

# Michigan Joint Task Force on Jail and Pretrial Incarceration

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## Fourth and Fifth Task Force Meetings

The Michigan Joint Task Force on Jail and Pretrial Incarceration hosted its fourth and fifth meetings on Friday, October 18, 2019, and Tuesday, November 19, 2019. The Pew Charitable Trusts presented an overview of Michigan statutes, policies, and practices related to arrests; pretrial detention and release; and sentencing, probation, and parole. Equipped with a better understanding of who is in county jails, how long they are serving, and why, the task force broke into subgroups to begin policy discussions aimed at mitigating the challenges of jail incarceration. Executive Order 2019-10 requires the task force to release their policy recommendations by January 10, 2020.

## System Assessment – Arrest & Arrest Alternatives

**Michigan Law Enforcement.** Michigan has approximately 590 law enforcement agencies that employ more than 17,000 sworn officers. Among many other duties, these officers are responsible for enforcing Michigan’s approximately 3,000 statutory crimes as well as many other local ordinances. Crimes in Michigan are generally classified as either misdemeanors or felonies, which is usually determined by the length of the maximum possible sentence. Misdemeanors are generally offenses with a maximum possible incarceration of one year or less in county jail, whereas felonies typically carry a maximum possible sentence of more than one year and are eligible for state imprisonment.

Law enforcement officers are statutorily permitted to conduct a warrantless arrest when (1) a felony, misdemeanor, or ordinance violation is committed within their presence or (2) they have reasonable cause to believe a person committed a felony or a misdemeanor punishable by more than 92 days in jail.

**Appearance Tickets.** Law enforcement also has discretion to charge individuals by issuing appearance tickets for certain misdemeanor offenses that are punishable by no more than 93 days in jail. In these circumstances, law enforcement issues a ticket directing an individual to appear in court at a later date instead of taking the person to jail.

Law enforcement in Michigan currently has less discretion to issue appearance tickets than many other states. Almost all states allow officers to issue tickets in lieu of arrest for misdemeanors and more than half of the states create a presumption of a ticket for certain offenses. At least four states authorize appearance tickets for some felonies.

**Deflection and Diversion.** Treating the underlying cause of criminal activity is sometimes best handled *outside* the traditional criminal justice system,

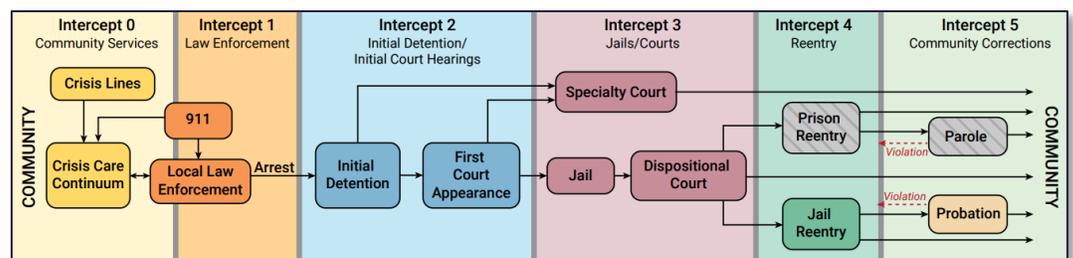


Figure 1: The Sequential Intercept Model

# Michigan Joint Task Force on Jail and Pretrial Incarceration

especially with mental health or substance use concerns. Deflection and diversion programs connect individuals to service providers within the community at early stages in the criminal justice process. The sequential intercept model (Figure 1) helps identify intervention strategies at each intercept, which can include mobile crisis outreach teams and co-responders; police and dispatcher training; specialized police responses; emergency department diversion; jail screenings for mental health and substance use disorders; and data collection. Unlike other states, these programs are not codified in Michigan law and are frequently left to the resources and collaboration of local counties to implement.

Current examples of local diversion programs in Michigan include the Hope Not Handcuffs program, the Michigan State Police's Angel Program, and Oakland County's Common Ground Resource & Crisis Center.

## Policy Considerations – Arrest and Alternatives

- What offenses should qualify for appearance tickets in lieu of arrest?
- How can law enforcement best support crime victims?
- What state-level policies could support a broader use of tickets, deflection, and diversion programs?
- Can local diversionary models be adopted or adapted statewide?
- What steps should be taken to avoid jail overcrowding?

## System Assessment – Pretrial Release and Detention

**Data Recall.** Approximately half of Michigan's jail population is comprised of unconvicted defendants awaiting trial. Of those able to post bond, 33 percent served longer than two days in jail before release and 12 percent served longer than one week before release. Pretrial incarceration of even just a few days increases a defendant's risk of recidivism, nonappearance in court, and loss of employment and housing.

**Pretrial Release and Detention.** Bail is the process by which a pretrial defendant is released into the community while awaiting trial. Notably, these defendants are *unconvicted* and are legally presumed innocent. Under Michigan law, a judge or magistrate may only make release decisions based on a defendant's risk to public safety and risk of nonappearance in court.

Defendants may be released from jail pending trial in one of three ways: (1) a personal or unsecured bond, (2) conditional release, or (3) money bail. Given the presumption of innocence, a personal bond is the *presumed* type of release in Michigan and does not require the defendant to post money or adhere to specific conditions. If a personal bond is insufficient to protect the public or assure the defendant's appearance, a court may impose conditions of release – including drug/alcohol testing, curfews, contact restrictions, and employment requirements – to mitigate the risk. The final release option allows the court to set a sum of money that must be posted before a defendant is released from jail. If posted, the court retains the money throughout the case as the defendant's guarantee to return for subsequent court dates.

The court is authorized to outright *deny bail* under certain circumstances if a defendant is charged with murder, treason, 1st degree criminal sexual conduct, armed robbery, kidnapping with the intent to extort money, and limited violent felonies.

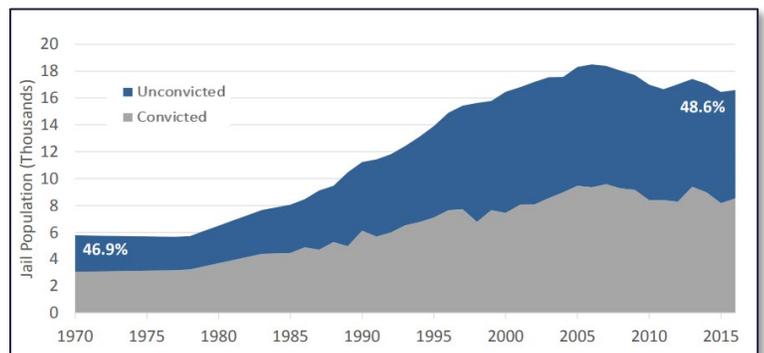


Figure 2: Convicted and Unconvicted Jail Population in Michigan, 1970 to 2016.

# Michigan Joint Task Force on Jail and Pretrial Incarceration

If a defendant's charge does not qualify for detention, the court must set either a personal, conditional, or monetary bail amount.

## Policy Considerations – Pretrial Release and Detention

- Do existing statutes and court rules provide sufficient due process protections for defendants subject to pretrial detention?
- Are crime victims provided sufficient support and input in the pretrial process?
- Are there alternatives to pretrial detention that can still ensure public safety and court appearance?
- When should release conditions be imposed and who should pay for their high financial costs?
- How can judges receive more information at arraignment to make well-informed bail decisions?
- Do Michigan laws requiring money bail for certain offenses comport with the constitutional requirement for individualized bail decisions?

## System Assessment – Sentencing, Probation, and Parole

**Data Recall.** In Michigan, 66 percent of all admissions are released within one week and account for 5 percent of all jail bed space. On the other hand, just 17 percent of jail admissions remain in jail for more than a month yet comprise 82 percent of all jail bed space. As such, policies that only reduce jail admissions might not correspond to a reduction in jail bed use. Although Michigan is ranked 29th in the nation for its incarceration rate, it has the 6th highest rate of people under community supervision.

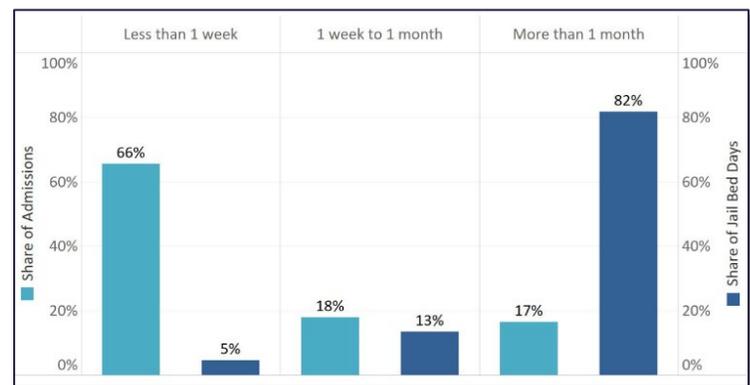


Figure 3: Jail bed use by length of stay, 2016 to 2018.

**Sentencing Overview.** With a few exceptions, the maximum incarceration for most misdemeanor offenses range from 90 days to 1 year in jail and most felonies range from 2 years to life in prison. Misdemeanors and felony offenses are also usually eligible for up to two and five years of probation, respectively, upon conviction. Probation is a period of court supervision that is usually granted in lieu of continuing incarceration. For those sentenced only to jail in 2018, the mean sentence length for misdemeanors was 40 days and the mean sentence length for felonies was 182 days. For those sentenced only to probation in 2018, the mean probation term for misdemeanors was 10 months and the mean probation term for felonies was 24 months.

When imposing probation, a judge typically orders a variety of conditions designed to protect the public and rehabilitate the defendant, including office reporting, drug testing, electronic monitoring, contact restrictions, and treatment. Violating any condition of probation can result in a revocation of probation and incarceration up to the maximum allowable sentence under the original offense. Between 2016 and 2018, 19 percent of probation violators received one day or less in jail, 25 percent received two to six days, 28 percent received one week to one month, and 28 percent received more than one month in jail. Approximately 10 percent of Michigan's jail population in 2018 was comprised of individuals who violated probation or parole.

**Sentencing Guidelines.** Sentencing guidelines standardize felony sentencing practices throughout the state by considering a defendant's crime class, prior record variables (PRVs), and offense variables (OVs). Crimes are assigned to classes that range from Class A to Class H based on their maximum possible imprisonment. PRVs examine a defendant's criminal history and assign points for prior convictions, whereas OVs examine the seriousness of the actual offense and assign points for aggravating circumstances.

# Michigan Joint Task Force on Jail and Pretrial Incarceration

Each crime class has its own sentencing grid that reflects the OV and PRV levels on each axis (see Figure 4). The intersecting “cell” between the defendant’s OV level and PRV level represents the defendant’s recommended minimum and maximum sentencing range. There are three types of “cells” that fall within this sentencing scheme: (1) prisons cells, when the minimum recommended sentence exceeds one year; (2) straddle cells, when the minimum recommended sentence is one year or less and the maximum is more than 18 months; and (3) intermediate sanction cells, when the maximum recommended sentence is 18 months or less. Michigan law does not provide any guidance as to when an intermediate sanction should be jail or a non-incarceration alternative.

| OV Level            | PRV Level     |                 |                   |                   |                   | Offender Status |
|---------------------|---------------|-----------------|-------------------|-------------------|-------------------|-----------------|
|                     | A<br>0 Points | B<br>1-9 Points | C<br>10-24 Points | D<br>25-49 Points | E<br>50-74 Points |                 |
| I<br>0-9 Points     | 6*            | 9*              | 11*               | 13*               | 18*               | H02             |
|                     | 7*            | 11*             | 13*               | 16*               | 22*               | H03             |
|                     | 9*            | 12*             | 15*               | 18*               | 24*               | H04             |
|                     | 12*           | 15*             | 18*               | 22*               | 28*               | H04             |
| II<br>10-24 Points  | 6*            | 9*              | 11*               | 13*               | 18*               | H02             |
|                     | 7*            | 11*             | 13*               | 16*               | 22*               | H03             |
|                     | 9*            | 12*             | 15*               | 18*               | 24*               | H04             |
|                     | 12*           | 15*             | 18*               | 22*               | 28*               | H04             |
| III<br>25-34 Points | 6*            | 9*              | 11*               | 13*               | 18*               | H02             |
|                     | 7*            | 11*             | 13*               | 16*               | 22*               | H03             |
|                     | 9*            | 12*             | 15*               | 18*               | 24*               | H04             |
|                     | 12*           | 15*             | 18*               | 22*               | 28*               | H04             |
| IV<br>35-49 Points  | 6*            | 9*              | 11*               | 13*               | 18*               | H02             |
|                     | 7*            | 11*             | 13*               | 16*               | 22*               | H03             |
|                     | 9*            | 12*             | 15*               | 18*               | 24*               | H04             |
|                     | 12*           | 15*             | 18*               | 22*               | 28*               | H04             |
| V<br>50-74 Points   | 6*            | 9*              | 11*               | 13*               | 18*               | H02             |
|                     | 7*            | 11*             | 13*               | 16*               | 22*               | H03             |
|                     | 9*            | 12*             | 15*               | 18*               | 24*               | H04             |
|                     | 12*           | 15*             | 18*               | 22*               | 28*               | H04             |
| VI<br>75+ Points    | 6*            | 9*              | 11*               | 13*               | 18*               | H02             |
|                     | 7*            | 11*             | 13*               | 16*               | 22*               | H03             |
|                     | 9*            | 12*             | 15*               | 18*               | 24*               | H04             |
|                     | 12*           | 15*             | 18*               | 22*               | 28*               | H04             |

Figure 4: Sentencing Grid for Class E Offenses

Sentencing guidelines are discretionary for judges and are only applicable to indeterminate sentences – they are *not* applicable to offenses with a mandatory determinate penalty. Sentencing guidelines are also not applicable to misdemeanor defendants.

**Parole Overview.** Parole is a period of supervision that occurs when a person is released back into the community after completing a *prison* sentence. Parole is administered by the Michigan Department of Corrections (MDOC), with the term lengths and conditions determined by the parole board. The average parole term is approximately 12 months but can be extended by the parole board upon the request of a parole agent. Individuals remain under the legal custody and control of the MDOC while on parole and may be returned to prison for certain violations. Between 2016 and 2018, 21 percent of parole violations served four days or less in jail for an investigation or a short sanction; 30 percent served five to ten days for a preliminary violation hearing or serving a sanction; 18 percent served 11 to 15 days awaiting a parole violation specialist’s decision; and 31 percent served 16 to 45 days awaiting transfer back to prison on a parole revocation.

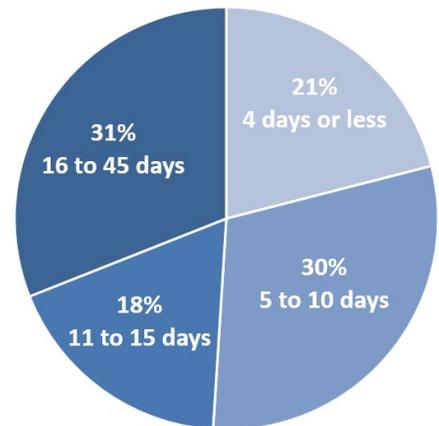


Figure 5: Length of Stay in Jail on Parole Violations, 2016-2018

## Policy Considerations – Sentencing, Probation, and Parole

### Sentencing

- Should certain offenses be handled with civil rather than criminal remedies?
- Should probation be the presumptive sentence for certain misdemeanors instead of jail?
- Should the sentencing grid separate probation from jail as an intermediate sanction?
- Who should be eligible for deferred judgments of guilt?

### Probation and Parole

- How long should someone be on probation?
- Are there good models for standardizing misdemeanor probation practices statewide?
- When should jail be used for felony probation violations and for how long?
- Is the process for early termination from felony probation working?
- When should alternative sanctions be used in place of jail time for parole violations?