

## Bruce A. Timmons

To the Honorable Kara Hope, Chair of the House Committee on Criminal Justice and Members of the House Committee on Criminal Justice.

April 11, 2023

Statement Submitted regarding **HB 4173** (to recreate the Criminal Justice Policy Commission)

I regret that I am unable to attend the April 11 meeting. I received no notice of this meeting. My comments are based on the only version I have – the introduced bill.

I have a long history regarding the prior Sentencing commission and the former Criminal Justice Policy Commission and will address concerns that I have with regard to HB 4173 as introduced based on my experience with both.

I served as legal counsel and policy advisor on the House Republican Policy Office when the original Sentencing Commission was created as part of the Sentencing Guidelines statute. I attended many of that Commission's meeting and worked with Rep. Mike Nye (Chair of House Judiciary) on the bill that created both the sentencing guidelines commission (1993-94) and the sentencing guidelines themselves as the work product of the Sentencing Commission (1997-98).

Before I retired at end of 2012, I encouraged Rep. Joe Haveman to sponsor legislation to recreate that commission. In 2014, his HB 5928 was enacted as 2014 PA 465, which created a similar but more expansive Criminal Justice Policy Commission. I attended many of the CJPC meetings. Hence, I have a personal perspective on what worked and what provisions in HB 4173 are problematic and even counterproductive.

In general, I **support** legislation that would reestablish the criminal justice policy commission. With the demise of the former Criminal Justice Policy Commission on September 30, 2019, there has been no entity in state government charged with an overview of the criminal justice system. We have seen multiple task forces or commissions targeting particular areas of concern, but all focused on parts of the whole. We need a broader view of the whole.

**HB 4173**, intended to **reestablish the Criminal Justice Policy Commission**, is similar to its 2014 predecessor (**2014 PA 465**, eff 01/12/2015) – many provisions being identical – but there are a few changes that merit greater examination.

**A.** My first objection concerns the **selection of the chairperson**.

HB 4173, as introduced, would provide on page 3, lines 6-9:

“(2) The governor shall designate 1 member of the criminal justice policy commission as chairperson. The individual selected as chairperson must have a professional background in criminal law and experience with the legislative process.”

That provision is compounded by making the **chair** a paid position and providing that the chair shall serve as chief of staff – with a salary. See page 3, lines 22-24.

One of the key facets of both predecessor commissions was that the Governor appointed the **Chair who was beholden only to the Governor and not to any stakeholder**. For the CJPC, the Chair **represented the public** and was **unaffiliated** with any stakeholder.

The most recent CJPC was successful due to both chairs – one selected by Gov. Snyder and the other by Gov. Whitmer – who led a collaborative process that welcomed contributions by all members and built around mutual respect among all CJPC members.

The **biggest downsides to the selection of the chair under HB 4173** are:

a) The Governor's selection is constrained by whomever is designated by other stakeholders. The Chair should be responsible only to the Governor, not first to whatever organization puts him or her on a list of **its** preferred representatives. **Don't tie the Governor's hands in choosing the Chair.**

b) The Chair for both predecessor commissions was independent of stakeholders. HB 4173 would set up one stakeholder above all the others – first among equals.

c. By making the Chair a paid position and (huh?) the commission's "chief of staff" is a bit of a bizarre arrangement and is asking the Legislature to pay for a Governor's FTE. None of the prior commission chairs was paid for that role. Have any of you ever been or worked for or with a committee or commission that had the chair also be the chief of staff? I haven't.

d. The criteria in HB 4173 for the Chair might better apply to a *real* chief of staff.

I would **strongly recommend** that the following provision **replace** the current subsection (2) with the following, taken (with emphasis added) from **2014 HB 5928 (S-9)**, page 3, as agreed to by both houses and became **MCL 769.32a(1)(o) and (2)** [See enrolled 2014 HB 5928, **2014 PA 465** (eff 01.12.2015):

4       “(O) **ONE MEMBER OF THE PUBLIC WHO IS NEITHER AFFILIATED WITH**  
5 **NOR EMPLOYED BY A DEPARTMENT, OFFICE, OR ENTITY DESCRIBED IN THIS**  
6 **SUBSECTION, BY THE COMMISSION CREATED UNDER THIS SUBSECTION, OR BY**  
7 **ANY ENTITY EMPLOYED OR HIRED BY THE COMMISSION CREATED UNDER THIS**  
8 **SUBSECTION.**

9       (2) **THE MEMBER OF THE PUBLIC APPOINTED BY THE GOVERNOR UNDER**  
10 **SUBSECTION (1)(O) SHALL SERVE AS THE CHAIRPERSON OF THE CRIMINAL**  
11 **JUSTICE POLICY COMMISSION.”**

**B. A second objection concerns how Commission members would be appointed.**

The statute creating the Sentencing Commission created categories of representation, not positions for stakeholders to fill. With input from the Governor's office and from the 4 legislative quadrants (Senate Rs, Senate Ds, House Rs, and House Ds – I was one of those), the resultant Sentencing Commission was a diverse body that included minorities and reflected geopolitical differences.

The former CJPC had one major flaw, due to its requiring most Members to be from select stakeholders, as HB 4173 would replicate. The result was a less representative Commission. I do not think it compromised the Commission product because its members were sensitive to demographics and whom proposals would impact, but certainly more by happenstance than by design. There was only one Black – a State Senator who may have attended 1 meeting before he ran into ethics violations and left office. Those picked tended to come from larger counties, not rural or UP (although the chair chosen by Gov. Snyder was from a smaller county, Hillsdale).

An unrepresentative Commission is a danger when so many positions are filled by stakeholder nominees who are chosen to best represent the organization, not the state. **If stakeholders do not submit diverse nominees, the Governor cannot pick a representative Commission.**

**C. A particular concern is that **HB 4173 shortchanges victims.****

As in 2014 PA 465, CDAM and PAAM would select a member under HB 4173.

The original Sentencing Commission had a representative of crime victims but did not specify an organization – she was a crime victim and was a regular attendee. The former CJPC substituted an individual, who like other stakeholders, was to come from among 3 submitted by an organization – the Michigan Coalition to End Domestic and Sexual Violence (MCEDSV).

The provision in HB 4173 stipulating that the Attorney General will be the victims' representative begs a huge question and, from working in the past with victims' organizations, I doubt they would appreciate the choice. **The officeholder is not by virtue of the office a "crime victim"**. Under the former CJPC, the Attorney General served in the capacity of the chief law enforcement official of the state and a key official in that office served for most of that Commission's existence. Inclusion of the Attorney General is warranted.

**I recommend that victims** have one of their own on a recreated Commission.

**D.** Below are highlighted differences between the former CJPC and proposed in HB 4173 that deserve the Committee's attention:

1. HB 4173 would eliminate these positions from the former CJPC (just so you know):

(j) An individual representing advocates of alternatives to incarceration.

(k) An individual who works in the mental or behavioral health care field.

(m) An individual who represents Michigan association of community corrections advisory boards.

(n) An individual appointed from a list of 3 names submitted by MCEDSV.

2. HB 4173 instead would add these members (just so you know):

(j) One individual who was previously incarcerated.

(k) **Two** individuals who are criminologists. [*Really?*]

(m) An individual who represents community corrections agencies.

**E.** Not a major issue but all too likely to be a headache – and I have served on and aided enough committees over a half century to **urge restoration** of a sentence that was in the CJPC statute but omitted from subsection (8) on page 4, lines 6-8, namely:

"A vote of the majority of the members of the commission present and serving is required for the official action of the commission."

Some might prefer to require a majority of the full membership.

Silence is the worst option.

**F.** The last provision of HB 4173 requires a **report** to Legislature, Governor, and Supreme Court **by December** of each year "on the implementation of legislative policies adopted in the current legislative session affecting the criminal justice system" as to several categories.

Whoever concocted this provision either anticipates final adjournment of the Legislature by Labor Day or may not have experienced how much legislation gets enacted near the year's end that a report "by December" could not possibly include. A report of this nature would likely need at least 3 months to compile after the Session ends, not while it is still ongoing.

Ironically, what the bill needs but lacks is a realistic time frame for appointment and beginning of a new commission. The date (June 1, 2023) on page 1, line 3, seems problematic.

**G.** Other provisions that have been changed merit questions:

1. Under Sec. 34b(1)(f), on page 5, why was a direction to provide sentencing guidelines for habitual offenders left out?

2. Under Sec. 34b(1)(f)(iv), why were references to “and offender characteristics” omitted after “offense characteristics” on page 5, lines 25 and 26? Don’t guidelines include them?

3. Under Sec. 34(1)(g), page 5, lines 9-10, after “regard”, why was the following “to physical and psychological injury to victims and victims’ families” dropped and replaced by “victims and victims’ families and victim input and advice regarding sentences”?

4. Under Sec. 34(4) concerning modifications of guidelines to render sentences within a range of severity proportionate to the gravity of offenses, why was the phrase “the harms done to crime victims,” removed and replaced by “victim input,”? Harm doesn’t matter anymore?

#### **H, Perspective on Sentencing Guidelines and role of a revised CJPC:**

Sentencing guidelines have been in effect for almost 25 years (per EHB 5419, **1998 PA 317**, eff 12/15/1998, but guidelines eff 1/1/1999). Guidelines were recommended and enacted as an educated guess based on what was known and some expectations that might or might not pan out. It was never the premise that they were somehow perfect, Tweaking or more was anticipated as it had data from actual use. The Sentencing Commission fully intended to review and revisit guidelines where experience varied from expectations.

The next target was how courts **should** respond to probation violations.

Repeal of the Commission, orchestrated by opponents of guidelines in EHB 5389, 2002 PA 31, eff 4/1/2002, after the same forces reduced the Commission’s budget to a level at which it could not effectively function, meant neither happened.

It was never the intent that probation violations ipso facto invoked the guidelines as though the defendant was first being sentenced – but courts interpreted language that was never intended to apply to guidelines and the Legislature has let it go without a second thought. The former CJPC never got into that issue.

And for 25 years **NO ONE has been keeping track** of how guidelines are working. For a while, SCAO did. But staff doing the work was a casualty of budget cuts almost 20 years ago. CJCP had concluded a study of straddle cells but got eliminated before they could proceed further to review experience with the guidelines generally. That review should be a goal for a new CJPC. It is long overdue.

**But** there is a danger that a new CJPC will look at other systemic issues and sideline any review of the now-voluntary guidelines. So, an imperfect product still plays a major factor in sentencing. One hopes that a renewed Criminal Justice Policy Commission will take a serious look at the current guidelines and at those that experience shows have not worked as intended.

Respectfully,

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