

Legislative Criminal Justice Oversight Task Force

Report and Recommendations

December 15, 2016

Report from the Legislative Criminal Justice Oversight Task Force

DECEMBER 2016

Arkansas's criminal justice system faces serious challenges. Between 2004 and 2015, the state's prison population grew by 31 percent.¹ As a result of this increase, prison facilities are at capacity and a growing number of people sentenced to prison are being held in county jails awaiting transfer to prison. The prison population is currently projected to increase by 28 percent in the next decade.² To address this challenge, the state has embarked on a data-driven justice reinvestment approach to help reduce the prison population, contain corrections spending, and reinvest in strategies that can reduce recidivism and increase public safety. To that end, key stakeholders have worked together to develop policies that will reduce the prison population by limiting the length of stay for people serving time in prison for violations of the terms of their supervision, as well as improving efficiencies in the delivery of critical programming and treatment in the community setting as well as in prison to improve outcomes for people on supervision and increase public safety. By implementing these proposed policies, the state can avert millions of dollars in construction and operating costs and will be able to reinvest savings in hiring additional supervision officers, providing community-based substance use treatment and programming, and reimbursing police departments for specialized police response training.³

Legislative Criminal Justice Oversight Task Force

In July 2015, Governor Asa Hutchinson, then Chief Justice Jim Hannah, Senate President Pro Tempore Jonathan Dismang, and House Speaker Jeremy Gillam requested intensive technical assistance from The Council of State Governments (CSG) Justice Center with support from The Pew Charitable Trusts (Pew) and the U.S. Department of Justice's Bureau of Justice Assistance (BJA) to use a justice reinvestment approach.

Passed by the Arkansas legislature and signed in April 2015, Act 895 established the bipartisan Legislative Criminal Justice Oversight Task Force to study the state's criminal justice system. The 19-member task force, which includes state lawmakers, members of the judiciary, corrections officials, prosecuting and defense attorneys, law enforcement representatives, and behavioral health practitioners met seven times between November 2015 and August 2016 to review analyses and discuss policy options.

TASK FORCE

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Sheila Sharp, Director, Arkansas Community Correction
David Talley, Circuit Judge, 13th Judicial Circuit

Data Collection

An extensive amount of data was provided by the Arkansas Crime Information Center, Arkansas Administrative Office of the Courts, Arkansas Sentencing Commission, Office of the Arkansas Attorney General, Arkansas Department of Correction, Arkansas Community Correction, and Arkansas Parole Board. In total, more than three million individual data records were analyzed across these databases, including: probation, parole, and incarcerated population trends; length of time served in incarceration and on supervision; and availability of treatment and programs designed to reduce recidivism. Nearly 90 in-person meetings and conference calls with judges, prosecuting attorneys, public defenders, sheriffs, police chiefs, probation and parole officers, behavioral health treatment providers, victims and their advocates, advocates for people in the criminal justice system, local officials, and others helped provide context for the data.

Summary of Challenges and Findings

Through its comprehensive review of state data, the Legislative Criminal Justice Oversight Task Force identified key challenges and related findings.

Key Challenges

1. **SIGNIFICANT PRISON POPULATION GROWTH** Arkansas's prisons are now at capacity due in large part to a significant increase in the number of people revoked to prison from supervision. This growth is placing a strain on county jails, which must accommodate the backlog of people waiting to enter prison, and will force the state to spend millions in facility construction and operations costs if nothing is done.
2. **INEFFECTIVE SENTENCING GUIDELINES** A significant number of the cells in Arkansas's voluntary sentencing standards grid include all types of disposition options (prison, community correction center, or alternative sanction), which has resulted in a large number of people convicted of low-level offenses being sentenced to prison. Further, because the standards do not provide much specific sentencing guidance, prison space is not effectively being reserved for people convicted of serious and violent offenses.
3. **STRAINED COMMUNITY CORRECTIONS SYSTEM** The state system of community corrections, which encompasses probation and parole supervision as well as the operation of secure community corrections centers and violator programs, is overwhelmed. High probation and parole officer caseloads, combined with a lack of available sanctioning options and inadequate community-based behavioral health interventions, have led to a high revocation rate.

Key Findings

- **Arkansas's incarceration rate has increased substantially and is well above the national average.** From 2004 to 2014,⁴ Arkansas's incarceration rate increased 21 percent, compared to a 5-percent decline in the national incarceration rate during the same period.⁵ In 2014, Arkansas incarcerated 599 people per 100,000 residents, the fourth-highest incarceration rate in the nation.⁶
- **In recent years, Arkansas has had one of the fastest growing prison populations in the nation, and it is projected to continue to rise.** The state's prison population increased 30 percent between 2004 and 2014, from 13,668 to 17,819 people.⁷ In 2015, the end of year prison population was 17,684 people. From 2016 to 2026, the prison population is projected to increase by 28 percent.⁸
- **County jail capacity is strained due to a large backlog of people awaiting entry into prison.** From FY2004 to FY2014, the number of state-sentenced people being held in county jails due to lack of space at state-operated prisons increased by more than 210 percent.⁹ Between FY2012 and FY2015 alone, the average number of people awaiting transfer to prison increased 276 percent.¹⁰ In FY2015, the county jail backlog averaged 2,396 people per day, but this has declined during FY2016 due to expanded prison capacity.¹¹ Nevertheless, many jails are too crowded to enable swift and sure sanctioning at the local level.¹²
- **Each year, thousands of people with mental illnesses are booked into Arkansas's jails.** Based on estimates of the prevalence of mental illness in jails,

approximately 1,300 of the more than 7,600 people in Arkansas's jails have serious mental illnesses.¹³ Because most jails are not equipped to provide the necessary treatment to people with mental illness, these people are better served in alternative locations that can provide services needed to address underlying issues associated with their mental illness.

- **Arkansas spends half a billion dollars on corrections annually.** From FY2004 to FY2015, corrections spending increased by 68 percent, from \$305 million to \$512 million per year.¹⁴ If nothing is done to address overcrowding, by 2023 the state will be forced to spend an additional \$653 million in construction and operating costs in order to accommodate prison population growth.¹⁵
- **Prison is the costliest sentence in Arkansas's criminal justice system at \$63 per person per day.** Additionally, when comparing people with similar offenses and similar criminal histories who were sentenced to prison or probation, people sentenced to prison had worse outcomes. Fifty percent of people released from prison in FY2013 were rearrested within two years, compared to 40 percent of people placed on probation the same year. In comparison to the cost of incarceration in prison, probation supervision costs \$2.25 per person per day.¹⁶
- **Arkansas's sentencing grid is intended to reserve prison sentences for people convicted of the most serious offenses, but in practice, people convicted of low-level offenses are often sent to prison.** Forty percent of the cells in Arkansas's sentencing grid allow for all sentencing options, as compared to 28 percent of the cells in North Carolina's grid and 8 percent in Kansas's grid. In 2014, 56 percent of sentences—more than 3,500 people—that fit the all-options cells on Arkansas's grid were sent to prison.¹⁷ In addition, Arkansas's sentencing grid doesn't include prison sentence length ranges.¹⁸
- **Parole approval rates have declined and more people are staying in prison beyond their parole eligibility date.** From FY2012 to FY2015, the parole approval rate decreased from 83 percent to 73 percent.¹⁹ It is also taking longer for people in Arkansas to be released on parole. For example, the number of people convicted of new offenses who were past their parole eligibility date but had not been released from prison grew by 37 percent between FY2012 and FY2015, from 1,337 to 1,832 people.²⁰
- **Most of the growth in the state's prison population stems from parole and probation revocations.** Between FY2009 and FY2015, parole revocations quadrupled, from 779 in FY2009 to 5,109 in FY2015.²¹ Over the same period, the prison population grew by 4,243 people, 2,385 of whom had violated parole and 1,476 of whom had violated probation for a total of 3,861 people who had violated some form of supervision.²² In FY2015, 52 percent of all admissions to prison were parole violators, up from 32 percent in FY2009.²³
- **Revoking people for technical violations of their probation and parole costs the state nearly \$16 million annually.** In FY2015, 1,732 technical violators were revoked to prison for an average of 9 months at a conservative estimated contract bed cost per day of \$30, resulting in a total annual cost of at least \$15.6 million.²⁴
- **Arkansas's probation and parole officers are overwhelmed.** Each supervision officer in the state has approximately 129 people to supervise as compared to 60

per officer in North Carolina. Large caseloads prevent officers from providing meaningful and effective supervision.²⁵

- **Recidivism rates in Arkansas have increased in recent years.** Recidivism, which is defined as rearrest in Arkansas, has increased for both people leaving ADC facilities and those placed on probation supervision. From FY2009 to FY2014, the one-year recidivism rate for people released from prison to parole supervision increased from 29 to 32 percent. Twenty-four percent of people beginning probation in FY2009, and 28 percent of those beginning probation in FY2014 were rearrested within one year.²⁶
- **Inefficient tracking of information and existing state policy create unnecessary barriers to victims accessing restitution and compensation.** A 2012 report by ACC noted significant deficiencies in the collection of fines, fees, and restitution due to the lack of a centralized database to enter and track this information. In terms of victim compensation, Arkansas is one of only 10 states that place restrictions on people with prior felony convictions from receiving money through the victim compensation program, and it is one of only two states that extend these restrictions to a lifetime ban.²⁷

Summary of Policy Options and Impacts

The policy options listed below are designed to achieve the following goals:

- Avert spending associated with growth in prison and jail populations.
- Reserve prison space for people who are convicted of serious offenses and have extensive criminal histories.
- Improve the quality of supervision and behavioral health treatment to reduce recidivism.
- Reinvest in strategies to hold people accountable and increase public safety.

Icons appear in the policy options section of this report to indicate which options will avert prison population growth, provide tools to reduce pressure on jails, and increase public safety and reduce recidivism.

Policy Options

1. Focus supervision resources on people who are most likely to reoffend.
2. Increase the availability of effective community-based substance use treatment and services.
3. Reconfigure aspects of ACC's residential facilities to ensure the effectiveness and efficiency of services that are intended to reduce recidivism.
4. Limit the amount of time people who have violated the conditions of their supervision may spend in prison so that prison space is reserved for people who commit serious and violent offenses.

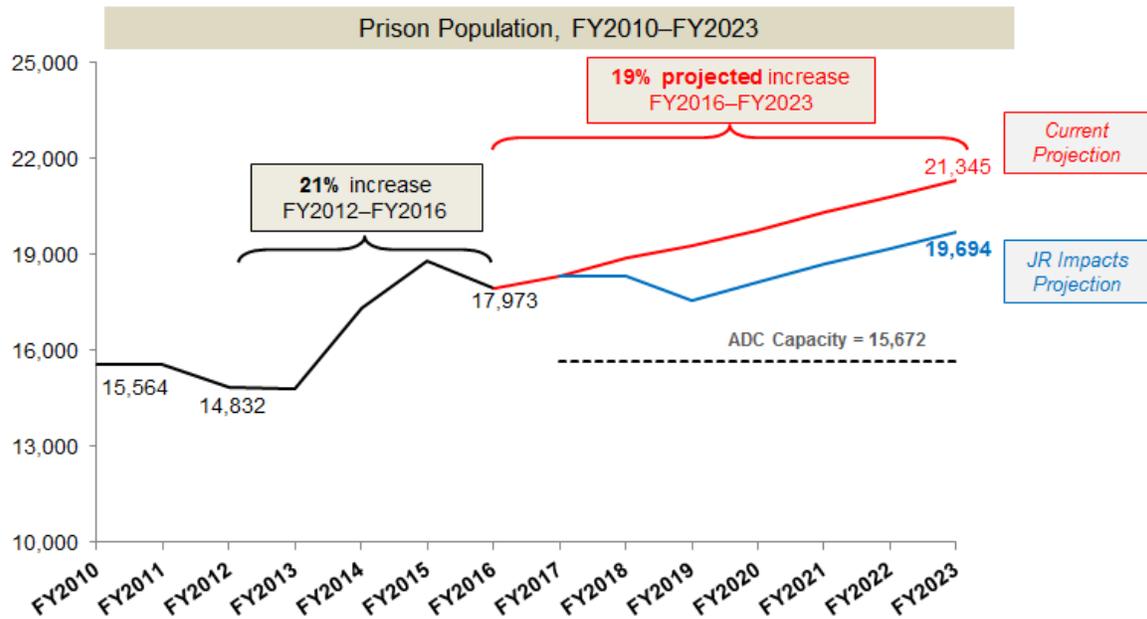
5. Improve the quality and consistency of the parole decision-making process, preparation for release, and information sharing between Arkansas's correctional agencies as it relates to parole.
6. Revise the Arkansas Sentencing Standards to ensure that sentences to prison are reserved for people convicted of the most serious offenses or who have extensive criminal histories.
7. Improve the collection of information related to restitution and access to compensation for victims of crime.
8. Develop and fund strategies to reduce pressures on county jails, including specialized law enforcement training, screening and assessment, and diversion for people with mental illnesses.
9. The Board of Corrections, Arkansas Sheriffs Association (ASA), and Association of Arkansas Counties (AAC) shall develop quality assurance reporting on the implementation of policies and expenditure of resource investments related to the justice reinvestment policies and reinvestments. The purpose of the reporting is to provide the legislature and state leadership with metrics and updates to help ensure that policies are being implemented and resources expended as intended. This reporting shall also include information relating to outcomes such as recidivism rates.
10. Permanent funding for Specialty Courts that are using established best practices and that can show positive outcomes that lead to reduced recidivism and a reinforcement of public safety.
11. The task force recognizes that the current prison population projection growth may require an investment in additional prison beds without sufficient criminal justice policy changes and investment in programs that protect Public Safety and lower the need for incarceration.

Projected Impact

As a package, the policies described in this report have the potential to generate significant savings and lower recidivism for Arkansas. By averting the projected growth in the state prison population, effective implementation of the policy framework will help the state avoid millions of dollars in construction and operating costs through 2023 for new prisons to accommodate the growing prison population. While the prison population is projected to reach 21,345 people by 2023, the policy options have the ability to reduce the projected population by more than 1,650 people by 2023. (See Figure 1)

Operating cost estimates are based on FY2015 Arkansas Department of Correction (ADC) cost per day of \$63. Construction cost estimates were created in consultation with ADC and are roughly based on conservative estimates of \$60,000 per bed for project and construction costs. CSG Justice Center projection impact analysis is based on FY2009–FY2015 ADC prison population and felony sentencing data. The baseline population projection assumes a continuation of moderate growth in the prison population.

Figure 1: Projected Impact of Justice Reinvestment Policy Framework on Arkansas's Prison Population



Reinvestment

By curbing prison population growth, Arkansas is projected to avert \$288.5 million in prison construction and operations costs by FY2023. To reach the projected outcomes, a portion of the averted costs must be reinvested in evidence-based strategies to reduce recidivism. In FY2018, an upfront investment of \$14 million in additional supervision officers, community-based substance use treatment and services, specialized police response training reimbursements, and expansion of the victim compensation program is recommended, falling to \$10 to \$11 million from FY2019 through FY2023. Averted costs and proposed levels of reinvestment are based on projected impacts to the prison population as calculated by the CSG Justice Center in comparison to the ADC population forecast. (See Figure 2)

Figure 2: Summary of Justice Reinvestment Policy Framework Averted Costs and Reinvestments

		FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	Total
Averted Costs	New Construction Costs Averted	Cost of constructing 1,650 prison beds estimated at \$60,000 per bed = \$99,000,000						\$99 M
	Operational Costs Averted	0	\$37.9 M	\$189.5 M				
	Total Averted Costs	\$16.5 M	\$54.4 M	\$54.4 M	\$54.4 M	\$54.4 M	\$54.4 M	\$288.5 M
Reinvestments	ACC caseworkers and support staff	\$10.6 M	\$6.1 M	\$6.1 M	\$6.1 M	\$6.1 M	\$6.1 M	\$41 M
	Community-based treatment	\$3.2 M	\$3.2 M	\$3.5 M	\$3.5 M	\$3.8 M	\$4.0 M	\$21 M
	Specialized police response training	\$500 K	\$500 K	\$500 K	\$500 K	\$500 K	\$500 K	\$3 M
	Victim compensation	\$100 K	\$100 K	\$100 K	\$100 K	\$100 K	\$100 K	\$600 K
	Total Reinvestment	\$14.4 M	\$9.9 M	\$10.2 M	\$10.2 M	\$10.5 M	\$10.7 M	\$65.9 M
Net Savings		\$2.1 M	\$44.5 M	\$44.2 M	\$44.2 M	\$43.9 M	\$43.7 M	\$222.6 M

Policy Options

POLICY OPTION 1:

Focus supervision resources on people who are most likely to reoffend.



Increase public safety and reduce recidivism

A. Provide the most intensive supervision at the beginning of a person's supervision term, when rearrest rates are highest.

For people who began supervision terms in FY2012 in Arkansas, 26 percent of those on probation and 32 percent of those on parole were rearrested within the first year. During their second year on supervision, rearrest rates fell to 12.3 percent for probationers and 16 percent for parolees, and in their third year on supervision, rearrest rates fell to 8 percent for probationers and 9 percent for parolees.²⁸ This trend is consistent with national data, which shows that rearrest rates are highest within the first year of supervision. **This policy option addresses the need to focus attention and resources on people who are in the early stages of their supervision term, when they are most likely to be rearrested.**

In systems where caseloads are high and supervision officers' time is limited, such as in Arkansas, officers will have more time to devote to challenging cases by actively supervising people during the first one to two years of their supervision terms. ACC should make efforts to shift people to annual reporting status once they have successfully completed active supervision so that officer caseloads remain manageable and officers can continue to focus time and resources on people who need them most.

B. Hire additional supervision officers to reduce the number of cases per officer, and improve training in effective recidivism-reduction strategies to increase the quality of supervision.

The effectiveness of community supervision in reducing recidivism is largely reliant on the ability of supervision officers to devote the necessary time and attention to people who have been assessed as being at a moderate to high risk of reoffending. Currently, ACC supervision officers, who carry both probation and parole cases, have high caseloads that significantly inhibit their ability to facilitate behavior change among people on probation or parole.²⁹ Officers must also be equipped with appropriate training and resources to effectively motivate behavior change. **This policy option will reduce caseloads and increase the quality of supervision by (1) allocating the necessary funding to ACC to increase the number of supervision officers, (2) adjusting caseload sizes based on assessed risk and needs of probationers and parolees, and (3) charging ACC with ensuring that initial and recurring training is based on proven strategies to reduce recidivism.**

In FY2015, Arkansas's supervision officers oversaw an average of 129 cases each. In numerous discussions with supervision officers and administrators across the state, many officers stated that they were overwhelmed and sometimes struggled to complete assigned tasks due to the heavy workload. Between supervisory duties and other tasks that every officer is expected to perform, including working the desk at the local field office and serving as part of the transportation team, officers described having very little time to engage with probationers and parolees in a meaningful and constructive manner.

To effectively change the behavior of people on probation or parole, officers must have the time and training to create and foster personal relationships with the people they supervise, monitor behavior and compliance with conditions of supervision, and assist other officers and staff in various duties, as necessary. An analysis of the agency's staffing needs resulted in the development of officer staffing goals based on probationers' and parolees' risk of reoffending and the desire to focus supervision resources on people during the first one to two years of their supervision terms. These staffing goals are as follows:

- High risk: active supervision for two years; no more than 40 cases per officer
- Medium risk: active supervision for 18 months; no more than 60 cases per officer
- Low risk: active supervision for 12 months; no more than 120 cases per officer

To meet these caseload goals, ACC will need to hire approximately 100 additional officers for a total field supervision officer allotment of around 550 officers

statewide. Such staffing goals are consistent with nationally recognized best practices.

Furthermore, ACC should revisit its core training curriculum to ensure that officers have an adequate foundation in core correctional practices, which include risk assessment and programming, and cognitive behavioral interventions. Additionally, training on how to supervise specialized populations, such as people convicted of sex offenses and people with mental disorders, will equip officers with the tools to effectively supervise more complex cases. Improvements in training will contribute to the development of a highly skilled workforce that focuses on an individual's unique needs and implements strategies to help change criminal thinking and reduce recidivism.³⁰

POLICY OPTION 2:

Increase the availability of effective community-based substance use treatment and services.



Increase public safety and reduce recidivism

A. Expand community-based substance use programming and treatment for medium- and high-risk populations on supervision.

Providing medium- and high-risk probationers and parolees with quality treatment services for substance use disorders is important to breaking the cycle of offending related to addiction. The size and scope of Arkansas's current network of community-based treatment providers is insufficient to adequately serve people on supervision who have been assessed as being at a high to moderate risk of reoffending. **This policy option will increase funding for substance use treatment providers in the community for medium- and high-risk probationers and parolees.**

Of the more than 20,000 people beginning terms of supervision each year in Arkansas, it is estimated that two-thirds—approximately 14,000 people—are at moderate to high risk of reoffending. Using national estimates of the prevalence of substance use disorders among people in the criminal justice system, it is also estimated that around 5,900 moderate- to high-risk people beginning terms of supervision in Arkansas have diagnosable substance use disorders.³¹ Though some substance use treatment services are provided by ACC, feedback from ACC staff indicated that these services are inadequate to meet current demand. Additionally, many people on supervision do not have sufficient income or health insurance coverage to pay for substance use treatment and services in the community. Therefore, community-based treatment and services in Arkansas should be expanded to adequately meet the needs of the thousands of people under supervision with substance use treatment needs.

For people on probation or parole, treatment combined with adequate supervision is more effective in reducing recidivism than intensive supervision alone or treatment without supervision.³²

B. Leverage Medicaid to cover the cost of substance use treatment and services for medium- and high-risk people on supervision.

As a state that has expanded Medicaid to provide additional coverage to low-income people, Arkansas has an opportunity to leverage federal funding to pay for a network of community-based substance use treatment services. **This policy option requires adjustments to Arkansas’s current Medicaid policy to (1) use available federal Medicaid expansion funding to create or expand a network of community-based substance use treatment providers that focus on people on supervision who have moderate and high risk and needs profiles, and (2) cover treatment costs for people whose primary diagnosis is a substance use disorder through traditional Medicaid.**

For the estimated 5,900 moderate- to high-risk people in Arkansas beginning supervision each year who have substance use disorders, it is projected that the community-based substance use treatment services necessary for this group will cost an average of around \$5,400 per person per year for a total annual cost of more than \$32 million. Arkansas can leverage available federal funding to cover the majority of this cost.³³ Because this population consists largely of people who are eligible for Medicaid, it is estimated that the state can receive federal funding for as much as 85 percent of the cost, meaning that Arkansas can provide around \$30 million in services for a cost of less than \$4 million to the state annually.³⁴ By expanding community-based programming and treatment to address substance use needs for people on supervision, the state is likely to see fewer people entering or returning to prison, the most expensive sanction in Arkansas’s criminal justice system.

POLICY OPTION 3:

Reconfigure aspects of ACC’s residential facilities to ensure the effectiveness and efficiency of services that are intended to reduce recidivism.



Increase public safety and reduce recidivism

ACC operates two types of residential facilities with 1,603 beds statewide: Community Correction Centers (CCCs) provide programming and treatment for people placed there by a judge, and Technical Violator Programs (TVPs) provide an alternative to prison for parolees who have violated the conditions of their supervision.³⁵ Analysis has shown that for people admitted to CCCs, the average length of stay is eight months, which research indicates may be longer than

necessary to provide an adequate dosage of programming and treatment.³⁶ For people admitted to TVP, the average length of stay is around 100 days. **This policy option requires changes to relevant community corrections policies to refine current programming and treatment in these facilities to maximize effectiveness and efficiency.** For CCCs, this will entail an increase in the intensity of treatment and programming in order to shorten the average length of stay so that more people can be served each year within existing physical capacity, and for TVPs, it will require changes to existing programming to more effectively address the criminogenic risk and needs of technical parole violators.

CCCs, which represent approximately three-quarters of ACC's residential capacity, have proven effective in reducing recidivism rates. The one-year rearrest rate for people exiting these facilities in 2014 was 22.7 percent, compared to 32.3 percent for people released from prison in the same year. While recidivism rates for people exiting TVPs are comparable with those released from ADC, the shorter length of stays at TVPs is a more cost-effective approach to sanctioning than prison.

Research on the effectiveness of treatment interventions shows that people at a high risk of reoffending who have significant behavioral health needs require between 200 and 300 total hours of programming. The programming should be delivered over a long enough period of time to allow for the necessary treatment dosage, typically four to five hours a day, five days a week. Given these parameters, the necessary dosage can be provided to even high-risk people within six months.³⁷ Research has shown that, especially for low- and medium-risk people, programming beyond 150 and 200 hours, respectively, can be counterproductive and may actually increase the likelihood of recidivism.³⁸ Even for high-risk people, overly long programming interventions eventually reach a point of diminishing returns.

POLICY OPTION 4:

Limit the amount of time people who have violated the conditions of their supervision may spend in prison so that prison space is reserved for people who commit serious and violent offenses.



Avert prison
population growth

Arkansas's supervision officers can use a range of graduated non-custodial sanctions, such as increased reporting and/or additional conditions of supervision or electronic monitoring, as well as custodial sanctions, including jail stays of seven days or less or placement into one of ACC's residential facilities, to respond to supervision violations. However, many people on supervision who commit low-level violations of the terms of their supervision are sent to prison as a sanction. In these cases, there are no limits on the length of such sanctions, even for technical violations (such as failing a drug test, missing programming, or not paying fees).

This policy option limits time served in prison for probation or parole violators to no more than 45 days for technical violations and no more than 90 days for violations involving a new arrest for nonviolent, non-sex misdemeanor offenses or absconding.³⁹

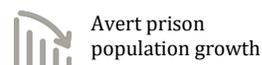
These caps will help ensure that space in prison is reserved for people convicted of serious and violent offenses. After serving three capped sanctions, technical or applicable misdemeanant violators will be subject to full revocation for the remainder of their original sentence. Those charged with a new felony offense or a misdemeanor violent or sex offense would not be subject to this cap.

Analyses conducted by the CSG Justice Center have shown that of the 10,462 people admitted to prison in FY2015, nearly 70 percent (7,174) were revoked from supervision. Of these, almost half of parole violators (47 percent) and more than one-third of probation violators (35 percent) did not have a felony arrest while on supervision. CSG's analysis has also shown that the average length of stay for technical violators in FY2015 was more than 11 months for probation violators and 9 months for parole violators. Using conservative approximations for length of stay and cost per day in ADC, it is estimated that housing technical supervision violators in prison cost the state of Arkansas at least \$15.6 million in FY2015. Based on the most recent prison population forecast and current ADC and ACC data, it is projected that this proposed cap will decrease the projected growth of the prison population by 1,651 people by FY2023.

Research has shown that connecting people to services that address the reasons for their criminal behavior can have the greatest impact on recidivism, particularly when such programming and treatment is provided in the community.⁴⁰ Limiting the length of prison sanctions will allow people to access community-based treatment and programming sooner than they would under current practice. By making sanctions shorter, the state will be able to increase spending on community-based services to reduce recidivism and increase public safety.

POLICY OPTION 5:

Improve the quality and consistency of the parole decision-making process, preparation for release, and information sharing between Arkansas's correctional agencies as it relates to parole.



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- A. The Arkansas Parole Board (APB) should establish parole guidelines to aid the board in making fair and consistent release decisions.***

Currently, the APB does not use an official set of guidelines to aid members in making fair and consistent decisions about whether, and when, to release parole-eligible people from prison. **This policy option urges the Arkansas Parole Board to adopt structured, informed, actuarially based guidelines for release decisions and the timing of release for all cases.**

The guidelines should outline how, and to what extent, a person's risk and needs assessment results, participation in recidivism-reduction programs, in-prison behavior, and seriousness of offense should be weighed in each release decision. The guidelines should inform voting actions prior to release in all cases.

B. Fully implement risk and needs assessment tool(s) for use across Arkansas's correctional agencies (ACC, ADC, and APB) and develop validation protocols.

As required by law, each of Arkansas's correctional agencies has adopted assessment tools that are used to determine each person's risk and need profile and guide programming decisions. Although the agencies developed the tools based on sound designs and research, they have yet to fully coordinate the implementation of these tools system wide. **This policy option requires ACC, ADC, and APB to coordinate the implementation of these assessment tools and share risk and needs information across agencies in order to ensure that treatment and programming is provided appropriately and consistently throughout the state's criminal justice system.** As part of this effort, all participating agencies should validate these tools to ensure that they reliably identify differing risk levels.

For more information on risk and needs assessment in corrections, see "Understanding Risk and Needs Assessment."⁴¹

C. Improve coordination between ADC and the parole board to expedite the communication of programming requirements to prevent delays in release to parole.

Although many people entering prison are candidates for programming based on their risk and needs assessments results, completion of ADC-recommended programming is not mandated as part of their sentence. However, programming is often required by the parole board as a condition of release. A significant number of people choose not to participate in ADC-recommended programming until they meet with the parole board to learn which programming the parole board requires them to complete, a meeting that might not happen until as few as six months before their release eligibility date. Further, information on people who will soon be eligible for parole—e.g., post-release plan or in-prison record—is transferred to the APB only 6 months before that person is eligible for release. **This policy option requires (1) that the results of ADC's initial risk and needs assessment be provided to the parole board for consideration as soon as practicable after the person's admission to prison, (2) that the parole board's programming requirements be communicated to the person within 3 to 12 months**

(depending on the length of sentence) of admission to prison so that the person can attempt to complete this programming in advance of the date of parole eligibility, and (3) that a person’s parole plan and other relevant information to be considered during the parole release decision-making process be transferred to the parole board 12 months prior to the person’s parole eligibility date in order to allow sufficient time for programming enrollment and completion.

Analysis of ADC data shows that in FY2015, more than 1,800 people in Arkansas’s prisons were past their parole eligibility date, which represents a 37-percent increase over FY2012.⁴² While some of these people remained in prison past their parole eligibility date due to the lack of a suitable parole plan, many remained there to complete parole board-required programming that could have begun earlier in their stay. Ensuring that people receive the parole board’s programming requirements at the earliest opportunity will allow more time for them to meet these requirements and result in more people being released on parole without unnecessary delays. Accelerating the transfer of information to the parole board would allow more people to complete necessary programming and still be released at the first legal opportunity.

POLICY OPTION 6:

Revise the Arkansas Sentencing Standards to ensure that sentences to prison are reserved for people convicted of the most serious offenses or who have extensive criminal histories.



Avert prison
population growth

A. Reduce the number of “all-options” cells in the Arkansas Sentencing Standards, thereby increasing the number of cells that provide explicit dispositional guidance.

Compared to other states’ sentencing guidelines, the current Arkansas Sentencing Standards contain a high number of cells in which all sentencing disposition options are available (for example, prison, community correction center, or alternative sanction). Because all options are available, such cells do not provide any actual guidance in terms of disposition. **This policy option reduces the number of “all-options” cells in the Arkansas Sentencing Standards to increase the guidance provided by the standards.**

Of the 60 cells in Arkansas’s current sentencing standards, 24 cells (40 percent) allow all available sentencing options: prison, community correction center, or alternative sanctions.⁴³ In comparison, North Carolina’s grid allows for all options in only 28 percent of cells. Kansas uses separate sentencing grids for drug and non-drug cases, but only 8 percent of each grid allows for all sentencing options. Analysis

of Arkansas sentencing data from 2014 shows that 43 percent of all cases fell into these “all-options” cells, with more than half of these cases—56 percent—resulting in sentences to prison, which is the state’s costliest and most resource-intensive sanction. A decrease in the number of all-options cells will increase the degree to which the sentencing standards actually guide sentencing decisions. To the extent that judges adhere to the standards, an increase in guidance will allow Arkansas policymakers and criminal justice administrators to more effectively and efficiently allocate resources to areas that can have the greatest impact on recidivism.⁴⁴

B. Revise the Arkansas Sentencing Standards to include recommended sentence length ranges rather than single value recommendations.

Sentence ranges are common across states that, like Arkansas, use a sentencing structure that incorporates the type and seriousness of a person’s offense and his or her criminal history in the determination of recommended sentences. Such ranges are intended to balance the determinant value of the guidelines with the need and ability of sentencing judges to consider any aggravating and/or mitigating factors in a given case. The current Arkansas Sentencing Standards include only a single sentence length value for each cell, which represents the recommended number of months in prison for that particular combination of offense and criminal history.

This policy option requires that the Arkansas Sentencing Standards be revised so that each cell includes a sentence length range rather than a single value.

The addition of ranges would increase compliance with the sentencing standards by providing judges more latitude while staying within reasonable range of the recommended sentence.⁴⁵

C. Develop a legal framework to allow for appellate review of sentences that depart from the Arkansas Sentencing Standards, but prohibit appellate review of departure sentences that are imposed by juries or that result from negotiated pleas.

Because Arkansas’s Sentencing Standards are voluntary, judges are under no legal obligation to sentence people to either the disposition or duration recommended by the sentencing standards. As a result, departures, or sentences that deviate from the length or disposition recommended by the guidelines, are fairly common. **This policy option calls for the creation of a legal framework to allow appellate judges, in cases of departure, to consider the recommended sentence disposition and/or duration upon appeal in order to increase consistency and fairness in sentencing across the state.** Such appellate review would be prohibited for sentences imposed by juries or that result from negotiated pleas.

Because judges are not legally compelled to follow the sentencing standards, no framework exists to appeal a sentence that deviates from what is recommended by the standards. While other states that use sentencing guidelines vary as to whether or under what circumstances departures from the guidelines are allowed on initial sentencing, almost all have a legal framework that allows for the consideration of

the guideline-recommended sentence during the appellate review process. For example, Alabama requires that judges make a finding on the official record of their reasons for deviating from the guideline-recommended sentence. Kansas’s sentencing guidelines enumerate certain case-specific factors to be used by the appellate judge to determine if reasoning for a departure from the guidelines is “substantial and compelling.”⁴⁶

POLICY OPTION 7:

Improve the collection of information related to restitution and access to compensation for victims of crime.



Increase public safety and reduce recidivism

A. Assist the Administrative Office of the Courts (AOC) and the Association of Arkansas Counties (AAC) in collecting information on court-imposed financial obligations to improve the monitoring and collection of these obligations.

While individual counties have the capacity to track information on court-imposed financial obligations, including court fines/fees, restitution, and other obligations, the lack of a statewide database makes it difficult for officials at the state level or in other counties to access this information and assist in the collection of monies owed. **This policy option would require that the state assist the AOC and AAC in the development and maintenance of a system for collecting information on legal financial obligations.** If information is shared across counties and with state agencies, supervision officers, courts, and local law enforcement can more efficiently and effectively enforce the collection of fines, fees, and restitution owed to counties and victims. Furthermore, having this information will enable the state to better work with those who have these financial obligations to develop payment plans that account for what the person has the ability to pay as well as the total amount of their obligations.

B. Expand eligibility and increase funding for the Arkansas Crime Victims Reparation Program to better serve victims of crime.

1. Consider revising eligibility requirements for the Arkansas Crime Victims Reparation Program that currently disqualify people with criminal histories.

Arkansas is one of only ten states that place restrictions on people with prior felony convictions from receiving money through the victim compensation program, and it is one of only two states that extend these restrictions to a lifetime ban. Although the state should maintain the right to deny compensation to a victim whose criminal act may have contributed to their

victimization, in other instances, someone with a felony record may be the victim of a crime through no fault of his or her own and should be eligible for compensation. **This policy option recommends that the Crime Victims Reparation Board consider adjusting the eligibility requirements for the Crime Victims Reparation Program to include people with criminal histories who did not contribute to their victimization.**

2. *Increase the time limit for claims to be filed with the Arkansas Crime Victims Reparations Program from one year from the date of the crime to two years.*

Currently, victims must apply to the Arkansas Crime Victims Reparations Program within one year of the date of their victimization. Many victims delay their reporting, so extending the time limit to two years will allow more victims who qualify for assistance from the state to participate in the program.

POLICY OPTION 8:

Develop and fund strategies to reduce pressures on county jails, including specialized law enforcement training, screening and assessment, and diversion for people with mental illnesses.



Provide tools to reduce pressure on jails

- A. *Create a fund to reimburse Arkansas's local law enforcement agencies for expenses associated with training officers/deputies in specialized responses for people with mental illnesses.*

Law enforcement officers in Arkansas, and across the nation, often come into contact with people who are suffering from mental illness or are experiencing a mental health crisis. In recent years, many law enforcement agencies, including several in Arkansas, have provided their officers with specialized training in how to respond to these situations so that they are more likely to be resolved peacefully, and people with mental illnesses are, when possible, diverted from jail. **This policy option would require the creation of a fund to reimburse the state's local law enforcement agencies for costs associated with training officers in specialized police response for people with mental illness.** This includes travel costs for officers to attend training outside their immediate area and overtime costs for other officers to fill shifts for those attending training.

- B. *Fund the creation of crisis stabilization units as well as necessary programming and treatment so that people with mental illnesses can be diverted from jails and successfully reintegrated into the community.*

While training in how to safely deal with people experiencing a mental health crisis is important and can result in a diversion from jail, law enforcement agencies in Arkansas do not currently have a place to take people in crisis to receive necessary services. These locations, known as crisis stabilization units (CSU), are important tools for law enforcement and community leaders in providing appropriate interventions for people with mental illness, rather than using jail as a first resort. **This policy option requires that the state provide necessary funding for the creation and operation of CSUs and associated programming and treatment that enable people with serious mental illnesses to successfully remain in their community and receive the support they need.**

C. Assist the Association of Arkansas Counties (AAC) and the Arkansas Sheriffs' Association (ASA) in the development and implementation of screening and assessment tools for use by local jails.

Many Arkansas jails lack effective screening and assessment tools to determine behavioral health needs of people being booked into the facility. **This policy option requires the state to provide funding and assistance to the AAC and ASA for the purposes of developing a voluntary behavioral health screening tool(s) to be used in county jails.** In other states, this tool is brief and is administered by correctional officers/deputies or other staff with minimal training. Responses to questions on the screening instrument may trigger a further assessment by medical staff or staff from the contracted local Community Mental Health Center (CMHC).

D. Create a secure statewide database to allow for the collection of information on jail intake screenings/assessments so that this information is readily accessible to county and state agencies.

Arkansas's sheriffs and jail administrators are increasing the use and effectiveness of behavioral health screenings and assessments of people entering their facilities. Information gleaned from these screens and assessments should be added to a database that is maintained by one entity so that it is available to all jails and state correctional agencies. **This policy option would require development of a database to allow for the collection and sharing of screening and assessment information that is gathered when people are booked into jail.** The sharing of this information will allow jails in other counties, as well as state law enforcement and corrections agencies, to quickly access someone's prior behavioral health screening or assessment information when the person comes into contact with the criminal justice system and to take appropriate steps to ensure the safety of that person, as well as staff and officers. Development and deployment of this database must take into account law and best practices around access to sensitive or confidential health-related information.

- ¹ JFA Associates, 2016 Arkansas Prison Projections and Historical Corrections Trends, June 2016. All dates in this report are calendar years, unless otherwise noted.
- ² 2016 Arkansas Prison Projections and Historical Corrections Trends—JFA Associates) [http://adc.arkansas.gov/images/uploads/2016 Arkansas Prison Projections and Historical Corrections Trends.pdf](http://adc.arkansas.gov/images/uploads/2016%20Arkansas%20Prison%20Projections%20and%20Historical%20Corrections%20Trends.pdf)
- ³ Estimates use an approximated construction cost per bed of \$60,000, which is then extrapolated to accommodate the current jail backlog and the projected prison population growth between 2014 and 2025. Both contracted and operational costs are estimated using an assumption of \$30 per inmate per day. The prison population projection is included in the previously cited JFA Associates report. Date represents fiscal year.
- ⁴ All years are calendar years unless otherwise noted.
- ⁵ Page M. Harrison and Allen J. Beck, “Prisoners in 2004” Bureau of Justice Statistics. <http://www.bjs.gov/content/pub/pdf/p04.pdf>; E. Ann Carson, “Prisoners in 2014,” Bureau of Justice Statistics, <http://www.bjs.gov/content/pub/pdf/p14.pdf>
- ⁶ E. Ann Carson, “Prisoners in 2014,” Bureau of Justice Statistics, <http://www.bjs.gov/content/pub/pdf/p14.pdf>.
- ⁷ Prisoners in the US 2014 and 2004. 2014: <http://www.bjs.gov/content/pub/pdf/p14.pdf> 2004: <http://www.bjs.gov/content/pub/pdf/p04.pdf>
- ⁸ 2016 Arkansas Prison Projections and Historical Corrections Trends—JFA Associates [http://adc.arkansas.gov/images/uploads/2016 Arkansas Prison Projections and Historical Corrections Trends.pdf](http://adc.arkansas.gov/images/uploads/2016%20Arkansas%20Prison%20Projections%20and%20Historical%20Corrections%20Trends.pdf)
- ⁹ ADC Statistical Reports 2004 and 2014. 2004: http://adc.arkansas.gov/images/uploads/statistical_info_brochure2004.pdf. 2014: <http://adc.arkansas.gov/images/uploads/Statistical-Information-Brochure-FY2014.pdf>
- ¹⁰ ADC 2015 Statistical Report: [http://adc.arkansas.gov/images/uploads/Statistical Information 2015_rev1.pdf](http://adc.arkansas.gov/images/uploads/Statistical%20Information%202015_rev1.pdf) 2012: <http://adc.arkansas.gov/images/uploads/StatisticalInformationBrochureFY2012.pdf>
- ¹¹ ADC Statistical Reports 2009–2015, ADC County Jail Backup 2015.
- ¹² Pulaski County, Sebastian County, Union County, and Washington County jails booking data, 2009–2015.
- ¹³ James, Doris J. and Lauren E. Glaze. “Mental Health Problems of Prison and Jail Inmates.” Bureau of Justice Statistics Special Report. United States Department of Justice. September 2006. <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>; Vera Institute, <http://trends.vera.org/#/incarceration-rates?geography=states>, Bureau of Justice Statistics (BJS); Census of Jails: Population Changes 1999–2013.
- ¹⁴ Arkansas State Budget 2004, 2015.
- ¹⁵ CSG Justice Center calculation based on 2016 projected prison population growth, current ADC daily operational costs, and conservative estimates for construction costs.
- ¹⁶ ADC Release Data, ACC Intake Data, ACIC Arrest Data, ADC Statistical Report.
- ¹⁷ Arkansas Sentencing Commission Data, 2014.
- ¹⁸ Arkansas Sentencing Commission; Kansas Sentencing Commission; and North Carolina Sentencing and Policy Advisory Commission.
- ¹⁹ ADC Onhand. This period was chosen because APB decision-making data was not available in a reliable form until 2012.
- ²⁰ *Ibid.*
- ²¹ APB Annual Reports, FY2009 and FY2015.
- ²² ADC Onhand.
- ²³ ADC Admission Data, ACC Termination Data.
- ²⁴ ADC Release Data, ACC Termination Data, ADC County Jail Backlog Cost Per Day.
- ²⁵ ACC Annual Report FY2015; North Carolina DPS, Legislative Report on Probation and Parole Caseloads, March 2015.
- ²⁶ ADC Release data, ACC Intake Data, and ACIC Arrest Data.
- ²⁷ Information compiled from a survey of victim compensation programs conducted by The Council of State Governments Justice Center in 2016. Arkansas, Florida, Louisiana, Missouri, Mississippi, North Carolina, Ohio, Rhode Island, Washington, and Wyoming are the 10 states that place restrictions on people who have some kind of felony record from receiving money from the state’s victim compensation fund. These states vary in terms of how, and to whom, such restrictions are applied. Of these, only Florida and Arkansas have lifetime bans.
- ²⁸ ADC Release Data, ACC Intake Data, ACIC Arrest Data. Of the 3,586 probation revocations during FY2015, almost 1,700, or 47 percent, happened within the first twelve months. The dynamic was very similar for those revoked from parole: 2,132 of the 4,485 revocations, some 48 percent, occurred within the first year.
- ²⁹ ACC Annual Report FY2014–2015, page 26. <http://www.dcc.arkansas.gov/images/uploads/publications/ACC%20Annual%20Report%202015.pdf>
- ³⁰ See Core Correctional Practices curriculum through NIC: <http://nicic.gov/training/ebplp>.
- ³¹ James, Doris J. and Lauren E. Glaze. “Mental Health Problems of Prison and Jail Inmates.” Bureau of Justice Statistics Special Report. United States Department of Justice. September 2006. <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>
- ³² Steve Aos, Marna Miller, and Elizabeth Drake (2006). Evidence-Based Adult Corrections Programs: What Works and What Does Not. Olympia: Washington State Institute for Public Policy. See *CSG Arkansas JR presentations from July and August 2016—slides 34 and 24, respectively.*
- ³³ See *CSG Arkansas JR presentation from August 2016—Slide 25.*

³⁴ Analysis by the CSG Justice Center of the supervision population in Arkansas suggests that the majority of those on supervision would be eligible for coverage under Medicaid expansion, which is based on income, rather than traditional Medicaid, which is based on physical disability/need. In pursuing this option, Arkansas policymakers will need to determine how best to leverage the state's Medicaid expansion structure to provide coverage to those on supervision. Under the current structure, the choice facing Arkansas policymakers would be to either (A) amend the definition of "medically frail" to include this population, or (B) amend the current *Arkansas Works* program to require that insurance plans include the necessary coverage for substance use treatment for criminal justice involved populations.

³⁵ ACC Population Reports, August 2016 showing a total of 1,603 beds in residential facilities, including Community Corrections Centers (CCC) and Technical Violator Program (TVP); ACC website outlining the role of various facilities, including CCC and TVP. <http://www.dcc.state.ar.us/programs-and-services>.

³⁶ Matthew Makarios, Kimberly Gentry Sperber & Edward J. Latessa (2014) Treatment Dosage and the Risk Principle: A Refinement and Extension, *Journal of Offender Rehabilitation*, 53:5, 334-350.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Consistent with the ACC Offender Violation Guide (OVG-published August 2015), "absconding" is defined as evading supervision for 180 days or more.

⁴⁰ Washington State Institute for Public Policy, Evidence-Based Adult Corrections Programs: What Works and What Does Not, January 2006.

⁴¹ CSG Justice Center "Understanding Risk Assessment."

⁴² See *CSG Arkansas JR presentation from July 2016—Slide 11*.

⁴³ Alternative sanctions refer to probation, suspended-imposition of sentence (SIS), fines, or community service. All are non-incarceration sanctions.

⁴⁴ For more information on sentencing policy and structure in other states where guidelines are used, see the *Sentencing Guideline Resource Center* from the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota (<http://sentencing.umn.edu/>).

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*