



Michigan's Sentencing and Justice Reinvestment Review

Kickoff Meeting

June 20, 2013

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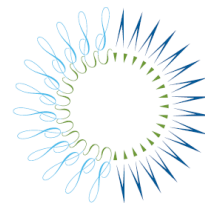
Council of State Governments Justice Center

- National non-profit, non-partisan membership association of state government officials
- Engages members of all three branches of state government
- Justice Center provides practical, nonpartisan advice informed by the best available evidence



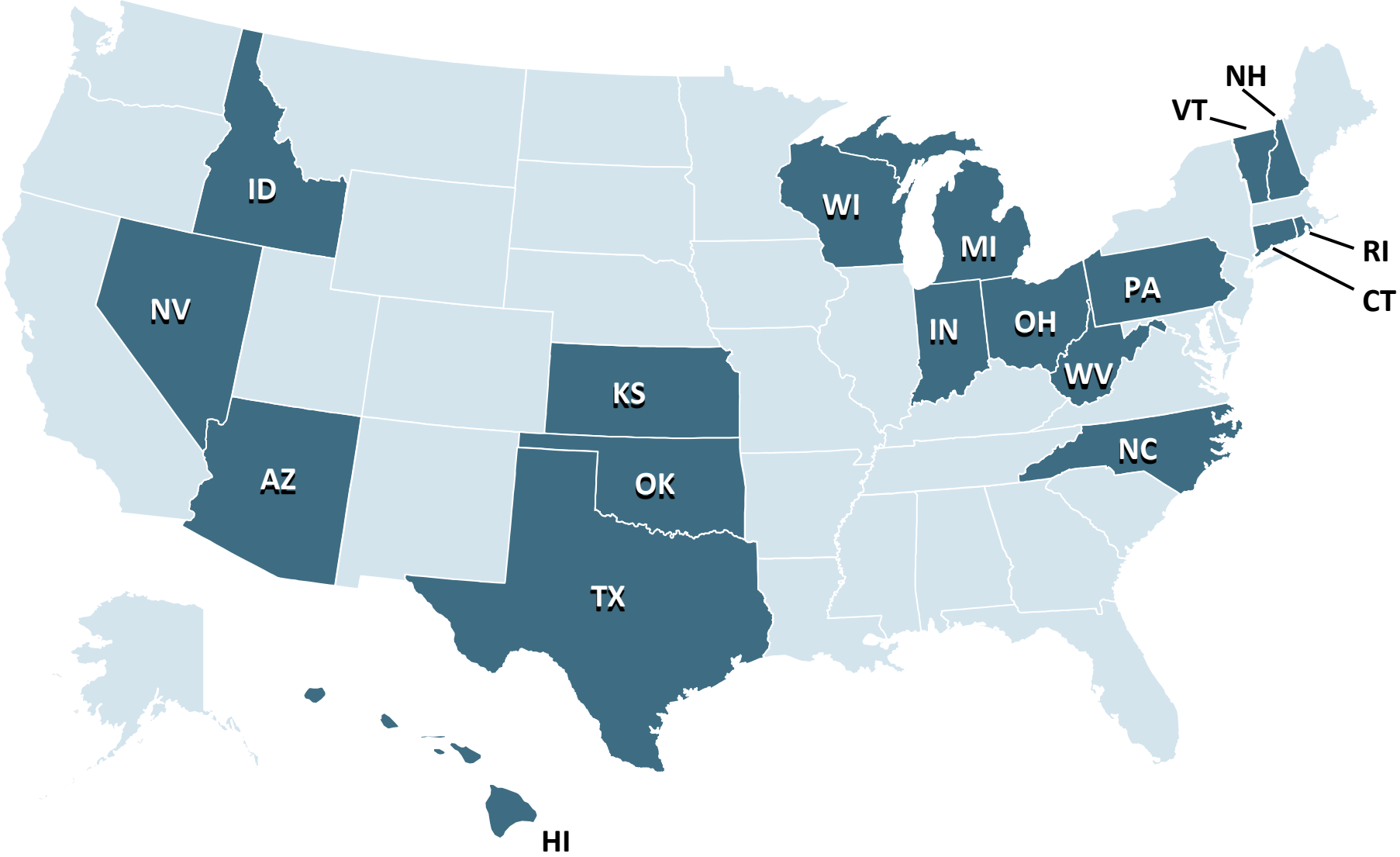
Justice Reinvestment

*a data-driven approach to reduce corrections spending
and reinvest savings in strategies that can
decrease recidivism and increase public safety.*



Public Safety
Performance
Project

CSG Justice Reinvestment States to Date



Previous Work in Michigan

JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS

JUSTICE REINVESTMENT IN MICHIGAN

Policy Options to Deter Crime, Lower Recidivism, and Reduce Spending on Corrections



This brief describes a range of policy options that the Council of State Governments Justice Center (Justice Center) has developed for Michigan policymakers. It tracks the findings outlined in a companion report, *Analyses of Crime, Community Corrections, and Sentencing Policies*. Both the report and this policy brief were developed in response to a request from Governor Jennifer M. Granholm, Senate Majority Leader Michael D. Bishop, and Speaker of the House Andy Dillon for intensive technical assistance to address the high rates of crime and victimization in Michigan and to reduce spending on corrections.

To guide the Justice Center's collection and analysis of data, the state leaders established a bipartisan, interbranch working group, the Justice Reinvestment Working Group. The working group agreed that whatever policies they decide to advance

should be consistent with the principles of justice reinvestment. In other words, to the extent policy changes effectively lower the Department of Corrections' budget, a portion of those savings should be reinvested in strategies that the working group has determined will reduce crime and strengthen communities.

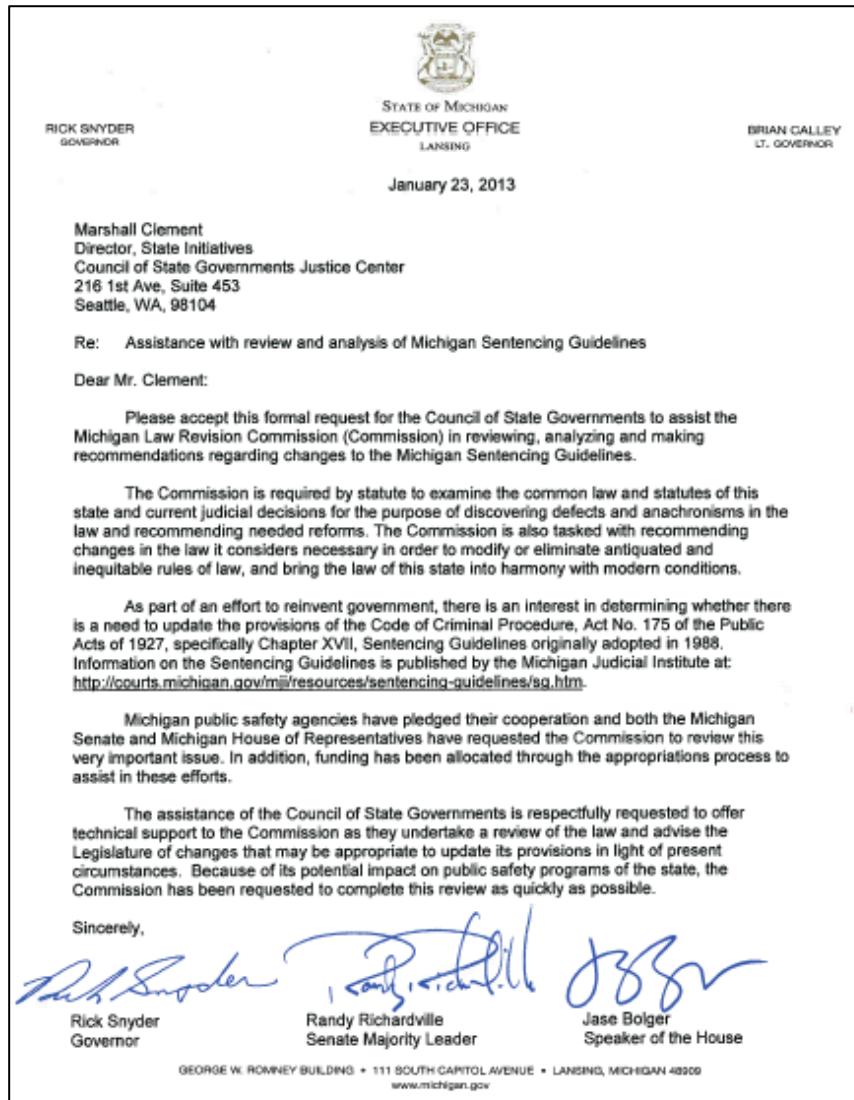
The options in this policy framework draw heavily on the expertise and experience of the working group members and a diverse group of Michigan stakeholders, including local government officials and representatives of community-based organizations.¹ These options are not a finite set of recommendations; they are a range of data-driven options that Michigan's leaders should fully consider in partnership with a broad group of stakeholders to ensure that taxpayer dollars are being invested in efforts that will make communities safer and stronger while reducing corrections spending.

¹ During the initial meetings, the Justice Center and the working group agreed that any analyses and policy options related to the Department of Corrections' operations (such as labor management, where there might be opportunities for increased efficiencies) would be beyond the scope of the project. Additional policy options were discussed and considered during the working group process; however, policymakers concluded that the options offered in this brief were among the most likely to achieve consensus on reducing crime and victimization and generate significant savings given the current circumstances in Michigan.

Justice Reinvestment Initiative (2008 - 2010)

- ✓ Formed working group, met with 50+ stakeholders and organizations
- ✓ Project focused on:
 - Law enforcement resources
 - Recidivism reduction strategies
 - Reducing spending on corrections

State Leaders Request Assistance with Sentencing and Parole Review



SB 233 Sec. 351:

The funds appropriated in part 1 for the legislative council shall be used for a contract with the Council of State Governments to ***continue its review of Michigan's sentencing guidelines and practices, including, but not limited to, studying length of prison stay and parole board discretion.***

Organization of Presentation

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graph TD; A[Sentencing and Parole] --- B[Project Goals]; B --- C[Process Moving Forward];
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Sentencing and Parole

Project Goals

Process Moving Forward

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Sentencing and Parole

Project Goals

Process Moving Forward

Long History of Indeterminate Sentencing

1850

***Const. 1963, Art. IV,
Sec. 45.***

“The legislature may provide by law for indeterminate sentences, so called, as a punishment for crime...”

1908

MCL 769.8(1)

When a person is convicted for the first time for committing a felony and the punishment . . . may be imprisonment . . ., the court imposing sentence shall not fix a definite term of imprisonment, but shall fix a minimum term...., The maximum penalty provided by law shall be the maximum sentence.

1963

1972

***People v. Lorenzen (1972);
People v. Cook (1907)***

The indeterminate sentence act aims to provide greater protection to law-abiding members of society by “convert[ing] bad citizens into good citizens” and encouraging imprisoned offenders to reform themselves during incarceration

Beginning of the Modern Era, *People v. Tanner*

1972

The “Tanner rule ” limited the length of an offender’s minimum sentence term to not more than two-thirds of the statutory maximum sentence, a significant check on judicial discretion.

- The rule made sense to the legislature, now codified at MCL 769.34(2)(b)

Tanner involved a 14 year 11 month minimum sentence and a 15 year maximum sentence. There were many similar cases.

Study Finds Disparities in Sentencing

1979

1983

1994

1998

2004

2013

SENTENCING IN MICHIGAN, Report of the Michigan Felony Sentencing Project

July 1979 - Zalman, Ostrom, Guilliams, Peaslee

Geographical disparity in felony sentencing practices.

"...sentence a defendant receives is dependent, in part, on where he was sentenced."

Racial disparity in felony sentencing practices..

"...statistically different patterns in the sentencing of whites and non-whites."

Custodial status of the individual impacted the probability of being incarcerated.

"... a rather invidious type of disparity."

Asking for a trial increased the probability of being incarcerated.

"...oftentimes quite substantially."

Michigan Supreme Court Adopts Guidelines in 1983

Modeled on Judicial Norms

1979

1983

1994

1998

2004

2013

In 2001
(*People v. Hegwood*),
the Court
described the
period from
1983-1998

“The effort reflected this Court’s attempt to respond to unwarranted disparities in sentencing practices between judges. Thus, the very premise of the guidelines is that judicial discretion will be restricted to a certain degree.”

Legislature Moves Towards Adoption of Sentencing Guidelines By Passing HB 4782 (1994 PA 445)

1979

1983

1994

1998

2004

2013

Commission created and charged with developing sentencing guidelines. The Commission was directed to focus on the following:

Proportionality

- Account for seriousness of offense and prior record
- Reduce sentencing disparities

Public Safety

- Determine prison versus alternative sanctions

Impact to Resources

- State and Local

Legislature Adopts Sentencing Guidelines – 1998 PA 317

1979

1983

1994

1998

2004

2013

❑ Minimum ranges based on recommendations by the Sentencing Commission and lawmakers

- ❖ “Truth-in-Sentencing” tied to enactment of sentencing guidelines.
- ❖ Commission ceased to function after enactment, and was formally repealed by 2002 legislation, along with purposes of guidelines.

Robust Appellate Jurisprudence of Sentencing Guidelines

1979

1983

1994

1998

2004

2013

- ❖ ***Validity*** - separation of powers & jury trial
- ❖ ***Applicability*** - to probation revocation
- ❖ ***Scoring*** - errors & clarifications
- ❖ ***Departures*** – requirements & appellate review

National Center for State Courts

Analyzed 2004 Sentencing Data

1979

1983

1994

1998

2004

2013

NCSC Findings

- ☐ Comparatively restrictive guidelines
- ☐ Low rates of departure
- ☐ Geographical disparities persist
- ☐ One of four guideline states without a standing Commission
- ☐ Comparatively complex, e.g., high number of grid cells

Michigan's Guidelines Are Unique

❑ Highly Complex

- 1,032 potential cells into which an offender may fall. Determining the correct cell is based on a multi-dimensional scoring of many factors including offense characteristics and prior criminal record.

❑ Only address issues of “minimum” sentence

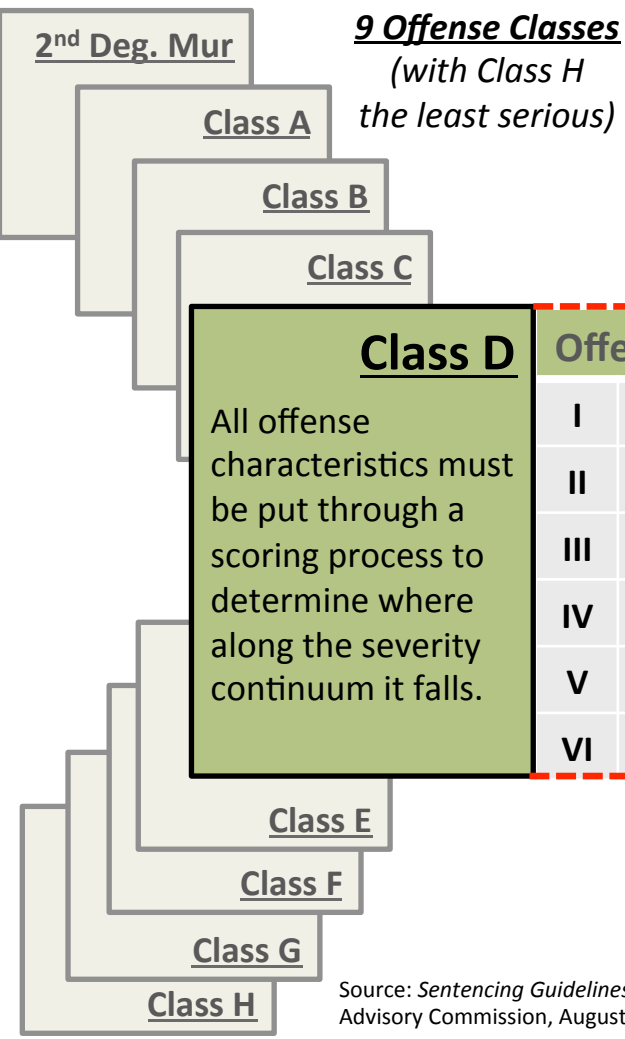
- Guidelines do not impact the maximum length of incarceration.

Michigan's Sentencing Guidelines Are Highly Complex

- ❑ There are nine different “classes” of offenses, each with its own grid.
- ❑ Regardless of the grid to which an offense belongs, a multi-layered *scoring* process is required to determine the correct cell within the appropriate grid.
 - Prior 10 years' criminal record
 - Offense and offender characteristics (20 offense variables total; number considered depends on the type of offense – could be as many as 19 variables scored)
 - Habitual offender status (prior felony convictions)

In Handling Offense Characteristics, Michigan Is More Complex than Other States

Michigan Guidelines



Offense Value	
I	Least Severe
II	↑
III	
IV	
V	
VI	Most Severe

Many state grids capture offense severity in one row. Michigan has an additional dimension of scoring offense variables leading to many more potential rows into which an offense may fall.

North Carolina Guidelines

10 Offense Classes
(with Class I the least serious)

Offense Class	
A	Most Severe
B1	↑
B2	
C	
	Aggravated
D	Presumptive
	Mitigated
E	↓
F	
G	
H	
I	
I	Least Severe

Source: *Sentencing Guidelines Manual*, MI Judicial Institute, June 2012; and *Structured Sentencing: Training and Reference Manual*, NC Sentencing and Policy Advisory Commission, August 2004.

Sentence Scoring: Determinants for Sentence Ranges

Conviction Offense
(determines class and **grid**)
Example: Attempted Murder

Prior Record
(determines **column** on grid)

Offense Variables
(determine **row** on grid)

Habitual Offender
(determines potential **Increase** in min sentence)

Sentencing Grid for Class C Offenses—MCL 777.64															
Sentencing Grid for Class B Offenses—MCL 777.63															
Sentencing Grid for Class A Offenses—MCL 777.62 <i>Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)–(c))</i>															
OV Level	OV Level	PRV Level											Offender Status		
I 0-9 Points	I 0-9 Points	OV Level	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
II 10-24 Points	II 10-24 Points	I 0-19 Points	21	35	27	45	42	70	51	85	81	135	108	180	
III 25-34 Points	III 25-34 Points	43		56		87		106		168		225		HO2	
52	67	105		127		202		270		360		HO4			
70	90	140		170		270		360		420		HO4			
IV 35-49 Points	IV 25-34 Points	II 20-39 Points	27	45	42	70	51	85	81	135	108	180	126	210	HO2
IV 35-49 Points	IV 35-49 Points	56		87		106		168		225		262			
67	105	127		202		270		315		HO3					
90	140	170		270		360		420		HO4					
		III 40-59 Points	42	70	51	85	81	135	108	180	126	210	135	225	
		87		106		168		225		262		281		HO2	
		105		127		202		270		315		337		HO3	
		140		170		270		360		420		450		HO4	

An offender falling into the highlighted cell would face a minimum sentence of 51-106 months

Source: Sentencing Guidelines Manual, MI Judicial Institute, June 2012.

Three Types of Cells on Grids

Sentencing Grid for Class F Offenses

Example: Fraudulently obtaining Controlled Sub.

OV Level	PRV Level											Offender Status	
	A 0 Points		B 1-9 Points		C 10-24 Points		D 25-49 Points		E 50-74 Points		F 75+ Points		
I 0-9 Points	0	3*	0	6*	0	9*	2	17*	5	23	10	23	
		3*		7*		11*		21		28		28	HO2
		4*		9*		13*		25		34		34	HO3
		6*		12*		18*		34		46		46	HO4
II 10-34 Points	0	6*	0	9*	0	17*	5	23	10	23	12	24	
		7*		11*		21		28		28		30	HO2
		9*		13*		25		34		34		36	HO3
		12*		18*		34		46		46		48	HO4
III 35-74 Points	0	9*	0	17*	2	17*	10	23	12	24	14	29	
		11*		21		21		28		30		36	HO2
		13*		25		25		34		36		43	HO3
		18*		34		34		46		48		58	HO4
IV 75+ Points	0	17*	2	17*	5	23	12	24	14	29	17	30	
		21		21		28		30		36		37	HO2
		25		25		34		36		43		45	HO3
		34		34		46		48		58		60	HO4

Intermediate Sanction

Any sanction other than prison or state reformatory

- May include probation and/or jail

Straddle

Cells where the sentence may be prison or intermediate sanctions

Prison

The presumed sentence is to prison. A lesser sentence would be considered a departure.

*In both “straddle” and “intermediate sanction” cells, a sentence below the low end of the cell range is **not** considered a departure*

Source: Sentencing Guidelines Manual, MI Judicial Institute, June 2012.

Michigan's Sentencing Guidelines

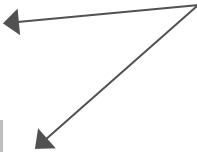
Do not Impact Maximum Sentence Length

Hypothetical where an offender faces minimum of 5 years in prison...

Kansas: guidelines dictate maximum sentence and available time credits.	No less than 60 months w/ good time	Max sent = 71 months
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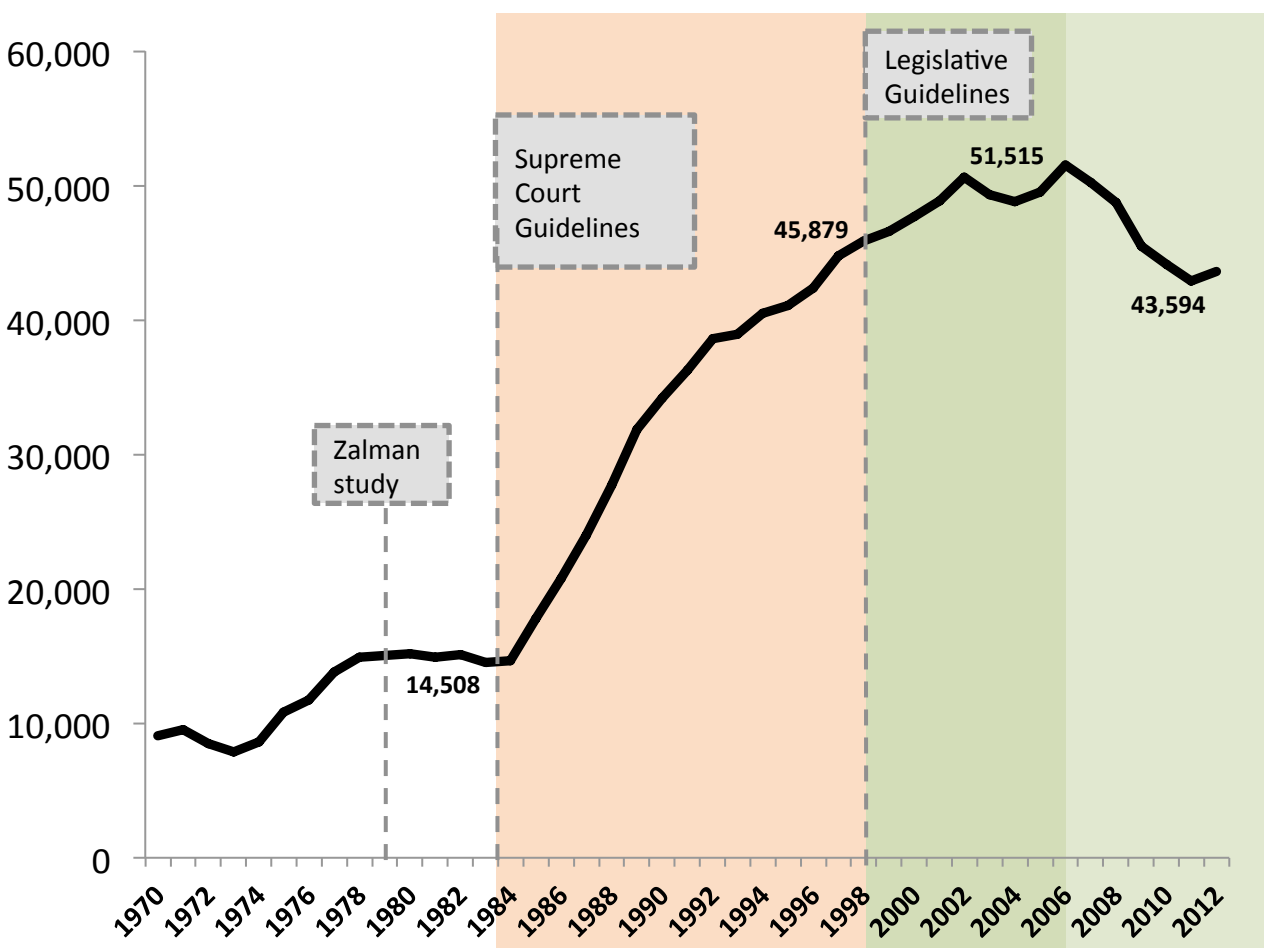
North Carolina: guidelines dictate minimum and maximum sentence.	Min sentence = 60 months	Max sent = 84 months
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No parole board, but offenders must “earn” their way to the minimum.



Michigan: guidelines dictate minimum sentence in most cases. The Parole Board controls most of the prison sentence.	Min sentence = 60 months	Parole board determines when released. Max sentence = 180-240 months (set in statute for specific offense)
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Prison Population Over Time and Guidelines Events



1983 – 1998

- Prison Population: + 216%

1998 – 2006

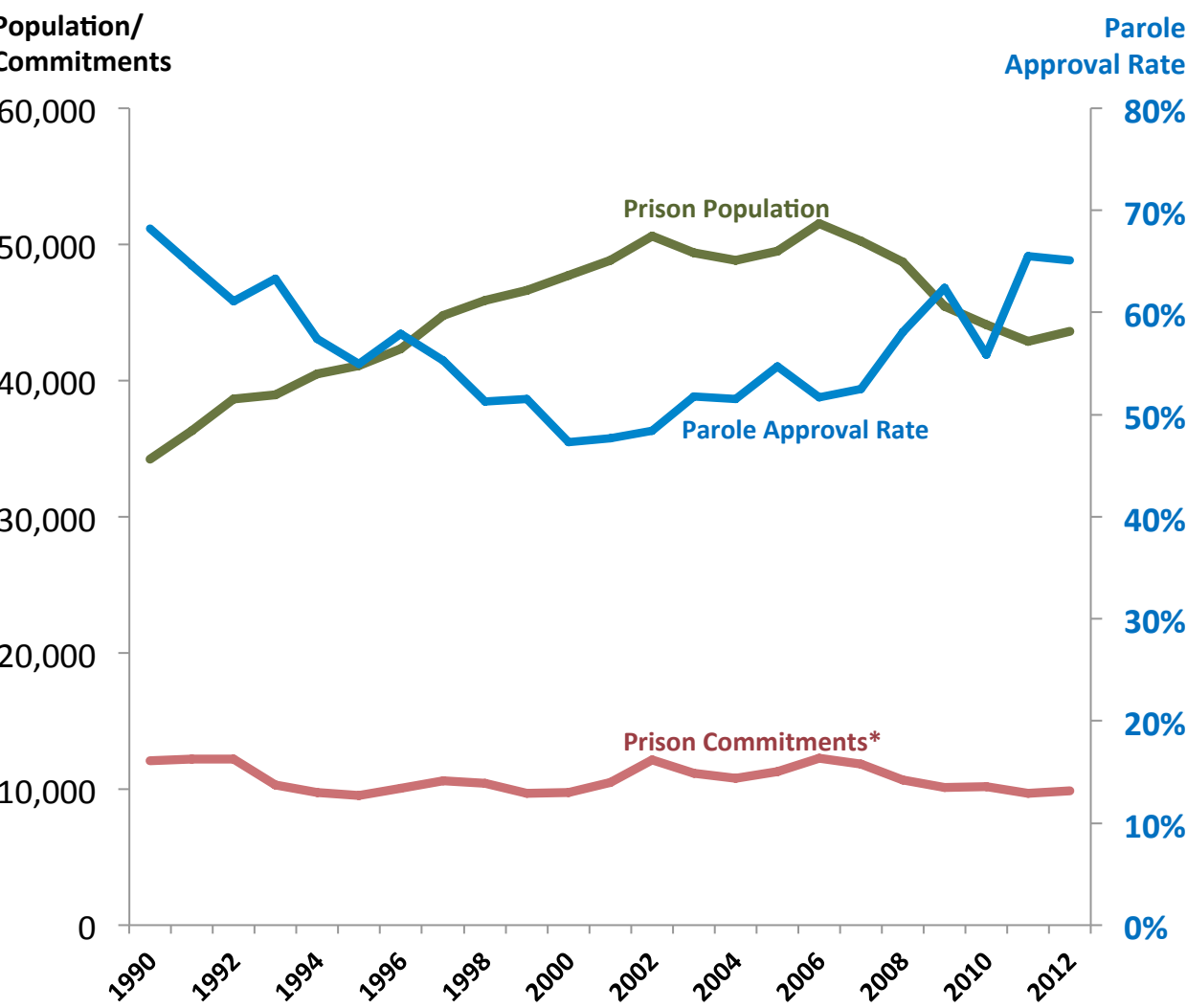
- Prison Population: + 12%

2006 – 2012

- Prison Population: - 15%

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

Prison Commitments, Population, and Parole Approval Rates



Since the early 1990s, the fluctuations in prison population and parole approval rates have been mirror opposites:

- As approval rates have declined, the prison population has risen.

* Prison commitments include new sentences, all probation violators (technical and new offense), and new offense parole violators.

Source: 2006-2011 Statistical Reports, MI Dept. of Corrections; 2008-2012 Intake Profiles, MI Dept. of Corrections; Trends in Key Indicators, MI Dept. of Corrections, February 2013.

Despite Complexity and Passage of Time, Research into Sentencing Guidelines Is Limited

- NCSC study is the only report relating to the sentencing guidelines since they were enacted into law 15 years ago.
- Unknowns about impacts of sentencing guidelines:
 - Have sentencing disparities continued since 2004?
 - Do the guidelines maximize public safety? Do they complement principles of effective supervision and recidivism reduction?
 - What are impacts to local and state resources?

Organization of Presentation



Sentencing and Parole

Project Goals

Process Moving Forward

Sentencing and Parole Are “Sorting” Decisions with Three Explicit Goals

Sentencing
and **Parole**
functions both
charged with
similar goals.

Sorting and Scoring of:

Offense
Variables

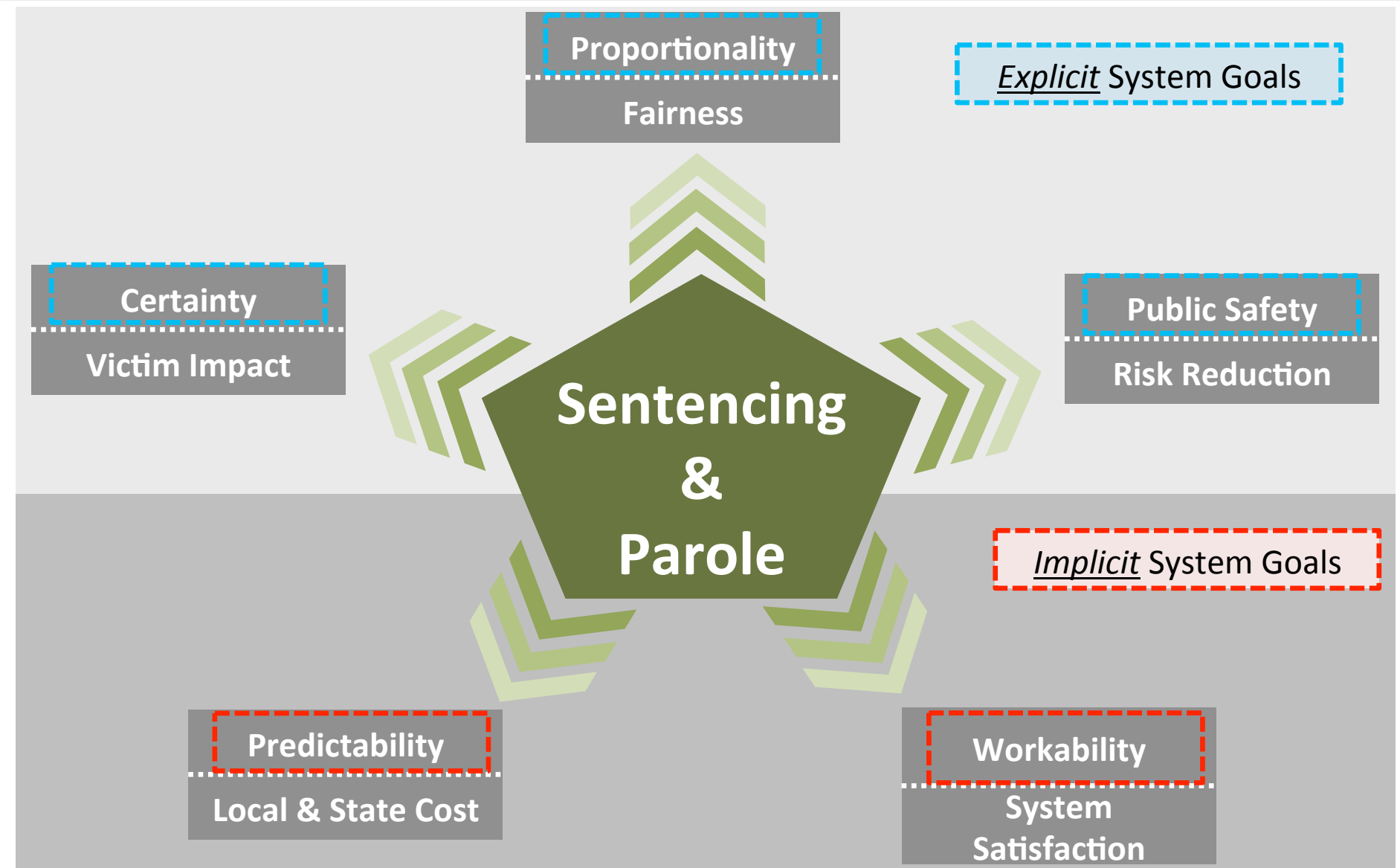
Offender
Variables

*Both functions consider
much of the same
information*

Explicit Goals

1. Public Safety
Risk Reduction
2. Proportionality
Fairness
3. Certainty
Victim Impact

In Addition to the Explicit Goals of Sentencing and Parole, Project Will Focus on Implicit Goals



Do Sentencing Guidelines and Larger Criminal Justice System Maximize Value for the Public?

Potential Research Questions:

System Goal	Question
Public Safety	Do the sentencing and parole decisions promote risk reduction?
Proportionality	Is there disparity in sentencing and time served for similar cases? If so, what are the causes?
Certainty	Are victims satisfied or frustrated with the uncertain portion of a sentence?
Predictability	To what degree are sentencing and parole decisions driving population trends?
Workability	Is the complexity of the sentencing system sufficiently advancing other goals to be worth the effort?

Long-Term Trends Since 2008 Have Been Mostly Good, But There Are Some Concerning Signs

Generally positive trends in Michigan during recent years.

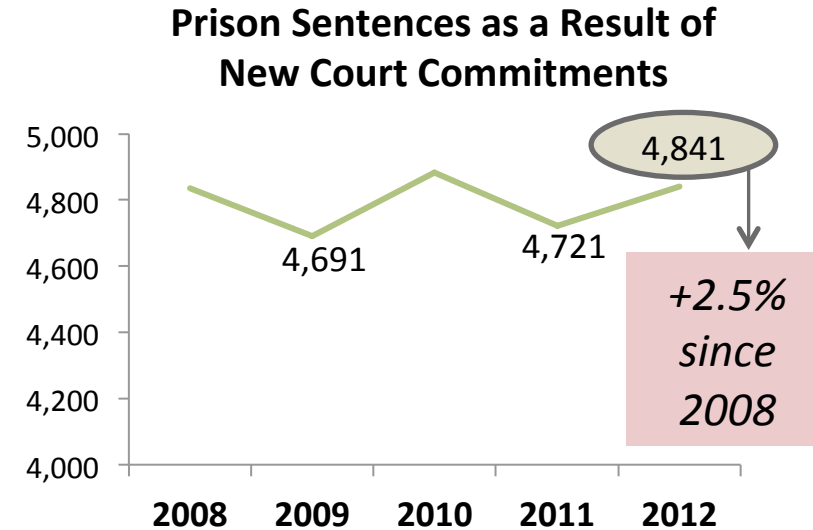
- ✓ Crime has been down, as well as arrests for serious offenses.
- ✓ Felony case filings and 'guilty' dispositions in the courts are down.

However...

- ❑ Share of guilty verdicts resulting in a sentence to prison ticking upward.
- ❑ Increasing rate of failure and revocation to prison among probationers.

Increasing Rate of Sentences to Prison Driving Increase in Admissions to Prison

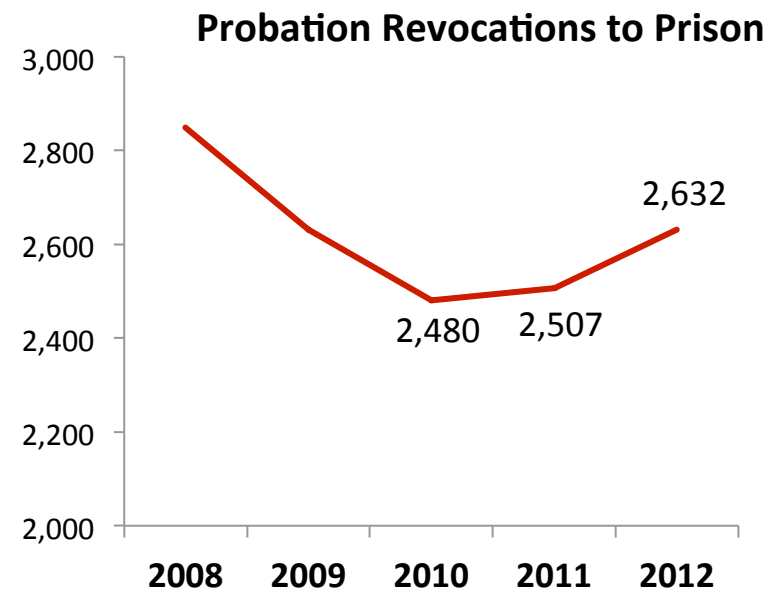
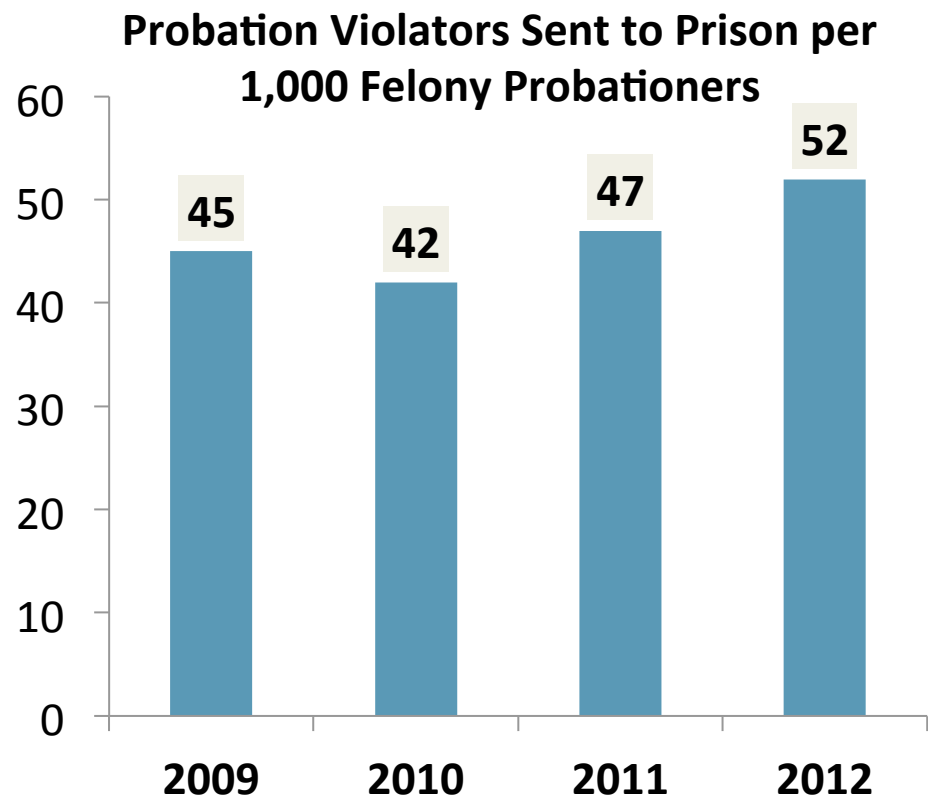
Year	Felony Convictions	Prison Sentences	<i>Prison % of Convictions</i>
2008	58,113	11,292	<i>19.4%</i>
2009	55,592	10,702	<i>19.3%</i>
2010	53,422	10,831	<i>20.3%</i>
2011	50,862	10,287	<i>20.2%</i>
2012	50,833	10,547	<i>20.7%</i>
2008-12 % Chg	- 13%	- 7%	+ 7%



If the 2012 prison rate were 19.4% as in 2008, there would have been almost 700 fewer sentences to prison.

Increasing Rate of Probation Failure Driving Increase in Admissions to Prison

Probation revocation rate increased almost 24% from 2010 to 2012.



Number of probation revocations to prison increased 6% from 2010 to 2012.

Source: 2006-2011 Statistical Reports, MI Dept. of Corrections; 2008-2012 Intake Profiles, MI Dept. of Corrections; Trends in Key Indicators, MI Dept. of Corrections, February 2013.

Does System Maximize Value?

...Some Early Indicators Are Available

System Goal	Question	Current Knowledge
Public Safety	Do the sentencing and parole decisions promote risk reduction?	Indications are that probation recidivism is on the rise.
Proportionality	Is there disparity in sentencing and time served for similar cases? If so, what are the causes?	Prior research and current anecdotes suggest disparity.
Certainty	Are victims satisfied or frustrated with the uncertain portion of a sentence?	We do not know, but plan on investigating.
Predictability	To what degree are sentencing and parole decisions driving population trends?	Sentencing contributes, but parole is major driver.
Workability	Is the complexity of the sentencing system sufficiently advancing other goals to be worth the effort?	Lots of appellate activity; not much user dissatisfaction detected.

Organization of Presentation

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graph TD; A[Sentencing and Parole] --- B[Project Goals]; B --- C[Process Moving Forward];
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Sentencing and Parole

Project Goals

Process Moving Forward

Project Integrity and Policy Objectives

Data driven analyses of sentencing:

- Disparity in sentencing
- Effectiveness of supervision

Ensure analyses reflect both state and local concerns:

- Use of jail and probation at the local level

Identify policies to:

- ✓ Make sentencing and parole decisions more cost-effective
- ✓ Retain truth-in-sentencing and increase certainty of time served
- ✓ Improve public safety by strengthening probation and parole supervision

Accountability for the Process

Data

Justice Center synthesizes and conceptualizes the data that Michigan provides

Collaboration

Justice Center supports in convening state leaders to participate in active discussions

Leadership

Michigan provides leadership and the Justice Center provides support

- **System dynamics**
- **Guideline scoring**
- **Risk reduction**

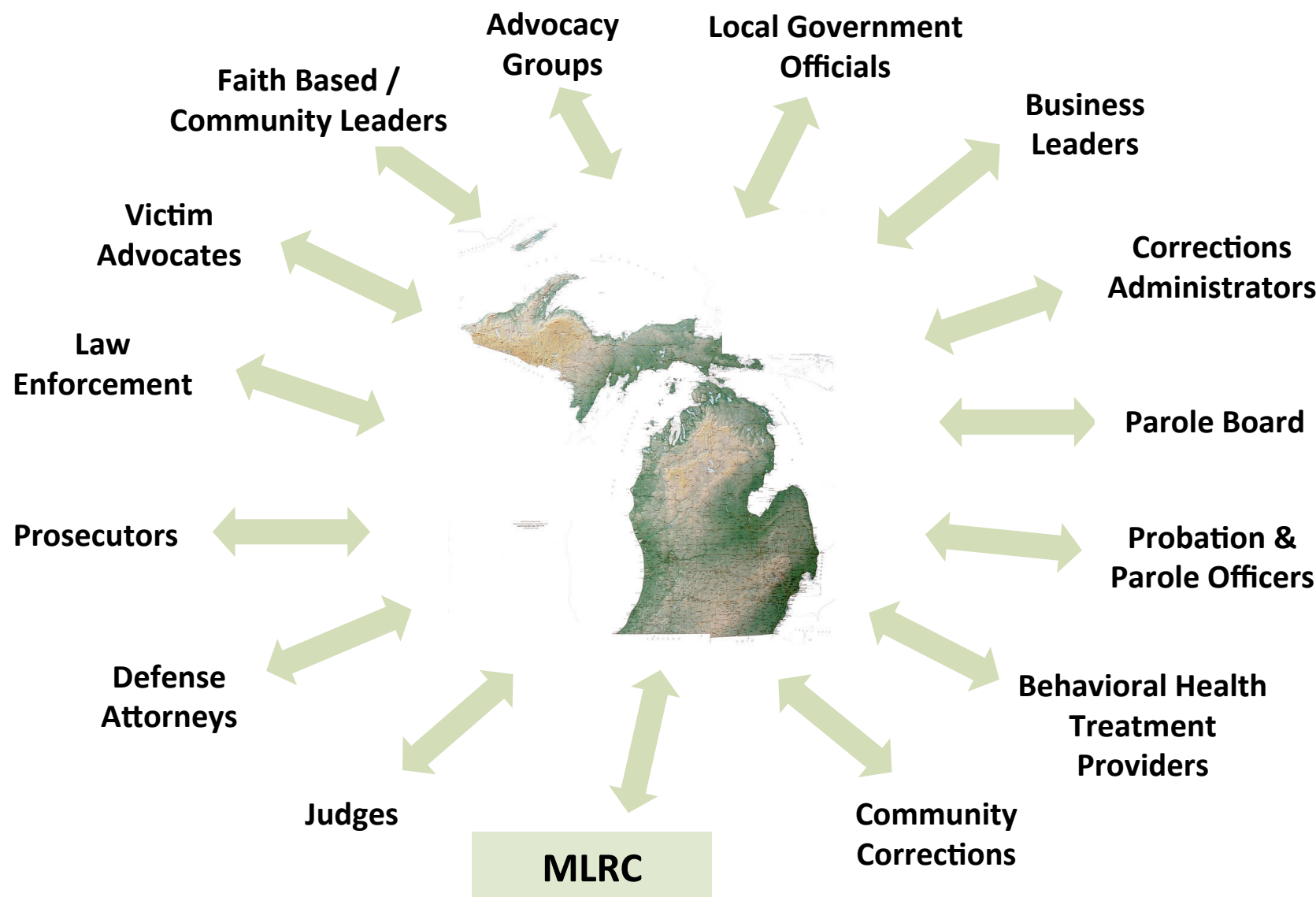
- **Bipartisan**
- **Inter-branch**
- **Inter-disciplinary**

- **Communication**
- **Policy adoption**
- **Sustainability**



Justice Center Data Requests Are Underway

Data	Source	Status
Crime and Arrest	State Police	Obtained
Criminal History	State Police	In Discussions
Court Dispositions	Judiciary; DOC	Requested
Jail	Kent and Jackson Counties; DOC	In Discussions
Community Corrections	Kent and Jackson Counties	In Discussions
Probation	Department of Corrections	Requested
Prison	Department of Corrections	Requested
Parole	Department of Corrections	Requested
Parole Board Decision-Making	Department of Corrections	Requested
Appellate Court Activity	Court of Appeals & Supreme Court	In Discussions

Project Will Require Stakeholder Engagement



Tentative Project Timeline

Dates	Activity
May – October 2013	Data Collection
June 20	MLRC Meeting – Kick off
June	Begin soliciting stakeholder input
July – October	Finish data collection & begin detailed data analysis
September	MLRC Meeting – Review Findings
September – October	Additional data analysis & meetings with stakeholders
November	MLRC Meeting – Review Findings
December 21, 2013	 at 
January 2014	MLRC Meeting – Review Findings
January – March	Model potential policy options
March 2014	MLRC Meeting – Discuss Policy Options

A topographic map of Michigan, showing the state's outline and internal features like lakes and terrain. The word "MICHIGAN" is printed in small capital letters above the map.

MICHIGAN

Thank You

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