

Justice Reinvestment in Wyoming

Policy Framework



JUNE 2019

Overview

Wyoming's prisons are currently at capacity—the state is already contracting with a prison in Mississippi to house 88 people—and the prison population is projected to continue to grow. This growth is driven, in part, by revocations from probation and parole and would require an increase to the corrections budget to accommodate. At the same time, recent declines in state revenue have hindered Wyoming's ability to invest in strategies to lower recidivism and reduce crime.

In March 2018, then Governor Matt Mead, then Chief Justice E. James Burke, then Senate President Eli Bebout, House Speaker Steve Harshman, and Wyoming Department of Corrections (WDOC) Director Robert Lampert requested and received support from the U.S. Department of Justice's Bureau of Justice Assistance (BJA) and The Pew Charitable Trusts to employ a Justice Reinvestment approach to reduce corrections

spending and reinvest savings in strategies that improve public safety. The Council of State Governments (CSG) Justice Center provided intensive technical assistance. Under the direction of Wyoming's Joint Judiciary Committee (JJC), CSG Justice Center staff collected and analyzed data and developed a set of proposed policies.

These policies were reflected in House Enrolled Acts (HEA) 45 and 53 and Senate Enrolled Acts (SEA) 19 and 50, which were signed into law in February 2019.¹ By successfully implementing the recommendations in the bills, the state can expect to avert up to \$18.1 million in contract bed costs by fiscal year (FY) 2024. This is money that can be reinvested in increasing the availability and effectiveness of community-based behavioral health treatment for people on community supervision.

WYOMING JOINT JUDICIARY COMMITTEE

The bipartisan 14-member committee, which includes members of the state legislature, met three times between May and November 2018 to review analyses and discuss policy options. Some committee members changed in 2019 due to the 2018 election.

2018 JJC

Senate Chair

Senator Leland Christensen

Senate Members

Senator Lisa Anselmi-Dalton

Senator Larry Hicks

Senator Dave Kinskey

Senator Tara Nethercott

House Chair

Representative Dan Kirkbride

House Members

Representative Bo Biteman

Representative Jared Olsen

Representative Mark Jennings

Representative Charles Pelkey

Representative Bill Pownall

Representative Tim Salazar

Representative Clark Stith

Representative Nathan Winters

2019 JJC

Senate Chair

Senator Tara Nethercott

Senate Members

Senator Lisa Anselmi-Dalton

Senator Brian Boner

Senator R.J. Kost

Senator Michael Von Flatern

House Chair

Representative Dan Kirkbride

House Members

Representative Sara Burlingame

Representative Chuck Gray

Representative Mark Jennings

Representative Charles Pelkey

Representative Bill Pownall

Representative Tim Salazar

Representative Clark Stith

Representative Art Washut



DATA COLLECTION

Extensive case-level data was provided to CSG Justice Center staff by the WDOC, with additional data provided by the Wyoming Judicial Branch, the Wyoming Department of Health, and the Wyoming Office of the Attorney General's Division of Victim Services and Division of Criminal Investigation. An analysis on this scale, in terms of breadth and depth, had not previously been undertaken in Wyoming and was critical to CSG Justice Center staff's ability to deliver comprehensive, systemic analysis of adult criminal justice processes to the JJC. In total, more than 1.2 million individual data records spanning more than 10 years were analyzed across these databases, including supervision and prison populations, admissions, and releases;

sentence lengths and length of time served in prison and on supervision; the results of risk and behavioral health needs assessments; community- and institutional-based programming assignments; court case filings; and statewide crime and arrest activity. Additional context and information were provided through in-person meetings in Casper, Cheyenne, Gilette, Jackson, Newcastle, Riverton, and Sheridan counties as well as conference calls with judges, prosecuting attorneys, public defenders, law enforcement officials, probation and parole officers, behavioral health service providers, community corrections officials, parole board members, victim advocates, and others.

KEY CHALLENGES

Wyoming's prison admissions are largely driven by probation and parole revocations for technical violations. Additional analysis found an increased number of people on supervision who have unmet substance addiction and/or mental illness needs. Through its comprehensive review of state data, the JJC identified the following key challenges and related findings.

- 1. Prison population growth.** Between FY2008 and FY2018, Wyoming's prison population increased 21 percent.² The population exceeds current capacity, which has resulted in WDOC contracting with an out-of-state private prison and in-state county jails to house additional people. The prison population is projected to continue to grow, increasing approximately 9 percent between FY2018 and FY2023 and requiring 201 additional beds at an estimated cost of \$18 million in new spending on contract beds.
- 2. Inadequate victim mental health coverage.** The Wyoming Crime Victim Compensation Program (WCVCP) enables eligible crime victims to receive reimbursement for mental health services within a 24-month timeframe. This is an insufficient amount of time to meet the needs of victims requiring a longer term of mental health services to help them heal from the trauma they experienced.
- 3. Ineffective and costly responses to supervision violations.** In 2017, 54 percent of prison admissions were due to supervision revocations, the majority of which were for violations that did not include a new felony conviction.³ Wyoming spends an estimated \$30 million per year incarcerating people revoked from supervision. Drug use is a common contributor to supervision revocations.
- 4. Inadequate substance addiction treatment.** Drug possession and drug manufacture/delivery arrests both increased sharply from 2013 to 2017 (up 26 percent and 59 percent, respectively).⁴ Drug-related offenses accounted for 17 percent of all arrests in 2017, straining criminal justice system responses and community behavioral health treatment delivery.⁵ Law enforcement executives stress the need to connect people who have substance addictions, as well as people with mental health and co-occurring needs, with community treatment and supervision to lower recidivism.

Summary of Policy Options and Impacts

The policy options presented to Wyoming's JJC and that were subsequently enacted in legislation are designed to achieve the following goals:

- Reduce the number of probation and parole revocations that result in prison admissions, as well as the length of stay in prison for revocations, 25 percent by FY2024.
- Provide additional resources to victims of crime in need of additional mental health services.
- Promote success on supervision by requiring behavior change strategies to be used in conjunction with accountability measures for people on supervision who engage in violation behaviors.
- Reallocate supervision resources more effectively while maintaining public safety.

SUMMARY OF POLICY OPTIONS

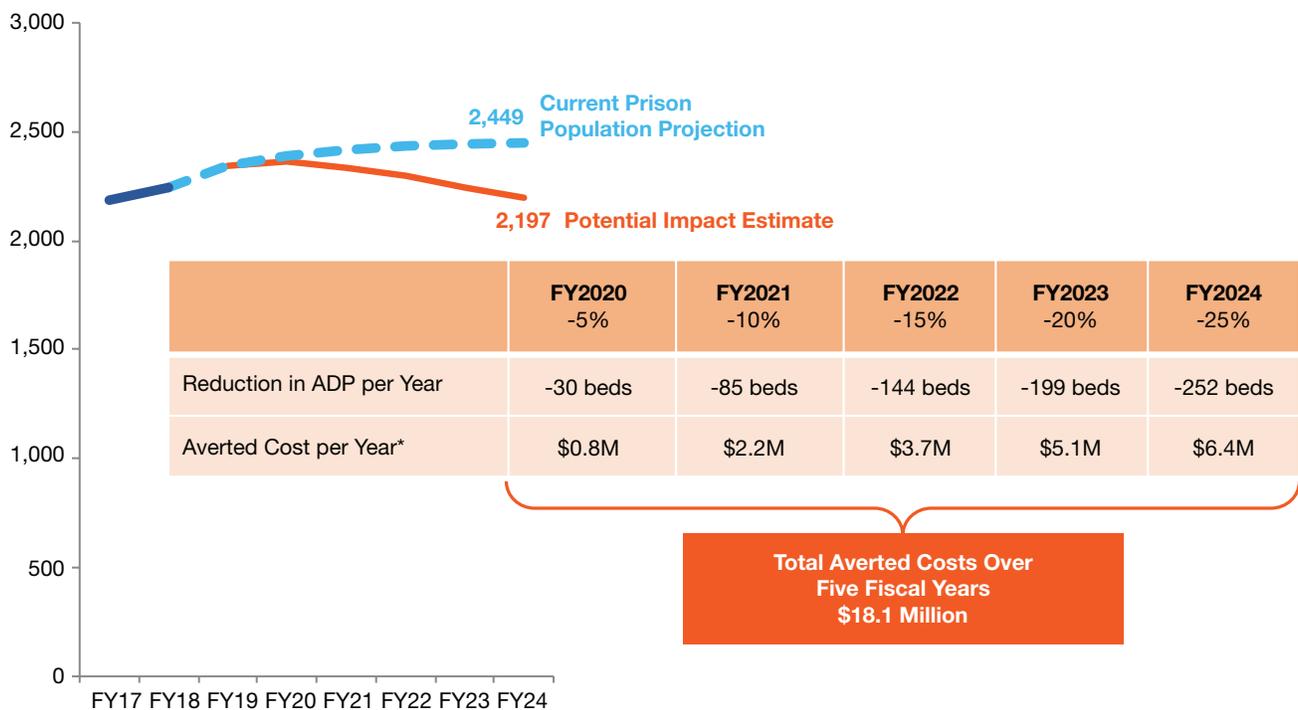
1. Provide additional tools to support judges as they determine probation terms and sentence lengths.
2. Extend the amount of time eligible victims can receive coverage for mental health service expenses.
3. Hold people on probation and parole accountable with swift, certain, and proportional sanctions and provide treatment and programming necessary to promote positive behavior change and increase success on supervision.
4. Focus probation resources on people during the years of their term when they are at the greatest risk of failing on supervision.

PROJECTED IMPACT

Key pieces of the Wyoming Justice Reinvestment policy framework address a major driver of prison population growth and cost: people revoked from probation and parole who are admitted to prison. From FY2013 to FY2017, more than 80 percent of supervision revocations were due to conditions violations without a new felony conviction.⁶ Enactment of the policy framework serves as a pivotal component of an effort to increase public safety by reducing recidivism.⁷ Achieving an

annual reduction of 5 percent each year in parole and probation revocation admissions—as well as length of stay in prison—totaling 25 percent by FY2024, is estimated to reduce the prison population by 252 people, averting projected growth and \$18.1 million in contract bed costs over the next five years (see Figure 1).⁸ As a result, Wyoming’s prison population will be 100 people below current rated capacity by FY2024.

FIGURE 1. WYOMING HISTORICAL AND PROJECTED PRISON POPULATION WITH POTENTIAL IMPACT ESTIMATE, AVERAGE DAILY POPULATION (ADP) FY2017–FY2024



* Based on current contract cost per person per day (\$70).

REINVESTMENTS

With the potential to avert up to \$18.1 million in costs, the state should reinvest, beginning in FY2020, in increasing access to timely, specialized community mental health and substance addiction treatment for people on supervision. Without this investment, it will be difficult to fully implement the Justice Reinvestment policies and see the projected prison population reduction. Cognitive behavioral interventions (CBI), and other evidence-based programming, should improve recidivism outcomes for people in the Intensive Supervision Program (ISP) or Adult Community Correction (ACC) centers.⁹ Currently, the ISP and ACC centers do not offer enough programs to aid the supervision population in changing violation behaviors. Increasing programming would ensure that all individuals with

assessed needs are afforded the necessary treatment and services to successfully complete supervision. CSG Justice Center staff recommended that the state reinvest 50 percent of potential averted costs between FY2020 and FY2024—\$9.1 million—leaving \$9 million in net savings. (See Figure 2.)

Through the enacted Justice Reinvestment legislation, the state has already allocated \$1.6 million in FY2020 to the WDOC to improve sanction-related programming and increase the department’s ability to swiftly implement sanction changes. CSG Justice Center staff recommend continued reinvestment each fiscal year through FY2024.

FIGURE 2. REINVESTMENT STRATEGIES AND NET SAVINGS FOR POTENTIAL AVERTED COSTS FY2020–FY2024

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2020-2024 Total
Potential Averted Cost per Year	\$0.8M	\$2.2M	\$3.7M	\$5.1M	\$6.4M	\$18.1M
Suggested Reinvestment (~50% of potential averted cost)	\$0.8M	\$1.0M	\$1.8M	\$2.5M	\$3.0M	\$9.1M
Potential Net Savings	--	\$1.2M	\$1.9M	\$2.6M	\$3.4M	\$9.0M
Actual Reinvestment Allocation	\$1.6M	TBD	TBD	TBD	TBD	\$1.6M to date

Policy Option Details

The following section describes the details of the policy options that were presented to Wyoming's JJC and were subsequently enacted in legislation, with relevant background information.

POLICY OPTION 1:

Provide additional tools to support judges as they determine probation terms and sentence lengths.

Background

- **Wyoming statutes predispose courts to impose lengthy periods of incarceration following probation revocations.**¹⁰ In Wyoming, probation is a “suspended sentence,” meaning a person’s incarceration sentence is suspended while they are placed on supervision. When someone is revoked, statutes predispose courts to act as if the sentence had never been suspended, and they may require the person to serve the same incarceration sentence.
- **In practice, incarceration lengths for people who are revoked from probation roughly mirror the lengths of new sentences to prison.** For example, from FY2013 to FY2017, the median minimum prison sentence length ordered, prior to allocation of good time, for all nonviolent offenses was 36 months for both new sentences and probation revocations.¹¹

Policy Details (Enacted as SEA 19)

Allow courts to (1) sentence people to unsupervised probation and impose fines related to the offense; (2) reduce length of probation sentences; and (3) consider eight criteria when determining the period of probation or a modification of a term. This policy enables courts to place a person on

unsupervised probation at sentencing, which typically involves conditions that the person must meet even though they are not being actively supervised. If the person violates these conditions or the law, such as by being arrested, he or she would be subject to additional sanctioning by the court. There are a variety of reasons someone might be placed on unsupervised probation. For example, a college student who lives out of state may receive this sentence.

The court may consider eight criteria when determining the period of probation or modifying an existing supervision period:

- Stable employment
- Positive community support
- Positive familial support
- Reasonable attendance to spousal and parental responsibilities
- Affirmative progress in addressing substance addiction issues
- Nature and seriousness of the underlying crime
- Risk posed by the defendant to the community
- Risk of reoffense as determined by a validated risk and need assessment

POLICY OPTION 2:

Extend the amount of time eligible victims can receive coverage for mental health service expenses.

Background

- **In recent years, victim compensation expenditures on mental health have almost doubled in Wyoming.** Compensation expenditures increased 193 percent, from \$93,113 in 2007 to \$272,697 in 2017.¹²
- **The window during which victims can receive compensation for mental health services is too short.** In Wyoming, victims are limited to receiving reimbursement for mental health services for 24 months, which may not be sufficient to adequately address their needs. Ongoing mental health services can be beneficial for a victim’s recovery from crime and violence.

Policy Details (Enacted as HEA 45)

Extend the period within which the WCVCP may allow reimbursement for victims’ mental health services and related care from 24 to 36 months from the date of injury or discovery of the crime.

By extending the eligibility period, more victims will be able to access mental health services, and victims will be more likely to utilize the entire \$15,000-per-person, per-crime, financial award under WCVCP.

POLICY OPTION 3:

Hold people on probation and parole accountable with swift, certain, and proportional sanctions and provide treatment and programming necessary to promote positive behavior change and increase success on supervision.

Background

- **Between FY2013 and FY2017, the number of people admitted to prison in Wyoming for supervision revocations spiked 27 percent, an increase of 123 people.**¹³ Probation and parole revocations accounted for 54 percent of prison admissions in FY2017, compared to 47 percent in FY2013. People who have been revoked from supervision constitute 30 percent of the prison population.¹⁴
- **People in Wyoming who are revoked from community supervision and sentenced to prison serve long sentences.** After allocation of good time, people who are revoked to prison from probation serve an average of 19 months in prison, and people revoked from parole and reincarcerated serve an average of 11 months.¹⁵
- **From FY2013 to FY2017, 84 percent of prison admissions due to supervision revocations did not include a new felony conviction.**¹⁶ Available data and WDOC audits show that reasons for supervision violations typically involve patterns of repeated technical violation behavior, often related to substance use.¹⁷
- **Wyoming spends an estimated \$30 million annually incarcerating people who are revoked from supervision.**¹⁸
- **The cost of enforcing sanctions in the community is significantly lower than revocations to prison.** The average cost per person for a sanction and placement in an ACC facility or the ISP is \$2,014 or \$5,658, respectively, while the average cost of revoking someone from probation or parole and sending them to prison is \$71,136 or \$41,184, respectively.¹⁹
- **The sanctions and rewards matrix that is currently in use is limited in scope.** Although WDOC probation and parole agents use the Positive Rewards Incentives Sanction Matrix (PRISM) for incentives and sanctions, it lacks controls to limit deviations and ensure that high-level responses are not used for low-level behaviors. ACC facilities do not have a matrix that includes incentives.²⁰
- **The majority of people on ISP are not at a high risk of recidivating.** Sixty percent of Wyoming's ISP population is low or moderate risk—29 and 31 percent, respectively,²¹ which suggests that the people who could most benefit from ISP are often not the ones on it.

Policy Details (Enacted as HEA 53)

- **Require the DOC to revise its incentives and sanctions system,** provide training to supervision staff and information to stakeholders, collect data on placements, and submit reports annually to the JJC. Sanctions permitted under the revised system are designed to be swift, certain, proportional, and cost-effective.
- **Allow jail sanctions of up to 15 consecutive days for serious supervision violations that warrant a period of incarceration.** Extend the continuum of sanctions available before a revocation from supervision occurs in order to hold people accountable in the community while reducing supervision failures and avoiding cost.
- **Allow an incarceration sanction of up to 90 days during which people would receive cognitive behavioral programming and other services based on risk of reoffending.** Imposed sanctions will be served in a consenting jail, an ACC program, or prison. Placements will be determined by a sentencing court or the Board of Parole. Sanctions of up to 90 days will include appropriate programming based on needs and will minimally have available substance addiction treatment and cognitive behavioral programming to address needs and promote positive behavior change.
- **Prioritize admission onto ISP for people beginning supervision terms who have been assessed as being at a high risk of reoffending,** unless good cause is identified by the judge to require ISP for people who are not high risk. Research has shown that to reduce recidivism, intensive supervision and programs should focus on people who are at a high risk of reoffending and have high needs.²²
- **Allow a person who violates parole and is revoked to prison to receive credit for the portion of time served on parole during which the person was compliant with conditions of supervision.** This creates the presumption that people will receive credit for successful time on parole supervision and reduce the length of time a person will serve on revocation to prison.

POLICY OPTION 4:

Focus probation resources on people during the years of their term when they are at the greatest risk of failing on supervision.

Background

- **Although Wyoming’s supervision population has decreased in recent years, it is now projected to grow.** From FY2008 to FY2018, the probation and parole population dropped 5 percent, but it is projected to increase 8 percent, or by 524 people, from FY2018 to FY2023.²³
- **Almost half of people on probation are bumped up to higher supervision levels upon intake, shifting resources from higher- to lower-risk people.** Forty-seven percent of people on probation from FY2013 to FY2017 were supervised at a level above their risk level, while 9 percent started at a supervision level that was below their risk level.²⁴
- **The average length of probation terms in Wyoming exceeds the period during which most recidivism occurs.** Research shows that probation revocations are more likely to occur in the first three years of a person’s

supervision term than they are beyond that time.²⁵ In Wyoming, two-thirds of revocations occur in the first two years of supervision, and 85 percent of revocations occur within the first three years. Yet 59 percent of probation terms are longer than three years.²⁶

Policy Details (Enacted as SEA 50)

- **Cap the length of probation terms at 36 months (3 years), unless good cause is shown.** If good cause is shown, the maximum length of probation shall not exceed the maximum term of imprisonment allowed by law, after considering public safety, rehabilitation, deterrence, and any other goals of sentencing.
- **Apply the cap to probation imposed without a conviction.** People who are sentenced by courts to probation as a means of diversion with eligibility to have charges dismissed will have probation terms capped at 36 months.

Looking Ahead

CSG Justice Center staff worked closely with officials in the state to identify priorities for implementation of the policies laid out in SEA 19, SEA 50, HEA 45, and HEA 53 as well as additional best practices that WDOC chose to adopt administratively. While the legislation involves policy changes throughout the justice system continuum, CSG Justice Center staff are focusing technical assistance on eight priority policy areas:

- Revise and implement PRISM for WDOC Field Services and develop and implement a sanction and incentive matrix at ACC centers.
- Expand substance addiction and cognitive behavioral programming for ISP and 90-day incarceration sanctions.
- Ensure that risk and needs assessments are appropriately and accurately conducted.
- Develop policy, procedures, and monitoring to ensure that overrides to risk and needs assessment scores are conducted

according to appropriate limits and reasons.

- Promote appropriate referrals and behavioral health interventions in the early stages of an individual’s supervision term.
- Increase early discharge from probation for people who qualify.
- Identify behavioral health needs in communities across the state for people on supervision through comprehensive analysis in conjunction with an interim study topic through the Joint Labor, Health, and Social Services Committee on the intersection of people with behavioral health needs and frequent criminal justice involvement.
- Develop measures to track outcomes related to the implementation of Justice Reinvestment policies.

The state has applied for additional technical assistance from BJA during the implementation of these policies and has requested funding to support one-time implementation needs.

Notes

1. All years in this report are calendar years unless otherwise noted.
2. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections Prison and Supervision Projections, July 2018.
3. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data, FY2017.
4. The Council of State Governments Justice Center Analysis of Wyoming Division of Criminal Investigation - *Crime in Wyoming Reports*, 2013–2017.
5. Wyoming Division of Criminal Investigation, *Crime in Wyoming* 2017.
6. Over this period, 84 percent of probation and 87 percent of parole revocations were due to violations that did not include a new felony conviction.
7. In this context, recidivism is defined as a reduction in the number of probation and parole revocations that result in prison admissions and a reduction in the length of stay in prison for revocations.
8. The CSG Justice Center's impact analysis is based on historical WDOC prison population and admission trends and WDOC prison population forecasts. The baseline population projection assumes an average annual growth rate of less than 1 percent per year. Averted costs were calculated at \$70 per person per day, which is the current contract cost being paid to house people in Mississippi. By averting the projected prison population growth, WDOC would avoid the costs of some of the current and any additional contract beds.
9. ACCs provide housing and case management services for people who have violated conditions of community supervision in lieu of revocation. ISP is a community supervision program geared toward people who are assessed as being at a high risk of reoffending and have high needs.
10. Wyo. Stat. Ann. §7 13 302, 2018.
11. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data, FY2013–FY2017.
12. The Council of State Governments Justice Center analysis of Wyoming Division of Victim Services data.
13. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data, FY2013–FY2017.
14. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data, FY2013–FY2017.
15. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data, FY2015–FY2017.
16. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data, FY2013–FY2017.
17. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data.
18. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data, FY2015–FY2017.
19. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data. Cost estimates from FY2017.
20. The Council of State Governments Justice Center analysis of Wyoming Field Services Policy and Procedures, accessed 2018.
21. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data, as of end of FY2017.
22. James Andrews and D.A. Bonta, *The Psychology of Criminal Conduct*, 5th ed. (New Providence, NJ: Mathew and Bender & Company, Inc., 2010).
23. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections Prison and Supervision Projections, July 2018.
24. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data, FY2013–FY2017.
25. U.S. Department of Justice Bureau of Justice Assistance, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005–2014)*, May 2018.
26. The Council of State Governments Justice Center analysis of Wyoming Department of Corrections data, FY2015–FY2017.



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The Council of State Governments (CSG) Justice Center is a national nonprofit, nonpartisan organization that combines the power of a membership association, representing state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities. The CSG Justice Center's work in Justice Reinvestment is done in partnership with The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance. These efforts have provided data-driven analyses and policy options to policymakers in 30 states. For additional information about Justice Reinvestment, please visit csjusticecenter.org/jr/.

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