Justice Reinvestment in Arkansas

2nd Presentation to the Legislative Criminal Justice Oversight Task Force

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The Council of State Governments Justice Center

- 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
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
The JR approach involves two phases of assistance:

**Phase I**

1. Analyze data
2. Engage system stakeholders
3. Develop policy options & estimate impacts

**Phase II**

4. Implement New Policies
5. Target Reinvestment Strategies & Monitor Key Measures
Arkansas’s criminal justice agencies have been excellent in providing data.

<table>
<thead>
<tr>
<th>Data Type</th>
<th>Source</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime and Arrests</td>
<td>Arkansas Crime Information Center</td>
<td>Received, analyzing</td>
</tr>
<tr>
<td>Sentencing</td>
<td>Arkansas Sentencing Commission</td>
<td>Received, analyzing</td>
</tr>
<tr>
<td>Prison (Admissions, Releases, and Population snapshots)</td>
<td>Arkansas Department of Correction</td>
<td>In process</td>
</tr>
<tr>
<td>Probation Supervision</td>
<td>Arkansas Community Corrections</td>
<td>Received, analyzing</td>
</tr>
<tr>
<td>Parole Supervision</td>
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<tr>
<td>Risk Assessment</td>
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<td>Parole Decision-Making</td>
<td>Arkansas Parole Board</td>
<td>Received, analyzing</td>
</tr>
<tr>
<td>Jail</td>
<td>Counties</td>
<td>Still scoping</td>
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</table>

Roadblocks that sometimes arise:

- Shortage of “data staff”
- Delays in delivery due to “data cleaning”
- Unavailable data instead collected through samples and surveys
- Agencies unaccustomed to sharing data with outside groups
Presentation overview

- Summary of Analysis to Date
- Sentencing Policy in Arkansas
- Analysis of Sentencing Practices
Arkansas has the fastest growing prison population in the country

Crime is falling faster in surrounding states

Corrections costs the state half a billion dollars annually, and the projected growth will require an additional $1.3 billion

Experiences in other states demonstrate the ability to reduce crime, manage prison populations and costs, and reduce recidivism
Arkansas has the fastest growing prison population

Percent Change in Sentenced Prison Populations, 2012–2014

Arkansas: 22% increase between 2012 and 2014

US Average: 0.2% increase between 2012 and 2014

Source: BJS Prisoners in the United States
Crime is falling faster in surrounding states

<table>
<thead>
<tr>
<th>Source: FBI Uniform Crime Report</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Violent</th>
<th>Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surrounding States</td>
<td>Arkansas</td>
</tr>
<tr>
<td>-14%</td>
<td>-4%</td>
</tr>
</tbody>
</table>
Corrections costs more than half a billion dollars, a 68 percent increase since 2004.

Source: Arkansas State Budget 2004, 2015
Without action, Arkansas’s prison population could climb 35 percent, and costs could rise $1.3 billion over 10 years.

Historical and Projected Prison Population, FY2010–2025

$1.3 billion in additional spending estimated if prison population grows as projected.

Baseline scenario assumes a 1.2% increase per year in admissions.

Crime and incarceration rates are both declining in most surrounding states

Change in Crime Rates and Incarceration Rates, 2004–2014

States are using justice reinvestment to manage prison growth and costs, and reduce recidivism

<table>
<thead>
<tr>
<th>Key Criminal Justice Indicators</th>
<th>Texas (JR in 2007)</th>
<th>North Carolina (JR in 2011)</th>
<th>Arkansas</th>
</tr>
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<tbody>
<tr>
<td>Crime Rate</td>
<td>↓</td>
<td>↓</td>
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<tr>
<td>Recidivism Rate</td>
<td>↓</td>
<td>↓</td>
<td>↑</td>
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<tr>
<td>Prison Population</td>
<td>↓</td>
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<tbody>
<tr>
<td>Crime Rate</td>
<td>4,632</td>
<td>3,425</td>
<td>3,877</td>
<td>3,203</td>
<td>4,235</td>
<td>3,818</td>
</tr>
<tr>
<td>Incarceration Rate</td>
<td>669</td>
<td>584</td>
<td>362</td>
<td>358</td>
<td>544</td>
<td>599</td>
</tr>
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</table>
Research compares cost-effectiveness of the three big strategies states use to impact criminal behavior

<table>
<thead>
<tr>
<th>Deter crime</th>
<th>Reduce recidivism</th>
<th>Prolong incapacitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase law enforcement’s ability to use hot-spot strategies and deploy additional officers to increase the perceived certainty of apprehension.</td>
<td>High-quality supervision (risk, need, responsivity), consistent sanctioning, and high-quality treatment programs tailored to needs.</td>
<td>Increase length of stay to hold moderate- to high-risk offenders in prison for an additional 3 months.</td>
</tr>
</tbody>
</table>

**Benefit to Cost Ratio**

Benefits per dollar of cost.

- $\longrightarrow $$$>
- $\longrightarrow $$$>
- $\longrightarrow $$$>
- $\longrightarrow $$>

Arkansas policymakers adopted the Sentencing Standards Grid in 1993 to ensure sanctions are proportional to the severity of the offense and the individual’s criminal history.

Sentences to prison “should be reserved” for the most serious offenses and offenders.

40% of Arkansas’s grid allows any type of sentence; more than other states with guidelines.
Arkansas is one of 20 states with sentencing guidelines.

Act 532 of 1993 established both Arkansas’s Sentencing Standards (sometimes referred to as the sentencing guidelines) and the Arkansas Sentencing Commission.

The **Sentencing Standards Grid** contains presumptive sentences based on (a) the seriousness of the offense and (b) the criminal history of the offender. Offense seriousness is listed on the vertical axis, while criminal history is listed on the horizontal axis.

The offender’s **criminal history score** is calculated based on:

1. **Prior felonies** (*.5 point for seriousness levels 1–5, 1 point for seriousness levels 6–10)*
2. **Prior misdemeanors** (*Class A only, worth .25 points)*
3. **Juvenile criminal record** (*No points for status offenses, .25 for each adjudication. Certain serious offenses are worth 1 point)*
4. **Custody status at the time of the offense** (*1 point if the offense occurs while under supervision or pretrial release)*

Key provisions of the 1993 law

Proportionality

B) Purpose of Sentencing Standards - Though voluntary, the purpose of establishing rational and consistent sentencing standards is to seek to ensure that sanctions imposed following conviction are proportional to the seriousness of the offense of conviction and the extent of the offender's criminal history. The standards seek to ensure equitable sanctions which provide that offenders similar with respect to relevant sentencing criteria will receive similar sanctions and offenders substantially different with respect to relevant sentencing criteria will receive different sanctions. Sentencing criteria should be neutral with respect to race, gender, social, and economic status.

Prison reserved for most serious

(C) Appropriate Use of Sentencing Sanctions - Rational and consistent sentencing policy requires a continuum of sanctions which increases in direct proportion to the seriousness of the offense and the extent of the offender's criminal history. Commitment to the Arkansas Department of Correction is the most severe sanction and due to the finite capacity of the department’s facilities, it should be reserved for those convicted of the most serious offenses, those who have longer criminal histories, and those who have repeatedly failed to comply with conditions imposed under less restrictive sanctions. Arkansas law provides for significant intermediate penal sanctions in the community which should be utilized when appropriate. Restrictions on an offender's liberty should only be as restrictive as necessary to fulfill the purposes of sentencing contained in this policy.

Arkansas has a variety of sentencing options for those convicted of felony offenses

**Conviction for Felony Offense**

- **Alternative Sanctions (AS)**
  - Fines, Community Service, Drug Court
  - Suspended Imposition of Sentence (SIS)
  - Probation

- **Incarceration**
  - Community Corrections Center (CCC)
    - Up to 24 months
    - Offer treatment and programming
    - Release to probation or SIS
  - Prison (ADC)
    - Eligible for good time*
    - Release is controlled by Parole Board
    - Release to parole or to no supervision

- **Suspension Imposition of Sentence** results in indirect supervision by Arkansas Community Corrections. May include period of confinement as condition of sentence.

- **Probation** results in direct supervision by Arkansas Community Corrections. May include period of confinement as condition of sentence.
Arkansas’s sentencing grid places defendants into 1 of 60 cells based on offense seriousness and prior criminal history.

<table>
<thead>
<tr>
<th>Offense Seriousness</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5+</th>
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</table>

### Most Frequent Offense Type

- **Murder – 1st Degree**
- **Rape**
- **Battery – 1st Degree**
- **Robbery**
- **Burglary – Residential**
- **Failure to Appear**
- **Theft of Prop. $5,000-$24,999**
- **Poss. of CS Sched. I,II – Meth/Cocaine Less than 2 grams**
- **Theft of Prop. $1,000-$4,999**
- **Computer Fraud**

Source: Arkansas Sentencing Commission
There are three basic areas in Arkansas’s sentencing grid in the context of “prison” sentences.

Source: Arkansas Sentencing Commission Data, 2014

Sentencing Options:
- ADC
- ADC, CCC, or AS
- CCC or AS
- AS

Sentencing Key:
- ADC = Prison
- CCC = Community Corrections Center
- AS = Alternative Sanctions (probation, SIS, fines, community service)
Sentencing grid prescribes a single length for prison terms instead of a range like other state grids.

<table>
<thead>
<tr>
<th>Offense Seriousness</th>
<th>Criminal History Score</th>
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<td>10</td>
<td>360</td>
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<tr>
<td>2</td>
<td>18</td>
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<td>1</td>
<td>9</td>
</tr>
</tbody>
</table>

Less history → More history

Sentencing grids typically offer a sentence length range that reflects mitigating or aggravating circumstances in individual cases.

Also noteworthy is the fact that the sentencing standards do not speak to length of probation for the “non-prison” cells.

Source: Arkansas Sentencing Commission
Sentencing grid is less prescriptive about the type of sentence imposed.

Most other state grids are more prescriptive about the type of sentence imposed.

<table>
<thead>
<tr>
<th>State</th>
<th>Total # of Cells</th>
<th># Cells w/ “All Options”</th>
<th>% of All Cells</th>
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</thead>
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<tr>
<td>AR</td>
<td>60</td>
<td>24</td>
<td>40%</td>
</tr>
<tr>
<td>KS</td>
<td>126</td>
<td>10</td>
<td>8%</td>
</tr>
<tr>
<td>NC</td>
<td>60</td>
<td>17</td>
<td>28%</td>
</tr>
</tbody>
</table>

Source: Arkansas Sentencing Commission; Kansas Sentencing Commission; and North Carolina Sentencing and Policy Advisory Commission
78 percent of prison sentences (and 87 percent of probation sentences) are for property, drug, or other offenses.

More than two-thirds of felony sentences involve individuals with limited criminal history (score of 0 or 1).

More sentences go to prison from “non-prison” area (at a cost of $7.2 million) than from “prison-only” area of sentencing standards grid.
Arkansas’s sentencing standards grid applies to about 78 percent of felony cases.

Standards do not apply to:

- Probation revocations
- Jury sentences
- Capital murder

Source: Arkansas Sentencing Commission Data, 2014
Prison and probation are most frequent sentences imposed, and both are driven by drug and property offenses.

**Felony Sentences by Disposition Type, 2014**

- **Total Sentences:** 14,760
- **Prison:** 5,496 (37.2% of all sentences)
- **Probation:** 7,319 (49.5% of all sentences)
- **SIS/Other:** 1,263

**Underlying Most Serious Offense Type**

- 87% Drug / Property / Other
- 78% Drug / Property / Other

Other consists of offenses such as possession of firearm by certain persons, failure to appear (FTA on a felony), furnishing prohibited articles, fleeing, and non-support.

Source: Arkansas Sentencing Commission Data, 2014
More than two-thirds of those sentenced had limited criminal history (score of 0 or 1)

Share of sentences with criminal history score of 0 or 1 was 71% in 2014.

Source: Arkansas Sentencing Commission Data, 2014
More sentences go to prison from “non-prison” grid cells than from “prison-only” grid cells

<table>
<thead>
<tr>
<th>2014 Felony Sentences</th>
<th>Criminal History Score</th>
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<tbody>
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<td>1</td>
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</tbody>
</table>

Source: Arkansas Sentencing Commission Data, 2014

- 7% of all grid cases
  - 892 sentences
  - 86% sent to prison

- 43% of all grid cases
  - 3,589 sentences
  - 56% sent to prison

- 50% of all grid cases
  - 1,015 sentences
  - 14% sent to prison
Use of prison for those in the least serious area of grid is costing Arkansas more than $7 million annually.

**Sentences to Prison for those in Non-Prison Area of Grid**

- **1,015**
  - # sentenced in 2014

- 47.25 months
  - Average sentence length imposed

- 7.9 months
  - Estimated length of stay in prison (based on assumption of earning maximum good time credits)

- **659**
  - Prison bed impact

- **$7.2 Million**
  - Annual cost of incarceration (based on $30/day contract rate instead of current ADC operational cost/day of almost $63/day)
Almost two-thirds of grid cases fall in area of grid with the least guidance

<table>
<thead>
<tr>
<th>2014 Felony Sentences</th>
<th>Criminal History Score</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5+</th>
<th>Totals</th>
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<tbody>
<tr>
<td><strong>Offense Seriousness</strong></td>
<td><strong>Less history</strong></td>
<td></td>
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<td>1,107</td>
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<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>20</td>
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</tbody>
</table>

Source: Arkansas Sentencing Commission Data, 2014

64% of cases in 2014

Council of State Governments Justice Center
Questions for task force

- The sentencing standards intended to reserve prison space for the most serious offenses and offenders. 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.
  - Should prison sentences be more focused on violent offenses and people with more criminal history?
  - Should sentencing standards speak to length of supervision and revocation for those in non-prison area of grid?
Questions for task force

- Over 1,000 sentences in “non-prison” grid cells ended up being sent to prison. Why?

- The standards do not guide the type of sentence used in 40% of grid cells (accounting for 43% of grid sentences). Probation and prison sentences are used in roughly equal measure.
  - What determines whether probation, prison, or CCC is used and is appropriate?
  - Should the task force try to examine the rearrest rates for similar offenders receiving different sentences?
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
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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