

EDUCATIONAL SERVICES, INC.

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August 29, 2014

Michigan Law Revision Commission c/o Michigan Legislative Council 124 W. Allegan Boji Tower, 3rd Floor PO Box 30036 Lansing, MI 48909

> RE: Comment on Draft 1, Council of State Governments (CSG) Sentencing Guidelines Proposed Legislation

Dear Commissioners:

Thank you for the opportunity to comment on behalf of all 83 county sheriffs, unified in one voice as the Michigan Sheriffs Association (MSA), on this most important, very controversial, and greatly anticipated issue. The MSA has been involved through the MLRC in the CSG process from the very beginning. The MSA also knows a great deal of time and effort has been expended by you, CSG, and the multitude of stakeholders concerned about sentencing in Michigan.

MSA sees five overarching issues in the draft tied together by the need for time and information. To fully understand the implications contained in Draft 1, MSA respectfully requests the time and information required by all stakeholders to fully vet these proposals. The five overarching issues under which all specific concerns fit are as follows:

- 1) New Issues
- 2) Local Control
- 3) Funding Issues
- 4) Modelling
- 5) Possible People vs. Lockridge Decision Implications

New Issues

There are many new issues that were not previously discussed over the last several months, which caught MSA by surprise. The following cause great concern and need appropriate time and discussion before being considered:



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first time felony waivers, downward only departures at sentencing, mitigating factors which appear to be unreasonably broad, jails taking all felony probation revocations, possible new programming and reporting requirements on jails and community corrections boards, and new community corrections responsibility for parolees. MSA has great concern over these new issues and respectfully requests they be removed from subsequent drafts until they can be understood and addressed.

Local Control

Many of the proposals appear to affect community decision-making abilities, and allow the state to encroach further into local jurisdictions. MSA worries about language referencing institutional transparency, and if grids are shifted to the left, the programming requirements that might be sent with prisoners to jails. Changes in the guidelines also appear to remove much of the judge's discretion in sentencing to fit a specific case or felon. In addition, it appears local community corrections boards are being co-opted by the legislation to state use for parolees. Finally, there are many new requirements for community corrections boards and funding strings based on new programmatic standards in the bill. Respect for local practical issues such as sentencing practices, jail space, funding and community corrections must be maintained.

Funding Issues

Funding appears to be, along with grid change models and numbers, the most glaring question mark of the proposal. In fact, there are but two references to funding in the entire proposal, in reference to the Commission's goals (page 13) and in reference to community corrections (page 42), neither of which provide protection for locals. Local partners need more of a commitment than this to be able to discuss any change to the current system. The changes suggested must be accompanied by a budget proposal that lays out the new costs and a funding stream to pay for them. The grid changes contained in the draft push longer term felons to jails that have never been housed in local jails in Michigan. In addition, it pushes more and more felons from jail to probation. Finally, the draft would require probation revocators to carry out their full sentence in jail rather than prison.

All of these changes taken together turn our current funding system on its head. The County Jail Reimbursement Program (CJRP) has been designed for the current felonies eligible for alternative incarceration in jails, and does not



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cover probation revocators at all, since they currently go to prison at a rate of about 1500 per year, some for periods of more than a year. As jails and their county funding partners try to deal with new federal Prison Rape Elimination Act (PREA) requirements, it is MSA's fear that the proposal in Draft 1 may push our members to the edge. Local jails, unlike prisons, have 14 types of beds all of which must be managed for space, availability, and separation from other inmates (see attachment). Finally, our partners at community corrections may be overwhelmed under the proposal with new state parolees eating up their budgets for local community corrections programming that has never been used for this population before. We simply need time and numbers to know the implications on the budget side of this proposal.

Modelling

We have been asked to respond to a proposal without models, numbers, budgets, or costs. While MSA understands that those are in the process of being developed, we respectfully request the latitude to reserve final comment until those models, numbers, budgets, and costs are known, agreed to, and vetted. A proposal this large has pieces that affect other portions of the proposal, and we need time to ferret those out. What are the implications of taking "harder" felons in the jail? Is there new programming required? Is there space? Does this squeeze to the jail equal the squeeze from jail to probation? How will a judge sentence what once was a 12-24 month felon that is now a 0-12 month felon? Will CJRP pay for this felon at 12 months since he/she could have gotten probation? How do we pay for the roughly 1500 new probation revocators who will carry out their sentences in jails? Do downward departures even out from prison to jail to probation for space? Currently Swift and Sure is a voluntary program paid for with grants. How will this program be paid for under a statewide implementation and what is the effect on bed space? By putting sentencing in the hands of the probation officer, rather than the judge, how will the sheriff and the court work on the practical issue of jail bed availability? Perhaps most importantly, is public safety and confidence assured by revising sentences down and does this proposal help victims? MSA is gravely concerned that the answer to this question is likely "no." Modelling, cost assessment, and numbers will help us begin to understand the ramifications of the proposal in order to answer these questions and others.

People vs. Lockridge



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The Michigan Supreme Court has taken a case that has the potential to require us to re-examine Michigan's sentencing guidelines as early as next Spring. The Supreme Court has asked parties involved in *People vs. Lockridge* to address two questions. 1) Whether a judge's determination of the appropriate sentencing guidelines range establishes a mandatory minimum sentence, and 2) Whether the fact that a judge can depart downward from the sentencing guidelines range for substantial and compelling reasons prevents the sentencing guidelines from being a mandatory minimum. These questions clearly have a direct impact on both our current guidelines and the CSG Draft 1 proposal. MSA submits that it may be wise to learn more about the consequences of this case and wait for a decision in order to avoid rewriting our sentencing practices twice in the course of less than a year.

Simply put, we need additional information and time to more fully address the ramifications of this proposal. Our concerns are real enough, but without more information, we cannot know to what degree any issues manifest themselves. Certainly, as with any rewrite, sheriffs are concerned with space, funding, public safety, and victim rights and advocacy. To that end, Michigan's sheriffs remain very concerned with this proposal but remain committed to working with the MLRC, other stakeholders, and presumably the state legislature to better understand this proposal over time and work toward positive and lasting reforms to Michigan's sentencing guidelines. Thank you again for inviting comment on this issue.

Sincerely,

Terrence L. Jungel Executive Director

Michigan Sheriffs' Association

TLJ:ad