'm sorry if this has been resolved and I just don't recall. Since most reoffending reoccurs within the first few years, I would be comfortable with a 3-year period. I question whether it is "re-arrest" that should include parole and probation violations or the definition of "recidivism" that should include these.

Commissioner Moody

I agree with 1, 2, and 3.

Commissioner Verheek

I think this resolution captures what we are attempting to do in terms of recidivism. Although I'm in favor of a three year time frame, the four year time frame is acceptable. I would have no changes at this time.

Judge Voet

I have no problem with proposals 1, 2, and 3.

2. It is the recommendation of the Criminal Justice Policy Commission that monies should be more equitably distributed between programs to serve the parole and probation populations. Programs designed to help these populations are quite different in each programmatic area and need to be funded for success. Funding that results in success for probationers has the potential to save the taxpayers significant money by avoiding the high cost of incarceration while effectively preventing crimes. Programs must be evaluated utilizing an objective evaluation tool to determine effective evidence-based programming that will result in successful outcomes and reduce the cost of incarceration.

Commissioner Kaminski

No comments. I would plan on supporting as written.

Commissioner Kubiak

2. It is the recommendation of the Criminal Justice Policy Commission that monies should be more equitably distributed between programs to serve the parole and probation populations. Programs designed to help these populations are quite different in each programmatic area and need to be funded for success. Funding that results in success for probationers has the potential to save the taxpayers significant money by avoiding the high cost of incarceration while effectively preventing crimes. Programs must be evaluated utilizing an objective evaluation tool that measures both process and outcomes to determine effective evidence-based programming that will result in successful outcomes and in reducing the number of those incarcerated. cost of incarceration. (note – remove text highlighted in red and add text underlined (in green)).

Commissioner Levine

Rather than phrase this as a comparison between probationers and parolees, I would suggest something more like: "Adequate funding should be provided for evidence-based programs for both probationers and parolees.

Funding that results in success for probationers has the potential to save the taxpayers significant money by avoiding the high cost of incarceration while effectively preventing crimes. Requiring program participation should depend on the offender's risks and needs. Required programs should be delivered in a timely manner. The effectiveness of programs should be regularly re-evaluated."

Commissioner Moody

I agree with 1, 2, and 3.

Commissioner Verheek

I would emphasize the need for the more equitable funding of evidence-based programs in order to emphasize evidence-based practices and programming from the onset. My concern is that if we don't have an emphasis on evidence-based programming from the onset, there may be wiggle-room for the funding of programs that may be popular, look good in the public eye, or are the favorite of a particular stakeholder, but in the end do and are not effective in reducing recidivism and changing the behavior of offenders. This would then change the last sentence to something like "Programs must be evaluated utilizing an objective evaluation tool to determine the continued funding of evidence-based programming that result in successful outcomes and the reduction of incarceration costs."

Judge Voet

I have no problem with proposals 1, 2, and 3.

3. In order to provide the legislature and Governor with an accurate evidence based analysis of the criminal justice system in an on-going manner the Criminal Justice Policy Commission makes the following recommendation; It is recommended that the legislature fund 3 permanent research and data collecting positions for the Criminal Justice Policy Commission. This will enable the Commission to provide the legislature and Governor with on-going research and analysis of all facets of the criminal justice system for their use in establishing legislation. It is further recommended that this funding be separate from the Michigan Department of Corrections budget.

Commissioner Kaminski

No comments. I would plan on supporting as written.

Commissioner Kubiak

Ok – is it clear that this may be an ‘incremental’ request?

Commissioner Levine

I would recommend a staff of five -- an executive director, an administrative assistant and three research staff. I would not characterize the latter as data collecting positions since I don't know how much they would actually be involved in collecting the data as opposed to analyzing it. I would be careful about over-promising what even these staff could do at any given time. Perhaps instead of being able to provide on-going research and analysis of "all" facets of the system it would be prudent to say "multiple" facets.

Commissioner Moody

I agree with 1, 2, and 3.

Commissioner Verheek

The only thing I would change is to maybe add that the funding would go towards 3 full-time researchers and 1 supervisor.

Judge Voet

I have no problem with proposals 1, 2, and 3.

4. I would also like each of you to give me your thoughts on how many years we should use for enhancing sentences. We currently use 10 years of a clean record which could take us back more than 10 years. Any change here could have a rather dramatic effect on length of sentences and thus save money. In addition, I would like your thoughts on whether we should change how we treat juveniles in terms of sentencing guidelines. When they re-offend as adults should we use all their juvenile violations to establish the new sentence length, use none of those violations or use some middle ground? Finally we need to determine if our justice system should be primarily a prevention system or a punishment system. Give me your thoughts as they will inform many of our decisions on other matters.

Commissioner Kaminski

I still do not have any comments to share related to the 10 year approach, but welcome the discussion. I don't think that we necessarily have to use all juvenile violations to establish sentencing length, but juvenile records, particularly age at first arrest, are a major aspect of determining future risk, so they cannot be ignored in sentencing. I'd reiterate my written comments from the last meeting regarding prevention vs. punishment.

Commissioner Kaminski's Comments Submitted After November Meeting:

I don't have any thoughts to share on the 10 year timeframe. I would suggest that juvenile violations are of significance because age at first arrest is one fact that helps determine future risk on most risk assessments.

If the goal is prevention, this information is potentially significant. That being said, utilizing all juvenile violations is likely unnecessary, so we should seek a middle ground.

Realistically, the sentences for some crimes will always be based on punishment (Murder in the 1st Degree), but considering that the vast majority of prisoners will return to the community regardless of whether their sentence is intended to prevent future crime or punish them, it seems sensible that our overall goal should be the prevention of crime. This should not deter stakeholders in the criminal justice system from seeking sentences that are reflective of the serious nature of a crime, but the overall goal of the system should be preventing future crimes because in doing so, we also prevent the creation of future victims.

Commissioner Kubiak

This is a lengthy and rich topic area and I look forward to discussion. My belief is that the criminal justice system has to encompass elements of rehabilitation as well as punishment. Research indicates that positive reinforcement for positive change, in a 6 to 1 ratio over punitive sanctions, works best for those involved in the criminal justice system. Rehabilitative systems have a goal of the prevention of subsequent crime and should be resource rich at the front end of the system for those at risk of reoffending. For those who continue to re-offend or who have committed serious offenses, punishment with rehabilitative elements (i.e. substance abuse treatment; trauma/recovery services) are required. Prison is a punishment— using the time during incarceration to prevent subsequent recidivism through rehabilitative efforts is a worthwhile endeavor.

Re: Youthful offenders – prior offenses that are serious felonies – and not HYTA deemed offenses - should be taken into consideration when sentencing (not misdemeanors).

Commissioner Levine

I don't feel prepared to develop a position yet on either the prior record enhancement or the use of juvenile adjudications. I haven't had the opportunity to thoroughly study the Robina Institute sourcebook. I will do so before the next meeting and may have more of a position then. However I would also like to see a data analysis that would tell us just what the impact of changes on either dimension would be. All that said, I am very concerned about the use of juvenile adjudications, in particular, because I believe they have a disproportionate racial impact -- though again I would like to see the Michigan data.

Finally, I would suggest that the question of "whether our justice system should be primarily a prevention system or a punishment system" be reformulated. Historically, the purposes of sentencing have been defined as punishment, general deterrence (of the public at large), specific deterrence (of the particular offender), incapacitation and rehabilitation. The range of available sentences exists on a continuum from least to most harsh but virtually any sentence can address all these purposes to a greater or lesser degree.

Our enabling legislation reflects these multiple purposes in Sec. 33a (4)(a) and (b). In subsection (c) the legislation says that our recommendations should reflect a policy: "To render sentences no more severe than necessary to achieve the applicable purposes in subdivisions (a) and (b)." Thus I believe that we should be measuring our current system, including the guidelines, against this principle of least restrictive means.

The word "prevention" conjures up images of preventive detention and controversial uses of risk assessment tools. It raises questions about whether people whose crimes deserve similar

punishment should be treated differently based on speculation about their future behavior. And whether people who have served their minimum term of punishment, whether in prison or the community, should be continued in prison or on supervision for the sole purpose of completing programs intended to reduce their risk. On the other hand, the notion that the system should be primarily for punishment fails to adequately acknowledge all the other purposes of sentencing.

I believe a discussion of what punishment is proportional and what the role of rehabilitation should be is of fundamental importance. I would just prefer to see the discussion framed in terms of the policies prescribed in the legislation.

Commissioner Moody

Yes, currently the sentencing guidelines allow for the scoring of prior record variables (meaning prior convictions and juvenile adjudications) in determining the length of a sentence. But no convictions or adjudications are counted preceding a 10 year crime free period. At this point, I don't see any reason why we would not count the juvenile adjudications (all of them) since the age at which a defendant commits his first crime is an indicator of his criminal propensity. And I don't think it would have a dramatic effect on the overall MDOC budget. But I'm willing to discuss.

With respect to whether the criminal justice system is primarily aimed at prevention (and by that I assume we mean rehabilitation of the offender so he does not offend again) or punishment I have to still say that it is a combination of both. Rehabilitation is an extremely important goal because of the cost to victims and communities of re-offense. But even if the criminal justice system could guarantee that, for example, a murderer would only kill once it would hardly be just to allow that murderer to escape punishment simply because he is no longer a danger. Justice to the victims and to society at large would require that he pay for his crime.

Judge Voet

As it relates to proposal 4, I don't think we should pretend some prior crimes never occurred, but yet recognize that other crimes should not dog a person their whole life. Perhaps a graduated system that keeps the more severe crimes on an individual's record for life, the moderately severe crimes and assaultive misdemeanors for 15 years, and everything else for ten? Also, Heidi's Law keeps OWIs on for enhancement for life after two convictions. I think this should remain unchanged.

Comments Submitted To This Question Previously After November Meeting:

Commissioner Buchanan

I would also like each of you to give me your thoughts on how many years we should use for enhancing sentences. We currently use 10 years of a clean record which could take us back more than 10 years. Any change here could have a rather dramatic effect on length of sentences and thus save money. *If I understand your question, you are asking us to evaluate the 10 year gap. Ten years is a very long time without an offense to consider criminal history. It would be helpful if the 10 year gap was not eliminated by minor offenses such as Driving While License Suspended and low level misdemeanors. Perhaps a hybrid, like 10 years without a felony and 3 years without a misdemeanor. Also, sort of a different issue, we should consider whether there should be a 10 year gap rule for habitualization.*

In addition, I would like your thoughts on whether we should change how we treat juveniles in terms of sentencing guidelines. When they re-offend as adults should we use all their juvenile violations to establish the new sentence length, use none of those violations or use some middle ground? *This is a tough one. If you mean adults with a juvenile record, I think juvenile history is a decent predictor of reoffense. However,*

there should become a time when it no longer matters. I guess the 10 year gap covers that. It also creates a practical problem for defense counsel and many times the prosecutor. Due to the protected status of juvenile records, I often cannot know my client's juvenile history. Many times neither does the prosecutor. Therefore, we make sentencing bargains that are thwarted by the PSR wherein MDOC finds the juvenile history thus raising the guidelines.

Finally we need to determine if our justice system should be primarily a prevention system or a punishment system. Give me your thoughts as they will inform many of our decisions on other matters. I always thought it was both, as the goals for sentencing are punishment, rehabilitation, and deterrence. Since we are dealing with post-offense individuals, as opposed to a treatment facility that may have a chance pre-offense, punishment will always be a large part of sentencing.

Commissioner Hilson

I am willing and interested in engaging in a discussion of how we use prior felony convictions. I am open to listening to reasonable ideas on how we might move forward. I would not change how we handle juvenile adjudications. It mirrors the adult system, but provides for fewer points for each category. I believe that our system carries a deterrent and prevention component. I would like to see the front end of the system be more preventative and focus on assessing the needs of the person and based on that assessment putting them into a program that meets those needs, addresses the problems, and offers solutions that are sustaining. However, our system does have to carry with it a punishment component. As long as there are violent crimes and victims of those crimes, we have to have the ability to punish those who commit the crime.

Commissioner Moody

With respect to whether the criminal justice system is primarily aimed at prevention (and by that I assume we mean rehabilitation of the offender so he does not offend again) or punishment I would say that it is a combination of both. Rehabilitation is an extremely important goal because of the cost to victims and communities of re-offense. But even if the criminal justice system could guarantee that, for example, a murderer would only kill once it would hardly be just to allow that murderer to escape punishment simply because he is no longer a danger. Justice to the victims and to society at large would require that he pay for his crime.

Commissioner Stelma

My thoughts on the “enhancing sentences” issue is that until it’s proven to be broken, the process should stay as is. I’m not convinced it is having a significant negative impact.

Juvenile sentence enhancement should have a middle ground. Not everything should be used but certainly crimes of violence should be considered an enhancer.

I don’t believe sentencing has to be only “Prevention” or “Punishment”. It shouldn’t be one or the other but needs to be dictated by the particulars of the given situation.

Commissioner Strange

For the years used for enhancing sentences, I am still researching this and will give my opinion once I feel educated enough in the topic.

For the treatment of juveniles, I imagine this will be a complicated discussion, but I do believe that there should be a difference with how sentencing guidelines are used. I don't necessarily think that juvenile violations should be ignored altogether because past behavior should be considered. It should not be the only

thing considered, however. Ultimately, looking at the interventions utilized in response to juvenile violations would be of interest. I think we will find the same for juveniles that we do for adults. Without enough focus and funding being placed on preventative measures and quality programming, juveniles are likely just going to be streamlined into prison.

Ultimately, it would be preferable to see our justice system become a prevention system which utilizes punishment as one of its tools, rather than a punishment system that uses prevention as one of its tools.

Judge Stutesman

The “ten year back rule” applies in felony cases only. Specifically, [MCL 777.50\(1\)](#) states:

“In scoring prior record variables 1 to 5, do not use any conviction or juvenile adjudication that precedes a period of [ten] or more years between the discharge date from a conviction or juvenile adjudication and the defendant’s commission of the next offense resulting in a conviction or juvenile adjudication.”

This means that if a defendant is able to have 10 years without a conviction his prior record is not counted. The time runs from when the previous sentence ends and the new charge. So if at 17 to 25 I had five breaking and entering convictions and I was able to complete my sentence and did not get any more convictions for ten years those five B&E will not count in my prior record variable score. They still can be used for me to be charged as a Habitual Offender though.

The ten year clock restarts with every conviction also. So if I had been able to remain crime free for 9 years 10 months but then was convicted of fishing without a license (a misd.) the clock starts again and everything counts including the juvenile adjudications. The law does not differentiate between 90 day misd., 93 day misd; or one year misd. and it should.

I am not sure what the question means. Just for counting the PRVs or for the Habitual Offender enhancements? I do not have an opinion on what the best time period is but I do think that it should only be triggered if the conviction is for a one year misdemeanor or higher.

Finally we need to determine if our justice system should be primarily a prevention system or a punishment system. Give me your thoughts as they will inform many of our decisions on other matters.

The trial court’s objective in sentencing a defendant is to tailor a penalty that is appropriate to the seriousness of the offense and the criminal history of the offender.The “framework” of an appropriate sentence consists of four basic considerations:

- the likelihood or potential that the offender could be reformed;
- the need to protect society;
- the penalty or consequence appropriate to the offender’s conduct; and
- the goal of deterring others from similar conduct. Rice, 235 Mich App at 446, citing *People v Snow*, 386 Mich 586, 592 (1972)

The criminal justice system is always geared towards the prevention of crime. It is far less expensive to do so with programs that have proven track records in reducing recidivism rather than just incarceration. There are some crimes that society recognizes as deserving of removal from society for lengthy periods of time even though you may never commit them again. The first goal should always be the protection of society. The framework set forth above should be followed.