Justice Reinvestment in Arkansas

3rd Presentation to the Legislative Criminal Justice Oversight Task Force

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The Council of State Governments Justice Center and the Justice Reinvestment process

**JUSTICE CENTER**

**The Council of State Governments**

*Collaborative Approaches to Public Safety*

- National nonprofit, nonpartisan membership association of state government officials
- Engages members of all three branches of state government
- Justice Center provides practical, nonpartisan advice informed by the best available evidence

**JUSTICE REINVESTMENT**

*A data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety*

The Justice Reinvestment Initiative is supported by funding from the U.S. Department of Justice’s *Bureau of Justice Assistance (BJA)* and *The Pew Charitable Trusts*
Takeaways from previous presentation


Among a variety of sentencing options available to the courts, the key provisions of Act 532 were to achieve proportionality in sentencing and reserve prison for the most serious offenses and repeat offenders.
Arkansas’s sentencing grid doesn’t offer sentence length ranges for prison sentences and has a high share of cells that allow for all sentencing options.

In policy, the grid does less than other states to guide the type of sentence used. In practice, prison is used often for less serious offenses or offenders.

Despite the intent of the guidelines to reserve prison space for the most dangerous offenders, more than 1,000 people from non-prison cells were sent to ADC in 2014.
Questions for the Task Force

1. What share of the grid should allow for **all sentencing options**?

2. Should the guidelines have prison sentence **ranges** instead of a specific term to allow for consideration of mitigating or aggravating factors?

3. Should there be a process for **reviewing** sentences in relation to the guideline-recommended term?
Kansas, North Carolina, and Alabama illustrate approaches to operationalizing questions posed to Task Force

Kansas (1993) and North Carolina (1994) each adopted their sentencing guidelines framework at a similar time to Arkansas (1993).

Alabama did not adopt sentencing guidelines until 2006.

✓ Above states demonstrate different approaches to putting “teeth” into guidelines.

✓ Surrounding region

✓ Recent history of addressing criminal justice challenges

Source: Arkansas Sentencing Commission; Kansas Sentencing Commission; North Carolina Sentencing and Policy Advisory Commission; and Alabama Sentencing Commission
Arkansas has a high share of its grid that doesn’t actually guide sentencing

Percent of total grid cells that allow for “all options” in sentencing:

- Arkansas: 40%
- North Carolina: 28%
- Kansas: 8%

These “all options” cells do not suggest any upper or lower boundary on the type of sentence imposed.

Source: Arkansas Sentencing Commission; Kansas Sentencing Commission; and North Carolina Sentencing and Policy Advisory Commission
Arkansas’s sentencing grid prescribes a single length for prison terms instead of a range

<table>
<thead>
<tr>
<th>Offense Seriousness</th>
<th>Criminal History Score</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5+</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Less history</td>
<td>360</td>
<td>384</td>
<td>432</td>
<td>528</td>
<td>660</td>
<td>780</td>
</tr>
<tr>
<td>9</td>
<td>Less history</td>
<td>240</td>
<td>312</td>
<td>396</td>
<td>480</td>
<td>600</td>
<td>720</td>
</tr>
<tr>
<td>8</td>
<td>More history</td>
<td>120</td>
<td>168</td>
<td>264</td>
<td>360</td>
<td>432</td>
<td>600</td>
</tr>
<tr>
<td>7</td>
<td>More history</td>
<td>42</td>
<td>54</td>
<td>84</td>
<td>120</td>
<td>160</td>
<td>300</td>
</tr>
<tr>
<td>6</td>
<td>More serious offenses</td>
<td>24</td>
<td>42</td>
<td>66</td>
<td>108</td>
<td>156</td>
<td>240</td>
</tr>
<tr>
<td>5</td>
<td>Less serious offenses</td>
<td>36</td>
<td>54</td>
<td>72</td>
<td>120</td>
<td>180</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>More serious offenses</td>
<td>18</td>
<td>30</td>
<td>54</td>
<td>72</td>
<td>96</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Less serious offenses</td>
<td>18</td>
<td>30</td>
<td>42</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>More serious offenses</td>
<td>18</td>
<td>24</td>
<td>42</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Less serious offenses</td>
<td>9</td>
<td>24</td>
<td>30</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Sentencing grids typically offer a sentence length range, taking into account that individual cases may have either mitigating or aggravating circumstances.

Source: Arkansas Sentencing Commission
Majority of states with guidelines use prison term ranges rather than singular recommended sentence length.

<table>
<thead>
<tr>
<th>Category</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>I</th>
<th>J</th>
<th>K</th>
<th>L</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity Level</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>普通的刑罚</td>
<td>12个月</td>
<td>15个月</td>
<td>18个月</td>
<td>24个月</td>
<td>30个月</td>
<td>36个月</td>
<td>48个月</td>
<td>60个月</td>
<td>72个月</td>
<td>96个月</td>
<td>120个月</td>
<td>180个月</td>
</tr>
<tr>
<td>Aggravated刑罚</td>
<td>18个月</td>
<td>24个月</td>
<td>30个月</td>
<td>42个月</td>
<td>54个月</td>
<td>66个月</td>
<td>84个月</td>
<td>102个月</td>
<td>120个月</td>
<td>150个月</td>
<td>198个月</td>
<td>288个月</td>
</tr>
</tbody>
</table>

Use of prison sentence ranges allows for consideration of aggravating or mitigating factors in individual sentences while maintaining compliance with the guidelines.

Source: Kansas Sentencing Commission; North Carolina Sentencing and Policy Advisory Commission; and Alabama Sentencing Commission
## States employ various means of limiting departures from the guidelines

<table>
<thead>
<tr>
<th>State</th>
<th>Framework for Appellate Review</th>
<th>Mechanisms Create Framework for Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>No</td>
<td>Guidelines provide a list of non-exclusive, case-specific factors to determine if departure reasoning is substantial and compelling.</td>
</tr>
<tr>
<td>Kansas</td>
<td>Yes</td>
<td>Statute provides available presumptive, aggravated, and mitigated ranges based on circumstances. Effectively no departures allowed outside those ranges.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Yes</td>
<td>Departures are allowed, but the judge must make a finding of mitigation or aggravation and state this reason on the record if departing from the presumptive sentence.</td>
</tr>
<tr>
<td>Alabama</td>
<td>Yes</td>
<td>Not Applicable</td>
</tr>
</tbody>
</table>

Source: Sentencing Guidelines Resource Center, Robina Institute of Criminal Law and Criminal Justice, University of Minnesota: [http://sentencing.umn.edu/](http://sentencing.umn.edu/)
Even in states with guidelines, sentencing policy and practice differs significantly

<table>
<thead>
<tr>
<th>Issue</th>
<th>Arkansas</th>
<th>Kansas</th>
<th>North Carolina</th>
<th>Alabama</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prison sentencing ranges?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Percentage of “all-options” cells</td>
<td>40%</td>
<td>8%</td>
<td>28%</td>
<td>N/A</td>
</tr>
<tr>
<td>Enforceable limits on departures?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Without a mechanism for reviewing sentences in relation to the sentencing standards grid, it will be very difficult to incorporate “teeth” into Arkansas’s guidelines.
Questions for the Task Force

1. What share of the grid should allow for all sentencing options?

2. Should the guidelines have prison sentence ranges instead of a specific term to allow for consideration of mitigating or aggravating factors?

3. Should there be a process for reviewing sentences in relation to the guideline-recommended term?
Moving forward

- **Analysis of prison, probation, and parole data**
  - Impact of supervision failures on prison pressures
  - Ability of supervision system to maximize public safety outcomes through policies and practices that effectively promote recidivism reduction

- **Analysis of local jail pressures**
  - How does jail backlog impact ability to effectively sanction supervision violators in a swift and sure manner

- **Analysis of demographic trends**
  - Gender, race, age
Proposed project timeline

- Task Force Meeting 1
- Task Force Meeting 2
- Task Force Meeting 3
- Task Force Meeting 4
- Task Force Meeting 5
- Task Force Meeting 6

Data Analysis
- Initial Analysis
- Detailed Data Analysis
- Impact Analysis

Policymaker and Stakeholder Engagement
- Stakeholder Engagement and Policymaker Briefings
- Policy Option Development
Thank You

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