Sentencing and Justice Reinvestment Initiative

December 11, 2013

Michigan Law Revision Commission

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Council of State Governments Justice Center and Our Justice Reinvestment Funding Partners

- National non-profit, non-partisan membership association of state government officials
- Engage 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.*

*Partner with Bureau of Justice Assistance and Pew Charitable Trusts*
Recap of Key Points to Date

SB 233 asks the MLRC to “contract with the Council of State Governments to continue its review of Michigan’s sentencing guidelines and practices, including . . . studying length of prison stay and parole board discretion.”

1. Sentencing Guidelines
   - Unusual in complexity and indeterminacy
   - 15 years of use, largely unstudied

2. Population Pressure
   - Parole approval rate drives prison population
   - Felons typically & increasingly sentenced to do time, most often in jail

3. Disparity & Disconnection
   - Disparity in dispositions by geography and within a single grid cell
   - Jail/probation sentencing is not well connected with goal of public safety
Reframing to Define Goals of “Justice”

Justice System & Offender Focus
- Incapacitation - Fairness

Victim & Offender Focus
- Humanity - Restoration

Public Safety Focus
- Effectiveness

Reducing Criminal Behavior

Punishing Predictably & Proportionally

Holding Offenders Accountable

Council of State Governments Justice Center
Overview of Presentation

- Punishing Predictably & Proportionally
- Holding Offenders Accountable
- Reducing Criminal Behavior
Overview of Presentation

Punishing Predictably & Proportionally

• Good Intentions but Guidelines Allow Disparity
• Evidence of Unpredictable and Disparate Sentencing
• Impact on Prison and Jail Populations

Holding Offenders Accountable

Reducing Criminal Behavior
Guidelines Have Been Effective at Limiting Admissions to Prison, and Imposing Truth in Sentencing for Prison Sentences

(2) In developing recommended sentencing guidelines, the commission shall consider the likelihood that the capacity of state and local correctional facilities will be exceeded. The commission shall submit to the legislature a prison impact report relating to any sentencing guidelines submitted under this section. The report shall include the projected impact on total capacity of state correctional facilities.
Michigan Sentences Fewer to Prison but More to Jail

Michigan

- **BEHIND BARS**
  - 76%
  - Prison: 21%
  - Jail: 55%

- **PROBATION ONLY**
  - 23%

BJS Urban Counties

- **BEHIND BARS**
  - 73%
  - Prison: 40%
  - Jail: 33%

- **PROBATION ONLY**
  - 27%

North Carolina

- **BEHIND BARS**
  - 66%
  - Prison: 42%
  - Jail: 24%

- **PROBATION ONLY**
  - 34%

Kansas

- **BEHIND BARS**
  - 31%
  - Prison: 24%
  - Jail: 7%

- **PROBATION ONLY**
  - 69%

Only 14% of “New” Cases Lead to Prison in Michigan, Versus 20% of All Guidelines Cases

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Total Sentences</th>
<th>Sentences to Prison</th>
<th>Sentences to Jail</th>
<th>Sentences to Probation</th>
<th>Sentences to Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brand New Cases</td>
<td>25,523 (58%)</td>
<td>3,597 (14%)</td>
<td>14,115 (55%)</td>
<td>7,615 (30%)</td>
<td>196 (&lt; 1%)</td>
</tr>
<tr>
<td>Total Guidelines Sentences to Prison</td>
<td>8,881</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Offense Violators</td>
<td>13,837 (31%)</td>
<td>4,337 (31%)</td>
<td>7,082 (51%)</td>
<td>2,349 (17%)</td>
<td>69 (&lt; 1%)</td>
</tr>
<tr>
<td>Prob. Compliance Violators</td>
<td>4,689 (11%)</td>
<td>947 (20%)</td>
<td>3,742 (80%)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

(i) Provide for protection of the public.

(ii) An offense involving violence against a person shall be considered more severe than other offenses.

(iii) Be proportionate to the seriousness of the offense and the offender’s prior criminal record.

(iv) Reduce sentencing disparities based on factors other than offense characteristics and offender characteristics and ensure that offenders with similar offense and offender characteristics receive substantially similar sentences.

(v) Specify the circumstances under which a term of imprisonment is proper and the circumstances under which intermediate sanctions are proper.
But the Sentencing System Builds In Multiple Sources of Enormous Potential Disparity

Grid Cells

- Only 1 of 3 cell types (Prison, Straddle, Intermediate) in the Guidelines results in predictable sentencing – to Prison

Prison Sentencing

- Upper end of minimum range (Min-Max) typically 2-4 times longer than lower end (Min-Min), and habitual laws expand to 5-8 times longer, as well as expand statutory maximum

Time Served in Prison

- Parole discretion controls ultimate length of stay up to Statutory Maximum, which may be 3-4 times longer than sentenced minimum
Grid Cells: 89% of Cases Fall in Cells with Unpredictable Sentencing Dispositions

### Intermediate (62% of Cases)

Allowable punishments:
- Up to 1 year in jail plus probation
- Jail only (1 year max)
- Probation only (5 year max)
- Fees/fines only

### Straddle (27% of Cases)

#### Allowable punishments:
- Prison
- Up to 1 year in jail plus probation
- Jail only (1 year max)
- Probation only (5 year max)
- Fees/fines only

### Prison (11% of Cases)

Allowable punishment:
- Prison

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Minimum Prison Sentence Range Is Wide, and Sentences Range Across It and Beyond

Min SL Distribution for Del./Man. < 50g I-II CS (Class D): *Prior Level F, Offense Level I – Straddle Cell* (excl. Habitual Offenders)

- Min-Min = 10 months
- Min-Max = 23 months

**Minimum SL Imposed:**
- 9% to 10 months
- 24% to 12 months
- 14% to 18 months
- 11% to 23 months

**Prison Sentence Length Ranges:**
- Min-Max Usually 100-300% Greater than Min-Min

Guidelines Result in Minimum Sentences All Over the Map

2012 SGL Non-Habitual Sentences to Prison – Relationship of Actual Minimum Imposed Compared to Minimum Required

More than one-third of defendants sentenced to prison are ordered to serve a minimum sentence that is at least twice as long as that required by law.

Michigan Ranges are Much Greater than Other Guidelines States and Has Fewer Departures as a Result

Each of the examples below summarizes non-habitual prison sentences from the most frequently used cell in the state’s respective guidelines.

**MICHIGAN**
(Column E, Row II, Grid E)

*Guideline Range:*
Min-Min = 10 months
Min-Max = 23 months

Range = 130%

89% within range

**NORTH CAROLINA**
(Column II, Row H, Felony Grid)

*Guideline Range:*
Min-Min = 6 months
Min-Max = 8 months

Range = 33%

76% within range

**KANSAS**
(Column A, Row 9, Nondrug Grid)

*Guideline Range:*
Min-Min = 15 months
Min-Max = 17 months

Range = 13%

68% within range

Actual Sentencing in Most Frequently Used Straddle Cell Shows Very Different Dispositions

Sentencing breakdown of brand new cases in the ‘E’ grid *Straddle cells* (Non Habitual)

### Total 2012 Sentences = 1,463

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td></td>
<td></td>
<td></td>
<td>402</td>
<td>128</td>
<td>103</td>
</tr>
<tr>
<td>II</td>
<td></td>
<td></td>
<td></td>
<td>359</td>
<td>141</td>
<td>69</td>
</tr>
<tr>
<td>III</td>
<td></td>
<td></td>
<td></td>
<td>77</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>IV</td>
<td></td>
<td></td>
<td></td>
<td>69</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>V</td>
<td>10</td>
<td>27</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VI</td>
<td>7</td>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Supervised in Community**

**“Behind Bars”**

- **43** Prison (Min range of 5-23 mos)
  - Avg. min. term imposed = 17 mos.;
  - Range of 6-36 mos.

- **224** Jail
  - Avg. term imposed = 6 mos.;
  - Range of 1-365 days.

- **134** Probation
  - Avg. term imposed = 24 mos.;
  - Range of 9-60 mos.

**Very different sentencing outcomes…**

Despite falling in the same cell on the same grid, defendants punished disparately:

- As little as a few months in jail without any supervision to follow,
- As much as 5 years on probation, or
- Minimum of up to 3 years in prison with potential for parole supervision of varying length.

Geography Compounds Disparity in Actual Sentencing for Most Frequently Used Straddle Cell

The 10 most populous counties accounted for 299 (74%) of the 402 sentences falling in this one straddle cell.

- 6 of the 10 counties didn’t use prison at all
- 1 county used prison for almost a third of cases
- 2 counties used probation for more than half of cases

Wide Disparity in Use of Habitual Sentencing Among Top 10 Counties

Percent of Eligible Cases Sentenced as Habitual Offender in 2012 (SGL Prison Bound Only)

- Wayne
- Oakland
- Macomb
- Kent
- Genesee
- Washtenaw
- Ingham
- Ottawa
- Kalamazoo
- Saginaw

Statewide Average = 42%

- Low of 10% of eligible cases in Washtenaw Co.
- High of 89% of eligible cases in Oakland Co.

Length of Minimum Prison Sentences Has Increased by Almost Three Months

**Length of Minimum Prison Sentence Imposed**

- 2008: 42.9 months
- 2012: 45.6 months

**Cost Impact of the Increase**

- The 8,881 individuals sentenced to prison in 2012 will serve on average at least 2.7 months longer compared to the 2008 average.
- Translates to an additional 1,971 prison beds occupied on any given day.
- At $98 per day, cost to Michigan is an additional $70 million each year.

### Possible Causes of Increased Minimum Sentences

<table>
<thead>
<tr>
<th>Possible Cause</th>
<th>Assessment</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>More serious offenses?</td>
<td>No</td>
<td>Grid placement is constant</td>
</tr>
<tr>
<td>More consecutive sentencing?</td>
<td>No</td>
<td>Consistent over time</td>
</tr>
<tr>
<td>More habitual sentencing?</td>
<td>A little</td>
<td>Increased use, increased minimums</td>
</tr>
<tr>
<td>Higher PRV/OV Scores?</td>
<td>No</td>
<td>Only two classes had scoring changes leading to longer minimums</td>
</tr>
<tr>
<td>Use of Discretion?</td>
<td>Yes</td>
<td>Everything points to changes in practice within discretion allowed</td>
</tr>
</tbody>
</table>
Average Minimum Sentences Have Increased Across Offense Classes and Cell Types

Increases in sentence lengths occur across all grids and apply to all cell types except Class B Straddle Cells.
Cases Are not Migrating to More Serious Offense Classes

### Distribution of Guidelines
**Prison Sentences by Class**

<table>
<thead>
<tr>
<th>Grid</th>
<th>2008</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>2nd Deg. Mur.</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Class A</td>
<td>11%</td>
<td>11%</td>
</tr>
<tr>
<td>Class B</td>
<td>12%</td>
<td>11%</td>
</tr>
<tr>
<td>Class C</td>
<td>13%</td>
<td>14%</td>
</tr>
<tr>
<td>Class D</td>
<td>18%</td>
<td>16%</td>
</tr>
<tr>
<td>Class E</td>
<td>27%</td>
<td>27%</td>
</tr>
<tr>
<td>Class F</td>
<td>7%</td>
<td>7%</td>
</tr>
<tr>
<td>Class G</td>
<td>9%</td>
<td>10%</td>
</tr>
<tr>
<td>Class H</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td><strong>Total Cases</strong></td>
<td><strong>9,411</strong></td>
<td><strong>8,851</strong></td>
</tr>
</tbody>
</table>

Increase in overall average minimum sentence length is not due to cases moving from less to more serious offense classes.

Fewer than 5% of Guidelines Prison Sentences Imposed Involve Consecutive Sentencing, Consistently from 2008-12

Use of Habitual Sentencing Is Selective but Increasing, Occurring in 42% of Eligible Cases

<table>
<thead>
<tr>
<th>Habitual Offender Type</th>
<th>2008</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># Eligible</td>
<td>% Habitualized</td>
</tr>
<tr>
<td>Habitual – 2nd</td>
<td>1,271</td>
<td>22.2%</td>
</tr>
<tr>
<td>Habitual – 3rd</td>
<td>1,141</td>
<td>33.5%</td>
</tr>
<tr>
<td>Habitual – 4th</td>
<td>4,226</td>
<td>44.8%</td>
</tr>
<tr>
<td>Habitual – Subtotal</td>
<td>6,638</td>
<td>38.5%</td>
</tr>
</tbody>
</table>


- 2,556 Defendants Habitualized in 2008
- 2,638 Defendants Habitualized in 2012
Minimum Sentences Are Increasing for Non-Habitualized and Habitualized Offenders

Length of Minimum Prison Sentence Imposed

Non Habitual Sentences

- 2008: 41.4
- 2012: 43.4

5% Increase

Habitual Sentences

- 2008: 46.4
- 2012: 50.2

8% Increase

Only Two Classes Showed Average Scoring Changes Large Enough to Move Cases to Cells with Longer Minimums

**SGL Sentences to Prison** – Average Minimum Sentence Length (Months), Average Offense Variable Score, and Average Prior Record Value Score

<table>
<thead>
<tr>
<th>Grid</th>
<th>Min SL</th>
<th>OV Score</th>
<th>PRV Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>2nd Deg. Mur.</td>
<td>277.9</td>
<td>309.6</td>
<td>113</td>
</tr>
<tr>
<td>Class A</td>
<td>121.4</td>
<td>132.7</td>
<td>59</td>
</tr>
<tr>
<td>Class B</td>
<td>54.9</td>
<td>59.4</td>
<td><strong>37</strong></td>
</tr>
<tr>
<td>Class C</td>
<td>41.5</td>
<td>41.8</td>
<td>34</td>
</tr>
<tr>
<td>Class D</td>
<td>26.4</td>
<td>27.8</td>
<td>24</td>
</tr>
<tr>
<td>Class E</td>
<td>19.1</td>
<td>20.3</td>
<td>18</td>
</tr>
<tr>
<td>Class F</td>
<td>18.9</td>
<td>19.1</td>
<td>23</td>
</tr>
<tr>
<td>Class G</td>
<td>16.3</td>
<td>17.6</td>
<td>17</td>
</tr>
<tr>
<td>Class H</td>
<td>14.8</td>
<td>15.6</td>
<td><strong>15</strong></td>
</tr>
</tbody>
</table>

### Summary – Punishing Predictably & Proportionally: Unpredictable and Disparate Sentencing

<table>
<thead>
<tr>
<th>Key Findings</th>
<th>Further Research</th>
</tr>
</thead>
<tbody>
<tr>
<td>❑ Opportunities for disparity built in</td>
<td>➢ Patterns and factors in parole decision making</td>
</tr>
<tr>
<td>✓ Most sentences fall in grid cells with</td>
<td>➢ Does parole add to or smooth out disparity?</td>
</tr>
<tr>
<td>unpredictable outcomes</td>
<td>➢ Length of stay based on parole decisions</td>
</tr>
<tr>
<td>✓ Minimum ranges span 100-300%</td>
<td>➢ Parole decisions by risk level</td>
</tr>
<tr>
<td>❑ Actual disparity emerges</td>
<td></td>
</tr>
<tr>
<td>✓ Minimums span the full 100-300% range</td>
<td></td>
</tr>
<tr>
<td>✓ Disparate outcomes in straddle cell sentencing</td>
<td></td>
</tr>
<tr>
<td>✓ Great variation by county in sentencing</td>
<td></td>
</tr>
<tr>
<td>❑ Prison sentence length increasing</td>
<td></td>
</tr>
<tr>
<td>✓ Primary cause is the exercise of discretion to</td>
<td></td>
</tr>
<tr>
<td>ratchet up sentencing</td>
<td></td>
</tr>
</tbody>
</table>
Overview of Presentation

Punishing Predictably & Proportionally

Holding Offenders Accountable

- Who Is Supervised
- Response to Supervision Violations
- Victim Perspectives

Reducing Criminal Behavior
Guidelines Do Not Effectively Structure Supervision

Who Gets Supervision

- Too many high-risk felons unsupervised after release from jail

Length of Supervision

- Low-risk probationers supervised almost as long as high-risk
- Sentencing law forces choice between incapacitation and post-prison supervision

Responses to Violations

- Violation responses never written into guidelines
- Voluntary deployment of Swift and Sure
Repeat Offenders Three Times Less Likely to Be Supervised After Release from Jail

For non-prison sentences, as the degree of risk increases, the probability of being supervised decreases.

More than 4,000 Higher Risk Felons Sentenced to Jail Without Post-Release Supervision

### 2012 SGL Sentences by Prior Record Level

<table>
<thead>
<tr>
<th>PRV Level</th>
<th>Total Sentences</th>
<th>No prior criminal history</th>
<th>Significant criminal history</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
<td>B</td>
<td>C</td>
</tr>
<tr>
<td>Total</td>
<td>7,985</td>
<td>6,110</td>
<td>10,904</td>
</tr>
<tr>
<td>Jail Only</td>
<td>978</td>
<td>1,017</td>
<td>2,078</td>
</tr>
</tbody>
</table>

These felons are higher recidivism risk by virtue of their criminal history (PRV) scores.

4,065 offenders with significant criminal history received sentences that involved no supervision at all (only received a period of time in jail).

- Represents 21% of total cases involving offenders with significant criminal history

Low-Risk Probationers Supervised Almost As Long as High-Risk Probationers

Supervising low-risk individuals for 2 years provides little public safety benefit and uses resources that should be targeted to supervise higher risk individuals.

Michigan Law Forces a Trade-Off Between Incapacitation and Post-Release Supervision

Many sentencing guideline schemes have a predictable period of post-release supervision.

But under Michigan law, with parole release discretion overlaid on the guidelines, the effect is that as release from prison is delayed, the potential for post-release supervision is reduced.

Regardless of time in prison, there will be a predictable period of supervision following release.

Time in prison directly impacts potential for supervision upon release from prison.

Worst of the worst released with no supervision.
Guidelines Were Silent on Probation Revocation and Court Ruling Filled the Void

- **Validity** - separation of powers & jury trial
- **Applicability** - to probation revocation

“The legislative sentencing guidelines apply to sentences imposed after probation revocation. . . . Further, a defendant's conduct while on probation can be considered as a substantial and compelling reason for departure from the legislative sentencing guidelines.”

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.
Grid Severity Has Minimal Effect on the Length of Revocation Sentence for Probation Compliance Violators

2012 Guidelines Probation Compliance Violator Cases

<table>
<thead>
<tr>
<th>Grid</th>
<th>#</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2nd Deg. Mur.</td>
<td>1</td>
<td>0.0%</td>
</tr>
<tr>
<td>Class A</td>
<td>16</td>
<td>0.3%</td>
</tr>
<tr>
<td>Class B</td>
<td>92</td>
<td>2.0%</td>
</tr>
<tr>
<td>Class C</td>
<td>272</td>
<td>5.8%</td>
</tr>
<tr>
<td>Class D</td>
<td>641</td>
<td>13.7%</td>
</tr>
<tr>
<td>Class E</td>
<td>1,395</td>
<td>29.8%</td>
</tr>
<tr>
<td>Class F</td>
<td>688</td>
<td>14.7%</td>
</tr>
<tr>
<td>Class G</td>
<td>1,370</td>
<td>29.2%</td>
</tr>
<tr>
<td>Class H</td>
<td>214</td>
<td>4.6%</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>4,689</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>360 Mos</td>
</tr>
<tr>
<td>14</td>
<td>40 Mos</td>
</tr>
<tr>
<td>47</td>
<td>45 Mos</td>
</tr>
<tr>
<td>96</td>
<td>26 Mos</td>
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<td>147</td>
<td>23 Mos</td>
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<td>304</td>
<td>20 Mos</td>
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<tr>
<td>124</td>
<td>19 Mos</td>
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<tr>
<td>193</td>
<td>19 Mos</td>
</tr>
<tr>
<td>21</td>
<td>19 Mos</td>
</tr>
<tr>
<td><strong>947</strong></td>
<td><strong>23 Mos</strong></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th># to Jail</th>
<th>Avg. Sen. Len.</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>---</td>
</tr>
<tr>
<td>2</td>
<td>12 Mos</td>
</tr>
<tr>
<td>45</td>
<td>7 Mos</td>
</tr>
<tr>
<td>176</td>
<td>8 Mos</td>
</tr>
<tr>
<td>494</td>
<td>7 Mos</td>
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<tr>
<td>1,091</td>
<td>7 Mos</td>
</tr>
<tr>
<td>564</td>
<td>6 Mos</td>
</tr>
<tr>
<td>1,177</td>
<td>7 Mos</td>
</tr>
<tr>
<td>193</td>
<td>6 Mos</td>
</tr>
<tr>
<td><strong>3,742</strong></td>
<td><strong>7 Mos</strong></td>
</tr>
</tbody>
</table>

More than $100 Million Spent Annually Revoking Probation Compliance Violators to Prison and Jail

2012 Probation Compliance Violation Revocations

947 to Prison
Avg of 23 mos
= 1,815 Prison Beds at $98/day
Annual Cost of $64.9M

3,742 to Jail
Avg of 7 mos
= 2,183 Jail Beds at $45/day
Annual Cost of $35.9M

There has to be a better way to hold probation violators accountable.

Use of Jail as Response to Compliance Violations Is Critical in Reducing Both Violations and New Crime

• Prior slides illustrate what we know about the “final” sanctioning of probation violators.

• Reality is that “final” sanctioning is likely preceded by many compliance violations.

• Question becomes not how probation violators are ultimately sentenced, but when and how sanctions are used to respond to initial patterns of non-compliance.
Research Shows Effect of Swift and Certain Responses to Reduce Recidivism

**Georgia POM**
Enabling probation officers to employ administrative sanctions & probationers to waive violation hearings reduced jail time three-fold, reduced time spent in court, and increased swiftness of responses to violations.

**Hawaii HOPE**
Intensive, random drug testing with swift, certain, and brief jail sanctions.

Michigan Has Enacted the Swift and Sure Sanctions Act (2012 PA 616)

Probationers subject to close monitoring and prompt arrest with immediate sanctions following a violation

Funds ($6m for 2013) available: for assessments; drug-testing; substance abuse/mental health treatment; EM tether devices; contractual employees; law enforcement overtime; jail reimbursement.

But...

Voluntary - i.e., if local circuit court does not want it, this proven concept is not in place

Bottom Line: Until use of swift/certain sanctions becomes the norm, there will be limited accountability for probationers.
Victim Advocates Raise Concerns

**Restitution**
- Restitution must be ordered if crime causes harm to property or injury to victim
- Is restitution assessed at the correct amount in appropriate cases?
- What are restitution collection rates in Michigan?

**Sentencing**
- Three offense variables address degree of injury to victim or victim’s family
- Advocates indicate that interpretations of trauma are painful and inadequate
- Is there a more direct way to incorporate injury to the victim in sentencing process?

**Crime**
- Crime and arrests down since 2008, but violent crime and low clearance rates continue to plague specific areas
- Victim service providers and advocates still see a high need for their services and programs
- Are there enough resources for local law enforcement and victim services?
Michigan Is Firm on Restitution in the Constitution and Crime Victim’s Rights Act

Constitution 1963, art. 1, § 24 and William Van Regenmorter Crime Victim’s Rights Act (CVRA)

- Judge **must** order restitution equal to the victim’s loss if the crime causes harm to property or physical or psychological injury.
- Restitution is to be imposed regardless of ability to pay.
- Payments are required across probation, prison and parole.

*Collaboration to improve restitution collection is ongoing, across agencies and branches of government.*

“Offender compliance with restitution and support orders is a key measure of offender accountability and the performance of offender supervision agencies.”

M.C.L. § 780.766(3)(a)-(c); M.C.L. § 780.766(4)(a)-(e)
Scoring Victim Injury Requires Assigning Subjective Point Values

- **Offense Variable 3**: Physical Injury to a Victim
  - Score 0, 5, 10, 25, 50, or 100 points

- **Offense Variable 4**: Psychological Injury to a Victim
  - Score 0 or 10 points

- **Offense Variable 5**: Psychological Injury to Victim’s Family
  - Score 0 or 15

Victim advocates indicate that subjective, ‘point value’ interpretations of injury or trauma are painful and inadequate

Is there a more empowering way to incorporate injury to victims in the sentencing score and process?
High Levels of Reported Violent Crime in Detroit, Flint, Pontiac, and Saginaw

2011 Violent Index Crime Rate

- **State**: 358
- **Detroit**: 1,596
- **Flint**: 1,805
- **Pontiac**: 1,320
- **Saginaw**: 1,619
- **Rest of State**: 215

Note: Due to updates provided to MSP after initial reporting to FBI, the data available on MSP’s website differs from that reflecting MI in the FBI UCR.


US Violent Crime Rate for 2011: 386
Low Violent Crime Clearance Rates in Detroit, Flint, Pontiac, and Saginaw

*Clearance Rate*: the percent of reported crimes “cleared” by an arrest.

### 2011 Violent Index Crime Clearance Rates

<table>
<thead>
<tr>
<th>Location</th>
<th>Reported Crimes</th>
<th>Reported Arrests</th>
<th>Clearance Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michigan</td>
<td>39,247</td>
<td>12,520</td>
<td>32%</td>
</tr>
<tr>
<td>Detroit</td>
<td>14,153</td>
<td>2,809</td>
<td>20%</td>
</tr>
<tr>
<td>Flint</td>
<td>2,140</td>
<td>206</td>
<td>10%</td>
</tr>
<tr>
<td>Pontiac</td>
<td>889</td>
<td>226</td>
<td>25%</td>
</tr>
<tr>
<td>Saginaw</td>
<td>945</td>
<td>235</td>
<td>25%</td>
</tr>
<tr>
<td>Rest of State</td>
<td>21,120</td>
<td>9,044</td>
<td>43%</td>
</tr>
<tr>
<td>US</td>
<td>1,203,564</td>
<td>534,704</td>
<td>44%</td>
</tr>
</tbody>
</table>

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## Key Findings

### Disconnect between risk and supervision practices
- High-risk felons unsupervised after jail
- Lengthy probation for low-risk individuals
- Forced choice between incapacitation and supervision after prison

### High state and county expense for locking up compliance violators
- Lack of structured violation responses weakens accountability
- “Swift and Sure” sanctioning dependent on voluntary adoption

### Further Research
- Probation re-arrest rates
  - by PRV score
  - by risk level
- Re-arrest outcomes from disparate revocation responses
  - jail vs. prison
- Restitution collection rate

### Victim concerns with crime and sentencing
- OV scoring of trauma is painful and inadequate
- Crime in major cities causes fear and defeat
Overview of Presentation

Punishing Predictably & Proportionally

Holding Offenders Accountable

Reducing Criminal Behavior

• Crime by Offenders on Supervision
• Risk Assessment Adoption
One-Third of New Felony Offense Violators Are Felony Probationers

**2012 New Felony Offense Violators**
(Par/Prob/Pretrial and Pris/Jail)

13,837

- **15%**
  - 2,101 Defendants out on bond

- **32%**
  - 4,472 Felony probationers

- **19%**
  - 2,638 Misdemeanor probationers

- **18%**
  - 2,464 Parolees

- **16%**
  - 2,162 Other/Unknown

Less Funding Devoted for Probationers Despite Higher Population and Impact on New Felony Offenses

**FUNDING***
- **PROBATION PROGRAMS:** $28 Million
- **PRISON PROGRAMS:** $80 Million
- **PAROLE PROGRAMS:** $62 Million

**TARGET POPULATION**
- 47,000 Probationers
- 43,000 Inmates
- 18,000 Parolees

*FY 2013 Funding
**Approximations based on 2012 population data

**$142 M**
## Risk Assessment Adopted in DOC and Parole

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Used in MI?</td>
<td>Not Yet</td>
<td>Not Yet</td>
<td>Risk Yes/ Needs Not Yet</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Validation Status*</td>
<td>Awaiting Validation</td>
<td>Awaiting Validation</td>
<td>Awaiting Validation</td>
<td>Validated</td>
<td>Validated</td>
<td>Validated</td>
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*Risk assessment tools must be validated to test whether a low-risk group identified by the tool actually turns out to have a lower rate recidivism than the medium-risk and high-risk groups.*
Risk Assessment Is Working for Parole - Only 6% of Low Risk Parolees Are Revoked for New Offenses

Parole Exits in 2012
12,205

21% High Risk (2,615)
26% Medium Risk (3,205)
47% Low Risk (5,736)

Revocations as Percent of Total 2012 Parole Exits - by Risk Level

Reducing Criminal Behavior Requires Focusing on Risk, Need, and Responsivity

- **Traditional Approach**
  - Supervise everyone the same way
  - Assign programs that feel or seem effective
  - Deliver programs the same way to every offender

- **Michigan Today**
  - COMPAS RISK to Tailor Supervision
  - COMPAS NEEDS in Reentry Program Assignment
  - Unclear/Unknown

- **Evidence-Based Practices**
  - Assess risk of recidivism and focus supervision on the highest-risk offenders
  - Prioritize programs addressing the needs most associated with recidivism
  - Deliver programs based on offender learning style, motivation, and/or circumstances

Evidence-Based Practices

- COMPAS RISK to Tailor Supervision
- COMPAS NEEDS in Reentry Program Assignment
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Supervise everyone the same way
Assign programs that feel or seem effective
Deliver programs the same way to every offender

Assess risk of recidivism and focus supervision on the highest-risk offenders
Prioritize programs addressing the needs most associated with recidivism
Deliver programs based on offender learning style, motivation, and/or circumstances
Michigan Invests in Prison and Jail Diversion as well as Other Programs to Reduce Rates of Re-offense

- County Jail Reimbursement Program
- Community Corrections
- Specialty Courts
- Prisoner Reentry

Continued research to analyze program outcomes and impacts
**Summary – Reducing Criminal Behavior: Using Risk to Guide Practice Is the Key**

<table>
<thead>
<tr>
<th>Key Findings</th>
<th>Further Research</th>
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<tr>
<td>❑ Crime by offenders on supervision</td>
<td>➢ Further analysis of supervision and program spending</td>
</tr>
<tr>
<td>✓ Felony probationers generate a third of the new felony crime, yet relatively few program resources go to reduce criminal behavior among this populations</td>
<td>➢ Opportunities to improve supervision and reduce recidivism</td>
</tr>
<tr>
<td>❑ Successful use of risk assessment for parole supervision</td>
<td></td>
</tr>
<tr>
<td>✓ Parole outcomes improving and resources are fairly significant accounting for prison and parole programming</td>
<td></td>
</tr>
<tr>
<td>✓ Risk assessment is key, and adoption of EBP is still in practice</td>
<td></td>
</tr>
</tbody>
</table>
## Key Findings and Further Research

<table>
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<tr>
<td>Punishing Predictably &amp; Proportionally</td>
<td>❖ Opportunities for disparity built in&lt;br&gt;❖ Actual disparity emerges&lt;br&gt;❖ Creep upward in prison sentence length</td>
<td>❖ Patterns in parole decision making, by risk level, and impacts on length of stay</td>
</tr>
<tr>
<td>Holding Offenders Accountable</td>
<td>❖ Disconnect between risk and assigning supervision&lt;br&gt;❖ Uneven responses to violations&lt;br&gt;❖ Victim concerns with sentencing and crime</td>
<td>❖ Re-arrest rates, comparing to PRV levels and types of sentence imposed&lt;br&gt;❖ Restitution collection rate</td>
</tr>
<tr>
<td>Reducing Criminal Behavior</td>
<td>❖ Crime by offenders on supervision&lt;br&gt;❖ Successful use of risk for parole supervision</td>
<td>❖ Analysis of program funding and effectiveness in reducing criminal behavior</td>
</tr>
</tbody>
</table>
Project Timeline

MLRC Meeting #1 May  
MLRC Meeting #2 Jun  
MLRC Meeting #3 Sep  
MLRC Meeting #4 Dec  
MLRC Meeting #5 Jan  
Data Analysis 2014 Feb  
Stakeholder Engagement Mar
Thank You

Ellen Whelan-Wuest
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