Michigan Jail Reform Advisory Council

2022 Final Report to the Governor, Legislature, and Supreme Court

December 2022

Members of the Michigan Jail Reform Advisory Council

- **Chief Justice Bridget M. McCormack (Chair),** Michigan Supreme Court
- **Debi Cain,** Department of Health and Human Services
- **Sheriff Jerry L. Clayton, Sr.,** Washtenaw County Sheriff's Office
- **Hon. Prentis Edwards Jr.,** 3rd Circuit Court
- **Hon. Carrie Lynn Fuca,** 41B District Court
- **Barbara Hankey,** Oakland County Community Corrections
- **D.J. Hilson,** Muskegon County Prosecutor's Office
- **Capt. Dale Hinz**, Michigan State Police
- **Robyn Liddell**, Michigan Department of Attorney General
- **Representative Mike Mueller,** Michigan House of Representatives
- **Takura N. Nyamfukudza,** Chartier & Nyamfukudza, PLC
- **Commissioner Bill Peterson,** Alpena County Board of Commissioners
- **Dr. Vasilis K. Pozios,** Oakland Community Health Network and NorthCare Network
- **Chief William Riley, III,** Inkster Police Department
- **Senator Jim Runestad,** Michigan Senate
- **Senator Sylvia Santana,** Michigan Senate
- **Melissa Smiley,** Michigan Department of State
- **Director Heidi Washington,** Michigan Department of Corrections
- **Representative Tenisha Yancey,** Michigan House of Representatives

Table of Contents

Executive Summary

The Michigan Jail Reform Advisory Council is an advisory body made up of 19 members representing various stakeholders within the justice system. The council was tasked with facilitating, monitoring, and evaluating the successful implementation of jail reform legislation throughout Michigan.

Implementation of the 2020 Michigan Jail Reforms

The council, with the support of the State Court Administrative Office (SCAO), assisted in guiding various stakeholder partners and justice system entities on best practices for implementing the reforms. Guides and resources were distributed to courts, law enforcement, attorneys, and other stakeholders. The Michigan Department of Corrections' (MDOC) Office of Community Corrections established new pretrial standards for grantees and the Michigan Department of State (MDOS) made changes to over 340,000 driving records as a result of the new laws. Many stakeholders updated policies and procedures to comply with the new laws before the council's establishment. The council acknowledges this and is grateful for those efforts.

Training and Education

Training opportunities were provided to justice system partners throughout the state. The SCAO provided trainings for judges and court staff. Administrative leaders from law enforcement agencies provided training opportunities to both current and new officers. The MDOC provided resources, including FAQ sheets, and trainings to local community corrections offices. Attorney associations for both prosecuting attorneys and criminal defense attorneys provided trainings, distributed information electronically, and continue to provide communications as practice-related questions arise.

Stakeholder Surveys

With the assistance of the Prosecuting Attorneys Coordinating Council (PACC), Prosecuting Attorneys Association of Michigan (PAAM), the association of Criminal Defense Attorneys of Michigan (CDAM), and the Criminal Law Section of the State Bar of Michigan, the council distributed a survey to attorneys across the state. The survey explored the amount of training attorneys received on the reforms, their specific knowledge of the reforms, and their experiences practicing since the reforms took effect. The council had 280 respondents in total, comprised of prosecuting attorneys and criminal defense attorneys.

Measurable Outcomes and Data Challenges

The council analyzed limited data from various sources, including court data on non-serious misdemeanors from the SCAO, sentencing and probation data from the MDOC, and license suspension and revocation data from the MDOS. Due to a lack of centralized data and obstacles created by the COVID-19 pandemic, examining justice system data to definitively determine the effectiveness of the reforms was not possible. The council will defer to the findings of the Wayne State Center for Behavioral Health and Justice who is currently working to recreate the original data analysis that supported the work of the Michigan Joint Task Force on Jail and Pretrial Incarceration.

Recommendations

After evaluating the implementation efforts of the reforms and their impact, the council recommends the following:

1. Establish unified data and case management systems for courts and jails.
2. Further explore judicial officers and law enforcement's knowledge of reforms.
3. Provide additional training for judges, attorneys, and law enforcement.
4. Establish a new body to review and act on the findings of the Landscape 2.0 project.

Overview

Over the course of 40 years, Michigan's jail populations have nearly tripled.[1] The Michigan Joint Task Force on Jail and Pretrial Incarceration (the Task Force) was established via Executive Order 2019-10 to examine years of jail, court, and law enforcement data. The Task Force consulted with experts, reviewed various studies, received public testimony, and ultimately released their final report and policy recommendations in January of 2020. Many of the recommendations put forth by the Task Force came to fruition in January of 2021, when Gov. Gretchen Whitmer signed an expansive jail reform bill package into law. In April 2021, the Michigan Jail Reform Advisory Council (JRAC), was established by Executive Order 2021-5 to facilitate, assist with, monitor, and evaluate the successful implementation of the jail reform legislation throughout the State of Michigan. The council is an advisory body made up of 19 members of justice system stakeholders, is chaired by Chief Justice, Bridget McCormack, and is staffed by the State Court Administrative Office. Per Executive Order 2021-5, the council is charged with:

> *"Somewhere along the way, as Michigan's jails tripled in size, their purpose got muddled. They became a tool for debt collection. A tool for responding to homelessness, mental illness, and addiction. To address this problem, we have to sharpen our focus on public safety. At each point in our justice system—from issuing warrants, to making arrests, to deciding who should be released pending trial, and how those found guilty should be punished—our laws should focus police, judges, and other decision-makers on immediate safety threats rather than money, addiction, and nuisances."*
>
> - Dr. Sheryl Kubiak, Dean of the School of Social Work at Wayne State University – Detroit Free Press, May 2, 2020.

- providing information to criminal justice system professionals by drafting and distributing guides explaining the jail reform legislation and their corresponding effective dates.

- collaborating with and supporting local and state agencies with implementation strategies

- identifying training needs for government agencies, system stakeholders, and professional associations to comply with the law and provide support as needed, including subject matter expertise, presentations, and educational materials

[1] U.S. Department of Justice, Bureau of Justice Statistics, Census of Jails and annual Survey of Jails.

- coordinating with government agencies and departments to develop and implement necessary changes in forms, technology, and website information

- recommending reasonable timelines for government agencies and key justice system practitioner groups to report on steps taken to implement the statutory and budgetary changes

- providing feedback on implementation plans to support compliance and enhance the likelihood of full and timely implementation

- identifying data that can be reasonably collected or sampled to measure the outcomes of jail reform legislation and partner with key justice system practitioner groups to gather data

Over the past 20 months, the MJC has engaged stakeholders, examined data, facilitated surveys and assessed training needs surrounding the 2020 jail reforms. The council met in a virtual format and conducted 12 meetings over the course of its existence. Meetings were made publicly available via the Michigan Supreme Court's YouTube channel. Recordings for each meeting can be found at the links below.

- June 23, 2021
- July 30, 2021
- September 10, 2021
- October 15, 2021
- November 23, 2021
- January 6, 2022
- February 10, 2022
- March 18, 2022
- June 10, 2022
- September 9, 2022
- October 14, 2022
- December 2, 2022

Michigan's 2020 Jail Reform Package

In December of 2020, the Michigan Legislature passed an expansive jail reform bill package that was signed into law. The package aimed to expand alternatives to jail, safely reduce jail admissions and length of stay, and improve the efficiency and effectiveness of Michigan's justice systems. The following is a summary of those reforms that were signed into law by Gov. Gretchen Whitmer and became effective in 2021.

Appearance Tickets

Before the 2020 reforms, law enforcement officers were limited to utilizing appearance tickets for misdemeanor offenses that were punishable by 93 days or less in jail. The reforms expanded the use of appearance tickets and allows officers to issue them for misdemeanor offenses punishable by up to one year in jail. Certain offenses are excluded, and a presumption of an appearance ticket was created for other offenses. Appearance tickets allow eligible defendants to appear in court on their own recognizance rather than being arrested.

> 2020 PA 393; effective April 1, 2021
> Modifies procedures for and authority to issue appearance tickets in lieu of arrest in criminal cases.
>
> 2021 PA 39; effective July 1, 2021
> Exception to the presumption for issuance of appearance tickets in lieu of arrest in operating while intoxicated offenses.

Summons and Warrants

Historically, the use of summons and arrest warrants have largely been left to the discretion of judges. The reforms established clear guidelines for courts as to which scenarios call for the use of a summons or as opposed to immediately issuing an arrest warrant. Additionally, the reforms require courts to issue a summons or show cause order to allow defendants 48 hours to appear after missing a court hearing before issuing a bench warrant, under certain circumstances. This practice allows for law enforcement to spend less time arresting and booking on low-risk charges and makes them available to tend to more immediate threats to public safety.

2020 PA 394; effective April 1, 2021
Modifies procedures relating to the issuance of bench warrants for failure to appear and for other processes related to arrest warrants.

Judgment and Sentence

The reforms clarified that imprisonment in a county jail as no longer being considered an "intermediate sanction". The reforms also established a rebuttable presumption for courts to impose sentences of a fine, community service, or other non-jail or non-probation sentence for persons convicted of any misdemeanor that is not classified as a non-serious misdemeanor. The reforms allow courts to depart from the presumption if a finding of reasonable grounds to do so is articulated on the record.

2020 PA 395, effective date March 24, 2021 creates a rebuttable presumption for non-jail, non-probationary sentences in certain misdemeanor cases.

Holmes Youthful Trainee Act (HYTA)

The Holmes Youthful Trainee Act previously allowed certain offenses to be dismissed if the defendant successfully completed the requirements established by the court if the offense was committed before the defendant's 24th birthday. Under the reforms, the age in which a defendant is considered eligible for HYTA was extended prior to the defendant's 26th birthday.

2020 PA 396; effective date March 24, 2021
Amends age limit eligibility for, and certain procedures related to, youthful trainee status.

Probation and Parole

To ensure probation and parole are effective, the reforms require probation conditions to be tailored to address individual risks and needs; be designed to reduce recidivism; and be adjusted if appropriate. The reforms also reduced the maximum period of probation for specific felonies from five years to three years, while allowing for extensions when necessary. Additionally, the reforms established a new process and eligibility requirements for early discharge from probation. The court is now required to identify technical violations of probation and placed limits on the maximum jail sentence for those technical violations.

2020 PA 397; effective date April 1, 2021
Amends the maximum length of probationary sentences, certain procedures related to early discharge, and probation violations.

2020 PA 398; effective date March 24, 2021
Amendment requires conditions of parole be tailored to the offender.

Decriminalization & Civil Infractions

To reduce jail admissions, the reforms amended several sections of the Michigan Vehicle Code to reclassify certain traffic misdemeanors as civil infractions.

2020 PA 382; effective date October 1, 2021
Amends penalties for certain violations of the Michigan Vehicle Code.

Driver's License Suspensions

Before the reforms, driving with a suspended license was the third most common charge for jail admissions in Michigan. Additionally, driver's licenses could be suspended for criminal convictions not related to unsafe driving, failure to appear in court, and failure to pay or comply with a judgment. The reforms limit the circumstances under which a driver's license can be suspended and required the Secretary of State to reinstate those licenses that were previously suspended for ineligible reasons.

2020 PA 376, effective date October 1, 2021
Amends the suspension and revocation of driver license as a sanction for certain vehicle code violations.

2020 PA 377, effective date October 1, 2021
Eliminates the suspension of driver license for certain violations related to the consumption, sale, or purchase of alcoholic liquor.

2020 PA 378, effective date October 1, 2021
Updates reference to juror compensation reimbursement fund.

2020 PA 379, effective date October 1, 2021
Amends suspension of driver license for nonpayment of child support.

2020 PA 380, effective date October 1, 2021
Eliminates suspension and revocation of driver license as sanction for certain controlled substances offenses.

2020 PA 381, effective date October 1, 2021
Eliminates licensing sanctions for certain controlled substance offenses.

2020 PA 387, effective date October 1, 2021
Prohibits a denial to issue or renew driver license for failure to appear.

HCR 29
Concurrent resolution opposing the enactment and enforcement of a state law, under a federal mandate, that requires the suspension or revocation of a driver's license to an individual convicted of a drug offense.

Mandatory Jail Minimums

Mandatory minimum jail sentences were previously required upon conviction for certain criminal offenses. Under the reforms, certain mandatory jail requirements were eliminated and others became waivable in the Public Health Code, Michigan Vehicle Code, Revised School Code, National Resources and Environmental Protection Act, and the Railroad Code. While jail is no longer required for these offenses, jail sentences can still be imposed at the court's discretion.

2020 PA 375; effective date March 24, 2021
Eliminates mandatory minimum jail sentences for certain violations of the public health code.

2020 PA 383; effective date March 24, 2021
Eliminates mandatory minimum jail sentences for certain vehicle code violations.

2020 PA 384; effective date March 24, 2021
Eliminates mandatory minimum jail sentences for certain violations of the revised school code.

2020 PA 385; effective date March 24, 2021
Eliminates mandatory minimum jail sentences for certain violations of the natural resources and environmental protection act.

2020 PA 386; effective date March 24, 2021
Eliminates mandatory minimum jail sentences for certain violations of the railroad code of 1993.

Implementation of the 2020 Jail Reforms

The Michigan Jail Reform Advisory council met virtually throughout 2021 and 2022 to oversee the implementation of the 2020 jail reforms. The reforms are a comprehensive series of laws that span the entire justice system. The council engaged various justice system stakeholders and provided guidance and assistance in implementing the reforms. Since the council was not established until April of 2021, many stakeholders undertook significant efforts and preparations that contributed to the successful implementation of the reforms. The activities of the council, as well as the ongoing efforts of its justice system partners, are summarized below.

Michigan Supreme Court and SCAO

Implementation of the 2020 jail reforms impacted court operations in numerous ways. The Michigan Supreme Court published for comment amendments and additions to Chapter 6 of the Michigan Court Rules, in an effort to make the court rules consistent with the statutory changes that took place when the reforms became effective. After the comment period closed, the Michigan Supreme Court issued an Order on May 18, 2022 to adopt the proposed amendments of Rules 6.001, 6.003, 6.102, 6.106, 6.445, 6.615 and 6.933, and additions of Rules 6.105, 6.441 and 6.450 of the Michigan Court Rules. These amendments and additions became effective September 1, 2022.

The SCAO assisted in supporting both the Michigan Joint Task Force on Jail and Pretrial Incarceration and the Jail Reform Advisory Council. In February of 2021, the SCAO provided a comprehensive Legislative Analysis that identified and explained the impact of each reform on judicial operations. The SCAO also released a Guide to Michigan's 2020 Jail Reforms. The guide was offered as a resource to attorneys, corrections officers and law enforcement practitioners, advocates, and members of the public. The guide identifies the amended and enacted statutes with their effective dates and explains the difference between the new laws and previous laws.

In addition to resource materials, various communications—including updated court forms that reflect the changes brought on by the reforms—were issued by the SCAO. SCAO staff analyzed, updated, and published 25 court forms to ensure compliance with the reforms. Below is a list of the various court forms that were updated.

Form Number	Form	Effective Date	Action
MC 433	Order Following Probation Violation Hearing	4/1/2021	Added field for technical violation and number.
MC 245	Order for discharge in probation	4/1/2021	Split into two MC 245m and MC245o (motion and order for discharge from probation)
MC 243	Order of Probation	4/1/2021	Replaced CC 243a and DC 243
MC 512	Notice Regarding Eligibility for Early Discharge from Probation	4/1/2021	New form
CIA 02	Judgment Civil Infraction	10/1/2021	Revised Pursuant to 2020 PA3 87
CIA 03	14 Day Notice, Civil Infraction	10/1/2021	Revised Pursuant to 2020 PA3 87
CIA 03a	14 Day Notice Civil Infraction	10/1/2021	Revised Pursuant to 2020 PA3 87
CIA 07	Default Judgment	10/1/2021	Revised Pursuant to 2020 PA3 87
CC 236	Order Committing Juvenile to MDHHS	10/1/2021	Revised pursuant to 2020 PA 380
JC 14a	Order of Disposition, In-home (delinquency Proceedings)	10/1/2021	Revised pursuant to 2020 PA 380
JC 14b	Order of Disposition, Out-of-home (delinquency Proceedings)	10/1/2021	Revised pursuant to 2020 PA 380
JC 59	Order of Adjudication (delinquency proceedings)	10/1/2021	Revised pursuant to 2020 PA 380
JC 71	Judgment of Sentence/Commitment to Jail (designated case)	10/1/2021	Revised pursuant to 2020 PA 380
JC 72	Judgment of Sentence/Commitment to Department of Corrections (designated case)	10/1/2021	Revised pursuant to 2020 PA 380

JC 73	Order Delaying Sentence (designated case)	10/1/2021	Revised pursuant to 2020 PA 380
MC 210a	Affidavit for Restricted Driver's License	10/1/2021	Legal authority for form repealed with 2020 PA 380
MC 210o	Order for Restricted Driver's License	10/1/2021	Legal authority for form repealed with 2020 PA 380
MC 216	14-Day Notice of Noncompliance, Drinking/Operating Offense	10/1/2021	Revised pursuant to 2020 PA 387
MC 216a	Notice of Noncompliance, Drinking/Operating Offense	10/1/2021	Revised pursuant to 2020 PA 387
MC 219	Judgment of Sentence/Commitment to Jail	10/1/2021	Revised pursuant to 2020 PA 380
MC 242	Assignment to Youthful Trainee Status	10/1/2021	Revised pursuant to 2020 PA 387
MC 294	Order Delaying Sentence (designated case)	10/1/2021	Revised pursuant to 2020 PA 380
UC 01a	Uniform Law Citation	4/1/2021	Revised pursuant to 2020 PA 393, 2020 PA 394 and MCL 257.732(3)(i)
UC 01b	Uniform Law Citation	4/1/2021	Revised pursuant to 2020 PA 393, 2020 PA 394 and MCL 257.732(3)(i)
UC 02	Municipal Civil Infraction Notice of Violation	4/1/2021	Revised pursuant to 2020 PA 393, 2020 PA 394 and MCL 257.732(3)(i)
UC 03	Uniform Municipal Civil Infraction Notice of Violation	4/1/2021	Revised pursuant to 2020 PA 393, 2020 PA 394 and MCL 257.732(3)(i)
CLC 01	Commercial Law Citation	4/1/2021	Revised pursuant to 2020 PA 393, 2020 PA 394 and MCL 257.732(3)(i)
UC 01a	Uniform Law Citation	10/1/2021	Updated to include information required under 2020 PA 376 and 2020 PA 387

UC 01b	Uniform Law Citation	10/1/2021	Updated to include information required under 2020 PA 376 and 2020 PA 387
CLC 01	Commercial Law Citation	10/1/2021	Updated to include information required under 2020 PA 376 and 2020 PA 387

Figure 1

The SCAO continues to maintain a Jail and Pretrial Reform webpage, housed within the special initiatives sections of its website. The webpage contains information on both the Joint Task Force on Jail and Pretrial Incarceration as well as the Jail Reform Advisory Council, in addition to other resource material related to jail and pretrial reform.

Michigan Department of State

Implementation of the clean slate portion of the reforms (2020 PA 376-381, 2020 PA 387, and HRC 29) was a large undertaking for the MDOS. Under the leadership of Jocelyn Benson, the MDOS revised statewide operating procedures, and implemented new processes and practices to ensure compliance with the new reforms. The MDOS worked to lift suspensions from driver's licenses, notify those individuals who were impacted, and provide opportunities for access to those who required assistance. In addition to notifying impacted individuals, the MDOS continued to provide resources including a guide on the clean slate reforms as well as information on Road-to-Restoration clinics throughout the state.

From late 2021 through the end of 2022, the MDOS completed 18 Road to Restoration clinics in 11 cities: Alpena, Benton Harbor, Dearborn, Detroit (4), Flint, Grand Rapids (2), Lansing, Muskegon (2), Saginaw, Traverse City, and Ypsilanti. Over 4,300 residents registered to attend the various clinics directly on the MDOS website, or by calling 211 for assistance. Residents were also able to walk-in to the clinics during the day to receive assistance.

The clinics were coordinated in partnership with the Department of the Attorney General, and several non-profit organizations and corporate partners: DTE Energy and the DTE Foundation, Miller Canfield Law Firm—Detroit office, Detroit Justice Center, United Way of Michigan/211 and its local affiliates. In addition to recruiting attorneys, staffing clinics, and helping with promotions, partners provided person power and fiscal resources worth over $100,000 to support the effort.

During the second round of clinics from July through November 2022, various District Courts assisted with follow up questions or directly embedded their staff at the clinic to conduct one-on-on discussions with residents, receive payments, and schedule or hold hearings. The following courts participated: Berrien County trial court, 36th District for the city of Detroit, 54A District for the city of Lansing, 54B District for the city of East Lansing, 55th District for the city of Mason, 60th District for Muskegon County, 70th District for Saginaw County. Clinics are on going and will continue to assist residents going forward.

Michigan Department of Corrections

The changes brought on by the reforms largely impacted the day-to-day operations of the MDOC. Changes to the areas of sentencing, probation violations, probation/parole special conditions, early discharge recommendations, eligibility for HYTA status, and the processing of absconders required additional coordination between the MDOC and the courts. The MDOC's Field Operations Administration, which consists of 105 statewide parole and circuit court probation offices and the Michigan Parole Board, worked to revise statewide operating procedures to ensure compliance with the new reforms, as well as implemented a risk-based response grid for parole/probation agents to follow when responding to offender violations, making the responses to those violations individualized.

In addition to the administrative and operational changes put forth by the MDOC, the Office of Community Corrections revised the community corrections funding application to include clear pretrial metrics that aligned with the new laws and were consistent with the standards of the National Association of Pretrial Services Agencies. The State Community Corrections Board adopted a new set of statewide board priorities that includes the addition of pretrial as a target population.

Prosecuting Attorneys Association of Michigan

The PAAM worked with local and statewide partners to track the reforms as they progressed through the legislative process. PAAM was also able to provide input and feedback regarding the reforms and how they would affect the roles of prosecutors and law enforcement if signed into law. Once the reforms became effective the PAAM provided guidance to the numerous prosecutor offices throughout the state working through the changes brought on by the reforms.

Training and Education

Since the Michigan 2020 jail reform implementation took place, there have been multiple opportunities for training on the reforms offered by various justice system partners, including members of the Jail Reform Advisory Council. Trainings were developed for judges, court staff, attorneys, law enforcement and other stakeholder groups, most of which took place as the reforms went into effect. The training-related activities are summarized below.

Courts

The SCAO developed and delivered multiple training events and participated in various workgroups to prepare judges and court staff for the new reforms. Training was provided to district and circuit courts, which included judges, court staff, probation officers, magistrates, and court administrators. Below is a list of training sessions that were offered by the SCAO.

Type	Date	Association	Presentation Title
Webinar	3/18/2021	Michigan District Judges Association	Criminal Justice Reform: Implications of the 2020 Jail Task Force Legislation on Court Proceedings
Webinar	3/19/2021	Michigan Association of District Court Probation Officers	Criminal Justice Reform: Implications of the 2020 Jail Task Force Legislation on Court Proceedings
Webinar	3/22/2021	Michigan Judges Association	Criminal Justice Reform: Implications of the 2020 Jail Task Force Legislation on Court Proceedings
Presentation	5/6/2021	Michigan Supreme Court Judicial Conference	Criminal Justice Reform: A Continuing Conversation about the 2020 Jail Task Force Recommendations
Webinar	7/22/2021	Magistrate Specialty Webinar	Jails Task Force Legislative Reforms
Presentation	8/13/2021	Michigan District Judges Association Annual Conference	Jails Task Force Legislation

Presentation	9/23/2021	Michigan Association of District Court Magistrates Annual Conference	Jail Reform – October 1st, 2021, Implementation

Figure 2

Law Enforcement

Law enforcement training was essential to ensure the successful implementation of the new reforms. The Michigan State Police (MSP) provided various trainings to update troopers and motor carrier officers, which promoted policing in accordance with the reforms. The MSP also incorporated updates into their new recruit training program to include specific training on the reforms through the academy. Similar to the specific trainings offered by the MSP, law enforcement agencies at the local and county levels also implemented trainings and incorporated those educational components into their new officer training programs to ensure policing practices that are in compliance with the reforms.

Attorneys

Education for attorneys also has been vital to successful implementation. Attorney organizations—including local bar associations, prosecuting attorney associations, public defense associations, and private firms—conducted trainings and presented at conferences to increase knowledge around the new reforms. These educational opportunities addressed the effects the reforms have on the way attorneys practice law and how their clients are impacted.

The PAAM utilized various outreach strategies including statewide email and virtual platforms to provide training and guidance to local jurisdictions on issues related to prosecution practices. In addition to aiding prosecutors throughout the state, PAAM provided recorded trainings to local law enforcement to further assist with education of the reforms. PAAM continues to offer ongoing support to local prosecutor offices and law enforcement agencies throughout the state as they work through the impacts of the reforms.

Multiple attorney associations, including CDAM and the Ingham County Bar Association's Criminal Defense Law Section (ICBA-CLDS), provided training opportunities for attorneys to expand their knowledge of the reforms and the impact on the way attorneys try these cases. Presentations on the reforms were given at CDAM's annual summer conference in 2021, to the Criminal Advocacy Program in Wayne County, and to the State Appellate Defender

Office. ICBA-CDLS continues to provide regular, no-cost presentations on the reforms.

Michigan Department of Corrections

The MDOC provided education on the new reforms to staff through instructional memorandums including FAQ documents, an updated risk-based response grid, and the distribution of new forms. The Office of Community Corrections also provided several training opportunities related to pretrial practices to local community corrections agencies and advisory board members. Training included discussions of national pretrial service standards, the Eight Evidence Based Principles, and the establishment and use of key performance measurements. Trainings offered by the Office of Community Corrections were facilitated by experts from the National Association of Pretrial Service Agencies, including experts from Michigan.

Public Comments

The Michigan Jail Reform Advisory Council holds all council meetings via Zoom and posts recordings on the SCAO's website as well as the Michigan Supreme Court YouTube page. The council released its 2021 Annual Report in January of 2022, which discussed the council's progress with implementation of the 2020 Michigan Jail Reforms and outlined the council's next steps.

The council received written public comments and oral testimony at the meeting held on February 10, 2022. The council received 68 written comments and had five members of the public provide oral testimony to the council.

Of the 68 written comments received, 37 of the comments discussed voting rights for individuals housed in county jails, 14 expressed their support for the passing of House Bills 5436-5443 of 2022 that addressed pretrial reform, and four cited the need for jail alternatives and additional mental health programs. The council also received comments on the specific progress regarding implementation of the 2020 Michigan Jail Reforms, data collection and the need for standardization, and the need for trial court funding by the state. In addition to the formal public comment process, council members received stakeholder feedback through informal discussions with various entities, which were summarized for council meetings.

Stakeholder Surveys

In October of 2022, the council surveyed prosecuting attorneys and defense attorneys across the state to ascertain their knowledge of the 2020 Michigan Jail Reforms and their experiences since the reforms took effect. The council established a subcommittee to develop and distribute the survey. The survey was distributed with the assistance of the Prosecuting Attorneys Coordinating Council, Prosecuting Attorneys Association of Michigan, the association of Criminal Defense Attorneys of Michigan, and the Criminal Law Section of the State Bar of Michigan.

The council received 280 responses which included 105 responses from prosecuting attorneys, 168 criminal defense attorneys, one individual identified as other (unspecified), and six who did not identify their role. The survey included questions on training, specific practical knowledge of the reforms, and attorney's experiences and observations in courtrooms. Similarities in responses between prosecuting attorneys and defense attorneys were noted among questions around training opportunities and

specific knowledge of the reforms. Notably, differences in responses from prosecuting attorneys and defense attorneys emerged regarding questions that explored courtroom observations.

Of the 280 respondents, 221 indicated that they had not received any specific training on the reforms. Of those who indicated they had received training, 67 percent indicated that the training they received occurred nine months ago or more. Those numbers suggest there should be further consideration about trainings on the reforms. The survey also measured respondent interest in attending future trainings on the reforms. Approximately 78 percent of respondents indicated that they were likely to attend additional trainings on the reforms if offered.

How likely are you to attend any additional trainings on the 2020 Jail Reforms if offered?

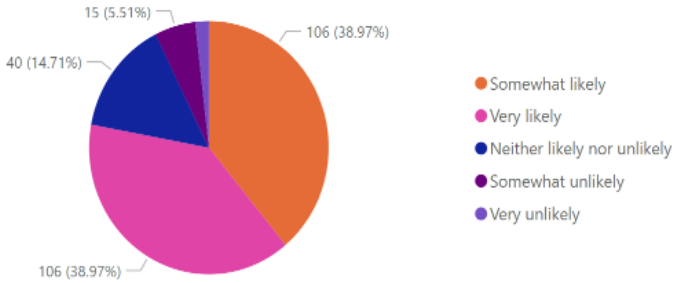


Figure 3

Multiple questions in the survey tested the respondent's specific knowledge of the reforms. The correct response rate for these questions varied from 79 percent to 98 percent. While these results were unexpected given the low percentage of respondents who received training, there is still room for improvement and additional training may have some positive effects.

Additionally, the survey explored attorney's experiences in courtrooms since the reforms became effective. Multiple questions asked about sentencing practices and probation violations. Upon review of the survey responses, some notable differences were observed when examining whether the respondents identified as a prosecuting attorney or defense attorney. Below is a depiction of those results in their entirety as well as broken down based on the respondent's role.

Based on your experiences, during the last two months how frequently are judges stating on the record why they are departing from non-jail, non-probation sentences when sentencing individuals to jail or probation on non-serious misdemeanor charges?

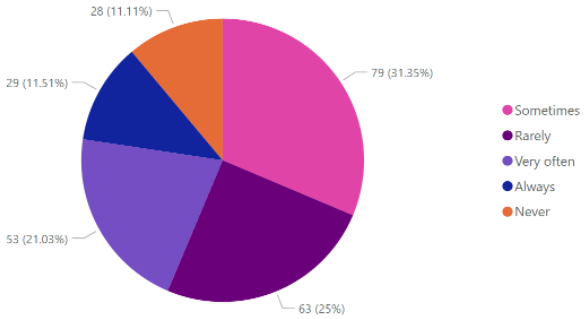


Figure 4

Fifty-six percent of respondents indicated judges "rarely" or "sometimes" state on the record why they are departing from a non-jail, non-probation sentence for non-serious misdemeanors. At first glance it appears that there is a lack of consistency and that this practice is not happening on a regular basis throughout the judiciary. When responses are separated by role, those rate in which those practices are taking place shifts drastically.

Prosecuting Attorney's Responses

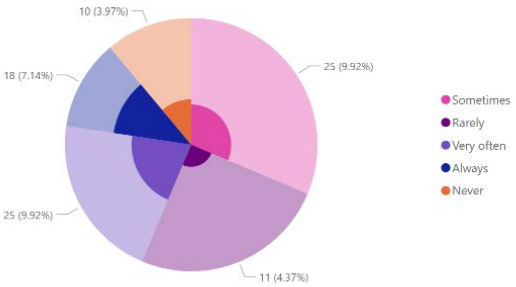


Figure 5

Defense Attorney Responses

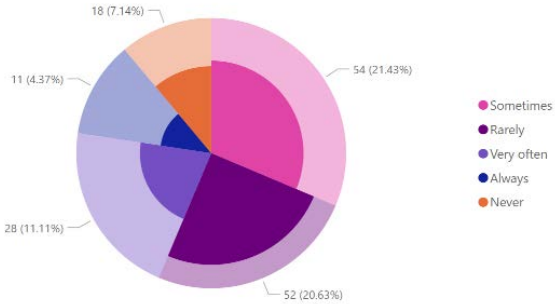


Figure 6

** Percentages reflect the percent of total responses received for each respondent type.*

Prosecuting attorneys reported that judges are adhering to those sentencing requirements more frequently than what defense attorneys are reporting. Only 4.3 percent of prosecuting attorney respondents indicate a judge "rarely" state on the record why they are departing from a non-jail, non-probation sentence for non-serious misdemeanors, compared to 20.6 percent of defense attorney respondents. There are multiple factors to consider when examining these results, including the courts in which attorneys are observing these practices. Specifically, the courts referenced in the responses of prosecuting attorneys may not be the same courts on

which defense attorneys recorded their experiences. For example, in a small county the prosecuting attorney may only appear before one or two judges. In contrast, defense attorneys often practice in multiple counties and observe sentencing practices before numerous judges. Those same considerations could account for similar discrepancies in the proceeding questions as well. In addition to the adherence of non-jail, non-probation sentencing practices for non-serious misdemeanors, respondents were asked to record their observations on adherence to the new guidelines outlined in the reforms around technical probation violations.

Similar to the previous questions, adherence to the new guidelines outlined in the reforms regarding advisement of technical violations, differs as observed by prosecuting attorneys and defense attorneys. As indicated in the table to the right, the most frequently selected response was *Sometimes,* accounting for 26% of total responses. When looking at the difference in responses selected based on the respondent's role, those numbers change dramatically.

MCR 6.445(B) which took effect September 1, 2021, states at the arraignment on an alleged probation violation, the court must inform the probationer whether the alleged violation is charged as a technical or non-technical violation. Based on your experiences during the last two months, how frequently are judges advising defendants to which and how many of their probation violations are "technical"?

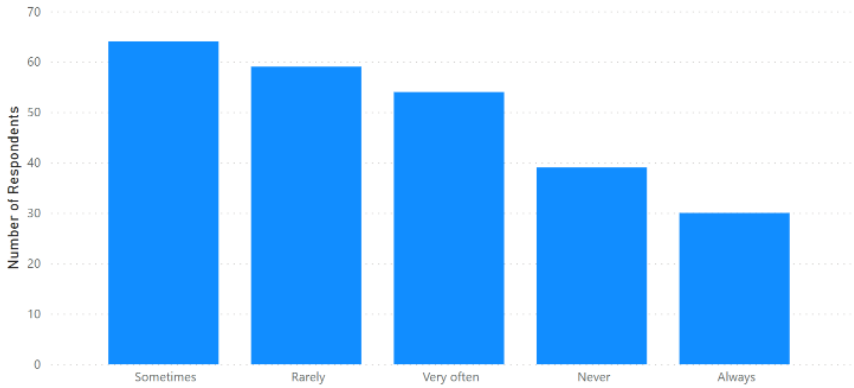


Figure 7

Prosecuting Attorney's Responses

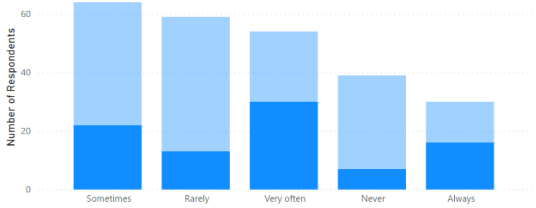


Figure 8

Defense Attorney's Responses

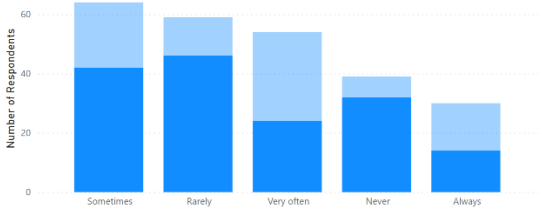


Figure 9

Again, there is an obvious distinction between the way prosecuting attorneys and defense attorneys responded when asked about their observations on advisement of technical violations. The most frequently selected response by prosecuting attorneys was *Very Often,* accounting for 34 percent of responses received. Prosecuting attorney responses appear to indicate that this practice is adhered to on a somewhat regular basis. In contrast, the most frequently selected response by defense attorneys was *Rarely,* accounting for 2 of 9 percent responses received. Defense attorney responses suggest that adherence to this practice is not happening as frequently as indicated by the responses of prosecuting attorneys.

While taking into account the considerations discussed above, another factor to consider when examining the responses to this question specifically is the frequency in which prosecuting attorneys are present for violation hearings. When probation hearings take place at the district court level, it is not unusual for prosecuting attorneys not to be present unless it is a contested violation hearing. The number of violation hearings on which the respondents are basing their responses could provide a reasonable explanation for the difference in response rates. When asked to record their observations of adherence to advising defendants at sentencing of their eligibility and the requirements for early discharge from probation responses between prosecuting and defense attorneys are more consistent.

Based on your experiences, during the last two months how frequently are judges advising defendants at sentencing of their eligibility and the requirements for early discharge from probation under MCL 771.2?

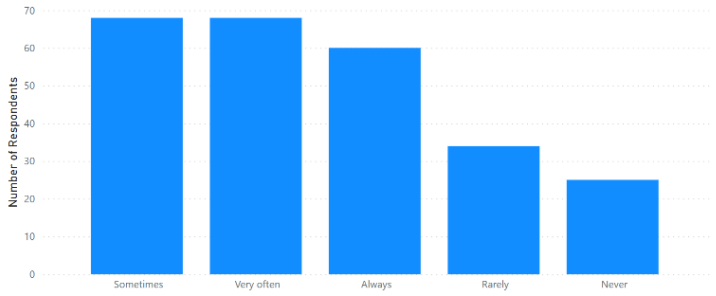


Figure 10

From a compliance standpoint, the responses to this question trend in a positive direction. The two most frequently received responses were *Sometimes* and *Very Often*, accounting for 27 percent of total responses each, and *Always* accounting for 24 percent of total responses. When examining the prosecuting attorney and defense attorney responses there are slight differences, but those differences are not as drastic as those identified in previous questions.

Prosecuting Attorney's Responses

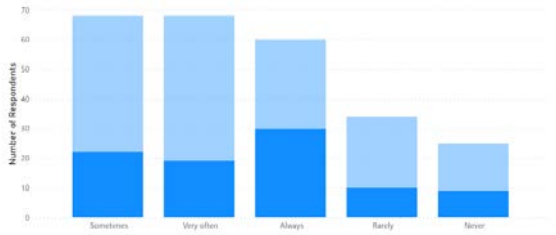


Figure 11

Defense Attorney's Responses

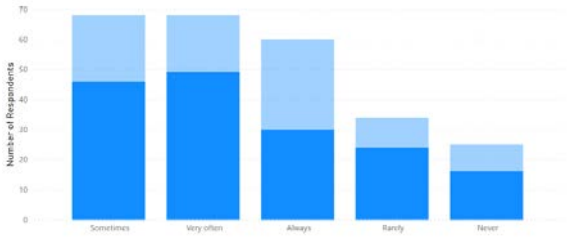


Figure 12

As indicated in the Figure 12 above, the most frequently selected response by prosecuting attorneys was *Always,* accounting for 33 percent of prosecuting attorney responses. The most frequently selected response by defense attorneys was *Very Often,* accounting for 30 percent of responses received by defense attorneys. Respondents from both groups the least selected responses were *Rarely* and *Never.* This indicates that adherence to the practice of advising defendants at sentencing of their eligibility and the requirements for early discharge from probation is happening more consistently than some of the other practices identified in previous questions.

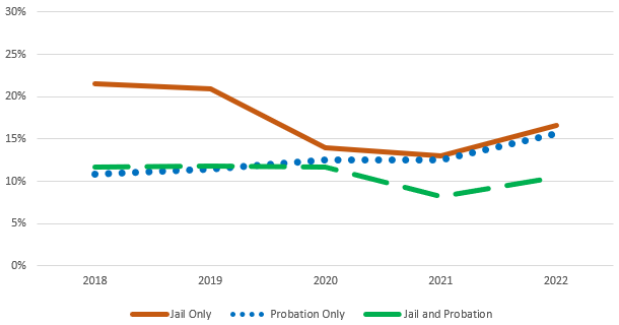
The council's distribution of the survey was intended to examine the knowledge practicing attorneys have on the jail reforms, and the ability to apply that knowledge to how they practice. The survey results seem to suggest that attorneys do have at least a very basic understanding of the reforms. However, the results of the survey also indicate a clear desire for more training around the reforms to be made available, as well as the need for additional feedback in both qualitative and quantitative forms to further understand the full impact that reforms have had.

Measurable Outcomes and Data Challenges

One of the major objectives of the Jail Reform Advisory Council was to assess the impact of the jail reforms through data. Obtaining data for the council to assess was a challenge due to the lack of centralized data and complications further complications brought on by the COVID-19 pandemic. However, the council was able to obtain data from the Judicial Data Warehouse (JDW), MDOC, and MDOS to attempt to provide a limited analysis on the effectiveness of the reforms.

Misdemeanor Offenses

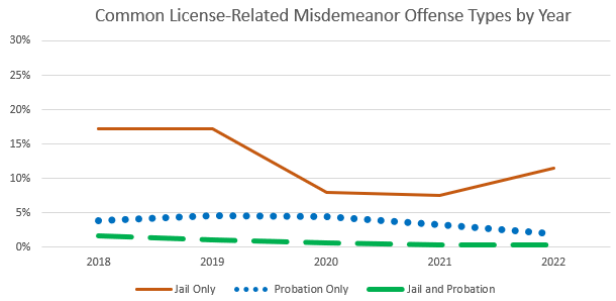
The council, with the support of the SCAO Statistical Research Division, was able to utilize court data provided by the JDW to examine overall trends of non-serious misdemeanant sentence types from 2018 to 2022. The data showed that from 2018 to 2021 jail only sentences for non-serious misdemeanants steadily decreased over time, while probation only sentences showed a slight increase during that time frame. In 2022 however, there was an increase in both jail only and probation only sentences for non-serious misdemeanants. Jail and probation combined sentences appeared to show no real change in frequency from 2018 to 2020, but drastically decreased in 2021 and began to increase again in 2022.



Year During 4/1–9/30	Jail Only Sentence	Probation Only Sentence	Jail and Probation Sentence
2018	21.5%	10.9%	11.7%
2019	20.9%	11.4%	11.8%
2020	14.0%	12.5%	11.7%
2021	13.0%	12.5%	8.2%
2022	16.6%	15.7%	10.5%

Figure 13 Captures trends over time for sentencing types of non-serious misdemeanants from 2018 to 2022.

While the decrease in jail-only sentences appear to suggest that implementation of the reforms has contributed to a decrease in the frequency in which non-serious misdemeanants are being sentenced to jail, the effects the COVID-19 pandemic on lodging practices have to be considered as well. The SCAO was able to conduct additional analysis on non-serious misdemeanant sentences to look at those sentences based on a range of different factors.



Year During 4/1–9/30	Jail Only Sentence	Probation Only Sentence	Jail and Probation Sentence
2018	17.2%	3.8%	1.7%
2019	17.2%	4.6%	1.0%
2020	8.0%	4.4%	0.6%
2021	7.6%	3.2%	0.3%
2022	11.5%	2.0%	0.4%

Figure 14 captures trends over time for sentencing types of license-related, non-serious misdemeanants from 2018 to 2022.

When looking at common license-related non-serious misdemeanor cases, the most common offenses were

- operating without a license on person;
- operating while license suspended, revoked, or denied;
- having no license or multiple licenses;
- owner permitting another to violate the motor vehicle code; and
- license plate – unlawful use.

The data showed a dramatic decline in jail only sentences in 2020 and 2021 and in increase in 2022, which is consistent with the overall sentencing trends. In 2022, probation only sentences for that same population decreased to their lowest point from 2018 to 2022, which seems to indicate that the reforms have helped reduce the use of probation sentences for license-related, non-serious misdemeanants. Jail and probation combined sentences for license-related, non-serious misdemeanants showed a slight decrease from 2018 to 2022. Again, while that data suggests a successful impact of the reforms, the effects of the COVID-19 pandemic on lodging practices have to be considered as well.

While overall trends in the data appear to show some indication of success of the reforms, limited data available and possible effects of the COVID-19 pandemic make it difficult to make a clear causation. One particular challenge with examining court data is the lack of district court probation data. While the JDW houses sentencing data, there are no data reporting requirements for probation data. Therefore, there is no data set that will allow the council to examine early discharge from probation as it relates to misdemeanors. Future examination of trends of the available data will help to distinguish between impacts of the reforms in contrast to those of pandemic related practices.

Felony Offenses

In addition to misdemeanor court data, the council examined felony probation data provided by the MDOC. Preliminary data analysis indicated lengths of felony probation sentences were on the decline prior to April of 2021 when 2020 PA 397 took effect. In 2019, the average length of a felony probation sentence in Michigan was 1.8 years. By March of 2021 that number decreased to 1.7 years. Updated data provided by the MDOC showed that while the number of felony cases being sentenced to probation increased dramatically from April of 2020 to August of 2022, the length of felony of probation sentences continued to decrease steadily, with an average length of 1.6 years. Trends in both the preliminary and updated data for felony probation sentences suggest that the tailored probation terms required by the reforms may result in a continued reduction in the length of felony probation sentences over time.

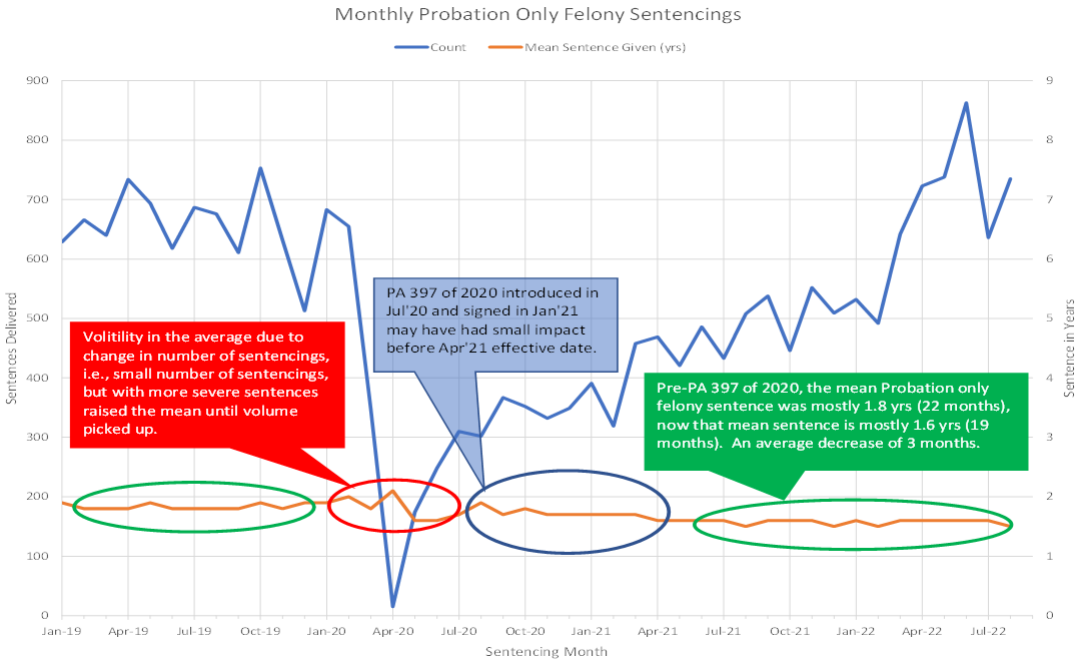


Figure 15 Captures the volume of felony cases sentenced to probation from 2019 through 2022, and the average length of felony probation sentences in years from 2019 to 2022.

In addition to felony probation sentence lengths, the MDOC provided the council with trend data on the frequency of early discharge from probation. The data showed in 2019, before the reforms took effect, the number of early probation discharges ranged between 40 and 80 per month. Discharges and early terminations increased between the months of April and August of 2021 to ranging between 60 and 100 discharges per month. Updated data from the MDOC indicated that the number of early probation

discharges continued to increase between August of 2021 and October of 2022, with the average ranging anywhere from 60 to 120 early probation discharges per month. While this data suggests that implementation of 2020 PA 397 has had a positive impact on the number of early discharges from probation, it is too early to determine if shorter probation only sentences will impact probation discharges as the data still includes some longer sentences that were imposed prior to 2020 PA 397 taking effect.

Clean Slate Reforms and Driver's License Sanctions

The MDOS has completed three separate data analyses since implementation of the clean slate laws, which analyzed how many drivers were affected by the clean slate laws and to what degree. Preliminary data showed after two rounds of review by staff at the MDOS, changes were made to the driving records of a total of 348,893 Michigan residents. After those changes were made a total of 154,326 Michigan residents were eligible to hold a driver's license and an additional 194,567 residents remained ineligible to hold a valid driver's license due to other infractions still on their records as of January 2022.

In total, the following actions were taken by MDOS in accordance with the clean slate reforms in October of 2021:

744,814 Failure to Appear in Court (FAC) suspensions ceased.
703,566 Failure to Comply with Judgment (FCJ) suspensions ceased.
10,124 FCPV/FCDV (Parking Holds) cleared.
57,172 Controlled Substance (drug crime) sanctions cleared.
5,531 Minor in Possession (MIP) sanctions cleared.
9,459 Converted/Other sanctions cleared.

Updated data provided by MDOS gives a clearer picture of the full impact of the clean slate reforms. As of September 30, 2021, one day prior to the clean slate reforms becoming effective, 323,812, Michigan drivers had an active sanction (suspension or revocation) that prevented them from obtaining a license. As of September 30, 2022, one year later, that number has decreased by roughly 51%, leaving only 158,088 drivers with a suspension or revocation as depicted by the figures below.

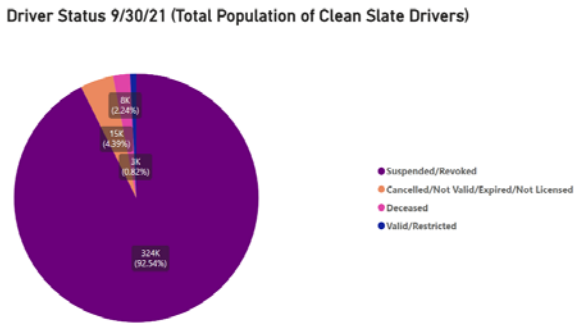


Figure 16 Captures the driving status of the total clean slate population on 9/30/2021, the day prior to implementation.

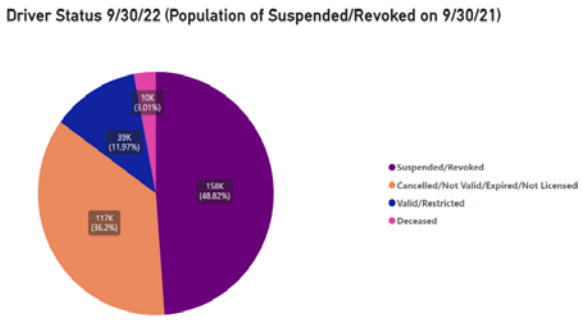


Figure 17 Focuses on the 93% (212,812) of drivers that had suspended or revoked driving privileges on 9/30/2021. After one year 12% (38,762) of population have secured driving privileges, with 36% (117,205) of drivers moving to a status of cancelled/not valid/expired/not licensed.

Appearance Tickets

For law enforcement determining what impact, if any, 2020 PA 393 had on the number of appearance tickets issued by law enforcement officers has been a challenge. Current data reporting systems make it difficult to track how many individuals were issued appearance tickets in lieu of being lodged in jail, as there is no centralized data system for the almost 600 different jurisdictions throughout the state. In addition to the impacts of 2020 PA 393, looking at jail populations and whether those numbers have declined has been a challenge due to a lack of centralized jail data. Each county jail is responsible for maintaining their own data, they do not all utilize the same data systems, and they don't track the same information. This makes it difficult to not only access the data, but also it poses obstacles for analysis. The COVID-19 pandemic further complicated efforts to evaluate reform impacts due to lodging restrictions that were put in place in the county jails when the pandemic started.

With the limitations the encountered, the council has determined that the best way forward would be to recreate the same data pull that was done by the PEW Charitable Trusts, in the original Jail's Landscape project (Joint Taskforce on Jail and Pretrial Incarceration). Wayne State University's Center for Behavioral Health and Justice (CBHJ) along with various partners will be recreating that study. However, the CBHJ does not expect to complete their research and have a full analysis and report on their findings until July 2023.

Recommendations

The Jail Reform Advisory Council arrived at four recommendations to continue the ongoing efforts to reduce Michigan's jail populations and examine the effectiveness of the 2020 Michigan Jail Reforms.

Recommendation 1: Unified Data and Case Management Systems

The State of Michigan should establish a centralized data repository for all county jails and law enforcement agencies to make uniform data more accessible. There are 88 jails in Michigan. Each is responsible for maintaining their own data and don't necessarily collect the same data. There currently is no centralized data system or standard definitions that require jail reporting, making it difficult to collect and analyze statewide data sets such as average daily population and the percentage of inmates that are pretrial versus sentenced. By implementing a statewide repository for all county jails, data would be uniform and easily accessible for further research and decision-making purposes. Statewide data could be utilized to compare Michigan jail populations with similar states who did not implement jail reform during the pandemic. This would allow for further analysis to determine effects on the jail populations due to COVID-19 versus effects on jail populations due to reform implementation.

In addition to centralized jail data, the state should support and continue to fund all technology needs for courts including case management and document management systems. This should include support and training for court staff. Having training and support for court staff will ensure consistent data entry practices, in turn making the data provided by courts more uniform. Continuing to work toward a unified court system with uniform court data will provide further opportunity to expand the amount of data available within the JDW as well as make it more accessible.

Recommendation 2: Further Explore Knowledge on the Reforms for Judicial Officers and Law Enforcement

The surveys distributed to attorneys were intended to measure training and knowledge on the reforms, as well as what attorneys have been experiencing when trying cases since the reforms became effective. One of the unintended results of those surveys were the candid comments received by the council from attorneys on their experiences in courtrooms since the reforms became effective. The council received varying responses regarding whether judges are adhering to new sentencing guidelines and whether they are deviating from non-jail, non-probation sentences for non-serious misdemeanors. Responses regarding practices around probation length and

eligibility for early termination from probation also varied. By distributing similar surveys to trial court judges, additional information could be examined on how knowledgeable judges are on the changes that took place when the reforms became effective. This would help determine whether or not judges are adhering to the new guidelines and requirements established by the reforms. A survey also would allow judges to provide feedback on the implementation of the reforms and what they are experiencing as a result.

In addition to surveying judges for additional feedback, the perspective of law enforcement should be considered as well. By surveying law enforcement, data regarding the reach of prior trainings, compliance with the reforms, and post-reform experiences would be available. The 2020 Jail Reforms and COVID-19 both had a large impact on law enforcement practices. Those impacts reached officers on the road and in the community, as well as officers working in the county jails. By surveying law enforcement, there would be an additional opportunity to not only look at quantitative data on jail populations, but also qualitative data on the impacts of the reforms for law enforcement. Collecting and understanding responses from law enforcement surveys, would provide an opportunity to bridge gaps between stakeholders as well as further understand the impacts of COVID-19 versus the reforms have had on jail populations.

Recommendation 3: Additional and Ongoing Training

While many efforts have been made by both the State Court Administrative Office and various attorney organizations to provide training on the reforms, additional training on the reforms should be made mandatory for judges and attorneys o to ensure compliance. The responses received in the surveys by the council indicate that not all attorneys received training on the reforms and not all attorneys are as knowledgeable on the changes brought on by the reforms as needed to provide effective assistance to their clients. Surveys also indicated that many attorneys were interested in participating in additional training opportunities, whether they had already received training or not. Trainings for attorneys should be provided by the State Bar and its various entities and should be provided on an ongoing basis to both seasoned and new attorneys.

In addition to understanding attorney knowledge of the reforms, survey responses received indicated some discrepancy in sentencing practices as they relate to the reforms and whether judges are in compliance with the reforms. The State Court Administrative Office in conjunction with the Michigan Judicial Institute should provide mandatory training for all judges on the reforms to ensure understanding of the reforms and the impact on judicial sentencing practices.

Recommendation 4: Establish an Additional Body to Review and Act on the Findings and Recommendations of the Landscape 2.0 Project

A lack of uniform and centralized data and the challenges brought on by the COVID-19 pandemic prevented the council from being able to access enough data to fully assess the effectiveness of the reforms.

The Center for Behavioral Health and Justice is currently working with various partners to examine the same data set that was looked at by the Michigan Joint Task Force on Jail and Pretrial Incarceration that resulted in the recommendation of the reforms being signed into law. The council has determined that examining the same data would be the best way forward for determining compliance with the reforms, and whether the reforms impacted Michigan's jail populations.

This council is set to dissolve no later than March 31, 2023, however the Center for Behavioral Health and Justice will not have completed the project by that time. Therefore, it is recommended that an additional body be established to carry on this work, upon completion of the Landscape 2.0 project.

Establishing an additional body upon the completion of the Landscape 2.0 project to review the existing data and findings from the Center for Behavioral Health and Justice, as well as examine data on appeals filed since the reforms became effective, will allow for a more accurate analysis and effective decision making. This new body will be better able to assess the impact of the reforms, as well as recommend additional policies and actions needed to further reduce jail populations, including the possibility of establishing support for expedited appeals on decisions that are time sensitive. This council by Executive Order 2021-5 is set to dissolve no later than March 31, 2023, however the Center for Behavioral Health and Justice will not have completed the project by that time. Therefore, it is recommended that an additional body be established to carry on this work, upon completion of the Landscape 2.0 project.

Attachments

Michigan Supreme Court
State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
Phone (517) 373-2222

Laura Hutzel
Statistical Research Director

M E M O R A N D U M

DATE: November 23, 2022

TO: Jail Reform Advisory Committee
Ryan Gamby, Field Services Director

FROM: Dian Gonyea, Statistical Research Analyst

RE: Non-Serious Misdemeanant Sentence Types – 2018 to 2022 – Updated

---

This revised and updated report on sentencing types for non-serious misdemeanor offenses replaces and extends the previous report distributed May 25, 2021. The evaluation in 2021 excluded certain non-serious misdemeanor PACC codes, which should be included for accuracy. This report contains updates to 2018-2021 data and new 2022 data, which provides a more comprehensive look at the rates at which Michigan courts are sentencing non-serious misdemeanants to probation, jail, or jail and probation.

The overall trends from 2018 to 2021 continue to show decreased use of jail for non-serious misdemeanants. However, in 2022, the use of jail, probation, or a combination of jail and probation increased. For common license-related offenses, sentences involving jail increased, but sentences for probation alone did not.

Methodology for Sentencing Assessments

Data were pulled from the Judicial Data Warehouse[1] (JDW) on misdemeanor cases disposed from April 1 through September 30 in 2018, 2019, 2020, 2021, and most recently 2022. Cases that resulted in a conviction were included. PACC codes were used to identify and remove serious misdemeanors, as defined by MCL 780.811, from the analyses[2]. The data set included case level sentencing type, specifically jail, probation, or a combined jail/probation

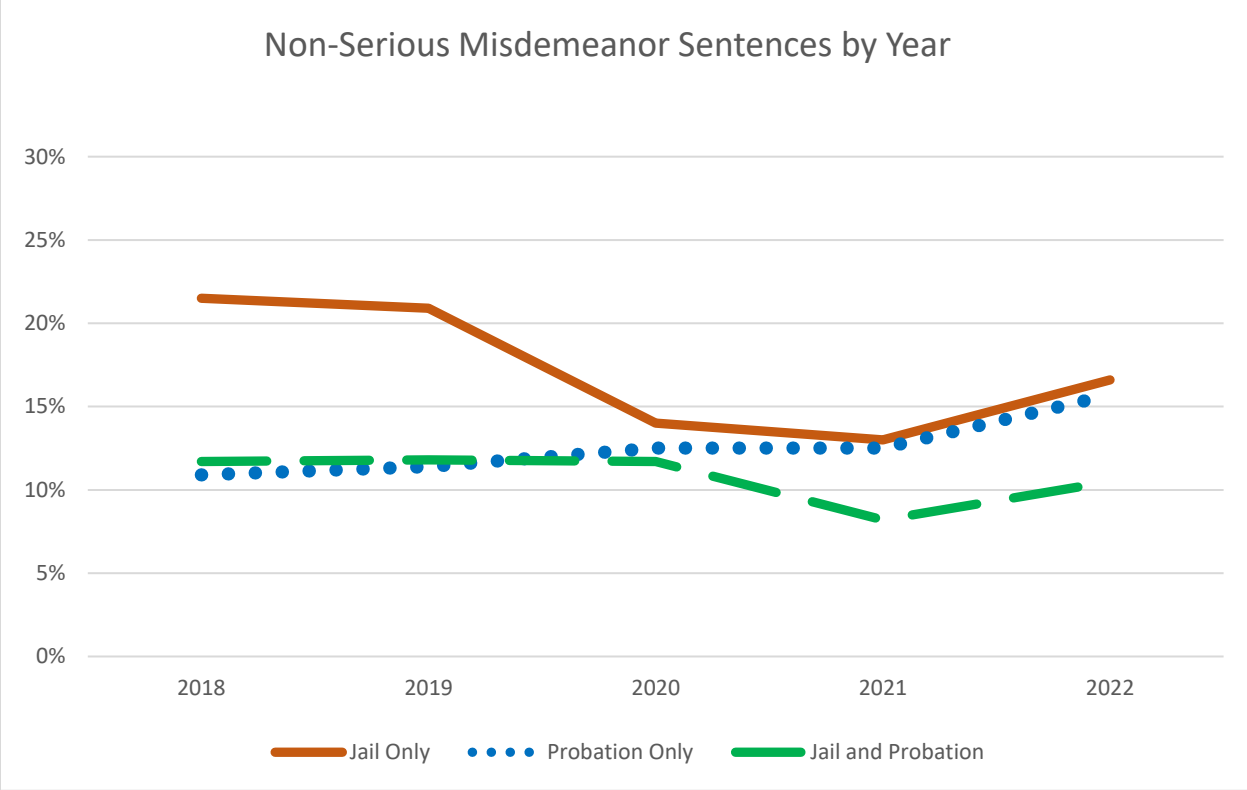
[1] The majority of district courts submit data to the Judicial Data Warehouse (JDW). The 5th District Court (Berrien County) and 61st District Court (Grand Rapids) are not included in the JDW.

[2] SCAO also reviewed local offense codes to identify other non-serious misdemeanor charges, but without definitive descriptions of the local offenses, these charges could not be included.

sentence. Those not sentenced to jail, probation or the combined, were sentenced to fines or community service.

Findings

From 2018 to 2021, there was a steady decrease in the percentage of non-serious misdemeanor cases sentenced to jail. Specifically, the percentage of cases receiving a jail only sentence decreased from 21.5% in 2018 to 13.0% in 2021. In 2022, however, the percentage rose to 16.6%. Probation only sentences increased from 10.9% in 2018 to 15.7% in 2022, while jail and probation combined sentences were steady from 2018 to 2020. In 2021, these types of sentencings decreased to 8.2% and rose again in 2022 to 10.5%

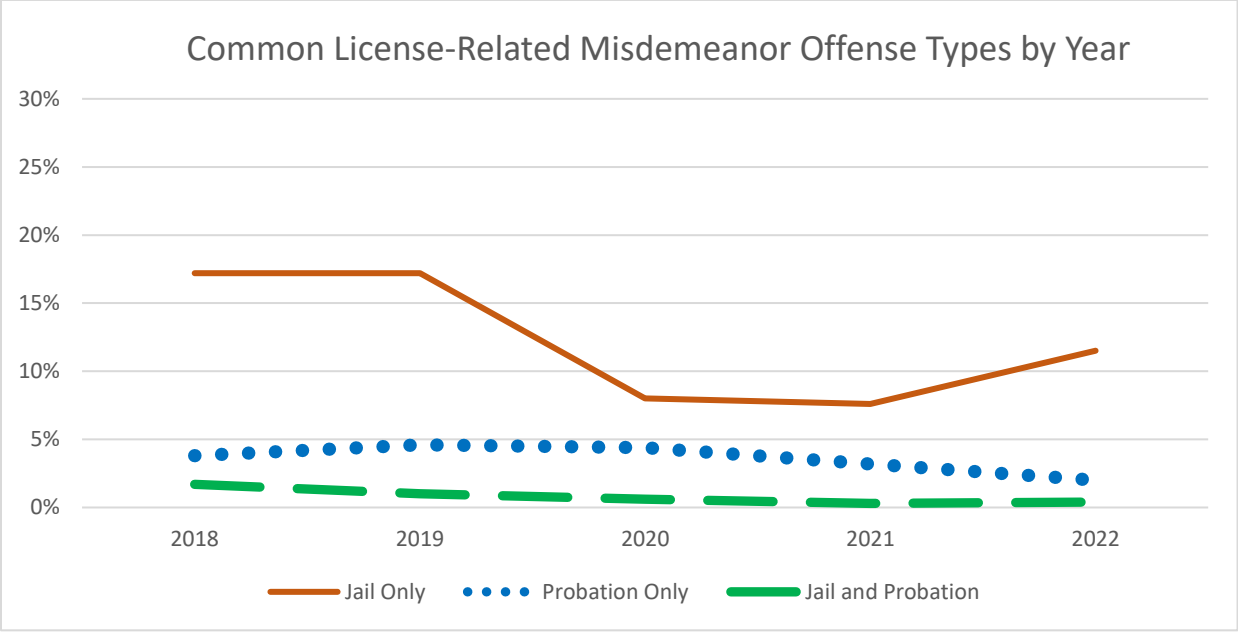


Year During 4/1–9/30	Jail Only Sentence	Probation Only Sentence	Jail and Probation Sentence
2018	21.5%	10.9%	11.7%
2019	20.9%	11.4%	11.8%
2020	14.0%	12.5%	11.7%
2021	13.0%	12.5%	8.2%
2022	16.6%	15.7%	10.5%

A second analysis was conducted to focus on license-related misdemeanor cases that

appeared most often in the samples. Most common were operating without a license on person; operating while license suspended, revoked, or denied; having no license or multiple licenses; owner permitting another to violate the motor vehicle code; and license plate – unlawful use.

The graph below shows that jail sentences for license-related cases remained steady in 2018 and 2019 but had a sharp decline by over 50% in 2020 and 2021. In 2022, the jail sentences began trending upward to 11.5%. Probation sentences decreased to their lowest percentage in 2022. The combination of jail and probation sentences decreased from 1.7% to 0.4% over time.



Year During 4/1–9/30	Jail Only Sentence	Probation Only Sentence	Jail and Probation Sentence
2018	17.2%	3.8%	1.7%
2019	17.2%	4.6%	1.0%
2020	8.0%	4.4%	0.6%
2021	7.6%	3.2%	0.3%
2022	11.5%	2.0%	0.4%

Sentences by Case Type Code

A table of case type codes and their definition is provided. Felony type charges are included in the data because they were reduced to non-serious misdemeanors. Data are shown for the revised 2021 and new 2022 numbers and percentages by sentencing types in the following tables.

Case Type Code	Case Type Definition
OD	Ordinance Misdemeanor Drunk Driving
FT	Felony Traffic
OM	Ordinance Misdemeanor
SD	Statute Misdemeanor Drunk Driving
FD	Felony Drunk Driving
FY	Felony Criminal
SM	Statute Misdemeanor
OT	Ordinance Misdemeanor Traffic
ST	Statute Misdemeanor Traffic

Non-serious misdemeanant offenders charged with an ordinance drunk driving (OD) case during the 2021- and 2022-time frames had the highest rate of receiving probation alone. In 2021, 42.5% of ordinance drunk driving cases with non-serious misdemeanor charges were sentenced to probation, and in 2022, 47.7% were sentenced to probation. There was a decrease in sentencings to probation among felony traffic offenses from 2021 (37.0%) to 2022 (33.5%). The last row with the totals reflects an overall increase in probation sentences from 2021 to 2022.

Probation Sentences by Case Type Code

Case Type	Sentenced to Probation		Total Sentenced		Percent Sentenced to Probation	
	2021	2022	2021	2022	2021	2022
OD	1,426	1,715	3,355	3,593	42.5%	47.7%
FT	47	56	127	167	37.0%	33.5%
OM	1455	1,485	4,578	4,742	31.8%	31.3%
FY	769	1,276	3,105	4,093	24.8%	31.2%
SD	1,211	1,551	4,688	5,214	25.8%	29.7%
FD	77	81	304	293	25.3%	27.6%
SM	964	1,147	5,638	5,985	17.1%	19.2%
OT	1045	637	26,467	19,735	3.9%	3.2%
ST	193	165	9,386	7,967	2.1%	2.1%
TOTAL	**7,187**	**8,113**	**57,648**	**51,789**	**12.5%**	**15.7%**

Offenders in statute misdemeanor (SM) cases were sentenced to jail alone at a higher rate than offenders in other case types in 2021 and 2022, and their rates were steady across both years. In 2022, there was an increase of five-percentage points among ordinance misdemeanor (OM) cases sentenced to jail compared to 2021, and a small decrease in felony non-traffic (FY) cases compared to 2021.

Jail Sentences by Case Type Code

Case Type	Sentenced to Jail		Total Sentenced		Percent Sentenced to Jail	
	2021	2022	2021	2022	2021	2022
SM	1,606	1,695	5,638	5,985	28.5%	28.3%
OM	974	1,254	4,578	4,742	21.3%	26.4%
FY	874	1,061	3,105	4,093	28.1%	25.9%
FT	24	38	127	167	18.9%	22.8%
ST	1,319	1,359	9,386	7,967	14.1%	17.1%
SD	703	778	4,688	5,214	15.0%	14.9%
OD	374	408	3,355	3,593	11.1%	11.4%
OT	1,616	1,954	26,467	19,735	6.1%	9.9%
FD	25	26	304	293	8.2%	8.9%
TOTAL	**7,515**	**8,573**	**57,648**	**51,789**	**13.0%**	**16.6%**

Drunk driving cases received sentences of jail and probation at higher rates than other case types. In both years, over half of felony drunk driving cases received a combined jail and probation sentence with little change in percentages from 2021 to 2022.

Jail and Probation Sentences by Case Type Code

Case Type	Sentenced to Jail and Probation		Total Sentenced		Percent Sentenced to Jail and Probation	
	2021	2022	2021	2022	2021	2022
FD	177	168	304	293	58.2%	57.3%
SD	1,906	2,039	4,688	5,214	40.7%	39.1%
OD	782	922	3,355	3,593	23.3%	25.7%
FY	783	1,008	3,105	4,093	25.2%	24.6%
FT	18	39	127	167	14.2%	23.4%
SM	640	749	5,638	5,985	11.4%	12.5%
OM	238	272	4,578	4,742	5.2%	5.7%
ST	121	154	9,386	7,967	1.3%	1.9%
OT	50	92	26,467	19,735	0.2%	0.5%
TOTAL	**4,715**	**5,443**	**57,648**	**51,789**	**8.2%**	**10.5%**

Sentences by Courts

We also examined sentence types imposed by different courts. The eight courts with the highest rates of sentencing to either probation, jail, or jail/probation in 2022 are provided in the tables below. Courts are de-identified and the naming convention does not represent the same court within all three tables.

In the eight courts with the highest rates of sentencing to probation, more than 50% or more of non-serious misdemeanants were sentenced to probation in 2022.

Top 8 Courts Sentencing to Probation in 2022

Court	Sentenced to Probation	Total Cases Sentenced	Percent Sentenced to Probation
Court A	23	24	95.8%
Court B	85	103	82.5%
Court C	79	96	82.3%
Court D	15	19	78.9%
Court E	207	265	78.1%
Court F	74	111	66.7%
Court G	26	41	63.4%
Court H	93	164	56.7%

In the eight courts with the highest rates of jail alone sentences, over 48% of non-serious misdemeanants were sentenced to jail in 2022. The court with the highest rate sentenced 90.8% to jail in 2022.

Top 8 Courts Sentencing to Jail in 2022

Court	Sentenced to Jail	Total Cases Sentenced	Percent Sentenced to Jail
Court I	276	304	90.8%
Court J	152	211	72.0%
Court K	181	254	71.3%
Court L	119	171	69.6%
Court M	153	248	61.7%
Court N	1,234	2,327	53.0%
Court O	51	105	48.6%
Court P	428	889	48.1%

In the eight courts with the highest rates of sentencing to jail and probation, over 45% of non- serious misdemeanants were sentenced to jail and probation in 2022. The court with the highest rate in 2022 sentenced 62.9% to jail and probation.

Top 8 Courts Sentencing to Jail and Probation in 2022

Court	Sentenced to Jail and Probation	Total Cases Sentenced	Percent Sentenced to Jail and Probation
Court Q	105	167	62.9%
Court R	61	98	62.2%
Court S	71	125	56.8%
Court T	88	178	49.4%
Court U	244	495	49.3%
Court V	131	268	48.9%
Court W	109	237	46.0%
Court X	48	105	45.7%

Sentences by Offense Codes

Offense codes were examined to identify the types of offenses that were sentenced to jail, probation, or both. The 10 offenses with the highest volume of sentences imposed statewide are listed in the following tables, with the percentage sentenced to probation, jail, and both. The tables include revised 2021 data and new 2022 data.

The two offenses with the highest rate of sentencing to probation did not change from 2021 to 2022, and included operating while impaired and operating while intoxicated. There was a three-percentage point increase in offenders with an operating while impaired offense from 2021 to 2022. In 2022, 35.0% of offenders charged with operating while intoxicated were sentenced to probation while 31.0% received probation in 2021. Retail fraud, third degree was similar across years where nearly one third were sentenced to probation. Offenders with a disorderly person offense were sentenced at a similar rate across time frames.

Most Frequent Offenses Sentenced to Probation

Offense Description	Sentenced to Probation		Total Sentenced		Percent Sentenced to Probation	
	2021	2022	2021	2022	2021	2022
Operating – Impaired	1,647	1,937	4,655	5,033	35.4%	38.5%
Operating While Intoxicated	732	900	2,358	2,570	31.0%	35.0%
Retail Fraud – Third Degree	577	663	1,912	2,073	30.2%	32.0%
Disorderly Person	449	459	1,847	1,765	24.3%	26.0%
Motor Vehicles – Allowing Suspended Person to Operate	130	146	2,297	1,912	5.7%	7.6%
Operating – License Suspended/Revoked/Denied	310	169	5,111	4,316	6.1%	3.9%
Operate Without License on Person	344	135	11,051	7,005	3.1%	1.9%
Operate – Owner Permitting Another to Violate Motor Vehicle Code	206	78	6,210	5,193	3.3%	1.5%
Operating – No License/Multiple Licenses	24	26	2,463	2,298	1.0%	1.1%
License Plate – Unlawful Use	21	13	3,728	2,268	0.6%	0.6%

The offenses with the highest rate of sentencing to jail were retail fraud third degree and operating with license suspended, revoked, or denied. In 2022, there was over a six-percentage point increase in sentencings to jail for operating with license suspended, revoked, or denied, and over three-percentage points increase for retail fraud third degree. Offenders with a disorderly person offense were also sentenced to jail at a higher rate in

2022 (22.2%) when compared to 2021 (17.3%).

Most Frequent Offenses Sentenced to Jail

Offense Description	Sentenced to Jail		Total Sentenced		Percent Sentenced to Jail	
	2021	2022	2021	2022	2021	2022
Retail Fraud – Third Degree	557	673	1,912	2,073	29.1%	32.5%
Operating – License Suspended/Revoked/Denied	1,050	1,151	5,111	4,316	20.5%	26.7%
Disorderly Person	319	391	1,847	1,765	17.3%	22.2%
Operating – Impaired	663	731	4,655	5,033	14.2%	14.5%
Operating While Intoxicated	267	321	2,358	2,570	11.3%	12.5%
Operating – No License/Multiple Licenses	205	263	2,463	2,298	8.3%	11.4%
Operate – Owner Permitting Another to Violate Motor Vehicle Code	396	530	6,210	5,193	6.4%	10.2%
Motor Vehicles – Allowing Suspended Person to Operate	158	166	2,297	1,912	6.9%	8.7%
License Plate – Unlawful Use	131	130	3,728	2,268	3.5%	5.7%
Operate Without License on Person	394	359	11,051	7,005	3.6%	5.1%

The offenses with the highest rates of sentencing to jail and probation were operating while intoxicated and operating while impaired. In 2022, the sentencings to jail and probation for operating while intoxicated decreased slightly from 42.6% in 2021 to 40.4% in 2022. In 2022, the sentencings to jail and probation increased slightly for operating impaired (29.7%) from 2021 (27.5%).

Most Frequent Offenses Sentenced to Jail and Probation

Offense Description	Sentenced to Jail and Probation		Total Sentenced		Percent Sentenced to Jail and Probation	
	2021	2022	2021	2022	2021	2022
Operating While Intoxicated	1,004	1,038	2,358	2,570	42.6%	40.4%
Operating - Impaired	1,282	1,497	4,655	5,033	27.5%	29.7%
Retail Fraud - Third Degree	213	222	1,912	2,073	11.1%	10.7%
Disorderly Person	94	108	1,847	1,765	5.1%	6.1%

Operating - License Suspended/Revoked/Denied	48	42	5,111	4,316	0.9%	1.0%
Motor Vehicles - Allowing a Suspended Person to Operate	2	20	2,297	1,912	0.1%	1.0%
Operating - No license/Multiple Licenses	9	11	2,463	2,298	0.4%	0.5%
Operate - Owner Permitting Another to Violate Motor Vehicle Code	5	19	6,210	5,193	0.1%	0.4%
Operating Without License on Person	11	19	11,051	7,005	0.1%	0.3%
License Plate - Unlawful Use	1	-	3,728	2,268	0.0%	0.0%

Jail Reform Advisory Council
Comment Summary

Monday, February 7, 2022

COMMENTS SPECIFIC TO REFORM IMPLEMENTATION

Throughout the comment period, comments specific to the 2020 Michigan Jail Reform package and how implementation of those reforms is going were received. The Council received one comment from a Kent County public defender who discusses challenges he and his clients are facing at the district court level, as well as a comment from a private citizen who details their interaction with a court regarding a traffic citation.

Comment #1: Firstly, I wanted to provide you a bit of background about me. My name is Ryan Keast. I am an attorney working at the Kent County Office of the Defender. I have worked there since December of 2020. My docket consists exclusively od misdemeanor cases. In my time at KCOD, I have worked in two different district courts here in Kent County. My cases have intertwined with the changes you helped to recommend as laws changed in both March and October of last year. Thank you for the chance to provide public comments, I would love to try to highlight a few areas that I believe deserve your continued attention and provide some insight with how these new laws are implemented in practice.

I will begin with the new law I was most excited about when I first read it, MCL 769.5, on misdemeanor sentencing. MCL 769.5 provides a "rebuttal presumption" of a no jail/no probation sentence unless a judge finds "reasonable grounds for the departure and states on the record the grounds for the departure." As a public defender, I was thrilled about this new sentencing law because one of my most common types of cases are retail fraud charges for first-or second-time offenders. Another common charge I see is operating while intoxicated (OWI). Whether OWI is a "serious misdemeanor" depends on "if the violation involved an accident resulting in damage to another individual's property or physical injury or death to another individual." MCL 780.811. For both retail fraud and no accident -OWI: the new law states that courts should typically sentence an individual to either community service or fines only, not probation or jail.

For both types of charges, district courts nearly always find reasonable grounds for departure from the presumption. In fact, I have never seen an OWI charge with a sentence within the statutory presumption of fines/costs/community service, regardless of the circumstances. Usually, the sentence is initially probation rather than jail. As a defense attorney, I have often asked courts to sentence a client within the presumption and give them either fines and costs only, or community service. Many district judges disagree. They see probation as their way of monitoring

whether fines get paid and whether community service is finished. MCL 769.5 clearly lays out a process for district courts to obtain compliance through a show cause procedure, but it is less work for them to find "reasonable grounds" for a departure and order probation at the outset. In sum, **I would like the Council to know that in my experience, the presumption of MCL 769.5 is the rare expectation, rather than the rule.**

Next, the new probation violation statute, MCL 771.4b, is another law I was excited to read. Practically, however, district judges have several ways around it's protections for criminal defendants. As the Council is likely aware, the law creates a rubric of "technical" violations that increases the possible sentence in increments of five days for each violation.

District Judges have several ways around this rubric. One is the suspended sentence under probation at sentencing on nearly every misdemeanor case. If someone violates their probation, district courts are under the impression that the suspended sentence gives them the discretion to impose up to ninety-three days in jail, rather than merely five days.

Another tactic some district courts will use to circumvent MCL 771.4b is through bond. Post-conviction, defendants are not necessarily entitled to a bond under Michigan's Constitution. Some district court judges will arraign a defendant on the violation, and when they plead not guilty, deny bond all together. The defendant now must wait fourteen days in jail for a probation violation hearing, at which point they typically plead guilty and ask for time served. After all, they have already served two weeks in jail. So long as there are no substantive violations (or four technical violations) they have already served the maximum sentence for three technical violations before they have a chance to speak to an attorney. In conclusion, **district courts often circumvent the new probation violation rubric by suspending sentences and denying bond.**

Finally, mental health is a huge concern of mine here in Kent County. I read about Inkster's "The One Mind Campaign" and am disheartened that many of our mentally ill do not have similar diversion opportunities, particularly for misdemeanors. We do have a Treatment and Support Court TASC) here in Kent County. It is an excellent program for the mentally ill, but only felony cases are eligible for TASC. Many end up in the Kent County Jail for much longer than is necessary. The jail is not equipped to handle mental illness in any way shape of form. The solution is often solitary confinement, which exacerbates mental illness. I have seen driving on suspended (DWLS) cases where individuals have spent weeks and weeks in jail simply because their mental illness prevents basic understanding that they must come to court. After several bench warrants, often judges will appoint an attorney to explain that the only way to end the case (and thus the bench warrants) is through a plea of guilt. Even that conversation is sometimes unsuccessful. Issues of competency do not get the same attention on these types of charges.

The insanity defense is also unusual to raise in a misdemeanor case. The Center for Forensic Psychiatry does not evaluate my clients because they are charged with a misdemeanor. Instead, the defense must come from independent certified psychologists with court approved expert funding. District courts rarely permit this course of action. While theoretically possible, the insanity defense is extremely rare in misdemeanor cases. Abolishing it all together raises grave constitutional concerns, and I worry misdemeanors in Michigan have all but abolished the defense. I would recommend more statistical research on this. Mental illness does not necessarily show up on every court file, but there are likely strong correlations between probate court guardianship cases and misdemeanor convictions. **I would like the Council to be aware that much of our misdemeanor jail population comes from mental illness, and our system does not currently have the tools to address both a criminal charge and mental illness.**

Thank you for your consideration of my experiences as a misdemeanor public defender. I appreciate the ongoing work you are doing to help with our common mission: keep the indigent out of jail. Your continued evaluation of the implementation of these new laws demonstrates a strong commitment to make a substantive change. I greatly appreciate your diligence, and I am sure my clients will also. – Ryan Keast, Kent County Office of the Defender

Comment #2: I am writing about the fact that Saginaw County, and Michigan in general, allows arrest warrants to be issued for traffic violations. I have a $240 ticket from early 2020, right around the beginning of the pandemic that I cannot afford to pay. I received a letter last week stating that a warrant for my arrest will be issued if I don't pay it within 10 days.

I feel that is unjust. Debtor's prisons are not supposed to exist in this country according to the constitution, but here I am in a situation where if I don't pay money that I don't have, I'll apparently go to jail.

I tried to challenge this ticket in spring 2020 by requesting a hearing. Several months later I received a letter asking me to join a Zoom meeting, which I tried to do but it wouldn't let me join at the stated time and date. I called and requested another hearing, and again had the same problem. I called yet again and was denied a hearing. I called as recently as about 2 months ago trying to get a hearing scheduled to address this ticket in some way, but was again denied and told my only option is to pay it. So, I'm in a situation where I've been denied due process of law, and told that I will be jailed for not having the money.

The Michigan legislature obviously believes that unpaid tickets should not affect people's lives in such a negative way, as they passed a law last year preventing driver's licenses from being suspended for unpaid tickets. However the problem of arrest warrants being issued still exists. Civil infractions should not cause someone to be jailed under any circumstance. Again,

debtors prisons are not supposed to exist in the United States. Civil infraction fines should be collected through civil collections, just like any other debt.
Please consider changing these practices. We're living in 2022, not the 1600s. Thank you.
– Jason Cousineau

VOTING RIGHTS OF JAILED INDIVIDUALS

Voting rights of incarcerated individuals was the most commonly cited term throughout the comments. Those comments sought to ensure that individuals being held both pretrial and post sentencing were not only provided education on their voting rights while incarcerated but also given the opportunity to exercise those rights. The council received comments from members of various organizations as well as private citizens.

Comment #1: I am a member of VotingAccessforAll.org (VAAC). In 2021, together with NationOutside.org, we published our Ensuring the Right to Vote Read the full report with data-informed recommendations on how to improve access to voting in jails. Please follow the link to read the report and work to implement the recommendations it offers.

We know our democracy works best when all voters can participate. Which is why Michigan can and should take steps to ensure that eligible jailed voters can have access to the ballot. Currently that is not the case. Jailed voters face major challenges in Michigan including but not limited to: confusion and misunderstanding of Michigan voting laws; difficulty in obtaining information about upcoming elections, problems in obtaining materials required to register and cast a ballot, mail restrictions and delays, and lack of Election Day voting opportunities.

Ultimately it is a failure of our democracy that thousands of eligible voters are excluded from elections every year merely because they are overlooked and under-resourced. Moreover, we know the population most affected by jail-based disenfranchisement also represents many historically marginalized voters: Black people, people with disabilities, people experiencing economic instability, and people experiencing homelessness. The Jail Reform Advisory Council can take steps to mitigate this harm. Thank you – Angela Boggs.

*This comment was received verbatim from additional members of VAAC including Audrey Anderson, Brooke Harris, Heather Mooney, Lynn Drickamer, Lily Myers, Margaret Schankler, Richard Weilbaecher, Nomi Joyrich, Steven Wilson, Raven Odom, Natasha Abner, Ruth Gerstle, Paul D'Arcy, Nicole Vioujas, Emma Mertens and Dena K. Morgan, Chief Executive Director, Dungytreei Heritage Foundation.
.

Comment #2: I am a member of VotingAccessforAll.org (VAAC). In 2021, together with NationOutside.org, we published our Ensuring the Right to Vote (https://bit.ly/3IUmHj4)report. with data-informed recommendations on how to improve access to voting in jails. Please follow the link to read the report and work to implement the recommendations it offers. On average, roughly 10,000 people enter Michigan's jails annually. This means there could be 10,000 people held in custody, pre-trial, but are not able to participate in the voting process, even though they have the constitutional right to do so! Anything that impedes upon a person's right to vote is known as voter suppression!

I am writing this to encourage this council to ensure voting rights for people held pre-trial in county jails. Thank you for your efforts and work in this regard. – Daniel Jones.

Comment #3: I am the policy analyst for Nation Outside. Nation Outside is a state based organization made up of formerly incarcerated people. One of our priorities is to ensure that justice impacted people have access to the ballot. We approach this through education, advocacy and policy ideas to shift the system towards a more equitable model.

In an effort to understand jail based disenfranchisement in the state of Michigan, Nation Outside in partnership with VAAC produced a report on Jail Voting in Michigan. We sent FOIA to each of the 83 sheriffs in Michigan. Seventy (70) out of 83 counties responded to our request for information of those 67 hold people for more than 72 hours. Of Michigan's 83 counties, 26 responded that they provide incarcerated voters with some kind of voter education resource. Oftentimes that was no more than a poster on the wall. It is for these reasons and the reasons detailed in the attached report that I believe the Jail Reform Advisory Council should focus on ways to ensure that citizens held in jail pre-trial have viable pathways to vote. Read the full report. – Antoniese Gant.

Comment #4: As a part of my passion for human rights, I've called dozens of county jails cross the state of Michigan to inquire about their process for ensuring that citizens in their custody are equipped with the information necessary to register and exercise their right to vote. Unfortunately, I've become deeply disappointed by jail officials handling of this critical matter. Some even lack an understanding of who is eligible to vote in their custody, but the vast majority rely on a small paragraph printed in their jail's inmate booking guide to notify incoming prisoners of their right to vote. Aside from a sort notice, instructions on how to do so and information about what's on the ballot are inaccessible.

While newly arriving at a detention facility it's unreasonable to assume that any person would be able to manage registering to vote without any follow up or additional support within the initial weeks of their incarceration. This is especially true in those cases were citizens are juggling financial and legal issues. It's essential for incarcerated citizens to have regular access to election information throughout their time incarcerated in jail and there are people who are willing to provide this information, who've been blocked from doing so by jail staff.

Our organization funds a jailed voter support program, Vote by Mail in Jail, with the central goal of ensuring that those who are eligible to vote while incarcerated have the ability to exercise that right. We do this in partnership with Michigan's Voter Access for All Coalition to provide incarcerated voters with registration forms, absentee ballot request application forms, templates with instructions on how to complete these forms and nonpartisan voter guide books as well as other election support materials like a list of local clerk's offices, stamps for mailing forms to one's local clerk, election deadline reminders and any other resources at the request of jail staff at no cost to the facility or incarcerated voters.

After working with just under a dozen of the 80+ county and city jails in Michigan to support eligible voters during their incarceration, we've realized that the majority of jail officials view voter support as an elective activity that's neglected until the last minute. With no access to internet and mailing delays it's essential that ample time is provided to incarcerated individuals to register to vote, request an absentee ballot (if they'll be incarcerated on Election day) and be educated about what's on the ballot. Having policies in place to ensure that jailed voters are provided with those resources to confidently register and vote is the only way to ensure that jail staff will prioritize this issue. Groups like ours are happy to help support jail administrators with doing this work, so long as jails are willing. Legislation would incentivize willingness in most cases. – Amani Sawari, Director of Justice Services, Spread the Vote US.

Comment #4: I have seen jail-based voting made accessible in Genesee County, and it is something to be celebrated. Facilitating voting for people who are in jail prior to conviction makes absolute sense and is in accordance with Michigan law. It is a way to respect the voting rights of people who are entitled to vote under the law but often face barriers to exercising that right. Further, I believe that a sense of civic duty is a positive and desirable quality, and facilitating jail-based voting helps strengthen people's connection to civic life. – Elizabeth Jones.

Comment #5: I am a former GED instructor at the Flint-Genesee County Jail and a current member of VotingAccessforAll.org (VAAC). In 2021, together with NationOutside.org, we published our Ensuring the Right to Vote (https://bit.ly/3IUmHj4)report. with data-informed recommendations on how to improve access to voting in jails. Please read the report and work to implement the recommendations it offers.

We know our democracy works best when all voters can participate. Which is why Michigan can and should take steps to ensure that eligible jailed voters can have access to the ballot. Currently that is not the case. Jailed voters face major challenges in Michigan including but not limited to: confusion and misunderstanding of Michigan voting laws; difficulty in obtaining information about upcoming elections, problems in obtaining materials required to register and cast a ballot, mail restrictions and delays, and lack of Election Day voting opportunities. – Gerald Tkach.

Comment #6: The populations most affected by jail-based disenfranchisement also represent many historically marginalized voters: Black people, people with disabilities, people experiencing economic instability, and people experiencing homelessness. It is a failure of our democracy that thousands of eligible voters are excluded from elections every year because they are overlooked and under-resourced.

Our democracy works best when all voters can participate. Jailed voters face major challenges in Michigan including, but not limited to confusion around Michigan voting laws, difficulty obtaining information, problems obtaining materials to register and cast a ballot, mail restrictions and delays, and lack of Election Day voting opportunities.

I call on you, members of the council, to focus on ways to ensure that citizens that are held in jail pre-trial have viable pathways to vote. – Jacquelyn Miller.

Comment #7: I believe that incarcerated individuals--especially those pending trial--should be allowed to vote. This is particularly true for Michigan, where prison populations count for local political representation! – Lawrence Root.

Comment #8: After working with just under a dozen of the 80+ county and city jails in Michigan to support eligible voters during their incarceration, we've realized that the majority of jail officials view voter support as an elective activity that's neglected until the last minute. With no access to internet and mailing delays it's essential that ample time is provided to incarcerated individuals to register to vote, request an absentee ballot (if they'll be incarcerated on Election day) and be educated about what's on the ballot. Having policies in place to ensure that jailed voters are provided with those resources to confidently register and vote is the only way to ensure that jail staff will prioritize this issue. Groups like ours are happy to help support jail administrators with doing this work, so long as jails are willing. Legislation would incentivize willingness in most cases. – Robert Simmons.

Comment #9: I am a formerly incarcerated member of the public who has worked to expand jail voting in the past. With little support, progress was very slow. There has been gradual improvement, but what is needed now are statewide guidelines that make it as easy as possible to vote for those in jail awaiting disposition of their cases. Helping to get jailed citizens the ability to vote easily is one thing that can make them feel more a part of our society, and thereby less likely to harm others. – Richa.

Comment #10: I have served in law enforcement in Michigan and have observed people held pre-trial that have had charges ultimately dismissed. Our constitution and framework of this country operate under the assumption people are innocent until proven guilty. People that are held pretrial in our jails deserve to have the right to vote and deserve a process that is fair and accessible. We should do everything in our power to guarantee that right to vote. As a sworn law enforcement officer, someone that takes an oath to protect and serve our freedoms and rights, I consider it

counterproductive to not make voting accessible no matter what circumstances someone finds themselves in. We bring medical services into the jail, we bring teachers into the jail, we can and should coordinate efforts to ensure that voting is possible for those incarcerated that want to exercise their right to vote. I know other areas have been doing this across our country, and I am confident we can get all of Michigan on board with this. I urge you to successfully make voting in our jails a reality, not a rarity. Thank you all so much for your time, integrity and dedication to service. - Alyshia Dyer.

Comment #11: I'm writing on behalf of the Voting Access for All Coalition (VAAC). Please follow the recommendations in this report "Ensuring the Right to Vote" (Read the full report) to do all you can to help eligible voters in jail to vote, just as we should help all people with challenges to exercise their constitutional right. In America, the right to vote is equated with feelings of dignity and self-worth. If prisoners get the message that their votes aren't important, they will be less likely to want to be law-abiding, contributing members of society. Studies show that recidivism is lower where justice involved people are civically engaged. – Barbara Lucas.

Comment #12: As a citizen volunteer I work with several organizations. Those organizations include the Voting Access for All Coalition (VAAC) which umbrellas numerous partners whose primary focus are our current and formerly incarcerated citizens. And that word “citizen” is vitally important to any conversation that we should have about these persons because it would then be held from the standpoint of their humanity as well as their rights afforded through the US and state level constitutions.

Given that, these organizations under the VAAC umbrella seek to address numerous issues including, but not limited to:

1. The conditions within jails and prisons.
2. Bail reform to ensure that poverty does not become “the crime”.
3. Bringing an end to Prison Gerrymandering.
4. The educating and equipping of these citizens to prepare them for release and decreases recidivism.
5. And the most fundamental of all rights, which I want to focus on today; voting.

Voting and the right to vote are fundamental pillars to any democracy. Given that, any and all impediments to voting should be addressed legislatively on a state level, and just as it was in 1965, if necessary, through Federal legislation. JRAC has the ability to be a force behind set standards for the state of Michigan when it comes to addressing all of the above listed issues, but again, the most noncontroversial should be ENSURING that nothing impedes the citizen’s right to vote. There needs to be a set standard for access that ensures that every citizen is fully apprised of their rights, an ongoing process that allows for these citizens to be informed of every upcoming election in the voting space of their pre-incarcerated address, and access to information that informs them of the positions of who and what are on their ballots. For this to come about, thankfully, the

infrastructure and blueprint have been established. Spread the Vote and its VAAC associated volunteers have already been successful in playing out this process utilizing their Vote by Mail in Jail program. JRAC now has the opportunity to assist, proposing legislatively, that this becomes the standard and we are hoping that you will make it so. – Charles Thomas.

Comment #13: It is outrageous that United States citizens held in jail pre-trial, have such limited access to voting. This type of f jail-based disenfranchisement discriminates against those citizens without adequate resources to arrange for their pre-trial release.

Michigan jails have a moral obligation to support citizens, under their care, in exercising their voting rights, by educating these people about Michigan's voting laws, providing them with information about upcoming elections, by providing materials and opportunities for them to register to vote, and by providing the means for eligible voters to effectively cast their ballots.

Please take the necessary measures to create effective policies that afford citizens held in jail pre-trial easy access to participate in our democracy by exercising their right to vote. – Karen Connor.

Comment #14: In 2006 when my son was in jai pre-trial, we worked very hard to get him an application for an absentee ballot. The existing mail rules for the jail made it very difficult. He eventually got the application back to me, and I mailed it in. But, he never got his ballot. Hard to know where in the chain the failure occurred.

So, even though he was a registered voter, was allowed to vote, and wanted to vote, he was not able to. The process needs to be clear and enforceable, so that people will not be denied their right to vote. – Kathie Gourlay.

Comment #15: I strongly endorse efforts to allow jailed Michiganders access to the vote, including information about upcoming elections; materials required to register and cast a ballot; and Election Day voting opportunities. Participation in voting is the bedrock of democracy. In the wake of mass incarceration and unremitting efforts to limit the vote, we need to provide our citizens support, resources, and knowledge for active engagement in the process of governance. Please help us to strengthen our democratic process by making it inclusive, by insuring that citizens that are held in jail pre-trial have viable pathways to vote. – Katie O'Sullivan See.

Comment #16: It is important in our society for all eligible people to vote so that their opinions are counted. Presently, citizens who are in jail pre-trial often lack the resources to understand and assert their voting rights. Most often, the citizens who are in this position are the poor, the homeless, minorities and people with mental or physical health problems. Thus, in addition to being left behind in society, they are not able to address their difficulties at the ballot box.

I am asking you, as members of the Jail Reform Advisory Council to help rectify this situation by promoting policies that give these citizens in jail pre-trial an equal opportunity to vote.

- Michael Kamrin

Comment #17: As you all know, our government operates better and our policies uphold equity more when all voters can participate, according to the law, in a way that meets their needs/circumstances. Currently that is not the case. Voters who are in jail at or leading up to elections face major challenges in Michigan, including, but not limited to: confusion and misunderstanding of Michigan voting laws; difficulty in obtaining information about upcoming elections; problems in obtaining materials required to register and cast a ballot; mail restrictions and delays; and lack of Election Day voting opportunities.

Currently, thousands of eligible voters are excluded from elections every year merely because they are overlooked and under-resourced. This is a system issue and can be rectified. We know the population most affected by jail-based marginalization represents many historically disadvantaged voters: Black people, people with disabilities, people experiencing economic instability, and people experiencing homelessness.

As members of the council, I ask that you explore and recommend ways to ensure that citizens that are held in jail pre-trial have reasonable opportunities, information, and connection to resources to vote. – Wende Randall, Director, Kent County Essential Needs Task Force

Comment #18: I believe the many rights of citizenship belong to all of us. Our right and responsibility to vote belongs to all of us in a democracy. This includes ALL of us. rich and poor, white, green purple and brown, those with high school and college degrees, those of us with no degrees. Those of us in prison, those of us not. those of us who do not belong in prison, those of us who do belong in prison. Let everyone vote! it will make a real democracy survive. – Vickie Wellman

Comment #19: The Michigan Jail Reform Advisory Council is charges with implementation of voting rights throughout the 83 counties' jails.

I encourage you, the Council, to move forward and work with county sheriffs to put procedures in place inside jails to educate pre-trial inmates about all upcoming elections. This education should be in place through postings in housing units, library and other common areas used by inmates. In addition the education materials should be available in printed form to inmates upon request to the librarian. The Council should create of obtain materials from organizations like the League for Women Voters to help inmate learn about the ballot, National, State and Local. This should include who is running with information about each person, any ordinances and proposals and most important a form to request an Absentee Ballot. This all needs to be done without pressure put upon the inmates by staff or the Council.

A perfect plan would be for trained citizens to enter the jails to present these educational materials and explain the election process and the importance of all citizens who can vote to do so and that the ARE able to vote.

I find it almost unbelievable that we, a democracy, are still not providing this process to pre-trial detainees. It is up to this Council to make this right available to pre-trial inmates. – Penelope Ryder.

PRETRIAL REFORM

Another commonly mentioned theme throughout the compiled comments was the subject of pretrial reform. Various comments received focused specifically on the current house bills 5436-5443 and citied supporting information or offered reasoning why those bills should be passed, including the need for standardized pretrial data. Additionally, specific areas of pretrial practices were identified as unfavorable and seen as infringements of basic rights.

House Bills 5436-5443

Comment #1: The Jail Reform Advisory Council has made great strides supporting the implementation of reform laws that passed in 2020, helping to safely reduce the jail population and promote a more equitable system. We are grateful for the work you've done to oversee the implementation of Senate Bills 1046-1051 that were signed into law in 2021. We know that we can't fully realize the success of reforms, until we've fully adopted the recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration.

The Michigan Joint Task Force on Jail and Pretrial recommendations includes reforming Michigan's broken bail system so that no one is behind bars simply because they cannot afford to pay for their freedom. Michigan must reform the bail system to strengthen the presumption of release, increase consistency, and standardize data collection and reporting. House Bills 5436-5443 would get this done and help ensure all Michiganders benefit from your hard work on jail reform. – Audrey Anderson.

*This comment was received verbatim from additional members of the public including Dan Niedzwiecki, Danielle Zemmel, Jerome Lusa.

Comment #2: In the law, the presumption of "innocent until proven guilty" can only be fully assigned if an accused citizen is not confined solely on the basis of their inability to post bail. Bail reform is essential to creating a fair and more equitable justice system and will be a support to the families and communities that are already challenged by the obvious economics. This in turn will result in the reduced costs related to incarcerating citizens, recidivism and make for more safe communities. Michigan must reform the bail system to strengthen the presumption of release, increase consistency, and standardize data collection and reporting. House Bills 5436-5443 would

get this done and help ensure all Michiganders benefit from your hard work on jail reform. I look forward to seeing these bills pass this legislative session, and the great work this body will do to oversee their implementation. – Charles Thomas.

Comment #3: The Jail Reform Advisory Council has done many things to support implementing the reform laws that passed in 2020 which help to safely lessen the number of people in jail and foster a system that is more equitable. Thank you for the work you have done facilitating the implementation of Senate Bills 1046-1051 signed in to law in 2021!

As positive as this is, the success of reforms will not be fully achieved until the Michigan Joint Task Force on Jail and Pretrial Incarceration recommendations are fully adopted.

One important reform that needs to be prioritized is Michigan's broken bail system—no one should be behind bars simply because they cannot afford to pay for their freedom. This needs to change. Changes need to be made that strengthen the presumption of release. Other needed changes include increased consistency and improved standardized data collection and reporting. House Bills 5436-5443 address these concerns and would make these necessary changes. This would help guarantee that all in Michigan profit from the hard work the Advisory Council is doing on jail reform. I look forward to these bills passing during this legislative session, as well as seeing the great work the Jail Advisory Council will do to oversee successful implementation. – Heidi Thornley.

Comment #4: I do not have a personal story about bail and the criminal justice system, but I wholeheartedly support the changes the ACLU is working towards. It is clear the system is, indeed, stacked against people of color and the poorer populations of our communities.

There are lots of statistics in the Michigan Joint Task Force on Jail and Pretrial Incarceration Report and Recommendations but the bottom line is if you have money, you have your freedom. No interruption to your work/life responsibilities.

If you don't have the cash to post bail, you lose your freedom, possibly along with your job, your credit rating, your home and/or your family. Most people don't have the funds for an emergency over $400. You may sit in jail for up to 45 days. Some incarcerations last 'months or years without ever going to trial. Please pass bills HB5436 through HB5443 and contribute to a more equitable system. – Lyn Mulkey.

Comment #5: I'm writing this testimonial to bring the voice of some formerly incarcerated to the discussion on bail reform and to prevent others from having to suffer similar struggles going through the system. I want to ask lawmakers to listen to those that have been through the system, to gather more perspectives that would guide better policy. Build the mechanism to gather the data to find out what can be done better. These Bail Reform Bills will gather the data. Let's define how bail is set and get rid of bail in as many cases as possible. My experience with the justice

system started with a nonviolent driving on suspended license, which required impounding my car arrest and days in jail. In that span of days I lost my job, was unable to get my car back due to huge impound fees and lost my apartment due to loss of income. With no way to get to class I had to drop out of college a week later. This quickly spiraled into Desperation and Despair. After losing all hope, addiction and self-destruction became my unwelcome direction. I am not alone in suffering losses like this, thousands have been down similar paths in the decades of these policies. I know changes have been made to some laws since this happened. Unfortunately we still have many laws that force police to arrest and detain people then impound vehicles. We need to develop mechanism to allow discretion and minimize harms. In situations like mine the resulting losses were a punishment that far exceeded the offense. The fact that it was before conviction made it irrelevant to the court and acceptable collateral damage. To me it was a loss of my dreams and the start of 20 years of struggle. – Normal Kovalich

Comment #6: Michigan has long faced a crisis in its jails, fueled by our cash bail system. In the past 40 years, the number of people in Michigan's jails has tripled — many of whom are there pretrial. As recently as 2016, there were more than 16,000 people in Michigan jails in a single day, resulting in costly and overcrowded facilities.

In 2020, Michigan lawmakers were provided a clear, concise roadmap designed from the Joint Task Force on Jail and Pretrial Incarceration to reform the state's criminal legal system. They began the journey of implementing that road map when the legislature passed 20 bills based on several of its policy recommendations. The bills were carried by a diverse group of legislators, passed with overwhelming support, and were signed into law on January 4, 2021.

These bills boldly aimed to decrease oversized paths into Michigan jails by diverting many people away from incarceration, when it is safe to do so. By reclassifying a slew of traffic offenses to civil infractions, increasing the use of arrest alternatives at the front end of the system, prioritizing alternatives to jail when sentencing people for low-level offenses, and reducing jail admissions for people on probation and parole, lawmakers have taken an important first step towards strengthening the state's criminal legal system.

But the work is not done. Now is the time to prioritize the Joint Task Force's remaining policy recommendations for legislative action, starting with fixing our broken cash bail system. While the Joint Task Force discovered significant challenges in Michigan jails, today, they face a new threat: as cases of the COVID omicron variant surge across the state, overcrowded jails threaten the health and lives of everyone living and working inside and the communities that surround them.

Cash bail was designed to ensure that a person returns to court; however, it creates a two-tiered system of justice: one for people with money and one for everyone else. It keeps people merely accused of crimes in jail simply because they cannot afford to post bond. On any given day, over 8,000 Michiganders are in jail before trial and many are there because they cannot afford to leave.

People who cannot afford bail face the specter of having their entire lives fall apart. They may lose their jobs If they miss work. They are unable to provide care for their children or dependent adults. The absence of young men, women, fathers, mothers, brothers, and sisters creates a social void in communities and neighborhoods across the state.

The current bail system is not necessary to get a person accused of a crime to appear in court. At The Bail Project, we prove every day that having money on the line isn't what brings people back to court. We pay bail for people who cannot afford it— at no cost to them, provide them with court date reminders and transportation, and connect them with local community support. The result: our clients have appeared for more than 90 percent of their court dates.

Opponents of bail reform argue that these policy changes drive increases in crime. Public safety should be taken very seriously, but recent analyses have concluded that there is no clear evidence linking bail reforms — which have been in place for years in some cities (like Detroit and Lansing) — to the recent rise in violent crimes nationally. In fact, the majority of cities that have seen increases in crime have not eliminated cash bail. It is much more likely that the effects of the ongoing COVID-19 pandemic, in which many people's lives have been uprooted, fueled this increase and should require careful attention from policymakers.

This bipartisan package of bills (HB 5436-HB 5443) offers a robust solution that could help bolster public safety. Once implemented, jails will be less crowded, and the rights of those too often marginalized by the current system will be protected, regardless of wealth.

Given the crisis in our jails and the uptick in new COVID cases, the Michigan Legislature must swiftly pass these important reforms. Without them, every day Michiganders are trapped behind bars amidst a pandemic unable to afford their liberty. I strongly urge the Jail Reform Advisory Council to prioritize supporting this package. – Nicole Zayas Manzano, Senior Policy Counsel, The Bail Project.

Concerns Surrounding Current Pretrial Practices

Comment #1: I currently have a client in jail waiting to be fitted with a tether to be released. He has been waiting in this status for over 12 days. He was ordered for release on January 12. Today is January 24. This delay is inconsistent with the presumption of innocence. And furthermore, to have a 57-year-old innocent man waiting 12 days in jail for a tether, during this ongoing pandemic, it offends public health. – Andrew Sullivan, Defense Attorney

Comment #2: The Fourteenth Amendment prohibits states from depriving “any person of life, liberty, or property, without due process of law", and our current system does that; however, if we establish consistent procedures and fair laws, we can live up to this amendment. There should be a consistent process and procedure to pre-trail release decision-making, and this legislation will help with that. – Emily Kearns

Comment #3: I strongly support the bipartisan efforts to reform our bail bonds system here in Michigan for the many reasons that will be shared today. I believe it discriminates against the poor, and encourages people not to cooperate with the police should they believe that they will most certainly be incarcerated should they do. As a faith leader (outreach minister of West Michigan Hindu Temple) I find that alternative methods to keep nonviolent perps out of jail until trial are more humanitarian. – Fred Stella

Comment #4: Twice I was victimized by pretrial incarceration for crimes that I did not commit. On the notable second instance, the prosecutor and law enforcement concealed material exculpatory surveillance visor from inside of an upscale retail store that undoubtedly would cause for case dismissal. However, due to the conditions of the bond on that second time, which included requirement for wearing a tether, I was unable to physically endure wearing a bulk tether sur to anatomical mal-alignment with my skeleton (uneven hips compounded with scoliosis and left shoulder injury.) The main issue on the case was that the prosecutor did not want to get the surveillance video since he knew it was exculpatory and moreover, by keeping me on tether, his officer not only got to control my body but the court was financially compensated through it contract with Home Confinement. Since I was unable and refused to submit myself to this punishment, the despicable and disgraceful circuit court judge insisted that I remain in jail until the persecutor decided that I could be released (trials were not be afforded to any defendant until late fall the following year.) Tether must be eliminated from ALL pretrial bond condition. It infringes on the basic principle of innocence presumed before trial or plea by imposing clear and conspicuous punishment against that individual by inflicting payment/fine and shackle on that person. If an individual is such an apparent threat to public safety (being reserved only to the most heinous crimes, generally that of rape and murder, or crime involving serious physical injury to another person), that person may so be remanded into custody yet not in a condition equivalent to those serving penance in jail or prison. A Pretrial detention center shall be constructed equivalent to those erected in Scandinavia (Norway, Denmark, among others).

In Scandinavia, their jails and connecting cell units are constructed similar to those in an assisted living facility, nursing home, or even dorm room in the United States. The singular purpose of pretrial custody is segregation from the public. However, the infliction of punishment through

horrendous confinement conditions create a horrific reality of individuals not only being coerced into pleading guilty/no-contest to crimes they did not commit to end the suffering through either time-served pleas as in my case and many others of for other to head to prison to live in ‘better’ conditions. Jail absolutely should not have worse housing conditions than prisons. While many do serve only a limited time in jail which minimizes physical and psychological damage, long-term confinement (>6 months) in jail has a severe adverse physical and psychological impact, in some cases permanent. This is undue, cruel and unusual especially for individuals who have been confined in jail in pretrial detention simply because they were unable to afford bond, unable to wear a tether, or meet another bond condition that was unattainable for the person.

On the first instance of being held in pretrial detention in jail, while although there was not an evident issue regarding exculpatory evidence, I had lost my competency due to being in jail for the first time in my life. I was held on an unwarranted excessive bond of $50,000 cash/surety for a misdemeanor charge which I absolutely could not afford at the time. After suffering 7 month in jail, I had not only accumulated 30 unhealthy pounds and began to suffer from slight heart arrhythmia but, unfortunately, had become psychologically dis-oriented from place and time commencing even at an earlier time while incarcerated for the wrongfully inflicted allegations. This was chiefly attributable to my Autism Spectrum Disorder which made enduring the environmental conditions of the jail come to the precipice of unbearable (chiefly excessive or continuous television noise that could not be tolerated due to sensitivity with noises). After being held in that jail for several months I was unable to fathom the reality and ability of getting out of jail. I was not familiar with the area nor had any regular contact with family or friends in society, I began seeing that people who were ‘free’ were a different class and variant of people who were privileged with the joys and glory of walking and living on the outside. The people stuck on the inside were doomed to a sort of tortuous permanent lifelong psychological and physical death. While also being stuck on the inside of a jail without adequate contact with family and friends, I was note able to verify information relating to acceptance of a plea bargain. The company managing the communication between friends/family and prisons at the time was Securus. They ordered that a person must pay $15 for a 10 minute call.

My mother had little money at the time so I rarely spoke with her, possibly once a moth if not less. I spoke with only one other family friend on about the same regularity. I had nobody who lived within 100 miles for the county jail so I had zero in-person visitors the entire time.

As such, I had to rely only on the attorney handling the case and since I was legally incompetent unable to communicate to any attorney or person what actually occurred in the instances alleged against me to reveal that I ad not actually committed the fabricated crime, I was not able to obtain

a proper defense. When given information regarding a plea bargain, I had to rely solely on the information provided by newly hired private counsel. If the information was erroneous (in this instance, erroneous advisement regarding the ability for clear record expungement within 5 years), I was to suffer the consequence of that attorney's ineptitude rather than have an to verify information for myself; most importantly, I was unable to consult with family prior to making such a grave decision without being fully informed of the gravity and consequences of doing so. Many prosecutors have vowed to end coercive plea-bargaining yet such intolerable bond conditions create a toxic prime environment through which a person can no longer tolerate the conditions of their confinement and themselves requiring to involuntarily plea to a criminal conviction. If the defendant attests in court that they weren't forced or coerced, they will find themselves in a positions where the judge will continue their incarceration until trial, which could very well be many months off that this person can no longer physically and/or psychologically tolerate.

In summary, as detailed previous, it cannot be tolerated nor accepted by a nation that prides itself on liberty and justice to allow conditions of confinement to be so horrendous and perilous to an individual that they are moved (forced rather) to accept a conviction against themselves for a crime that they are innocent of. Instituting or correcting a bond that is reasonably affordable or tolerable to that person while still achieving the same result is quite very reasonable and just. A hundred and hundred-plus thousand dollar bonds for common working folk who do not make even close to those amounts is clearly excessive. Where the purpose was originally designed to ensure a return to court, it is now used as a means of punishment against a person, notably for particular allegations that the court finds abhorrent and so acts in its bond ruling to ensure that person remains in ajil or other institutional confinement. Moreover, other bond conditions have become punitive such as tether where the pretrial division of the court does not even allow for reasonable accommodation such as letting the defendant wear non-detachable light and slim FitBit GPS tether rather than strictly-imposed 3M grossly bulk and burdensome tether. End punitive bond measures and eliminate pre-trial jail incarceration.

It is requested the Council immediately approve or recommend eliminating tether imposition for pre-trial defendants, especially for low-level crimes (all misdemeanors, low-level felonies, and any offense not inflicting rape or serious physical injury to that person), and provide affordable bond measures that ensure simply that person return to court.

Moreover, protections for defendants by securing rights to material exculpatory evidence, thus denying a judge and court having a want to inflict punishment against a person, who by proof of exculpatory evidence, is innocent; or otherwise where there is no physical evidence tying that person to a crime, secure their right to go to trial without infliction of punishment.

Though sensible allocation of funds and measures in the long term with discernable progressive action, it is requested that for those individuals whom have circumstantial defense arguments (such as stand-your-ground or self defense arguments, among others) for crimes such as murder among other heinous crimes, the right not be confined equivalent to conviction by constructing or repurposing sensible humane housing units for detention equivalent to those in Scandinavia. – Kevin Vayko

Comment #5: I am certain you are hearing about the discriminatory application of bail-and-jail and the domino effect of loss of job, housing, custody of children on low-income persons arrested and not being able to make bail. I'm sure you are seeing studies showing that even without bail assessments, people are keeping court appearances. I understand that Michigan has begun changing some offenses to ticketed violations instead of criminal charges so there's no arrest, no jail, no bail requirement. And that the Michigan State Police has admitted discrimination in making stops. All very good steps.

"It's all about the money" is also a cry about the use of bail (and excessive fines)—being used to fund various court and governmental expenditures, not all of them necessary. But the discrimination is a form of taxation without representation and levied on those least able to afford being donors.

I do not shout "Defund the police," but I want my taxpayer money to be used to help them better "to protect and to serve." Once called "peace officers," then "law enforcement," our police are fortunately now becoming Public Safety Officers. That's a good step, too, in attitude and approach.
I want my taxpayer money to be directed first towards triage training—to analyze a situation and persons involved and to determine whether it is a result of substance abuse or mental health or actual criminal intent. Then I want the money to provide a place other than a jail cell for the first two—to come down from the substance or mental breakdown and begin treatment under medical supervision. And to also avoid the "criminal" label.

Where there appears to be criminal intent, I understand that your commission is considering in what situations, to protect the public, that bail can be a control, such as potential for further violence or fleeing the area before the court date. I agree with that direction.

Thank you for your work toward Justice. – Sherry Wells, JD

Comment #6: Hello. I want to thank this Advisory Council for the opportunity address you this morning. My name is Philip Mayor, and I am a senior staff attorney at the ACLU of Michigan. In that capacity, I am co-lead counsel in *Ross v. 36th District*, the class action lawsuit concerning the unconstitutional bail practices at the 36th District Court in Detroit. I've also represented defendants in other cases around the state in which courts have violated state law and the constitution by imposing unaffordable bail.

Over two years ago, I had the privilege of testifying before the Michigan Joint Task Force. At that time, we had recently filed the *Ross* lawsuit in Detroit. I began my remarks to the Commission by emphasizing one thing: although we filed our class action lawsuit in Detroit, the problem of courts conducting unconstitutional bail hearings is, without doubt, a statewide issue and one that I hear about when I speak to advocates in every corner of this state. I also indicated that the ACLU would be continuing to watch what happens in other jurisdictions around the state when it comes to bail.

Unfortunately, we have continued to see courts around the state flouting the United States Constitution and the Michigan Court Rules in imposing bail. This failure by courts to follow the law has become even more stark during the past two years as the COVID-19 pandemic has swept through the world, with particularly grim results in carceral facilities. The widespread presence of the pandemic inside Michigan's jails, and jails' systemic inability to prevent its spread within their walls means that people improperly held pre-trial not just have their lives disrupted by being ripped from their family, their jobs, and their home—but they now also face the risk that their pretrial incarceration will become a death sentence. Furthermore, the extensive delays that have resulted from COVID-related court closures means that thousands of Michiganders have now spent *years* incarcerated pretrial because of having unaffordable bail imposed in their cases. I have personally spoken with dozens, if not hundreds, of people facing this plight during the pandemic. Unfortunately, all of these problems have had a predictably disparate impact on communities of color as well, a fact that is supported both by statistics in Michigan and around the country regarding pretrial incarceration, as well as by my own anecdotal experience.

I'd like to share just some of the stories we've heard demonstrating the continuing failure of Michigan's broken bail system since I addressed the joint task force. In Oakland County, I litigated a bail appeal in which the circuit court had imposed unaffordable bail after a defendant who was charged with felony firearm and intent to deliver fentanyl was late to court due to bus delays. Despite the fact that this occurred in the early days of the pandemic, the circuit court ordered that this woman be detained while awaiting trial, a decision that the Court of Appeals found constituted an abuse of discretion. A few weeks later, I litigated another Oakland County decision imposing unaffordable bail on a defendant charged with felony firearm. The circuit judge had reasoned that the lengthy prison sentence potentially facing the defendant rendered him a flight risk. We appealed, and the court of appeals denied our appeal. We appealed again to the Michigan Supreme Court, which ultimately found the cash bail to be an abuse of discretion. Justice Cavanagh's concurrence explained that a court cannot "conclude[] that defendant [i]s a flight risk, despite . . . no history of absconding on bond or failing to appear for court, and based only on defendant's presumed incentive to avoid punishment—an incentive present in virtually every case." We were pleased that the Michigan Supreme Court ultimately vindicated our client's right not to face unjust pretrial incarceration, but the widespread problems of bail abuse in Michigan cannot be cured by the whack-a-mole strategy of appealing individual cases to the Supreme Court, and most defendants do not have access to the legal resources or to counsel who are equipped to bring such appeals.

Yet another example: in 2021 we learned that a judge in Kent County was raising bond for defendants who had already been released pretrial and who were compliant with the terms of their release shortly after those individuals rejected plea bargains. Essentially, the judge was punishing people for exercising their constitutional right to proceed to trial. We appealed two such cases and in both, the circuit judge was reversed. The Court of Appeals emphasized the law that "[m]oney bail may only be imposed where the 'defendant's appearance or the protection of the public cannot be otherwise assured.'" Again, we were pleased with these victories, but this kind of patchwork appellate litigation cannot address the statewide problem.

> What *could* address the statewide problem is for the legislature to move forward the package of bail reform bills that were introduced in the house last fall. Those bills reflect a comprehensive strategy to transform Michigan's pretrial practices and bring them into compliance with the constitution and with sound policy.

We at the ACLU continue to work with all involved stakeholders to move these bills forward, and I am hopeful that they will advance soon. However, if they do not, I fear that the next step will be for organizations such as the ACLU to turn back towards federal class action litigation. I do not relish the time, cost, and concomitant disruption that such litigation can bring. Though I am personally a litigator, I believe these issues are best resolved through legislative reform. I urge the members of this council to do everything in their power to promote such reform to help steer Michigan into a more just, and constitutional, pre-trial regime. – Philip Mayor, Senior Staff Attorney, ACLU of Michigan.

Comment #7: Thank you and the Jail Reform Advisory Committee for allowing for both public written and oral comments regarding jail and pretrial reform in Michigan. I was very pleased to see that participants had highlighted the critical issues regarding abundant flaws and failures of the criminal legal process and institutional procedure in this state, chiefly the significant problem with GPS tethers and cash bond assessment and how it significantly impacts judicial outcomes (coercive plea bargaining). We briefly touched base on treatment, necessity, and alternatives for confining pretrial defendants in jail including diversion to alternatives such as rehab for drug offenses and segregation of pretrial defendants to alternative housing such as those security centers erected in Denmark which are akin to nursing homes/university dormitories.

I wish that the Advisory Committee was aware (or able to become aware through review of the recording) of the chat comments during the meeting upon which expanded upon my oral testimony pointedly stating that the chief purpose of jail and prison are for convicted criminals only. Forcing a defendant to stay in jail/prison because they were not able to afford bond, tether, or comply with the extensive responsibilities such as managing of a tether among other potential bond conditions that are clearly onerous (akin to punitive probation terms) is plainly unconstitutional. The sole and original purpose of bond is simply to ensure

that the defendant returns to court. Where only there is a clear illustration and substantive physical evidence illustrating an individual is a clear danger to the public, that person shall at least be afforded a condition where only their liberty to participate in public shall be limited such as confinement to a nursing home with access to their usual standard of living affairs such as ability to manage various financial accounts, have access to proper home cooking/home provisions, free communications with their loved ones, access to remote employment opportunities and specific, guarded in-person engagements such as consulting, and plein furnishings including clothing, toiletries, and homewares. For instance, if a person is charged with a felonious assault, why should that person be restricted from use of their cellphone, remote work, communications, preferred food provisions, and home furnishings?

For a person charged with manufacturing of some illicit drug, there should not be a restriction with social communication with other individuals such as in-person work engagements. Denying access to a person charged with an assault crime should not limit their access to home-cooked food on law enforcement paranoia that they would use this as an avenue to funnel illicit drugs into the institution. That person may very well have no knowledge nor connection with any drug users so it is completely unwarranted like how the courts rule that a probation condition should tailor the crime that that person was convicted of (prohibiting the enforcement of drug testing for a person with no drug use history on a retail fraud).

I think I could speak well for most of the participants in that meeting by stating that we look forward to future opportunities for participation to allow the people to illustrate and exhibit their experience with the criminal legal system to evidence the need for necessary reform.

We are thankful for the initiation of this committee and seek to continue supporting this committee through working collaboratively on action to achieve the Committee's, ACLU's, and the People's mission to reform the unconstitutional and seriously flawed county and state policies as well as improve the gravely malicious conditions suffered by those forced to wait months if not years in jails not only for those facing crimes they did not commit but anybody seeking trial to obtain proper humane housing assignments and conditions so that their critical rights are not infringed by the torturous nature of a jail cell that are designed are reserved for convicted crimes as punishment for their crimes committed. The precept of the 'guilty before trial' presumption that so many judges often make, often based solely off a (usually) fabricated or exaggerated police report (as mine was on both occasions), in imposing bond and the subsequent infliction of punitive jail sentence for those who could not make bail as opposed to social isolation/quarantine, must be eliminated.

This two-prong task is one that will take good coordination to implement; once implemented, justice will be within a closer approach for those who simply wish to assert their trial right and moreover gain access to legal resources and supports to assist in their cases. – Kevin Vayko.

MENTAL HEALTH AND ALTERNATIVES TO INCARCERATION

Additional comments were received that discussed the importance of mental health programs as they relate to individuals who find themselves involved with the justice system and public safety. The general concern appears to be around finding alternatives to jail for those who are in need of mental health services as well as the impact of incarceration on those with pre-existing mental health concerns.

Comment #1: I think that mental health issues are closely connected to public safety. It is essential that mental health issues be addressed very early in the legal process. Embedded police social workers have demonstrated effectiveness in various police departments. Providing effective mental health services rather than utilizing jail services is also important. (Diversion programs) Police and judges need the ability to make this legally happen. In addition, there are many people currently in jail with mental health issues who need effective mental health services and programming. People with mental health issues in jails who do not get effective services and programming are at high risk for more severe mental health issues including suicide and recidivism when released. I also think that there needs to be reform for juvenile justice. I was a member of our local Juvenile Justice Committee, but it stopped meeting and has not reconvened.

Thank you for accepting public input and The charge of this Council is very important. – Charles Mueller, MSW.

Comment #2: Solitary confinement has been exacerbated by COVID and will have lasting mental health effects on those inside AND the staff who have had to deal with additional stress. Because of this, I think mental health staff need to have trauma therapy training to help people cope and adjust to society again. Something else that could be introduced without the addition of another staff member would be meditation or telehealth therapy through a tablet. Speaking of programming, all jails should be following the IGNITE model in Genesee County. We need to make sure corrections officers inside jails have behavioral training, specifically Critical Incident Training (CIT). Studies at Wayne State University and Oakland County Jail said it reduced cell extractions by 50% and staffs mental health also improved. Obviously, conditions inside need to be addressed as well. Washtenaw County does an excellent job of keeping an organized, clean jail that staff and the incarcerated population cleaning it take pride in. They do good work because they're offered good time. Which is something else all jails and prisons should be practicing. Washtenaw County also leads ending cash bail, with more prosecutors following. Cash bail is a harmful gateway to getting people stuck in the system. It fuels mass incarceration, is rooted in systemic racism, and punishes the poor. We need to be forward thinking, and lead with empathy. Everyone deserves to be treated with basic human dignity. – Carolyn Schaefer-Geurin.

Comment #3: As a Registered Nurse in the Emergency Room, I frequently cared for patients brought in by law enforcement. Most of them were picked up for some mental illness related activity. All such patients were evaluated by mental health professionals. Because the last few decades have basically stripped all residential mental health services from northern Michigan

(unless someone can afford expensive private treatment), there were seldom options other than taking the person to jail. These patients need treatment, not confinement. Law enforcement does not have the training, or the patience, to deal with mental patients. Pretrial diversion options need to become the common policy in these situations. Our goal should be to deal with the underlying problem, not to just lock a mentally ill person out of sight to suffer. Burdening them with a criminal record will only make their path to wellness almost impossible. Pretrial diversion options is the answer. – Patricia MacIntosh, RN.

DATA COLLECTION AND STANDARDIZATION

Another area of interest within the comments received was that of data collection. Also discussed in the comments received on the Pretrial Bills, there appears to be a general interest in standardizing criminal justice data throughout the State to increase effectiveness of the justice system.

Comment #1: I submit some comments today regarding jail reform and my opinion about the need for transactional data integration at the local charge, adjudication, and supervision levels.

Traditionally, justice stakeholders at the local government level (Law enforcement, Prosecutors, Courts, Jails) often work with information gaps due to the siloed nature of their organizations. The decision makers in these systems rely on information from many sources and information gaps result in degraded decision making. This can result in unnecessary holds, arrests, or inappropriate releases at the supervision level.

The opportunity exists for data sharing to occur automatically from one information system to another and at the time a specific justice event or action occurs. Additionally information exchanges built with a response message to convey results back to the sender, creates a feedback loop that reduces the chance for errors and slashes the time it takes to update or correct a record.

A justice data integration initiative, facilitated by an IT group, could convene all these stakeholders, help them see the big picture and value of establishing an effective data integration solution across these charge, adjudication, and supervision levels.

The effort would include mapping the information flow a high level down to each individual information exchange, e.g., Computer Aided Dispatch systems, Jail Management systems, Prosecutor and Court Systems. Working with Subject Matter Experts to develop and manage a comprehensive workflow that results in a well-conceived data integration model across the entire justice system. This would reduce information gaps, delays in record correction, and overall improved decision making. Thank you for the opportunity to submit comments. – Anthony June, IT Professional Macomb County.

Comment #2: I am an original citizen contributor to the Joint Task Force's efforts, having provided data and statistics from such organizations as the Prison Policy Initiative, and the Vera Institute of Justice. I have been watching the recommendations, legislative process, and politics unfold around this issue, at the local, state, and national levels. At the local level, our county (Otsego) has pursued quadrupling it's jail facility while these reforms have been ongoing. Within our state a report from the MSP outlining some of it's own discretionary mistakes, and potential racial profiling. At the national level, crime and the typical reactionary politics surrounding it, is fueling pubic discontent with no real solutions being offered by anyone.

One thing has become abundantly clear. The politics surrounding this issue is strong. The hard line right's policy portrays incarceration as the best tool, that produces the best results, for most circumstances. Where the deep left's policy's seem to be that jails should not exist at all. Reality is no where near either side. Recognizing that jails/prisons are inherently harmful institutions their use should be focused on individuals who are actuarially assessed to pose a serious Public Safety threat, and to reduce recidivism.

I would ask all of you to please remove the politics from this issue, and utilize real data to inform decisions.

With that, I have attached a Meta-Analytical Review of Custodial Sanctions and Re-offending to my comments. (See attached). – Stephen Butka.

ADDITIONAL COMMENTS

Comments were also received regarding a variety of additional justice related topics from various sources including stakeholders as well as private citizens.

Comment #1: I am writing to ask if you have read and considered the final report issued by the Criminal Justice Policy Commission? It provides some valuable information and was two years in the gathering of facts. I believe the Legislative Service Bureau has a copy of the report. If they do not, please contact me and I can forward it to you. – Bruce Caswell, Retired State Senator.

Comment #2: How many lawyers, doctors, or generally well educated individuals that are successful in their careers do you suppose are incarcerated every year in comparison to other classes of citizens? Does it not stand to reason that an individual who is satisfied, naturally talented, and naturally interested in their career path would generally be more satisfied with their life in general as they substantially contribute to their community and would thus have little to no need to commit crime in pursuit of that same satisfaction in life or simply to survive it? Does it also not stand to reason that the time an individual wastes rotting in a jail cell on the tax payers dime could be far more productively spent pursuing the education necessary to pursue such a career that is uniquely suited to their natural interests and gifts? Therefor, does it not stand to reason that their sentencing should be more focused on transforming them into the person they should be and can

be, compelling them to realize their potential so that they can see the difference between “right” and “wrong” for themselves and truly understand the distinction, as opposed to wasting time trying to measure what size “stick” to use as their punishment for a reckless mistake that they are incapable of reversing time and amending even if they wished for nothing more than to undo whatever “wrong” they committed? From where I’m sitting, such pointless and reckless misuse of taxpayer funding, blatant disregard for another human being’s life, and demonstration of sociopathic qualities that makes someone incapable of relating to or understanding the human condition and all the flaws and mistakes that come with it, are every bit as harmful, if not more so, as most crimes that these individuals are so often locked in a cage like animals because of. It also stands to reason that whoever came up with the idea to lock human beings in cages like rabid dogs and expected them to come out the other end more civilized, despite the fact that common sense and all history of the attempt have not only failed towards that effort but produced adverse consequences, was not a generally well educated individual and all statistics conclusively prove that they were not remotely successful in their career of distributing justice to the community. Perhaps if they had been more educated, rational, and open minded, we wouldn’t find ourselves in these present circumstances. Education is not a privilege, it is an inexorable duty and obligation of each and every person to both acquire and share as efficiently as is within reason. If our justice system actually took the time to ask these people WHY? they did what they did instead of placing so much effort into publicly crucifying, humiliating, and punishing them, thereby demonstrating characteristics of sadists, it would be clear that an individual does not commit an injustice without first being the victim of one that remains to this day, unrectified. People are neither born “BAD” nor choose to be “BAD”. Some people are just exposed to certain intolerable circumstances in life and the fact that we are too ignorant to process the complex mathematical equation filled with those unknown variables does not excuse us to treat them like animals and take their life from them. In which case, WE become the animals. The LAW and Democracy killed Jesus Christ 2 millennia ago and in all that time, it would seem that our intelligence has not grown as a society because we are still making the same mistakes and expecting different results. Neither monkeys, dogs, or any other animal is that stupid. For the love of God, try something else, anything else. A solution by definition solves a problem and if it fails to do so, you cannot beat it into submission like cave men, as history has made abundantly clear. Anyone who lacks the basic capacity to at least do that much needs to find a more productive use of their time and allow someone better suited for the task assume that role. The solution is to treat people like people and talk to them like people. Who would have thunk?

Generally speaking, younger people tend to be more open minded, willing to admit when they are wrong, or that they don’t have the answers and it is generally much easier to address their bad and incorrect predilections than those who are more matured by comparison. However, our justice system uniformly lacks that diversity, which is a huge issue. Generally speaking, the older you get and the more experience you acquire, the harder it becomes to admit to one’s self that the opinions they have so passionately held for so long and the mistakes they’ve made as a result were in fact incorrect and that the time and effort spent has been counterproductive. Its an uneasy feeling and I generally can’t blame anyone individually for being a stubborn ass but is a substantial issue

nevertheless, especially in matters of government. Its also complete BS that we don't give kids the right to voice their opinion about the laws and policies that govern their lives, yet they can be sentenced to life or have their potential futures stripped from them nevertheless. That's human trafficking and it needs to stop. - Brandon Harvey.

Comment #3: I appreciate the opportunity to submit a comment. The injustice that has plagued our nation will not end until we see justice within our judicial system. We must be willing to rewrite the wrongs in our laws and implement the corrections allowing for prisoners to see true justice. The supreme court made corrections to the Michigan Felony Murder Law, in 1980 yet the corrections has not corrected the sentencing of many elderly men and women serving life sentences. Please make a recommendation for Governor Whitmer to commute their sentences., for justice sake. – Felicia Massie.

Comment #4: We are seeking your assistance on behalf of the men and women who have been wrongfully imprisoned for erroneous felony murder convictions in Michigan. Before November 24, 1980, the Michigan Felony Murder Law contained judicial conflicts. The Michigan Supreme Court intervened and corrected the judicial conflicts in their corrective Aaron Ruling effective November 24, 1980. The People vs Aaron ruling clarified that malice must be proven by the prosecution. If not, then the respective Governor has the authority and power to execute commutations on behalf of the erroneous felony murder convictions that merit the application of the Aaron ruling of November 24, 1980. We are asking the Governor to release the Pre Aarons. The Michigan Supreme Court Ruling of November 24, 1980, clarified malice could not be assumed by participation during the underlying felony, but that separate findings of Malice must be made regarding the death. Unfortunately, the Michigan Supreme Court Aaron Ruling applied the ruling to the 3 cases before it and to all future cases, leaving the remedy for the prior all other erroneous felony murder convictions to the legislature and the respective Governor. The Governor has the power to grant commutations based on the cases that are deserving the Aaron Ruling. Please contact The Michigan Governor Whitmer on behalf of the Pre Aarons and request the commutations of these elderly men and women serving life sentences. Thank you for your time and consideration! – Michael Bryant.

Comment #5: Democracy's literal meaning is "rule of the people." The more localized that the decision- making is, the more democratic a society is. This is because the smaller the group of voters, the more each vote will effect the policies under which that voter lives.
Lansing politicians have sought to de-localize the justice system by constraining the ability of local judges to enact the right solutions for the communities that elected them. If a community in the Upper Peninsula, for example--through its elected law enforcement and judicial officials--wishes to punish drunk driving especially severely, based on a belief that this will reduce its incidence in the community, why should the goals of uniformity sought by Lansing officials who neither live in, are responsive to, nor are responsible to that community stand in that community's way?

The first answer which would likely be offered in response is that of uniformity--that drunk drivers or other wrongdoers should be punished equally no matter where in the state they have done wrong. The second answer that would likely be put forth is that Lansing officials have been given the authority to make policy decisions on a broader scale than that of local officials and the Lansing officials have decided this to be the best course.
The first answer holds water initially, but ignores that communities--acting in their own interest--can change course quickly, and much quicker than can occur statewide. So, if, for example, a southeast Michigan community noted that it had become lenient on drunk driving while a southwest Michigan community was harsh, and the harsh treatment was reducing incidence, those southeast Michigan judges could alter their practices or the voters could elect different judges. On the flip side, if communities noted that their inmate numbers were high but without a corresponding boost in public safety, they could seek different judges as well. The second answer is certainly true as a legal assertion. As a local actor who cares deeply about the community I live in and am raising my family in (and was raised in and my parents and sibling live in), I disagree with the idea that people who do not live here know what is best in crafting the policy to best enhance the public safety. If the people of this county, through the judges that they elect, wish to be harsher on crime, or more restrictive on bail decisions, that should be within their authority so long as the practices are consistent with the federal and state constitutions. Notably, some solutions may be effective in one community but not another.

What I ask you to do is consider whether what you are doing is proper. I—of course—understand that it is well-intentioned and, ultimately, data and public-input driven. In a democracy, however, people should be free to disagree, to craft local solutions, to try different options, and, even, to make mistakes. De-localizing the justice system is well-intentioned but it is not the right course because it hampers the ability of the people to do so and I respectfully ask you to reverse course. – Christopher (Kit) Tholen, Assistant Prosecuting Attorney/Deputy Civil Counsel, Grand Traverse County.

Comment #6: Please work to substantially reduce jail populations:

End the use of bail; Commit to no new jail construction or expansion; Seek and provide necessary funding for nonprofits to mentor and oversee in the community those who would otherwise be in jail but pose no immediate threat; Decriminalize all use and selling of drugs;

Provide much greater funding, in part from money saved by the above, to communities most at risk for criminal behavior, including cash grants to establish an income floor, support for homeownership and nonprofit rentals, public transportation, health care, and higher education.

In addition, undertake a media campaign to highlight successes of those who could have gone to jail but didn't, as well as dangers posed by those who were jailed unnecessarily or excessively. Think of it as the reverse of the Willie Horton strategy. – Richa.

Comment #7: If we are discussing jail reform legislation and creating standards to ensure state-wide compliance, we cannot leave the uniquely complicated municipal court phenomenon out of the broader conversation. It is not enough to assume that current compliance measures will affectively reach or impact these courts/communities in the same way. There should be a targeted plan specifically for these courts who, unlike their state counterparts, "are often run in informal fashion by interested parties, or by parties whose salary and tenure depend on satisfying local political and economic interests" (Natapoff, 2021, p. 968). Communities ran by those who have a direct economic or political interest in how the court operates may limit implementation of reform policies that may reduce the budget, upset the community, or affect special interest.

One policy example that illustrates this point would be the presumption of nonprobation sentences and early discharge from probation. Probation oversight fees, charged as a fixed monthly amount for each month on probation, is one of the highest single assessments on a probation case. Municipalities heavily depend on their courts contribution to the city's economic health and the judges' performance and tenure may be determined by the courts fiscal contribution to the budget and the communities satisfaction of how the court operate. judges in these courts may feel pressure to slow, stall, or only partially implement these new legislative policies to satisfy special interest and falling back on judicial discretion; with minimal to no oversight to verify or compel compliance. For this reason, I believe this council will need a targeted approach to address compliance barriers uniquely present in municipal ran
courts/communities.

In addition, how municipal courts operate from day to day is often different from state courts and should also be recognized and included in this councils targeted approach to ensuring compliance in the municipalities. A Harvard law review published January 11, 2021 stresses that municipal courts are "least scrutinized and largely ignored by judicial theorist" (Natapoff, 2021, p. 965) and further details "dysfunctions for which lower courts have been generally criticized: cavalier speed, legal sloppiness, punitive harshness, and disrespectful treatment of defendants"
(Natapoff, 2021, p. 965), that often go unchallenged and uncorrected due to the inattention and lack of scrutiny from the legal community. Courts operating in this manner can hinder the reform and compliance efforts of this council.

1. How does the council intend to facilitate and ensure legislative compliance if a court is found to be inflicted with those attributes or any other internal organizational barrier that poses a threat to proper implementation and compliance?
2. Has the council considered or plans to consider how to specifically target and address legislative compliance within the four (4) locally created, funded, and operated municipal courts in the Grosse Pointes?

3. How does the council plan to approach ensuring legislative compliance within the four (4) municipal courts/communities who may chooses to satisfy their own or other party interests over legislative compliance? And will there be measures in place to ensure continued compliance after the council is dissolved?

I hope this council can address these specific questions here but also be the spark that sheds light on the 4 municipal courts in Michigan and the importance of addressing and incorporating their unique challenges/situations in the larger plan to address criminal justice reform and hopefully create a dialogue between the legal community and these municipalities through our shared goals for equal justice throughout Michigan. And hopefully usher in an increased level of attention, scrutiny, and oversight of municipal court operations to reduce defragmentation in the justice system and increase recognition and consideration of their unique barriers and challenges.

Natapoff, Alexandra, Criminal Municipal Courts (January 11, 2021). Harvard Law Review, Vol. 134, No. 3, 2021, Harvard Public Law Working Paper No. 21-04, Available at SSRN: https://ssrn.com/abstract=3775273. – T. Smith, Court Clerk/Probation Officer

Comment #8: All of those inside our jails should be given the opportunity to vote. In addition, standards requiring all jails to provide programming for all of those serving time must be required. Genesee County and Ingham County are two examples of counties that are showing this can and should be occurring.

Jails should be addressing the use of isolation/segregation. When individuals must be isolated, there should be a limited time and programming should occur while they are inside, that would benefit their growth and assist staff with their behavior.

Training addressing the culture and addressing individual's needs should be implemented. We are seeing this is possible in other states and needs to be implemented in Michigan. Creating a trauma-informed approach, along with addressing person-centered needs is essential.

The last recommendation is for jails be mandated to create family reunification policies, putting standard release forms in place upon entry and policies that focus on the need for families to stay involved during their stay in jails so individuals are better prepared for return. This should include free phone calls, tablets that are free of charge to families and in-person visits, particularly for children.

Legislators should create laws that implement a Legislative Inspection Committee, mandating unannounced visits at county jails. In addition, Community Advisory Jail Boards should be established at every jail. – Lois Pullano

Jail Reform Advisory Council Attorney Survey Comment Summary

Monday, November 28, 2022

With the assistance of the Prosecuting Attorneys Coordinating Council, Prosecuting Attorneys Association of Michigan, the association of Criminal Defense Attorneys of Michigan, and the Criminal Law Section of the State Bar of Michigan, the council was able to distribute a survey to attorneys across the state. The survey explored the amount of training received by attorneys on the reforms, their specific knowledge of the reforms, and their experiences practicing since the reforms took effect. The following questions were asked:

1. Please identify the counties in which you primarily practice.
2. Please select from the following:
    a. Prosecuting Attorney
    b. Defense Attorney
    c. Other
3. Have you received any training on the Michigan 2020 Jail Reforms?
    a. Yes
    b. No
4. When was the most recent training you received?
    a. Within the last six months.
    b. Within the last nine months.
    c. Within the last twelve months.
5. How likely are you to attend any additional trainings on the 2020 Jail Reforms if offered?
    a. Very likely
    b. Somewhat likely
    c. Neither likely nor unlikely
    d. Somewhat unlikely
    e. Very unlikely
6. Please answer the following based on your knowledge of the 2020 Jail Reforms. Defendant A fails to appear for the first time for a hearing on a retail fraud 3rd degree charge (MCL 750.356d) that was initiated by a complaint and warrant. The court DOES NOT have a specific articulable concern for public safety or that a person or property will be endangered, witnesses are NOT present, and the hearing in question was NOT scheduled for sentencing. What should the court's course of action be?
    a. Immediately issue a bench warrant.
    b. Wait 48 hours before issuing a bench warrant to allow the defendant to voluntarily appear.
7. Based on your experiences, during the last two months how frequently are judges stating on

the record why they are departing from non-jail, non-probation sentences when sentencing individuals to jail or probation on non-serious misdemeanor charges?

a. Always
b. Very often
c. Sometimes
d. Rarely
e. Never

8. Based on your experiences, during the last two months how frequently are judges advising defendants at sentencing of their eligibility and the requirements for early discharge from probation under MCL 771.2?
    a. Always
    b. Very often
    c. Sometimes
    d. Rarely
    e. Never
9. MCR 6.445(B) which took effect September 1, 2022, states at the arraignment on an alleged probation violation, the court must inform the probationer whether the alleged violation is charged as a technical or non-technical violation. Based on your experiences during the last wo months, how frequently are judges advising defendants as to which and how many of their probation violations are "technical"?
    a. Always
    b. Very often
    c. Sometimes
    d. Rarely
    e. Never
10. Based off your knowledge of the 2020 reforms, Defendant B is found guilty of driving while license suspended (MCL 257.904), 1st offense, and can only be sentenced to jail if _____.
    a. The judge finds reasonable grounds stated on the record.
    b. The defendant has a prior criminal history.
    c. The license suspension originated from a failure to comply with a previous judgment.
11. In your observation, are sentencing practices currently consistent with the 2020 Jail Reforms?
    a. Always
    b. Very often
    c. Sometimes
    d. Rarely
    e. Never
12. For defendants who receive probation sentences, what risk/needs assessment tools have you observed being utilized to determine the need for rehabilitative programing (i.e. probation).
13. Please provide any additional feedback you would like to share.

The council had 280 respondents in total. Respondents were asked to respond anonymously to encourage participation. Below you will find a list of all comments received, categorized by subject matter.

GENERAL COMMENTS ON THE REFORMS AND IMPLEMETATION

With the 2020 Michigan Jail Reforms came many changes which required a huge lift on the parts of all justice system stakeholders and partners. With those changes came many new policies and procedures in effort to reduce jail populations. Below are the comments received from attorneys that address the reforms in general as well as implementation.

Comment #1: I don't believe the jail reforms are serving the defendants or public. This is especially true in controlled substance offenses. Defendants are dying, picking up new felony charges, or absconding in record numbers. Letting a fentanyl addict sit in jail for a couple months before their case is resolved may save their life.

Comment #2: The reform has made it difficult to prosecute misdemeanor cases, with no threat of jail time being imposed.

Comment #3: The reforms of 2020 have placed priority on defendants' convenience, makes it hard to hold them accountable, and has had a negative impact on public safety.

Comment #4: The reforms of 2020 are absolutely stupid and just slow down the inevitable. While they sought to achieve noble goals they have taken away all discretion from all parties!

Comment #5: My answer to #6 reflects the fact that the courts are NOT departing from "non-jail, non-probation sentences". Almost no one goes to jail at all, for anything, ever. Many defendants are blowing off court dates and then showing up days to months later to "turn themselves in" before they can get picked up on their bench warrants to avoid any sanctions. #9 & #10 were guesses since I have had zero training on this and am unsure. #11 if they are using something beyond the original Pretrial Release Assessment, I haven't seen it.

Comment #6: I see a decline in holding defendants accountable. Defendants don't take court seriously because they know they aren't going to jail. They go out and commit more crime and reoffend. The Courts are not doing enough to deter crime when handing down "slaps on the wrist" and giving defendants, 3rd, 4th, 5th, chances, and extensions to pay their court fees/fines/costs/ etc. It's discouraging as a prosecutor to do this work and have defendant's get little to know "punishment".

Comment #7: I am an Appellate APA so I really don't see misdemeanor sentencings, but in that vein, I have not seen any appeals based on a judge not following the 2020 Jail Reforms, so my best guess is that the judges in Oakland County are following them.

Comment #8: I believe there are issues with the reform changes in how they impact sentencing to jail in Circuit Court cases. I believe the court should have more discretion to give some jail in many felony situations, and the assumption in many cases that no jail is an appropriate resolution is not fair to either the community or the victim. I also feel that if the goal is to give probationers alternative services, than more accessibility to mental health services and substance abuse services need to be paid for and made available, especially in rural communities.

SENTENCING PRACTICES

Many of the reforms passed in 2020 impacted sentencing practices, including 2020 PA 395, which became effective March 24, 2021 and created a rebuttal presumption for non-jail, non-probation sentences for persons convicted of any misdemeanor that is not classified as a non-serious misdemeanor, with a fine, community service, or other non-jail or non-probation sentence. However, the reforms do allow for courts to depart from the presumption if a finding of reasonable grounds to do so is articulated on the record. Below are the comments received from attorneys regarding what they have been experiencing in courtrooms in regard to sentencing practices since the reforms became effective.

Comment #1: Judges have largely ignored the 2020 jail reforms, and I'm not seeing a practical difference in sentencing practices.

Comment #2: Chippewa County refuses to honor non-jail and to grant tether time for sentencing. They just state it is a risk to public safety and figure that is good enough.

Comment #3: Many judges in our county are using Givans for any opportunity to deny defendants credit, potentially running afoul of the general statutory scheme making concurrent the default, and consecutive the exception

Comment #4: There needs to be clarity on some issues, some judges are purposely crafting sentences to avoid some of these reforms… i.e. suspended sentences or specific consequences put on the record at sentencing to sentence harsher on what would normally be a simple technical violation.

Comment #5: There are District Judges who seem to think that probation and jail for any misdemeanor is not on the table if it is a first offense.

Comment #6: I am a City Prosecutor and do not attend sentencing unless I feel there is a public safety issue and I want to make sure that the Court is apprised of our concerns regarding a particular defendant.

Comment #7: A lot of the judges are not following the jail reform. For example, we have

multiple clients who are eligible for sobriety court, do all the work to get into sobriety court, and the judge will still sentence the defendant to a jail term. We also see that some judges will not allow for a transfer out of their court in order for a defendant to get into a sobriety court in another jurisdiction (because they do not qualify for the sobriety court in the court's jurisdiction, simply because they do not reside in said jurisdiction). It is very frustrating!

Comment #8: Someone needs to go to Eastpointe and explain to the judge there all the reforms. She is sentencing individuals to high fines and costs and probation for DWLS offenses. The probation will be 6-12 months with oversight fees. The defendants never have a chance!!!

Comment #9: Judges have by and large ignored recent sentencing reforms and continue to prop up the probationary system as much as possible.

Comment #10: I find it to be extremely uncommon for Macomb Co judges to sentence jail time for minor misdemeanors or even for PVs, so fortunately many of these have not been applicable in my practice.

PROBATION

Various comments received focused specifically on current experiences of attorneys as it relates to probation terms and violation sentences. Under the reforms, 2020 PA 398 which took effect March 24, 2021, established an amendment that requires conditions of probation/parole be tailored to the offender. Additionally, the reforms established a new process and eligibility requirements for early discharge for probation, established the requirement for courts to identify technical violations, and placed limits on the maximum jail sentence that can be imposed for technical violations. Below are the comments received regarding probation.

Comment #1 Judges routinely fail to adhere to the probation reform sentence structure with technical violations. The appeal process takes too long to address these concerns.

Comment #2: Some judges are simply ordering a doubled probation time so that the request for termination is appropriate at the time they wanted anyway.

Comment #3: Too many judges respond to serial probation violators as though they are being personally insulted. And too many of them waste time apparently trying to educate the offenders.

Comment #4: The standard terms of probation still being utilized without them being tailored to each individual and each individual crime/rehabilitativeness.

Comment #5: The judges do not tailor probation to the individual. Nearly all probation terms are

the same regardless of the offense.

Comment #6: One judge in particular is now giving a sentence held in abeyance (like 30 days) to be instituted on any violation. She actually said in a recent sentencing that this way she can go around the statute on technical violations and give more time. By the time someone appeals, the sentence is already served. The court does not suffer a penalty.

Comment #7: Consider this example: In DUI cases, education can be helpful. However, over the years, the courts have gone from admonishing people to "not do it again" to sending them to all kinds of classes and counseling and requiring all kinds of testing. What has been the net result? No decrease in drunk driving incidents overall.

Sometimes, the imposition of a fine is enough. Other times, perhaps a term of non-reporting probation will be enough. However, probation officers have become the big "deciders" in so many misdemeanor cases, and often play the role of clinician and counselor.

Sorry if that wasn't exactly responsive, but it seems that probation has grown from part of a sentence to an entire institution in its own right. Too many judges fail to exercise their own thought, and just rely upon a PSI.

TRAINING AND EDUCATION

Additional comments were received that discussed the importance of additional training and education, not only for attorneys, but for Judges as well.

Comment #1: I think there needs to be more training for judges, probation departments, and attorneys.

Comment #2: Training on this is well needed.

Comment #3: Most of our county judges comply with the amendments. We have a couple of judges that refuse to. Not sure if it is from a lack of training or education in the updates or from a refusal to comply because they do not agree.

Comment #4: The bar as a whole needs to have a required CLE on the topic

Comment #5: It seems many of the Judges have little or no knowledge of the Jail reform bills or new court rules.

Comment #6: Would love additional training.

Comment #7: I had training on this back in March/April 2021 and gave a presentation from our office to law enforcement on this subject based on the laws.

Comment #8: I'd be interested in a practical what-prosecutors-need-to-know type of training (focused on what we need to take into account/address when pleading cases out and handling sentencings), ideally on Zoom, with the recorded training and/or handouts being available for later review. But maybe this is something more appropriate for PAAM to take on (if they haven't already--I'm not sure).

Comment #9: More training and a handout/reference guide would be helpful.

Comment #10: This information should be made available in the courthouses for indigent defendants and pro se defendants.

Comment #11: The MSC and the SCAO need to take the lead in informing courts of what they must do in this regard.

Comment #12: I have minimal dealings with misdemeanors but substantial dealing with felony probation violation. In my experience, the Courts are working hard to follow the new requirements. Additional training would be helpful.

Comment #13: Jail reform updates should be sent to all attorneys practicing in Michigan.

FINES AND COSTS

While the issues of fines and costs, and court collections were not specifically addressed by the reforms, there were a few comments received on the topic.

Comment #1: There needs to be less financial incentive for courts to sentence individuals to probation. Oversight fees are a large revenue stream for courts and, while I understand that courts are underfunded, the State needs to step up with funding to make these jail reforms a viable option for the courts to follow.

Comment #2: I think it's important that we continue to target nonviolent offenders too but we also need to focus on the warrants issued on "failure to pay cases." Indigent defendants frequently change addresses and phone numbers and once they are off probation, they have no legal requirement to update the court. If they still have fines and costs owing the court will likely issue a show cause order forcing them to appear but the defendant will never get it and a warrant will be issued for missing court. These are issued even in cases where the defendant has already served the maximum jail sentence or probation term. Continuing to monitor fines and costs through the use of "show cause" hearings isn't any different then indefinitely extending their probation. Courts should be limited to the same collection procedures as civil parties and be required to issue subpoenas to show up for a creditor's exam and require personal service.

Comment #3: One of the negative side effects that I've noticed is an increase in the number of cases a defendant will pick up while on bond. My concern is that there isn't enough supervision during pretrial supervision, and it leads to more negative consequences for defendants on bond.

ADDITIONAL COMMENTS

Comments were also received regarding a variety of additional justice related topics. These topics varied in subject matter including, but not limited to bond matters, pretrial supervision, and clients' access to their attorneys.

Comment #1: Access to atty - client meetings in jail is too limited and impedes case preparation, client communication and case resolution.

Comment #2: Strict bond conditions and testing requirements that are expensive for indigent clients are also common practice still.

Comment #3: We are working hard to get the courts, the jail, and the prosecutor on the same page procedurally. Pretrial incarceration is a problem here due to extremely high bonds in many cases. While there are ongoing challenges, we have definitely seen improvement.

Comment #4: One of the negative side effects that I've noticed is an increase in the number of cases a defendant will pick up while on bond. My concern is that there isn't enough supervision during pretrial supervision, and it leads to more negative consequences for defendants on bond.

Comment #5: I'm not sure the requirement that judges place reasons on the record are likely to change anything. There's been a PR bond presumption a long time and still most felonies have cash bonds set, even on nonviolent offenses. There's always going to be some reason to depart from the default.

Comment #6: Judges in district courts treat misdemeanors like felonies--they impose the same restrictive probationary conditions that are nearly impossible for the "best probationer" to complete. Going from class to treatment to a drug testing facility to community service to reporting with the monthly stipend--these conditions are designed for failure. Judges quickly revoke HYTA, 7411, delayed sentencing and other expungement pleas upon the tiniest technical violation. It's mean and racist. As for felony offenders on probation, the courts threaten prison at sentencing. The stress this causes the average probationer who made a stupid mistake is insane. Clients go through case-related depression and anxiety and often seek medical attention for these conditions. I mean, seriously, WTF. It shouldn't be like this. In the federal system, clients drop when they report (at the pretrial or probation meeting, rather than at an off-sight location costing $50-$75 for testing), pretrial officers set clients up with counseling appointments as the client sits and watches the officer call and make the appointment, education

and additional classes are also set up through the PT officer, thus, maintaining a close relationship with the client's success. The DOC is a joke. All of the court-ordered classes cost money my clients need to be spending on putting food on the table for their children. Keeping a full-time job and complying with a probation order may not work, given the pile on of different conditions. So, yes, I'm interested in the training or reading about the 2020 jail reforms. I am, however, cynical about them changing the behavior of the bench.

Comment #7: Jackson County recently implemented a policy that restricts attorney visits to 3 hours during the normal workday. I think this should get looked into and a lawsuit started.

Comment #8: I found it stunning that a defendant who was charged with CSC was out on tether, pending trial.

Comment #9: We have staffing/personnel issues in this county, with rapid turn-over in the clerk/probation office that interferes with training and skills in the probation department.

Comment #10: The continued restrictions on Judge's to deal with Defendant's is causing more harm than good. Many of these defendant's get out, get another felony, get out, get another felony, get out, get another felony. Sometimes 5 or 6 times. Which ends with them having numerous convictions and way more problems. I feel the primary issue is the speed at which cases are resolved. It is not effective to put punish someone 2 years after the crime has been committed. Covid backups have made it worse. I just tried a forcible rape 3 years after it was committed. This isn't fair to the victim, it isn't fair to the defendant and it's very difficult on witnesses.

Comment #11: Most often the Judges are very interested in rehab of client/defendant.

Comment #12: Coupled with general Jail Reform, I would like to see overlapping or comprehensive training that encompasses a focus on Juvenile Justice and accompanying reform efforts as well.