

HB 5078: Re-establishing the Michigan Sentencing Commission
Testimony of Citizens Alliance on Prisons and Public Spending (CAPPS)

House Committee on Criminal Justice
December 4, 2013

Good morning, Chairman Heise and Members of the Committee:

The Citizens Alliance on Prisons and Public Spending strongly supports re-establishing the Michigan Sentencing Commission. We are grateful for Rep. Haveman's determination to introduce this bill and for the enormous bi-partisan support he has garnered, including many members of this committee.

The frequent uncoordinated changes to guidelines scoring and offense classifications have kept pushing up the average length of time that Michigan prisoners are incarcerated, even though all the research has found no connection between longer prison stays and increased public safety. When the Pew Center for the States found that Michigan has the longest average length of stay of any of the 35 states it studied, it was because of two factors – our sentencing practices at the front end and our parole release policies at the back. Re-establishing the sentencing commission can go a long way toward ensuring that our sentencing scheme is internally consistent and directed toward specified goals: that sentences are proportional to the offense and the offender, that they protect the public and help prevent future crime, and that they use scarce public resources as cost-effectively as possible.

The current bill recreates the commission essentially as it was in the late 1990s. Its enactment would be a big improvement over the status quo. However, the commission's mandate would be limited to recommending adjustments to the sentencing guidelines. As we have heard, a number of other changes in sentencing practices have contributed substantially to increasing our sentence lengths – longer maximum sentences, new mandatory minimums, more consecutive sentencing. The guidelines could be adjusted in any number of ways without reaching the impact of these other approaches. Indeed, any progress the commission made could be completely offset by continuing ad hoc use of these techniques.

The current bill also proposes a commission membership identical to the original. It does not reflect legislative interest that has grown during the intervening 18 years in reducing the use of jail and prison for juveniles and the mentally ill. It also does not fully reflect the interest of local officials in the usage, cost and capacity of county jails.

The data analysis portion of the current bill only applies to felonies. It does not provide for the collection and analysis of information about the use of local jails as opposed to alternative sanctions for misdemeanors. Since jails are frequently used as an alternative to prison for felonies, it is important that their use for misdemeanors be adequately

understood in order to set realistic priorities that account for their total capacity and to track the effectiveness of programs designed to reduce recidivism.

To address these major issues and to incorporate operational practices found to be effective by other states' sentencing commissions, we recommend that HB 5078 be amended in the following ways:

- Expand the commission membership to include a district judge, a mental health professional, an individual with expertise in juvenile criminal behavior and a representative from the Michigan Association of Counties.
- Expand the commission's mandate to include research, data collection, facility population projections and recommendations for change regarding not only the sentencing guidelines but other laws, rules and policies that affect the use and length of incarceration.
- Include misdemeanors along with felonies in the provision requiring the commission to collect, analyze and disseminate information about sentencing practices and the use of prisons and jails.
- Ensure the commission's ability to do high quality work by expressly requiring the legislative council to employ an executive director with appropriate training and experience.
- Enhance the commission's capacity to do its work thoroughly and efficiently by permitting it to establish subcommittees on specific subjects that may include experts and other non-commission members.
- Add a specific reference to cooperation with the MDOC in data collection and analysis regarding correctional facilities that is comparable to the existing reference to cooperation with the SCAO in data collection and analysis regarding sentencing.

It bears emphasizing that our proposed amendments do not change the fundamental structure of the sentencing commission as an advisory body to the legislature. Even with a broader mandate, more diverse membership and improved capacity to do its work, the commission would have no authority to change the law. The Legislature would still have to approve any of its recommendations. Thus there is no downside to these proposals. Strengthening the commission and obtaining from it the maximum amount of information and insight can only be to the good.

The exact language for the amendments we are proposing is attached to this testimony. We appreciate your considering them.