Rhode Island Justice Reinvestment Working Group

*Third Meeting*

*October 27, 2015*

*The Council of State Governments Justice Center*

*Carl Reynolds, Senior Legal and Policy Advisor*
*Chenise Bonilla, Policy Analyst*
*Ed Weckerly, Data Analyst*
*Michele Rodriguez, Program Associate*
Council of State Governments Justice Center

- National non-profit, non-partisan 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
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
Data analysis process has identified several obstacles that should be addressed.

<table>
<thead>
<tr>
<th>Quantifying the Data Analysis Conducted So Far</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data Submitted by Four Different Agencies</td>
</tr>
<tr>
<td>Received Nearly 100 Case-Level Data Files</td>
</tr>
<tr>
<td>Sum Total of 2.3 Million Records</td>
</tr>
</tbody>
</table>

- **Statewide identifiers** not used across all data systems to facilitate sharing and matching.
- **Reliance on external vendors** for dataset creation.
- Previously **unexamined data** requires additional validation.
- Identifying **data gaps** (e.g., race in sentencing data, and probation case management).
- **First-time data exports** requiring incremental improvements.
- Data housed in transitioning or **developmental data systems**.

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Data housed in transitioning or **developmental data systems**.
Individuals working in and affected by the CJ system lent their time and voices to illuminate issues in need of examination

<table>
<thead>
<tr>
<th>Stakeholder Engagement Since the September Workgroup Meeting</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Victim Advocates</strong></td>
</tr>
<tr>
<td>Over 20 participants from multiple organizations, including The Institute for the Study &amp; Practice of Nonviolence, Mothers Against Drunk Driving, Justice Assistance, Day One, and the Coalition Against Domestic Violence</td>
</tr>
<tr>
<td><strong>Probation &amp; Parole Officers</strong></td>
</tr>
<tr>
<td>About 25 participants in five separate focus groups with parole officers, probationers officers with general caseloads, probation officers with specialized caseloads, transitional officers/discharge planners, and supervisors/administrators</td>
</tr>
<tr>
<td><strong>Behavioral Health Experts</strong></td>
</tr>
<tr>
<td>Over 25 participants from multiple organizations/agencies, including Providence Center, Kent Center, Department of Human Services’ Medicaid Office, and RI Communities for Addiction Recovery Efforts</td>
</tr>
<tr>
<td><strong>Community Advocates, Service Providers, &amp; CJ Involved Individuals</strong></td>
</tr>
<tr>
<td>Over 30 participants from multiple organizations, including Direct Action for Rights &amp; Equality, OpenDoors, RI for Community &amp; Justice, and College UnBound</td>
</tr>
<tr>
<td><strong>Courtroom 9 Observation</strong></td>
</tr>
<tr>
<td>To better understand court procedures related to probation and parole violations</td>
</tr>
</tbody>
</table>
Recap of topics covered and to be covered in this project

1st Meeting
- Introduction to Justice Reinvestment
- Project Focus Areas
- Next Steps

2nd Meeting
- Reducing Recidivism
- Pretrial
- Probation Policies

3rd Meeting
- Stakeholder Perspectives and Probation Outcomes
- Sentencing Trends and Supervision Practices
- Probation Statutes and Case Law

4th Meeting
- Parole
- Behavioral Health Policy Options
• Stakeholders see an ineffective system and it does in fact produce high recidivism

49% of probationers resentenced within three years

• Sentencing produces lengthy supervision terms, and probation practices are insufficiently “evidence based”

Caseloads of 155 probationers per officer, even with over half of the population banked

• State policy governing sentencing and supervision is starkly outdated and other states provide models

One key statute untouched since 1956
Presentation Overview

Stakeholder Perspectives and Probation Outcomes

Sentencing Trends and Probation Supervision Practices

Probation Statutes and Case Law
Victim advocates are frustrated with probation, notification, and compensation.
People involved in the system explain what it means to be on probation and parole

**Key Takeaways:**

**Probation Terms**
- People plead to probation term and conditions without full understanding

**Supervision**
- Differing views about supervision--some feared moving to “banked” supervision because they become just a number, others thought officers used harsh sanctions

**Violations**
- Sanctions are not consistent and do not fit the type of violation
- Inadequate due process in violation hearings

**Behavioral Health Issues**
- Substance abuse and mental health needs contribute to criminal behavior

**Expungement**
- Make expungement automatic if eligible

**Home Confinement**
- Expand the use of home confinement
Prohibition officers indicate major challenges to supervising people effectively

**Key Takeaways:**

**Risk Assessment**
- Limited to a brief risk screen, not a full risk/needs assessment, that does not adequately drive intensity or nature of supervision.

**Training**
- Trained in evidence-based practices, but unable (and sometimes resistant) to use those practices due to current caseload demands.

**Caseloads**
- Unmanageable caseloads with most time spent on paperwork.

**Violation Responses**
- Ability to apply intermediate sanctions in response to minor violations limited by the court.

**Special Conditions**
- Do not reflect risk and needs, and judges sometimes resist probation officer recommendations.

**Programming**
- In-house cognitive behavioral programming is very limited.
Reminder: Community corrections spending accounts for only 8 percent of DOC funding

Department of Corrections General Revenue Spending, FY2014
$185.3M Total

With only 8% of DOC funds devoted to supervision, are there ways to better target resources to increase public safety?

Source: Rhode Island Budget Office, FY2004 and FY2014 Budget as Enacted Reports.
Additional analysis of ACI sentenced commitments shows as much as 61% may be probation violators.

To address concerns that some probation violators were not being identified among ACI admissions, we matched FY2015 commitments to court data and uncovered 789 additional likely violators.

Sentenced Commitments by Type, FY2015

Source: RIDOC sentenced admission data.
Technical violators sentenced to the ACI spend about as long as those resentenced for new crime violations.

### Probation Violator
#### Sentenced Admissions, FY2015
- **Felony**
  - 591 admissions
  - 34% Technical
  - 66% New Charge

- **Misdemeanor**
  - 745 admissions
  - 25% Technical
  - 75% New Charge

### Average Length of Stay
Among FY2015 Releases
- **Technical Violator**
  - Admissions: 10.5 months
  - Releases: 2.1 months
- **New Charge**
  - Admissions: 12.8 months
  - Releases: 2.2 months

Source: RIDOC sentenced admission data.
Probation violators pose significant cost to the state, consuming at least one-third of the ACI population.

**Probation Violator Pretrial Bed Consumption**

- Probation Violator pretrial admissions in FY2015: 2,785
- Average length of stay among these releases: 31.4 days
- Pretrial beds for a full year: 240

**Probation Violator Sentenced Bed Consumption**

- Probation Violator sentenced admissions in FY2015: 1,336
- Average length of stay among these releases: 211.5 days
- Sentenced beds for a full year: 774

Just those currently flagged as probation violators represent 29% of the total ACI population which Rhode Island spends more than $170 million per year to house.

**Source:** RIDOC pretrial and sentenced stock data.
Half of those placed on probation are re-convicted or violated within three years, mostly in the first year.

7,333
Unique individuals with a probation start in FY2012

3,565
Individuals with a technical violation or new guilty case disposition within 3 years

3,768
Individuals that did not reappear in sentencing data within 3 years

2,245
Year 1

841
Year 2

479
Year 3

49%
Three-Year Resentencing Rate

*Resentencing measure based on court sentencing data only, includes only new probation starts, relies on estimate of probation start date for split sentences, and defined as a revocation or new case conviction within three years of probation start.

Source: RI Supreme Court Sentencing Data.
How do resentencing rates compare for similar individuals sentenced to Probation Only, versus ACI + Probation?

Using a scoring system, divide the population into well differentiated profiles:

Available Data for Scoring: Age at Probation Start, Sex, Total Charges among Guilty Cases in the Past 5 Years

<table>
<thead>
<tr>
<th>Profile</th>
<th>Resentencing Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profile 1</td>
<td>34%</td>
</tr>
<tr>
<td>Profile 2</td>
<td>49%</td>
</tr>
<tr>
<td>Profile 3</td>
<td>65%</td>
</tr>
</tbody>
</table>

Source: RI Supreme Court Sentencing Data.
Resentencing rate is lower for Probation Only compared to ACI + Probation across groups with similar “risk”

Source: RI Supreme Court Sentencing Data.
Other research demonstrates higher post-incarceration recidivism for matched risk groups.

Idaho
Three-Year Incarceration Rates by Risk Level, FY2008-2009

- New Straight Probation Starts
- Paroles from Term

Reasons why prison might increase an individual’s likelihood of future criminal activity:

- Modeling and reinforcement of pro-criminal behaviors
- Identification as part of a convict group
- Assimilation of pro-criminal attitudes, habits, prison culture

Source: CSG-JC Idaho Justice Reinvestment Project.
Reminder: Other states are adopting shorter, less costly sanctions and reducing recidivism

**Washington**
Technical violators can be held for 2-3 days for low level violations and up to 30 days for high level violations

- Days incarcerated: 23 Days in 2010, 8 Days in 2013 (-65%)
- Days in Jail: Status Quo - 31 Days, POM - 8 Days (-74%)

**Georgia**
Prompt sanctions to correct behavior of troublesome probationers

- Days incarcerated: 2011 - 15,188, 2014 - 7,440 (-51%)

**North Carolina**
Swift and certain “dips” of brief jail sanctions and “dunks” of prison sanctions in response to violations

Key Takeaways: Probation outcomes

- Probation violators stay in the ACI for technical violations almost as long as those with new charges.
- Probation violators constitute an estimated 61% of sentenced commitments to the ACI.
- Half of those on probation are reconvicted/wrapped within three years, mostly in year one.
- Despite poor probation outcomes, individuals sentenced to Probation Only have lower resentencing rates than ACI + Probation, a result borne out by other research.
- Other states are adopting shorter, less costly sanctions that do less to impair access to treatment, housing, employment. To reduce recidivism due to new charges, probation supervision must be strengthened to deploy best practices shown to be effective in other states.
Presentation Overview

Stakeholder Perspectives and Probation Outcomes

Sentencing Trends and Probation Supervision Practices

Probation Statutes and Case Law
Three factors drive Rhode Island’s large probation population

1. The volume of people sentenced to probation terms

2. The length of time people serve on probation

3. The volume of people recycling back through probation on violations/wraps with or without time in the ACI

Sentence to Probation in Lieu of Incarceration

Probation Following Incarceration

23,686 Probationers
As of FY-end 2015

No Mechanism to Shorten Initial Probation Sentence

Long Probation Terms
More serious felony offenses tend to result in sentences to ACI + Probation

- **Misd Property/Drug/Other**: 4%, 40%, 54%
- **Misd Violent/Sex**: 7%, 50%, 39%
- **Felony Property/Drug/Other**: 35%, 57%, 5%
- **Felony Violent/Sex**: 55%, 38%, 5%

Source: RI Supreme Court Sentencing Data.
Misdemeanor sentencing adds six thousand cases to probation yearly

* Other includes community service, fines, forfeitures, license suspension, programs, treatment, restitution, etc.

Source: RI Supreme Court Sentencing Data.
Felony sentencing includes probation supervision in 93% of cases, with frequent use of ACI + Probation

Felony Case Sentences by Type, FY2006-FY2015

- ACI Only 1%
- ACI + Probation 41%
- Probation Only 52%
- Other** 6%

93% of all new case dispositions*
Over 3,000 cases per year

* Excludes probation violation dispositions
** Other includes community service, fines, forfeitures, license suspension, programs, treatment, restitution, etc.

Source: RI Supreme Court Sentencing Data.
Highest volume felonies over 10 years of sentencing show the routine use of long terms of probation

Median Probation Only and ACI + Probation Sentence Lengths in Months for 10 Most Common Felony Offenses, FY2006-FY2015

<table>
<thead>
<tr>
<th>Offense</th>
<th>Probation Only</th>
<th>ACI + Probation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Possession Controlled Substance Schedule I-V</td>
<td>6</td>
<td>24</td>
</tr>
<tr>
<td>Manufacture/Deliver/Possess with Intent Schedule I-II</td>
<td>12</td>
<td>60</td>
</tr>
<tr>
<td>Felony Assault</td>
<td>18</td>
<td>60</td>
</tr>
<tr>
<td>Breaking and Entering - Dwelling</td>
<td>21</td>
<td>60</td>
</tr>
<tr>
<td>Felony Larceny &gt;$1,500</td>
<td>12</td>
<td>36</td>
</tr>
<tr>
<td>Felony Shoplifting</td>
<td>12</td>
<td>36</td>
</tr>
<tr>
<td>Possession Marijuana – Subsequent offense</td>
<td>4</td>
<td>24</td>
</tr>
<tr>
<td>Obtain Prop by False Pretense &gt;$1,500</td>
<td>12</td>
<td>60</td>
</tr>
<tr>
<td>Felony Assault - Domestic</td>
<td>12</td>
<td>60</td>
</tr>
<tr>
<td>Possession Stolen Motor Vehicle/Parts</td>
<td>12</td>
<td>36</td>
</tr>
</tbody>
</table>

Source: RI Supreme Court Sentencing Data.
Median felony sentence lengths show much longer periods of probation when accompanied by an ACI sentence.

**Misdemeanor Mean Sentence Lengths in Months, FY2006-FY2015**

<table>
<thead>
<tr>
<th>Misd Property/Drug/Other</th>
<th>Probation Only</th>
<th>ACI + Probation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misd Violent/Sex</td>
<td>11</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>10</td>
</tr>
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**Felony Median Sentence Lengths in Months, FY2006-FY2015**

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<td>12</td>
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<td></td>
<td>54</td>
<td>10</td>
</tr>
</tbody>
</table>

*Suspended sentence lengths equal the probation length in nearly 100% of ACI + Probation sentences*

Source: RI Supreme Court Sentencing Data.
Cumulative total of suspended sentence exposure of individuals is an unaffordable threat

Each year, the courts hand down about 5,200 bed-years of incarceration sentences (ACI Only or ACI + Probation)

Each year the courts hand down 3.5 times that amount of bed-year liability in the form of suspended sentences (with Probation Only or ACI + Probation)

“No one in the courtroom really believes that the defendant deserves the length of the sentence that is suspended.”

Source: RI Supreme Court Sentencing Data.
Resentencing analysis demonstrated diminished recidivism with passage of time.

Half of those placed on probation are re-convicted or violated within three years, mostly in the first year.

Months to Resentencing Among Those Resentenced Within Three Years, FY2012 Probation Start Cohort

Source: RI Supreme Court Sentencing Data.
Only 20% of probationers, and 31% of active cases, are within the period highest recidivism.

Probation Stock Population by Current Length of Stay on Supervision, FY2015

- 31% of probationers
- 20% of active cases

Proportion that has served less than 1 year:
- >1 yr – 80%
- >2 yrs – 70%
- >3 yrs – 62%

Active:
- 31%
  - >1 yr – 69%
  - >2 yrs – 53%
  - >3 yrs – 44%

Banked:
- 12%
  - >1 yr – 88%
  - >2 yrs – 81%
  - >3 yrs – 75%

Total:
- 20%

Source: RIDOC probation stock population data.
Key Takeaways: Sentencing

- Rhode Island includes probation in over 90% of felony sentences, either in lieu of or post-incarceration. ACI + Probation is used more, for more serious offenses.
- Long probation sentences of 4 to 7 years are routinely imposed.
- Post-prison probation and suspended sentence terms are virtually always identical and average 3.5 times prison sentenced time.
- Over half of the probation population has served beyond the 3-year mark, the period in which recidivism is most likely to occur.
- And only 20% of probationers, and 31% of active cases, are within the period of highest recidivism.
Most probationers are not actively supervised and that decision has been primarily based on time under supervision.

Felony probationers are eligible to be moved from active to low and then banked supervision based on offense type, compliance, and score on risk proxy or LSI-R screener.
- Nonviolent: After 6 months
- Multiple Violent or Serious Offenses: 1-3 years
- Sex Offense: Ineligible

Probation Stock Population by Supervision Type, FY2015

- Active: 35%
- Banked: 59%
- Low: 6%

Probation Stock Population Breakdowns with Percentage Banked, FY2015

Note that risk assessment data among FY2015 probationers is very limited – only 22% were assessed at some point in time.

Source: RIDOC probation stock population data.
Current supervision caseload information shows inadequate officers for the population

<table>
<thead>
<tr>
<th></th>
<th>Generic Probation</th>
<th>Specialized Probation*</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Officers</td>
<td>34</td>
<td>29</td>
<td>63**</td>
</tr>
<tr>
<td>Banked Cases</td>
<td>13,233</td>
<td>775</td>
<td>14,008</td>
</tr>
<tr>
<td></td>
<td>(Administrative Banked, Minimum Supervision Unit, Warrants, Holds, Interstate, Court ordered unsupervised)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Active Cases</td>
<td>7,159</td>
<td>2,589</td>
<td>9,748</td>
</tr>
<tr>
<td></td>
<td>(Active and Low Supervision)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average Active Caseload per Officer</td>
<td>211</td>
<td>89</td>
<td>155</td>
</tr>
</tbody>
</table>

There is no accepted, universal caseload size standard, however probation can reduce recidivism rates when the dosage of time and attention is paired with the risk and need level of the client. An example of potential caseload levels stratified by risk:

* Low: 120-200 cases  Moderate: 50-60 cases  High: 20-30 cases

* Specialized caseloads include Domestic Violence, Sex Offender, Gender Specific, Drug Court, Mental Health, and Safe Streets.
** Probation officer positions: 63 carrying a caseload, six vacancies, four on medical leave, one training officer, one institutional officer.

Using the current number of officers, Rhode Island could reduce caseloads to levels that actually reduce recidivism.

### Current Probation

<table>
<thead>
<tr>
<th></th>
<th>Number of Officers</th>
<th>Banked Cases</th>
<th>Active Cases</th>
<th>Average Active Caseload</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inflow</td>
<td>63</td>
<td>14,008</td>
<td>9,748</td>
<td>155</td>
</tr>
</tbody>
</table>

Instead of high caseloads that result in no public safety gain, caseloads of 40 high risk felony probationers for 12 months of supervision could enable officers to employ practices demonstrated to reduce recidivism.

### Hypothetical Scenario

<table>
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<tr>
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<tbody>
<tr>
<td>Estimated Annual Inflow</td>
<td>2,100</td>
<td>3,200</td>
<td>3,200</td>
<td>1,000</td>
</tr>
<tr>
<td>Length of Active Supervision</td>
<td>0 months</td>
<td>3 months</td>
<td>9 months</td>
<td>12 months</td>
</tr>
<tr>
<td>Number of Officers</td>
<td>0</td>
<td>5</td>
<td>30</td>
<td>27</td>
</tr>
<tr>
<td>Active Cases at any one time</td>
<td>0</td>
<td>800</td>
<td>2,400</td>
<td>1,000</td>
</tr>
<tr>
<td>Average Active Caseload</td>
<td>0</td>
<td>150</td>
<td>80</td>
<td>40</td>
</tr>
</tbody>
</table>
Reminder: System checklist to reduce recidivism

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td><strong>Assess</strong> risk and need</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td><strong>Target</strong> the right people</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>Frontload</strong> supervision/treatment</td>
</tr>
<tr>
<td><strong>4</strong></td>
<td><strong>Implement</strong> proven programs</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><strong>Address</strong> criminal thinking</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td>Hold individuals <strong>accountable</strong></td>
</tr>
<tr>
<td><strong>7</strong></td>
<td><strong>Measure</strong> and incentivize <strong>outcomes</strong></td>
</tr>
</tbody>
</table>
1. Assess Risk and Need: Rhode Island has yet to adopt a modern risk and need assessment tool

- **Current Practice:**
  Probation does not yet conduct a full risk assessment. This year, probation began using an 8-factor risk screening tool.

- **Recommendations:**
  - Continue to use screening tool to triage low-risk people to low supervision unit.
  - Use full validated risk and need assessment for those identified as higher risk by the screening tool.
  - Conduct periodic reassessment to monitor changes in risk.
  - Respond to the changing risks and needs.
2. Target the Right People: Supervision and programs are not adequately focused on people with higher risk/need

- Use risk and needs assessment to drive supervision intensity and placement in appropriate programming.
- Prioritize programming resources for individuals who are most likely to reoffend.
- Move felony probationers from active to banked based on risk level and demonstrated compliance.

Current Practice:
Risk screening information only minimally informs supervision level or prioritization of programming resources.
3. Frontload Supervision and Treatment: Probation officers prioritize contact with individuals at the onset of probation.

- Continue more frequent contact with PO at the onset of supervision.
- Reduce frequency of contact with on-going compliance over time.
- Reallocate resources to make a difference in the critical first year for higher risk offenders.

Current Practice:
Officers frontload supervision and increase dosage after serious violations. Banked caseloads receive minimal supervision, if any.
4. Implement Proven Programs: Probation offers minimal Cognitive-Behavioral Interventions (CBI)

Current Practice: CBI programs are not routinely offered and probation does not fund outside treatment. Programs offered in the community are not evaluated to ensure effectiveness.

- Implement and fund evidence based practices.
- Invest in CBI to address criminal thinking.
- Require community based programs to use evidence based interventions for offenders.
5. Criminal Thinking: Officers recently trained but have not fully bought into trainings that address criminal thinking

Current Practice: Probation officers have been trained in EPICS but unable to fully implement. Probation recently starting a Thinking For Change program.

- Fully implement EPICS and ensure quality in application.
- Adjust workload to create ability for probation officers to deliver CBI to higher risk probationers.
- Institute quality assurance mechanisms to ensure effective practices are continually used regarding risk assessment and interventions between probation officers and offender.
6. Accountability: Lack of any policy and practice to ensure that violation sanctioning is consistent, graduated, and fair

Current Practice:
Responses to violations are delayed due to court procedures and are at the full discretion of the presiding judge. Current policies lack specificity to ensure responses to violations are consistent, graduated, and fair.

- Provide probation officers the ability to modify conditions of supervision to address emerging risks and needs.
- Give probation officers the authority to apply swift and certain responses to violations.
- Create detailed guidance to respond to non-compliance with supervision.
7. Measure Outcomes: Probation and providers are not adequately held accountable

- Not measuring outcomes
- Tracking outcomes
- Incentivizing outcomes

Current Practice:
No ongoing capability or use of monthly outcome data for probationer success or violation behavior.

- Measure multiple measures of recidivism by region, risk level, programs, etc.
- Use outcomes to manage probation supervision strategies, training and resources for programming.
- Require community-based programs for offenders to measure impacts on recidivism.
- Explore using incentives to improve quality of programs.
Key Takeaways: Probation supervision practices

• Today’s supervised caseload of about 10,000 produces average caseloads of 155:1, and another 14,000 are not supervised.

• Current probation resources are not deployed to reduce recidivism, but could be reallocated to make a difference in the critical first year for high risk offenders.

• Risk and needs assessment is a prerequisite to prioritizing supervision and treatment resources effectively to reduce recidivism. Rhode Island is way behind, and even the risk screen being conducted is not used to triage high caseloads.

• Increasing accountability implicates probation officer authority to impose swift and limited sanctions.
Presentation Overview

- Stakeholder Perspectives and Probation Outcomes
- Sentencing Trends and Probation Supervision Practices
- Probation Statutes and Case Law
Our assessment of Rhode Island General Laws and cases governing sentencing and probation

1. Most laws governing probation and supervision have not been updated in 30-60 years, unlike laws in other states that have been overhauled recently.

2. Existing laws are not supportive of, and hinder, probation from adopting best practices.

3. Rhode Island’s laws are out of step with most other states on several key issues, particularly in use and length of suspended sentences and probation terms.

4. Case law highlights current constraints on reform.
1. Most of Rhode Island’s probation laws have not been updated in 30-60 years

- 1956 § 12-19-15 Terms of probation & suspended sentences
- 1976 § 12-18-1 Probation allowed pre-sentence
- 1982 § 12-19-14 Probation violation process
- 2010 § 12-19-18: Release if violated and then acquitted/charges dropped
- 2014 § 12-19-8: Modification of conditions may be requested

- 1956
- 1973 Model Penal Code
- 1986
- 1989 Overhaul of probation & community corrections
- 1993 Overhaul of Penal Code & sentencing
- 2005-07 Progressive sanctions required
- 2011 Overhaul of probation sentencing, assessment, delegation of authority, and sanctioning

- 2013 Risk assessment required

- 2015
2. Other states have recently enacted laws enabling probation to use best practices; Rhode Island has not

- Authorizes graduated responses to supervision violations

- Requires risk-needs assessments for people supervised in the community

- Focus probation supervision resources on higher risk offenders through policy or incentive credits

- Swift, certain, and shorter sanctions for violation behavior to reduce probation revocations to prison
2. Despite 50-year old statute, suspended sentences and probation are treated as a unified package for split sentences


“The power of the court to commit the defendant shall not be deemed to terminate with the termination of the period of the original sentence, but the court shall have power to enforce the sentence even though the original period of the sentence has expired.

The term of the suspended sentence may be longer or shorter or for the same time as the probation period . . .”

Nearly 100% of misdemeanor and felony ACI + Probation sentences had equal suspended and probation terms post-ACI

Cumulative total of suspended sentence exposure of individuals is an unenforceable (unaffordable) threat

Each year, the courts hand down about 5,200 bed-years of incarceration sentences (ACI Only or ACI + Probation)

Each year the courts hand down 3.5 times that amount of bed-year liability in the form of suspended sentences (with Probation Only or ACI + Probation)

“No one in the courtroom really believes that the defendant deserves the length of the sentence that is suspended.”

Source: Supreme Court Sentencing Data

Council of State Governments Justice Center
2. Rhode Island sentence ranges allow long sentences to be imposed, or suspended

<table>
<thead>
<tr>
<th>Felony Offense</th>
<th>CT</th>
<th>MA</th>
<th>RI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony Assault (weapon)</td>
<td>1-20</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>Felony Assault (injury)</td>
<td>1-20</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Robbery 2nd</td>
<td>1-10</td>
<td>Life</td>
<td>5,30</td>
</tr>
<tr>
<td>Robbery 1st</td>
<td>1-20</td>
<td>Life</td>
<td>10-Life</td>
</tr>
<tr>
<td>Larceny etc. ($250-$2,000)</td>
<td>5</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Delivery 1oz &lt; 1k</td>
<td>15</td>
<td>10</td>
<td>50</td>
</tr>
<tr>
<td>Delivery 1oz &lt; 1k (not)</td>
<td>5-20 to Life</td>
<td>10</td>
<td>50</td>
</tr>
</tbody>
</table>

21 states have adopted sentencing guidelines, so they have
(1) ranked offenses by seriousness;
(2) considered the impact of criminal history systematically; and
(3) narrowed statutory ranges with presumptive ranges
3. Most states have caps on felony probation terms and mechanisms to shorten them – Rhode Island has neither.

43 states have either a cap on probation terms, or a statutory mechanism for shortening probation terms or both.

- States with a cap on maximum felony probation terms of 5 years or less*
- States with statutes allowing for probation terms to be shortened, but no caps
- States with both a cap of 5 years or less and mechanism for shortened probation

* Many states exempt some crimes from the cap
3. ALI Model Penal Code recently overhauled guidance on probation, sentencing, supervision, and sanctioning.

1956

1960s: IL, MN, NM

1970s: NY, GA, KS, CT, CO, OR, DE, HI, NH, PA, UT, MT, OH, TX, FL, KY, ND, VA, AR, ME, WA, SD, IN, AZ, IA, MO, NE, NJ

1980s: AL, AK, WY

2014 Sentencing Guidance
- Probation is for accountability and risk reduction
- Terms limited to 3 years for felonies
- Early termination should be authorized and encouraged
- Lesser sanctions should be used before revocation

34 states adopted the original MPC; RI has not
4. Case law highlights other areas where Rhode Island may have unique constraints upon reforms

Administrative Sanctions
• *Gagnon v. Scarpelli* (SCOTUS) required 2-step violation hearings but *DeLomba* (SCRI) did not adopt
• A new administrative sanction policy could fulfill this function

Retroactivity of Reforms
• Current litigation (*Beaudoin*) may mean that policies such as limiting terms on probation, or changing sanctions, can only be adopted prospectively

Standard for Violations
• “Reasonable satisfaction” standard has been a creature of case law since 1968

➢ Working Group will need to consider judicial as well as legislative policy changes, e.g., South Dakota
Key Takeaways: Probation law

• Existing laws governing probation have barely been touched while other states have modernized their laws to enable and require more effective sentencing and supervision practices.

• The length of probation terms in Rhode Island is driven by the long suspended sentences imposed on top of sentences to the ACI, permitted by broad penalties in law.

• Unlike most other states, Rhode Island has no meaningful limit on terms of supervision, and no method for early discharge.

• Rhode Island has not modernized the larger policy framework (such as the 34 states that have adopted the Model Penal Code, and 21 states that have adopted sentencing guidelines).
Looking ahead to policy options to improve probation

To reduce recidivism, increase public safety and lower costs, Rhode Island must modernize its entire approach to probation.

Step 1, overhaul of existing laws that are outdated, unsupportive of what works, and out of step with most other states.

– Probation sentences and length of active supervision must be aligned with risk, available resources, and the research on when offenders are most likely to recidivate.

Step 2, comprehensive administrative implementation.

– Probation officers must adopt and utilize a full risk and needs assessment tool to identify individuals most likely to reoffend.

– Existing probation resources must be reorganized to ensure high risk offenders are supervised on caseloads small enough to enable effective supervision capable of reducing recidivism.

– Responses to probation violations must be more swift, certain, and less severe to reduce costs, free up resources for reinvestment in supervision & programs, and more effectively reduce re-offending.
Justice Reinvestment Timeline

May
- Press Conference & Project Launch
- Working Group Meeting 1

Jun
- Working Group Meeting 2

Jul
- Working Group Meeting 3

Aug
- December 15th Working Group Meeting 4: Policy Option Rollout

Sep
- Final Report Rollout

Oct
- Bill Introduction

Nov
- 2016 Session

Dec
- Policy Option Development

Policymaker and Stakeholder Engagement

- Stakeholder Engagement and Policymaker Briefings
- Ongoing Engagement

Data Analysis

- Initial Analysis
- Detailed Data Analysis
- Impact Analysis
Thank You

Chenise Bonilla, Policy Analyst
cbonilla@csg.org

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