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

<table>
<thead>
<tr>
<th>Corrections</th>
<th>Courts</th>
<th>Justice Reinvestment</th>
<th>Law Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mental Health</td>
<td>Reentry</td>
<td>Substance Abuse</td>
<td>Youth</td>
</tr>
</tbody>
</table>
Justice Reinvestment

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

- Sentencing and Parole
- Project Goals
- Process Moving Forward
Organization of Presentation

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

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.

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

**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.”
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)

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979</td>
<td>Commission ceased to function after enactment, and was formally repealed by 2002 legislation, along with purposes of guidelines.</td>
</tr>
<tr>
<td>1983</td>
<td></td>
</tr>
<tr>
<td>1994</td>
<td></td>
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<tr>
<td>2004</td>
<td></td>
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<tr>
<td>2013</td>
<td></td>
</tr>
</tbody>
</table>

Robust Appellate Jurisprudence of Sentencing Guidelines

|------|------|------|------|------|------|

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

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**

- **2nd Deg. Mur**
- Class A
- Class B
- Class C
- **Class D**
  
  All offense characteristics must be put through a scoring process to determine where along the severity continuum it falls.

**North Carolina Guidelines**

- **10 Offense Classes** (with Class I the least serious)
  
  - A Most Severe
  - B1
  - B2
  - C
  - D Aggravated
  - E Presumptive
  - F Mitigated
  - G
  - H
  - I Least Severe

- **9 Offense Classes** (with Class H the least serious)
  
  - Class A
  - Class B
  - Class C
  - Class D
  - Class E
  - Class F
  - Class G
  - Class H

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.

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)

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

### Three Types of Cells on Grids

#### Sentencing Grid for Class F Offenses

<table>
<thead>
<tr>
<th>PRV Level</th>
<th>A (0 Points)</th>
<th>B (1-9 Points)</th>
<th>C (10-24 Points)</th>
<th>D (25-49 Points)</th>
<th>E (50-74 Points)</th>
<th>F (75+ Points)</th>
<th>Offender Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>I 0-9 Points</td>
<td>3*</td>
<td>6*</td>
<td>9*</td>
<td>11*</td>
<td>21</td>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>3*</td>
<td>7*</td>
<td>11*</td>
<td>21</td>
<td>28</td>
<td>28</td>
<td>28 HO2</td>
</tr>
<tr>
<td></td>
<td>4*</td>
<td>9*</td>
<td>13*</td>
<td>25</td>
<td>34</td>
<td>34</td>
<td>34 HO3</td>
</tr>
<tr>
<td></td>
<td>6*</td>
<td>12*</td>
<td>18*</td>
<td>34</td>
<td>46</td>
<td>46</td>
<td>46 HO4</td>
</tr>
<tr>
<td>II 10-34 Points</td>
<td>6*</td>
<td>9*</td>
<td>17*</td>
<td>23</td>
<td>23</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td></td>
<td>7*</td>
<td>11*</td>
<td>21</td>
<td>28</td>
<td>28</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td></td>
<td>9*</td>
<td>13*</td>
<td>25</td>
<td>34</td>
<td>34</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td></td>
<td>12*</td>
<td>18*</td>
<td>34</td>
<td>46</td>
<td>46</td>
<td>34</td>
<td></td>
</tr>
<tr>
<td>III 35-74 Points</td>
<td>9*</td>
<td>17*</td>
<td>23</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td></td>
<td>11*</td>
<td>21</td>
<td>28</td>
<td>30</td>
<td>30</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td></td>
<td>13*</td>
<td>25</td>
<td>34</td>
<td>36</td>
<td>36</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td></td>
<td>18*</td>
<td>34</td>
<td>46</td>
<td>48</td>
<td>48</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>IV 75+ Points</td>
<td>17*</td>
<td>23</td>
<td>24</td>
<td>29</td>
<td>29</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td></td>
<td>21</td>
<td>28</td>
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<td>45</td>
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<td>37</td>
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<tr>
<td></td>
<td>34</td>
<td>46</td>
<td>58</td>
<td>58</td>
<td>58</td>
<td>43</td>
<td></td>
</tr>
</tbody>
</table>

**Example:** Fraudulently obtaining Controlled Sub.

**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.

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

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

**North Carolina:** guidelines dictate minimum and maximum sentence.
- Min sentence = 60 months
- Max sent = 84 months

**Michigan:** guidelines dictate minimum sentence in most cases. The Parole Board controls most of the prison sentence.
- Min sentence = 60 months
- Max sentence = 180-240 months (set in statute for specific offense)

No parole board, but offenders must “earn” their way to the minimum.

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

**Explicit Goals**

1. **Public Safety**
   - Risk Reduction

2. **Proportionality**
   - Fairness

3. **Certainty**
   - Victim Impact

**Sentencing and Parole** functions both charged with similar goals. Both functions consider much of the same information.
In Addition to the Explicit Goals of Sentencing and Parole, Project Will Focus on Implicit Goals

Explicit System Goals

- Certainty
- Victim Impact
- Proportionality
- Fairness

Implicit System Goals

- Public Safety
- Risk Reduction
- Predictability
- Local & State Cost
- Workability
- System Satisfaction

Explicit System Goals

- Sentencing & Parole
- Certainty
- Victim Impact
- Proportionality
- Fairness

Implicit System Goals

- Public Safety
- Risk Reduction
- Predictability
- Local & State Cost
- Workability
- System Satisfaction
Do Sentencing Guidelines and Larger Criminal Justice System Maximize Value for the Public?

**Potential Research Questions:**

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

### Table: Felony Convictions, Prison Sentences, and Prison % of Convictions

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

### Graph: Prison Sentences as a Result of New Court Commitments

- 2008: 4,691
- 2009: 4,721 (+2.5% since 2008)

### Note:

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.

Probation Violators Sent to Prison per 1,000 Felony Probationers

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

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

- 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

• System dynamics
• Guideline scoring
• Risk reduction

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

• Bipartisan
• Inter-branch
• Inter-disciplinary

Leadership
Michigan provides leadership and the Justice Center provides support

• Communication
• Policy adoption
• Sustainability
# Justice Center Data Requests Are Underway

<table>
<thead>
<tr>
<th>Data</th>
<th>Source</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime and Arrest</td>
<td>State Police</td>
<td>Obtained</td>
</tr>
<tr>
<td>Criminal History</td>
<td>State Police</td>
<td>In Discussions</td>
</tr>
<tr>
<td>Court Dispositions</td>
<td>Judiciary; DOC</td>
<td>Requested</td>
</tr>
<tr>
<td>Jail</td>
<td>Kent and Jackson Counties; DOC</td>
<td>In Discussions</td>
</tr>
<tr>
<td>Community Corrections</td>
<td>Kent and Jackson Counties</td>
<td>In Discussions</td>
</tr>
<tr>
<td>Probation</td>
<td>Department of Corrections</td>
<td>Requested</td>
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<tr>
<td>Prison</td>
<td>Department of Corrections</td>
<td>Requested</td>
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<tr>
<td>Parole</td>
<td>Department of Corrections</td>
<td>Requested</td>
</tr>
<tr>
<td>Parole Board Decision-Making</td>
<td>Department of Corrections</td>
<td>Requested</td>
</tr>
<tr>
<td>Appellate Court Activity</td>
<td>Court of Appeals &amp; Supreme Court</td>
<td>In Discussions</td>
</tr>
</tbody>
</table>
Project Will Require Stakeholder Engagement
Tentative Project Timeline

<table>
<thead>
<tr>
<th>Dates</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>May – October 2013</td>
<td>Data Collection</td>
</tr>
<tr>
<td><strong>June 20</strong></td>
<td>MLRC Meeting – Kick off</td>
</tr>
<tr>
<td>June</td>
<td>Begin soliciting stakeholder input</td>
</tr>
<tr>
<td>July – October</td>
<td>Finish data collection &amp; begin detailed data analysis</td>
</tr>
<tr>
<td><strong>September</strong></td>
<td>MLRC Meeting – Review Findings</td>
</tr>
<tr>
<td>September – October</td>
<td>Additional data analysis &amp; meetings with stakeholders</td>
</tr>
<tr>
<td><strong>November</strong></td>
<td>MLRC Meeting – Review Findings</td>
</tr>
<tr>
<td>December 21, 2013</td>
<td>MLRC Meeting – Review Findings</td>
</tr>
<tr>
<td><strong>January 2014</strong></td>
<td>MLRC Meeting – Review Findings</td>
</tr>
<tr>
<td>January – March</td>
<td>Model potential policy options</td>
</tr>
<tr>
<td><strong>March 2014</strong></td>
<td>MLRC Meeting – Discuss Policy Options</td>
</tr>
</tbody>
</table>
Thank You

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