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CRIMINAL SEXUAL CONDUCT: Prisoners here rarely serve more than minimum

num term before they are paroled. ■ 38 defendants (22 percent) were sentenced to minimum prison terms of five years or more, including three molesters who were given life terms. An additional nine juveniles were convicted in circuit court and sentenced as juveniles to detention in state or county facilities or home treatment. Sentencing in one case involving an adult was on hold pending an appeal. Few cases made it to trial. Out of 209 cases, many involving multiple charges, only 29 went to trial — just under 14 percent of the total.

Washtenaw Circuit Judge David S. Swartz said he isn't surprised by the numbers. Because of the nature of the crimes and difficulties prosecuting them, there is a tendency to resolve them without going to trial.

"With kids for your complaining witness, prosecutors may feel they have an almost impossible, or uphill fight, to get a conviction, given the testimony they expect or fear they're going to get," Swartz said. "So they'll make what seems like ... a far more attractive deal than you'd otherwise think they would make, with the plea or the sentence agreement — just to save it."

County Prosecutor Brian Mackie is proud of his office's conviction rate for defendants in child sex assaults, with 87 percent of the defendants convicted of some charge. "We obviously do a very good job on CSC cases," Mackie said. "Convictions in these cases are hard to come by, and they're good. The number of convictions is good."

He is aware that the conviction rate is bolstered by plea agreements and sentencing agreements between defendants and judges. "We do plea agreements in some CSC cases because we want to get convictions," Mackie said.

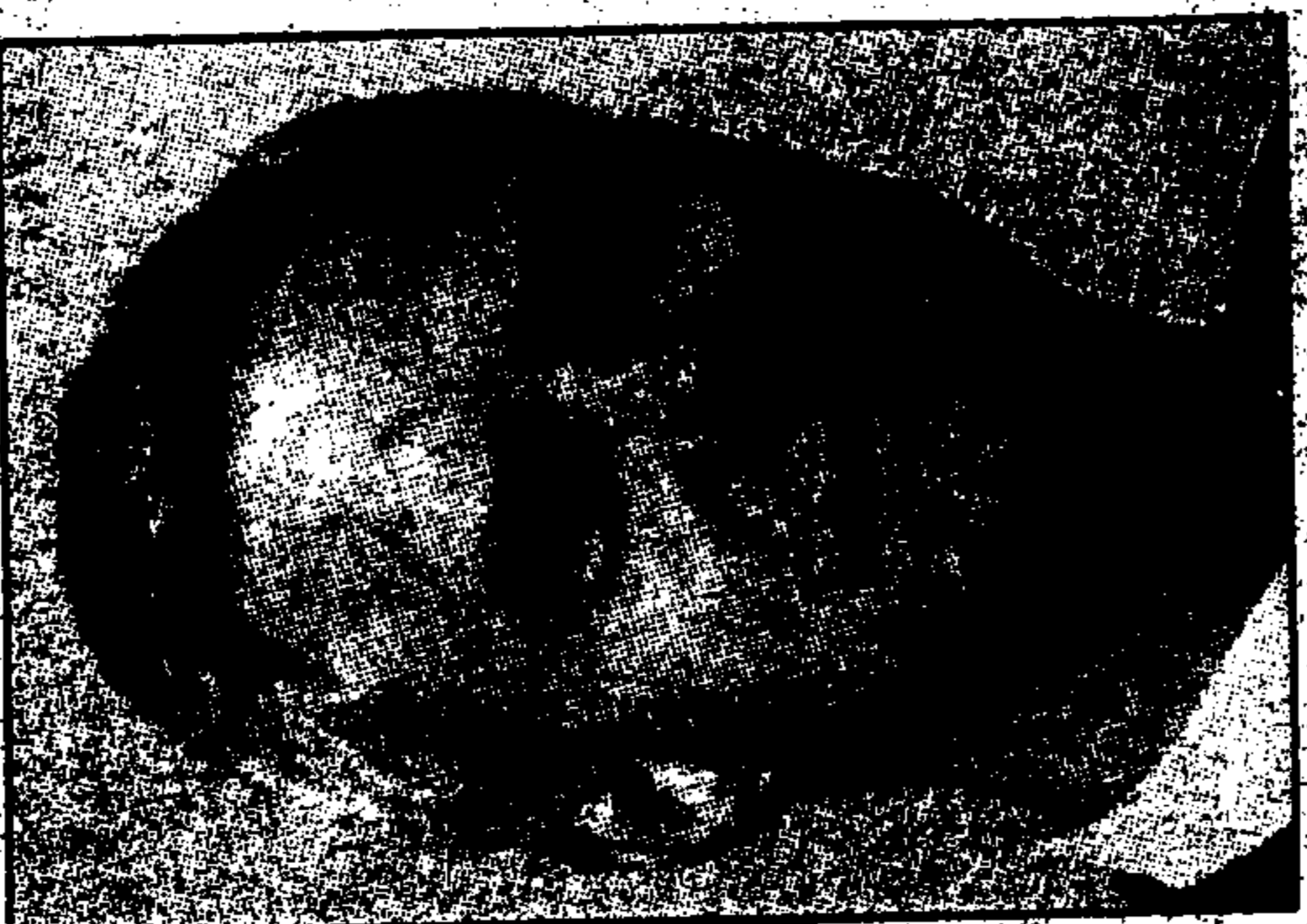
Sentencing is up to the judges, the prosecutor said, though his office has some input.

Sentencing molesters

An adult babysitter left her 4-year-old charge with her 16-year-old son while she went shopping. The Northfield Township teen molested and sexually penetrated the little boy while she was gone.

There is no reason to think there is anybody in this county who is soft on child molesters. That certainly doesn't make any sense. There are a whole lot of factors that go into it.

— Washtenaw County Circuit Judge David Swartz



I work in a different part of the system, with the kids. But children don't really have a voice, even when they have a (lawyer). They don't have anybody who looks out for their interests.

"People think about the adult who's been accused, and whether that person should be locked up or given a second chance — or a third, or a fourth." Yet the lengths and type of sentences handed out by Washtenaw County judges in child molestation cases aren't necessary any more lenient — or more strict — than those handed out elsewhere in the state.

In 1997, the last year for which figures are available, Michigan Department of Corrections records show 54 percent of convicted sex offenders, including those who assaulted adults, were sentenced to more than a year in prison. The same year, 38 percent of all convicted sex offenders were sentenced to probation, 6 percent to jail, and 2 percent to juvenile detention.

In general, Mackie said, "most people convicted of felonies are not going to go to prison, contrary to what people tend to think." "Prison commitment rates around the state (for all felonies) are, sometimes, 25



... The one consistent consideration is that the agreement be in the interests of justice — for the victim and for the community.

— Washtenaw County Chief Deputy Assistant Prosecutor Steve Hiller

molester who had earlier admitted to the charges as part of a plea bargain. He backed out on the plea and went to trial because he didn't like the sentence the judge later said he would impose.

In at least 70 percent of the 186 cases in which the defendants pleaded guilty or no contest during the time period studied, there appeared to be some type of plea bargain — either original charges were reduced or some charges were dismissed. Many, if not most, of the remaining cases — in which a plea was reached without a reduction — involved sentencing agreements between the judge and the defendant, although specific numbers are not available.

Michigan, others have complicated sentencing

Michigan's sentencing system is complicated by a number of factors, including the fact that Michigan has no probation department. Michigan circuit court judges have discretion in sentencing, but within the boundaries created by law. Supreme Court interpretation of the law, and guidelines created by the Legislature, are, sometimes, 25

with a rise in plea bargains and sentencing agreements since 1992. Ten of the 16 cases charged in the last half of 1992 ended in conviction — every one of them resolved by plea. In 1998, 26 of 31 cases ended in conviction — again, all by plea.

Sentencing agreements

An Ann Arbor man who helps his wife run her day-care operation pleaded guilty to one count of first-degree criminal sexual conduct and six counts of second-degree CSC, after his attorney worked out a sentencing agreement with Judge Swartz. He was accused of repeatedly molesting and digitally penetrating his 15-year-old adopted daughter. The man was lauded in letters from community leaders, and his wife and daughter asked Swartz not to break up the family.

Over written and oral objections from Assistant Prosecutor Eric Gruenberg, Swartz in December imposed the lowest sentence allowed by law. While first-degree CSC carries a possible life sentence, and probation officers recommended a four-year term, the conviction requires only a year in prison. Swartz agreed to sentence him to one year and a day in

types of felony cases. The appeals are most successful when the judge actually violates statutory minimum sentences. They are less successful when prosecutors challenge the judge's discretion in departing from the guidelines.

State sentencing guidelines

A 33-year-old Ypsilanti man charged with attempting to sexually assault a 9-year-old boy at knifepoint in a city park wrote to Judge Swartz prior to sentencing last September.

In the letter, Yancey William Knox wrote: "I'm going to be worse off unless you get me some help. Society will be a sexual smorgasbord for my appetite."

"I'm here to see that those appetites aren't fed," Swartz said, sentencing Knox to 40-60 years in prison on one count of assault with intent to commit criminal sexual conduct.

Swartz said he was departing from state sentencing guidelines — which called for a maximum of 10 years in prison — because of "bragging in his letter of his stated intention of sexual exploits," lack of remorse and threats to repeat the offense if released.

"To be quite frank about it, you're every parent's nightmare," the judge told the defendant.

Virtually all felony defendants are sentenced according to state guidelines.

The guidelines are calculated in a complex mathematical formula that places individual defendants on a scoring grid, based on variables in the current offense and for any previous offenses. Violent crimes generally carry heavier guidelines, property crimes lighter.

While judges do still have some discretion in sentencing, they must either impose a sentence within a range established by the guidelines, or iterate a specific, allowable reason for departing from them with a sentence either lighter or heavier than called for on the grid.

The guidelines, originally formulated by the state Supreme Court, were amended earlier this year on recommendations from legislators. The changes take more variables into account — whether a victim was injured or terrorized, a weapon was used, how many crimes were committed in the incident, the

records and entering the information into a data base. The records were researched every felony sex charge filed in Washtenaw County Circuit Court between July 1, 1991 and Dec. 31, 1998 in which the alleged victim was a child.

As many as 33 categories of information were gathered and entered into the database. The data includes names, ages and addresses of the defendants, the nature of the offenses, when the alleged crimes occurred, the charges filed against the suspects and alleged victims, the number of charges, the court when charges were resolved, the sentence imposed, and the crimes themselves, as reported by the courts.

shocked to learn Michigan State Police investigators had traced what was described as a loosely knit ring of child molesters operating from a dingy Ypsilanti Township home.

Eventually 10 adults, including parents of some of the victims, would be charged and convicted of molesting young children. Most of the defendants were given lengthy prison terms. It was a case that attracted a lot of attention because of its magnitude. But what about the dozens of other child molestation cases that are charged each year in Washtenaw County? How is our justice system handling those cases?

The Ann Arbor News decided to find out. Staff reporter Susan Ornal, a veteran police and crime