

[Notice having been given, the Prisons and Corrections Section Council adopted this position statement on February 1, 2003 by a vote of 11-0-1. The views expressed are those of the Section and do not necessarily represent the views of the State Bar of Michigan.]

A BLUEPRINT FOR COST-EFFECTIVE CRIMINAL JUSTICE IN MICHIGAN

Modeled on the

ABA Blueprint for Cost-effective Pretrial Detention,
Sentencing, and Corrections Systems

**PREPARED BY:
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ADOPTED FEBRUARY 2003

Fiscal Accountability

1. Michigan should require the Michigan Sentencing Commission (see Proposal 4) to prepare fiscal and prison/jail bed space impact statements before any legislation is enacted that would create a new criminal offense, change the number of persons subject to a particular criminal sanction, or change the potential sentence length for any criminal offense.

Sentencing and Community Corrections

2. Michigan should create a separate state Department of Community Corrections and Supervision that combines the current functions of the Office of Community Corrections, the parole board, probation supervision and parole supervision. The purpose of the new department would be to promote, manage and fund community-based supervision of adult offenders, to conduct research and training, to coordinate the services necessary for offenders to remain in the community successfully, and to secure and administer grants to local service providers. To insure knowledgeable assessments of prisoners' institutional records when making release decisions, at least 50 percent of parole board members should have significant experience working in a state adult correctional facility. The Department of Corrections would continue to operate prisons. The two departments would work cooperatively regarding community programs for prisoners who have not yet been paroled and pre-release planning.

This separation of functions and the award of department status to community- based oversight of offenders would help insure adequate recognition and funding of community-based supervision. It would also help insure that prisons are treated as a scarce resource and incarceration is treated as a last alternative. And, since incarceration and community supervision involve inherently different skills, knowledge, and objectives, it would allow each department to focus its resources exclusively on its primary mission.

3. Michigan community corrections programs should avoid unnecessary supervision and incarceration, in part by expanding the use of means-based fines, so long as adequate community service opportunities are available to those who are unable to pay.
4. Michigan should establish a sentencing commission with representatives from the prosecution, defense, judiciary, law enforcement, victims' advocates, corrections, community corrections, mental health, substance abuse treatment, and the general public. Legislators, who will ultimately vote on the commission's work product, should not be members of the commission.

The commission should be charged with developing sentencing and parole guidelines that accomplish the following objectives: (a) provide that a community-based sanction is the presumptively appropriate penalty for persons who do not present a substantial danger to the community; and (b) ensure that the populations subject to the jurisdiction's prison, jail or community-sanctioning systems do not exceed each system's rated capacity. In order to accomplish these objectives, the commission should:

- a. Bear primary responsibility for developing and revising sentencing guidelines for all felony offenses, with the Legislature limited to adopting or rejecting the commission's recommendations.
- b. Recommend to the Legislature sentencing guidelines for judges to follow when imposing sentence after revoking a sentence of probation.
- c. Recommend to the Legislature parole guidelines that:
 - i. are coordinated with sentencing guidelines,
 - ii. prevent the parole board from denying parole based solely on the same factors the trial court considered in selecting the minimum sentence,
 - iii. presume release after service of the minimum absent a poor institutional record or objective factors indicating the prisoner is a current threat to public safety, and
 - iv. apply to parolable lifers.
- d. Recommend to the Legislature separate parole guidelines for technical parole violators that account for the nature of the technical violations and the fact that the minimum punishment for the underlying crime has been served.

5. Michigan should review the length of sentences prescribed by law, and sentencing and parole guidelines, to ensure that they accurately reflect current funding priorities, as well as research findings that question the utility of long sentences, whether incarcerative or community-based, for certain kinds of crimes. To accomplish these objectives, the Legislature should:
 - a. Provide the Sentencing Commission with adequate research staff to annually collect and analyze data on the impact of drug courts and other community-based programs, the imposition and revocation of probation, sentencing guidelines, truth in sentencing, and parole guidelines on the length of time served, recidivism rates, and the capacity of state and local correctional facilities and community-sanctioning systems and services.
 - b. Amend current truth in sentencing requirements to reflect national norms regarding the award of disciplinary credits:
 - i. Require violent offenders to serve at least 85% of their minimum sentences
 - ii. Establish credit amounts for non-violent offenders after reviewing the average amount awarded to such prisoners nationally
 - c. Establish a special panel to review in-depth the cases of all prisoners who have served at least 15 years of a parolable term, or 25 years of a mandatory life sentence for first-degree murder, and recommend whether parole or commutation, as appropriate, should be granted. The panel shall consist of the following five members: one former judge, two corrections professionals, and two mental health professionals. Panel recommendations shall be acted upon by the parole board in special executive sessions consisting of the five panel members and five regular parole board members assigned to the special sessions on a rotating basis. Legislation establishing the special panel should be subject to a three-year sunset provision.
6. Michigan should repeal mandatory minimum sentencing laws that unduly limit a judge's discretion to individualize sentences, so that the sentence in each case fairly reflects the gravity of the offense and the degree of culpability of the offender.
7. Michigan should expand the use of drug courts and the availability of comprehensive substance abuse treatment programs, in lieu of incarceration.
8. Michigan prosecutors should regularly examine their policies concerning charging, plea-bargaining, and sentence recommendations, in order to avoid overcharging, and to make greater use of community-based sanctions.

Sentence Modifications

9. The Michigan Department of Community Corrections and Supervision should develop graduated community-based sanctions for non-criminal violations of probation and parole. It should utilize imprisonment for such violations only as a last resort.
10. Michigan should establish a mechanism to apply sentencing reforms, where appropriate, to currently incarcerated inmates.
11. Michigan should require the MDOC Bureau of Health Care Services to prepare a quarterly report to the parole board with information about prisoners who are terminally ill, chronically physically ill or incapacitated, or over age 65. The parole board should then be required to review each prisoner's circumstances to determine whether the prisoner presents a threat of violent behavior and is otherwise a suitable candidate for a recommendation of commutation. The Bureau's report and the parole board's decisions shall be provided to the Office of the Legislative Corrections Ombudsman who shall recommend changes needed to improve the review process and who may recommend the reconsideration of any individual parole board decisions.

Reentry and the Reduction of Recidivism

12. Michigan should adopt a comprehensive plan to reduce return rates to prison and jail that includes the development of reentry plans, procedures, and services to facilitate released inmates' reintegration into the community, and relief from legal obstacles that impede reintegration. Aspects of this plan should include the following:
 - a. Develop cost-effective transition programs for re-entering prisoners, whether on parole or discharging from their maximum sentences.
 - b. Aggressively pursue all available public and private funding for innovative community-based supervision methods and community services needed to decrease recidivism, including drug, re-entry and mental health courts, day reporting centers, substance abuse and mental health treatment, medical care, job training and placement, higher education, parenting classes, and family counseling.
 - c. Reduce the caseloads of probation and parole officers, and define their roles as enabling their clients' successful integration into the community, not merely monitoring compliance with the conditions of supervision.

13. Michigan should implement and fully fund programs within prisons and jails, and within community-based sanctioning programs, to provide educational opportunities, vocational and job training, mental health and substance abuse treatment, counseling, and other programs designed to reduce recidivism.

To avoid extending incarceration longer than necessary, Michigan should:

- a. Require the MDOC to provide prisoners with the opportunity to complete all required programs, such as adult basic education and GED testing, substance abuse treatment, sex offender treatment, and assaultive offender treatment, before their first parole eligibility date and should prohibit the denial of parole based on the prisoner's inability to complete an unavailable program.
- b. Require the MDOC to compile data and publish a report regarding prisoner program completion and the reasons for non-completion, including the number of people who did not complete required programs before their earliest release dates because: 1) they voluntarily opted out, 2) programs were not available at the institutions where they were housed, or 3) their participation in programs was disrupted by transfers to different institutions or returns to court.
- c. Require the MDOC to conduct research on the relationship between program completion and 1) release on parole and 2) recidivism.

Allocation of Jail Space

14. In order to reduce unnecessary detention and save jail space for persons who need to be incarcerated, Michigan should call upon the State Court Administrative Office to sponsor a task force on pretrial services, jail bed space, and the possible establishment of regional facilities, that includes representatives from the Michigan Judges Association, Michigan District Judges Association, the Michigan Sheriffs Association, the Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan.

Correctional Operations and Facilities

15. In light of the MDOC's share of the general fund budget and the impact of its operations on prisoners and staff, the Legislature should increase the resources and expertise of the Auditor General for conducting fiscal and program audits of the MDOC to independently determine the effectiveness of programs, appropriateness of security classifications, and compliance with statutes, rules and professional standards.

The Department of Community Corrections and Supervision should compile data on the results of community-based supervision programs, and should require grants and contracts with private vendors to include financial incentives for successful outcomes and financial disincentives for unsuccessful outcomes.

16. Michigan should establish a criminal justice coordinating council to engage in the following activities: undertake long range criminal justice planning; recommend resource allocation; facilitate data sharing among existing agencies; commission research; apply for federal and private grants; develop strategic partnerships with colleges & universities, other state agencies, professional organizations and community groups.

The membership of the council should include: the directors of the State Court Administrative Office, Michigan Department of Corrections, Michigan Department of Community Corrections and Supervision, Michigan State Police, Family Independence Agency, and the Office of Drug Control Policy; representatives from the Michigan Judges Association, Prosecuting Attorneys Association of Michigan, Criminal Defense Attorneys of Michigan, Michigan Association of Community Corrections Boards, Michigan Sheriffs Association, Michigan Association of Chiefs of Police; the Legislative Corrections Ombudsman, the Prisons and Corrections Section of the State Bar, the Collaborative on Juvenile Justice Reform, the Citizens Alliances on Prisons and Public Spending; a mental health professional; a substance abuse treatment professional; a victim's advocate, a prisoner advocate, an academician with expertise in criminal justice, and an ex-offender.

17. Michigan should amend current truth in sentencing requirements to permit low security prisoners to participate in community residential programs before reaching their earliest release dates.
18. Michigan correctional officials should establish linkages with universities, colleges, and community colleges through which research and service learning can be better utilized to reduce correctional costs.
19. The decision to close correctional facilities for budgetary reasons should be subject to the following requirements: (a) the selection of the facilities to be closed should be informed by and based on input from correctional officials regarding which facility (or facilities) it would be most advisable to close from a fiscal and correctional-management perspective; (b) the closing of a correctional facility should not result in the transfer of inmates to any facility already operating at or above its rated capacity; and (c) the selection of the facilities to be closed should take into account the desirability of permitting appropriate visitation by family members, in order to facilitate inmates' eventual reintegration into the community.