

Michigan Jail Reform Advisory Council



2021 Report to the Governor, Legislature, and
Supreme Court

January 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

Executive Summary

The Michigan Jail Reform Advisory Council is a 19 member advisory body tasked with facilitating, monitoring, and evaluating the successful implementation of jail reform legislation throughout Michigan. The Council must report annually on or before the 15th of January to the Governor, Legislature, and Supreme Court on implementation of the jail reform legislation and measurable outcomes.

Courts

The State Court Administrative Office (SCAO) developed several resources and training opportunities in 2021 to help courts prepare to implement the jail reforms. The SCAO also maintains a Jail Reform webpage with information for the public, and revised numerous court forms to comply with the new laws. The Michigan Supreme Court published for comment, several court rule amendments and additions to align court procedures with the new jail reform laws.

Law Enforcement

Administrative leaders from law enforcement agencies across the state provided regular training opportunities to current and new officers on the new laws and how they impact policing procedures. Law enforcement continues to explore avenues of data collection to determine how the new reforms have affected Michigan jail populations.

Department of State

The Michigan Department of State implemented procedures, consistent with the reforms, resulting in 154,326 Michigan residents becoming eligible to hold a valid driver's license. Additionally, the Department of State issued various communications to Michigan residents affected by these changes, informing them of their license status.

Attorneys and Public Defenders

Various bar associations, private law firms, and other attorney-affiliated associations throughout Michigan have provided various educational opportunities to assist attorneys with navigating these reforms and understanding how they impact their clients.

Prosecutors

The Prosecuting Attorney's Association of Michigan (PAAM) utilized various methods of statewide outreach to provide training and information to prosecutors regarding the jail reforms.

Department of Corrections

The Michigan Department of Corrections revised statewide operating procedures and implemented new processes, practices, and forms. The Department issued instructional memorandums and question and answer documents to their staff throughout the state. They have also taken steps to revise the annual Community Corrections funding application to include pretrial standards that are consistent with national standards.

Michigan Jail Reform Advisory Council

"Thanks to the data-driven, bipartisan work of the Jail and Pretrial Incarceration Task Force, Michigan is a national leader in reforming our criminal justice system to be more fair, effective, transparent, and accountable."

- Chief Justice Bridget M. McCormack.
Governor's Office Press Release, April 21, 2021

The Michigan Legislature passed an expansive jail reform bill package in December of 2020, that was signed into law by Gov. Gretchen Whitmer in January of 2021. The Michigan Jail Reform Advisory Council, established via Executive Order 2021-5, is specifically tasked with ensuring the successful implementation of these laws in Michigan. The Council must report annually on the implementation of these jail reforms and their measurable outcomes.

Despite falling crime rates, Michigan's jail populations have nearly tripled over the course of 40 years.¹ This trend was not closely analyzed until state and county leaders collectively made jail incarceration a priority in Michigan. The Michigan Joint Task Force on Jail and Pretrial Incarceration (the Task Force) was established via [Executive Order 2019-10](#) and was tasked with making recommendations to expand alternatives to jail, safely reduce jail admissions and length of stay, and improve the efficiency and effectiveness of Michigan's justice system. The Task Force examined years of jail, court, and law enforcement data, consulted with experts, reviewed literature, and listened to public testimony before issuing a [final report and 18 policy recommendations](#) in January of 2020. Many of these recommendations were codified into law and became effective throughout 2021.

The Michigan Jail Reform Advisory Council (the Council) was established in April of 2021 by [Executive Order 2021-5](#) and was specifically tasked with ensuring the successful implementation of these laws and reforms in Michigan.



Gov. Gretchen Whitmer signing the jail reform bills on January 4, 2021.
(Photo: Governor's Office)

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



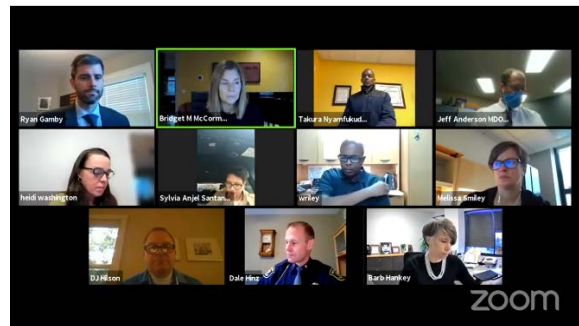
(l to r): Senate Majority Leader Mike Shirkey; Former Speaker of the House Lee Chatfield; Lt. Gov. Garlin Gilchrist II; and Chief Justice Bridget McCormack

The Council is a 19 member advisory body within the Department of Technology, Management, and Budget (DTMB). The Council is chaired by Chief Justice Bridget M. McCormack and receives assistance from the State Court Administrative Office (SCAO) to facilitate, monitor, and evaluate the successful implementation of the 2020 jail reform laws. Per Executive Order 2021-5, the work of the Council may include, but is not limited to:

- 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.
- 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.



Michigan Jail Reform Advisory Council Remote Meeting (October 15, 2021)

The Council conducted five virtual meetings in 2021, which are recorded and made available to the public via the SCAO's website. 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](#)

Michigan's 2020 Jail Reform Package

The Michigan Legislature passed an expansive jail reform bill package in December of 2020 that was signed into law by Gov. Gretchen Whitmer in January of 2021. The laws align with the recommendations made by the Michigan Joint Task Force on Jail and Pretrial Incarceration 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 provides a brief summary of the jail reforms that became effective in 2021.

Appearance Tickets

Appearance tickets allow defendants charged with certain crimes to appear in court on a specific date rather than being arrested by law enforcement. Before the reforms, law enforcement officers could only issue appearance tickets to defendants charged with misdemeanor offenses punishable by 93 days in jail or less. The reforms authorize law enforcement officers to issue appearance tickets for misdemeanors punishable by up to one year in jail, but expressly exclude certain offenses; and establish a presumption of an appearance ticket for other offenses.

[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 Bench Warrants

When a defendant is charged with a new criminal offense, courts may issue either a summons, which directs the person to appear in court on a certain date, or an arrest warrant. Similarly, if a defendant fails to appear for a scheduled court appearance, the court may issue either an order to "show cause," which requires the defendant to appear in court, or a bench warrant. The reforms require courts to issue summons, specifically under certain circumstances, to allow a person the opportunity to appear in court. The reforms also allow certain defendants 48 hours to present themselves to the court after failing to appear, before a bench warrant is issued. These reforms allow law enforcement to focus on more immediate threats to public safety rather than arresting and booking low risk defendants into jail on warrants.

[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 establish a rebuttable presumption for courts to sentence persons convicted of misdemeanor offenses, other than a non-serious misdemeanor, with a fine, community service, or other nonjail or nonprobation sentences. Courts may depart from this presumption upon finding reasonable grounds to do so and stating it on the record. The reforms also clarify that imprisonment in county jail is no longer considered an “intermediate sanction.”

[2020 PA 395](#), effective date March 24, 2021

Creates a rebuttable presumption for nonjail, nonprobationary sentences in certain misdemeanor cases.

Holmes Youthful Trainee Act (HYTA)

The Holmes Youthful Trainee Act allows certain offenses to be dismissed if a defendant successfully completes court requirements. Under the previous law, a defendant was only eligible for HYTA if the offense was committed before the defendant’s 24th birthday. Under the reforms, HYTA eligibility is expanded to include offenses committed before 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

The reforms ensure probation and parole are used effectively, and tailored to address individual risks and needs. Changes to the law include:

- Reducing the maximum period of probation for certain felonies from five years to three years, but with eligible extensions.
- Establishing a new process for earned early discharge from probation.
- Identifying technical violations of probation and placing caps on their maximum jail sentence.
- Requiring probation and parole conditions to be individualized, specifically address assessed risk and needs, be designed to reduce recidivism, and be adjusted if appropriate.

[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

In an effort to reduce jail admissions, several sections of the Michigan Vehicle Code were amended 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

The Michigan Joint Task Force on Jail and Pretrial Incarceration recommended that driver's license suspensions be limited to activities related to unsafe driving. This recommendation was made, in part, because driving with a suspended license (DWLS) is the third most common charge for admission to jail in Michigan. Before the reforms, driver's licenses could be suspended for failing to appear in court, failing to pay or comply with a judgment, and certain criminal convictions unrelated to driving safety. The reforms reduce the circumstances under which a driver's license may be suspended and also require the Secretary of State to reinstate driver's licenses that are currently suspended for reasons no longer eligible for suspension.

[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

Certain criminal offenses require mandatory minimum jail sentences upon conviction. The reforms eliminated certain mandatory jail requirements, and allowed others to be waived, in the Public Health Code, Michigan Vehicle Code, Revised School Code, National Resources and Environmental Protection Act, and Railroad Code. These offenses are still eligible for jail sentences at the judge's discretion, but jail is not required.

[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.

Jail Reform Implementation

The Michigan Jail Reform Advisory Council convened five virtual meetings in 2021 to review and assist with implementing the 2020 jail reform laws. Each meeting was recorded and is posted on the Michigan Supreme Court's YouTube page and also linked on the SCAO website. Council meetings continue to be held in a virtual format and Council members are given the opportunity to discuss progress within their respective areas and any issues with implementation. The Council continues to engage with the various justice system entities to offer support and assistance with implementing the new laws.

The jail reforms which the Council was tasked with implementing were significant and spanned the entirety of the criminal justice system in Michigan. The reforms became effective on three primary dates, identified by category below, which required separate preparation and collaboration among stakeholders:

- **March 24, 2021:** Sentencing, parole, mandatory jail minimums.
- **April 1, 2021:** Appearance citations, summons, bench warrants, probation.
- **October 1, 2021:** HYTA, reclassification, driver's license suspensions.

Since the Council was officially established on April 21, 2021, many external partners and stakeholders had already undertaken significant steps to implement these reforms. The Council is grateful for these efforts, and summarized many of the activities in this report.

Courts

Progress to Date

The SCAO created various resources, trainings, and court forms to assist courts with implementing the jail reforms.

Resources: The SCAO developed a comprehensive [Legislative Analysis](#) in February of 2021, that identified and explained each jail reform and its impact on judicial operations. The Legislative Analysis was revised in July of 2021, following the enactment of 2021 PA 39.

Additionally, a [Guide to Michigan's 2020 Jail Reform](#) provides a summary of the jail reform package and is intended for use by attorneys, law enforcement, advocates, and members of the public.

Trainings: The SCAO developed and delivered at least seven training events throughout 2021 to prepare judges and court staff for the jail reform laws. SCAO staff also participated in informal meetings and workgroups with regional administrators and courts. Training audiences included district and circuit court judges, district court probation officers, magistrates, and court administrators.

Forms: The SCAO maintains numerous forms used by courts and litigants throughout the state. The jail reforms impacted several aspects of criminal procedure, requiring SCAO staff to carefully analyze, update, and publish nearly 25 court forms to ensure compliance with the new laws.

Website: The SCAO maintains a "[Jail and Pretrial Reform](#)" webpage that contains information and resources about the Council and jail reform laws.

Proposed Court Rules: The Michigan Supreme Court published, for comment, several [amendments and additions](#) to Chapter 6 of the Michigan Rules of Court. The proposed amendments and additions would make the court rules consistent with the recent statutory revisions from the recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration. Interested persons may [submit comments](#) on the proposed amendments and additions until March 1, 2022.

Law Enforcement

Progress to Date

The State of Michigan is home to nearly 600 law enforcement agencies governed by different jurisdictions including counties, cities, townships, villages, airports, railways and parks. Law enforcement agencies at the local, county, and state level have taken measures to educate and assist their officers with implementing new procedures to align their policing practices with these new laws.

Michigan State Police

The Michigan State Police (MSP) has given legal update training to every enforcement member to ensure that troopers and motor carrier officers are aware of and are policing in accordance with the new laws. MSP recruits also receive training in these new laws during their legal instruction at the academy.

What's Next?

One of the major objectives of the Council is to assess the impact of the jail reforms through data. With law enforcement, this involves determining what impact, if any, 2020 PA 393 had on the number of

appearance tickets issued by law enforcement officers. While data collection will be an area of focus in 2022, current data reporting systems make it difficult to track how many individuals were issued appearance tickets in lieu of being lodged in jail. Additionally, lodging restrictions associated with the COVID-19 pandemic further complicate efforts to isolate and measure the true impact of the jail reforms. The Council will continue working with stakeholders and partners in the coming year to determine how to collect and analyze measurable data.

The Council continues to take note of efforts made by law enforcement agencies to partner with various community behavioral health providers to implement diversion practices. The Inkster Police Department has partnered with The One Mind Campaign to provide mental health services to its officers and citizens. The goal of the program is to provide law enforcement additional tools to assist individuals they encounter who may be dealing with substance use issues or mental illness and provide a path to treatment, subsequently avoiding negative contact with law enforcement. Through these diversion practices, ideally, individuals will be able to not only avoid incarceration, but also avoid acquiring a criminal history. The Council will continue to work with law enforcement agencies as well as stakeholder partners to collect and analyze measurable data in regard to the effectiveness of these types of programs and partnerships, and how they are impacting jail populations.

Department of State

Progress to Date

Under the leadership of Secretary of State Jocelyn Benson, the Michigan Department of State (MDOS) took great strides to implement reforms related to the driver records of Michigan residents. Staff from several units in the department

collaborated to lift suspensions from driver records, notify impacted residents, and provide ongoing online and in-person opportunities for people to access further assistance.

Lifting Suspensions

After the MDOS completed a technology upgrade in March 2021, staff began planning for the October 1, 2021, changes to the Michigan Vehicle Code. Actions included significant programming, testing, and re-testing of the system to ensure that post-October 1, suspensions aligned with the amended law. Staff also planned, communicated, and implemented a timeline for stopping the flow of abstracts from the courts just prior to the deadline.

Notifying Residents

The MDOS mailed letters to the last known address of all impacted residents, explaining to them how their driving record had been impacted and if they need to take additional action before they can resume driving. These letters were also posted to the residents' Secretary of State online account, where they can also purchase a copy of their updated driving record.

Opportunities For Assistance

Updated information and links to further guidance is maintained at [SOS - Clean Slate](#). Beginning in August 2021, the MDOS worked with the Department of Attorney General, legal organizations, and corporate partners to develop a pilot in-person clinic to assist residents in understanding their driving records and what they may need to do, if anything, to have their driving privileges restored. The MDOS and its partners met at the Goodwill location in Detroit and 13 volunteer attorneys from DTE Energy and Miller Canfield (Detroit office) assisted over 30 residents.

Preliminary Data

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. Of that total, the changes made 154,326 Michigan residents eligible to hold a driver's license, though many of them need to complete a typical renewal or reinstatement. The other 194,567 residents impacted by these changes remained ineligible to hold a valid driver's license due to other infractions still on their records.

In total, the following actions were taken:

- 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.

154,326 Michigan residents are now eligible to hold a driver's license.

Clinics throughout the state beginning in February 2022. Commitments have already been made by churches in Grand Rapids and Muskegon to host additional clinics next year.

Public Defenders and Attorneys

Progress to Date

The Ingham County Bar Association's Criminal Defense Law Section (ICBA-CLDS) regularly offers presentations for defense attorneys at no cost. The ICBA-CLDS enlisted defense attorneys to present on issues related to the Task Force recommendations and legislative changes to assist attorneys navigate the

new reforms and understand how it impacts their clients.

The Criminal Defense Attorneys of Michigan (CDAM) also presented on the jail reforms at their annual summer conference in 2021. Additionally, presentations were given to the Criminal Advocacy Program in Wayne County as well as the State Appellate Defender Office. Attorneys have created multiple Listservs through various local bar associations to share information and developments regarding these reforms.

Prosecuting Attorneys

Progress to Date

With the newly implemented jail reform laws, prosecutors continue to not only work with each other, but also with local and statewide partners to ensure a smooth transition. The Prosecuting Attorneys Association of Michigan (PAAM) utilized its Legislation Committee to track the progress of each of the proposed laws, including providing feedback and input as the jail reform package progressed through the legislative process. Once signed into law, the PAAM worked as a group to provide guidance as individual prosecutor offices worked through the impact of these changes on their local jurisdictions. The PAAM's electronic outreach, whether by statewide e-mail or virtual platform, provided ample opportunity to work through specific and general issues related to how prosecutors perform their roles based on these reforms. As an example, in Muskegon County, Prosecutor DJ Hilson prepared a webinar to train local law enforcement officers regarding the expanded use of appearance tickets in lieu of arrest. This recorded training was used not only in Muskegon, but across Michigan.

What's Next?

As with other changes in the criminal justice system, prosecutors in Michigan have the ability to adapt and move

forward, ensuring they continue to protect victim's rights and the integrity, fairness and equality of the criminal justice system.

Department of Corrections

Progress to Date

The jail reforms apply to the Department of Corrections (DOC) specifically in areas related to responding to violations, imposing parole/probation special conditions, early discharge recommendations, assignment to HYTA status, enhanced communication and coordination with the courts, and the processing of absconders.

Field Operations Administration

The Field Operations Administration (FOA) encompasses 105 statewide parole and circuit court probation offices and the Michigan Parole Board. The FOA took several steps to align statewide efforts with the new reforms, specifically 2020 PA 396, 397 and 398. These steps included revising statewide operating procedures, implementing new processes, practices, forms, and issuing instructional memorandums and question and answer documents to FOA staff throughout Michigan. The FOA also implemented a risk-based response grid for parole/probation agents to follow when responding to offender violations. The standardized statewide responses to violations for both parolees and probationers tied the response to the individual risk of the offender and included the use of incentives.

The Office of Community Corrections

The Office of Community Corrections, which works with local community corrections advisory boards to establish and support programs for pretrial and probation populations, took several steps to align statewide efforts with the recommendations of the Michigan Joint

Task Force on Jail and Pretrial Incarceration, while adhering to requirements outlined in the new reforms. These steps included revising the annual Community Corrections funding application to include clear pretrial standards that are consistent with national standards.

The Office of Community Corrections also provided several training opportunities to local community corrections advisory board members related to pretrial practices. Training included discussions of national pretrial service standards, the Eight Evidence Based Principles, and the establishment and use of key performance measurements. Trainings were facilitated by experts from the National Association of Pretrial Service Agencies, as well as experts from Michigan.

The State Community Corrections Board adopted a new set of statewide board priorities, including the addition of pretrial as a target population.

Preliminary Data from the Michigan Department of Corrections

Since 2020 PA 397 took effect in April of 2021, preliminary data shows a slight decrease in the length of felony probation sentences. In 2019, the average felony probation sentence was 1.8 years. During 2020, and the COVID-19 pandemic, those averages were somewhat inconsistent, as many factors came into play that historically would not. From November 2020, through March 2021, the average felony probation sentence decreased to 1.7 years. Notably, this period of time is before 2020 PA 397 took effect in April 2021. It is anticipated the new reforms and tailored probation terms may result in further reductions over time.

Preliminary data also suggests an increase in the number of early probation discharges. During 2019, the number of early probation discharges ranged between 40 and 80 discharges per month. The data varies again in 2020, presumably due to the COVID-19 pandemic. Although

there is still very limited preliminary data after 2020 PA 397 took effect in April of 2021, there is an increase in early probation discharges from 2019. Between the months of April and August in 2021, the number of early probation discharges ranged between 60 and 100 discharges per month.



What's Next?

The Department of Corrections continues to develop new practices and policies to implement the 2020 jail reforms. The DOC is currently working with two counties to develop a pilot to improve the tracking of data related to supervision and services for pretrial populations. These pilots should begin in 2022 and will help to further determine the effectiveness of the new reform laws.

Next Steps - 2022

"It's been a pleasure being a part of the thoughtful discussions that the Council has had regarding implementation of the legislated jail reforms. There is much we all agree upon and we, in the victim service world, support meaningful criminal justice reform for non-violent offenders. Given that supporting the safety of victims is central to our work as victim advocates, I welcome the opportunity to assist in bringing victim voices and the impact reforms can have on victims as a part of the Council's focus as we continue to discuss, implement, and evaluate this legislated reform. I look forward to continuing to serve and to contribute to this Council's important work in the coming year on improvements to criminal justice reform."

- Debi Cain, Director of the Division of Victim Services, DHHS

The majority of the Council's efforts throughout 2021 were focused on successfully implementing the jail reforms and educating stakeholders on the changes in law. While these efforts will continue in 2022, the Council will begin focusing efforts throughout the next year on collecting data and analyzing the impact of the reforms. Some of these reforms became effective as late as October of 2021, meaning there is not yet a significant data set available for analysis. The Council will continue meeting regularly to discuss the reforms and tracking data, where available, to evaluate its effectiveness.

Future Meeting Dates

The Council is currently scheduled to meet on the following dates in 2022:

- Thursday, February 10, 2022
- Friday, March 18, 2022
- Friday, April 29, 2022
- Friday, June 10, 2022
- Friday, July 22, 2022
- Friday, September 9, 2022
- Friday, October 14, 2022
- Friday, December 2, 2022

Data Collection and Analysis

Now that steps have been taken to implement new reforms, the Council is looking to collect both qualitative and quantitative data to determine effectiveness. The Council is currently exploring the use of subgroups or small committees to examine the data in their respective fields to help determine the needs, opportunities, and obstacles going forward. Procedural changes implemented as result of the COVID-19 pandemic continue to present confounding variables which complicate traditional analysis. The Council will continue tracking data supplied by the Department of State regarding driver's license

suspensions, as well as data provided by the Department of Corrections regarding early probation discharges and the length of sentences. The Council will also continue to explore other sets of preliminary data as it is made available and make recommendations.

Public Comment

The Council is currently scheduled to accept public comments regarding the implementation of the reforms during its meeting on February 10, 2022. Individuals preferring to submit written testimony may do so by emailing Emilie Tarsin at TarsinE@courts.mi.gov.



**THE SENATE
STATE OF MICHIGAN**

JIM RUNESTAD
15TH DISTRICT
P.O. BOX 30036
LANSING, MI 48909-7536
PHONE: (517) 373-1758
FAX: (517) 373-0938
senjrunestad@senate.michigan.gov

COMMITTEES:
FINANCE, CHAIR
APPROPRIATIONS
EDUCATION AND CAREER READINESS
FAMILIES, SENIORS, AND VETERANS
JUDICIARY AND PUBLIC SAFETY
APPROPRIATIONS SUBCOMMITTEES:
JUDICIARY AND PUBLIC SAFETY, VICE CHAIR
CAPITAL OUTLAY

Memorandum

To: Jail Reform Advisory Council

Attn: Emilie Tarsin

From: Sen. Jim Runestad

Date: January 11, 2022

Re: 2021 Report to the Governor, Legislature, and Supreme Court

Sen. Runestad solicited feedback from law enforcement, prosecutors, and judges regarding the Jail Reform Advisory Council's 2021 report draft to be sent to the Governor, Legislature and Supreme Court. Sen. Runestad asked for the above groups personal experience in the wake of the criminal justice reforms the report draft outlines. The feedback Sen. Runestad's office received is as follows.

The Oakland County Sherriff's office informed Sen. Runestad that many of the reforms outlined in the report draft were already department practice. As a result of proactive practices, the Oakland County Sheriff's department has been able to curb and lessen their jail population.

The Honorable Michael Warren, Oakland County Circuit Court judge, provided Sen. Runestad with his account of the effects the Legislature's reforms have had on the judicial system. The Honorable Warren provided feedback on individualized probation (2020 PA 398), probationary terms (2020 PA 397), violations of probation (2020 PA 397), and bench warrants (2020 PA 394).

Regarding individualized probation, the Honorable Warren found the legislation was well intentioned but was concerned with unintended consequences of the reform. To reasonably tailor probation to each individual defendant, and avoid "rubber stamp" or "boilerplate" statements by trial courts justifying the probationary terms, the amount of judges would need to be increased. In addition, many terms of probation are self-evident (drug testing, not to commit additional crimes, etc.), why there needs to be an articulation of the probationary term/period simply belabors the proceedings - resulting in

docket congestion. This may also create a disincentive for some to give people probation, potentially having a converse effect on the reform's intent, increasing the propensity to incarcerate defendants as opposed to tailoring individualized probation terms.

Regarding probationary terms, concern was expressed regarding reducing the discretion of judges in connection with probationary terms (dropping the maximum from five to three year (although they can be extended) and encouraging early discharge). Judges who might be willing to be more graceful in jail or prison terms in light of the ability to sentence a defendant to four or five years of probation now have a negative incentive to give more jail or prison sentences upfront. Now if they render a probationary term of three years, the defendant is likely to apply for early release after 18 months and the judge has to defend keeping them on probation for the full period (as well as extending probation). This also contributes to docket congestion.

The problems associated with lessening sanctions for probation violation were identified as two-fold. Lessening the sanctions for probation could further incentivize a probationer to violate the terms of their probation with the knowledge that there is no serious penalty associated with violations. For example, someone can leave the state and abscond for 59 days and it is just a "technical violation." Skipping drug tests and failing to take domestic violence programming are also just technical violations. Judges, on the other hand, may be less likely to initially sentence a defendant probation knowing that the terms of their probation may be violated without serious consequence.

Establishing a 48-hour waiting period for bench warrants can lead to an increase in failures to appear and logistical issues for prosecutor and judicial offices. Prosecutor Steve Pierangeli, Berrien County Prosecutor's Office, provided more insight on the logistical issues associated with 48-hour waiting periods for bench warrants. If a defendant does not show at their appointed hearing, instead waiting to appear in court within the 48 hours they are allowed before a bench warrant is issued, prosecutors are unaware which cases are headed for a preliminary hearing and which cases have come to a plea agreement. This impacts law enforcement officers who serve subpoenas for cases that do not plea or are not given enough notice to issue a subpoena for defendants that do show 48 hours later. For judges it becomes increasingly difficult for them to plan their docket when they do not reliably know when someone is going to appear, if a plea agreement was reached, or when preliminary hearings begin.

Prosecutor Pierangeli anecdotally identified through conversation with a judge a public safety concern with modifying the definition of absconding as the intentional failure of a probationer to report to their supervising agent of their whereabouts for a continual period of not less than 60 days (2020 PA 397). Not knowing where a probationer is for an almost two month long period does not seem to increase public safety.

Sen. Runestad received a suggestion for the council on soliciting feedback from the judicial system community on the effects of the legislature's reforms the judicial community has experienced. It was suggested that a survey be conducted that includes judges, probation agents, prosecutors, law enforcement, parole officers and other interested parties of their experience handling cases with the reforms in effect. The survey would ask, in the respective parties' experience, has public safety been improved with the Legislature's reforms now in effect. A sample survey can be provided to the council at the council's request should there be interest in conducting a survey.

Sen. Runestad would like to include the feedback he received in the final version of the Jail Reform Advisory Council's final report to the Governor, Legislature and Supreme Court.