Justice Reinvestment 2.0 in Ohio

Launch Presentation to the Ohio Criminal Sentencing Commission

November 9, 2017

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The CSG Justice Center focuses on public safety topics with federal, state, and local policymakers.

National membership association of state government officials that engages members of all three branches of state government.

Justice Center provides practical, nonpartisan advice informed by the best available evidence.
Ohio state leaders requested technical assistance through the Justice Reinvestment Initiative.

In July 2017, Ohio state leaders submitted a signed letter requesting technical assistance to reengage in justice reinvestment.

In November 2017, the Justice Reinvestment Ad Hoc Committee, created under the Criminal Sentencing Commission, held its first meeting.
Proposed objective and principles for Ohio’s JR 2.0

Proposed objective

Develop a statewide public safety strategy to reduce crime, improve behavioral health treatment, and adopt more cost-effective sentencing, corrections, and supervision policies.

Core principles to guide the process

1. Each state is unique.
2. Data should inform decision making.
3. New initiatives should be relatively cost neutral and should, on balance, improve public safety.
4. Bipartisan, interbranch commitment for reform from top policymakers is essential.
5. Policy and budgetary changes must result.
6. Engagement of stakeholders—in local and state government and in community organizations—is critical.
7. Sustainability planning and ongoing data analysis and reporting are essential elements to successful reform.
Ohio’s criminal justice system faces major new challenges and three persistent barriers to solving these challenges.

**Major New Challenges to Public Safety and Public Health**
- Recent increases in most violent crime categories
- The epidemic of opioid abuse and overdose

**Persistent Barriers to Reinvesting in Public Safety and Health Challenges**
- Ohio still lacks a coherent strategy for recidivism reduction for the huge population under probation supervision
- Ohio’s sentencing structure is ad hoc, convoluted, and opaque
- Prison crowding and costs remain high
Overview

1. New Challenges
2. Persistent Challenges
3. Justice Reinvestment
Ohio’s criminal justice system faces major new challenges and three persistent barriers to solving these challenges.

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Ohio’s violent and property crime rates have resembled national trends for more than 50 years.

Index Crimes per 100,000 Residents, 1960–2016

Property Crime Rates

Violent Crime Rates

Change in Crime Rates since 1990

<table>
<thead>
<tr>
<th>Category</th>
<th>U.S. Total</th>
<th>Ohio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Crime</td>
<td>-52%</td>
<td>-41%</td>
</tr>
<tr>
<td>Violent Crime</td>
<td>-47%</td>
<td>-41%</td>
</tr>
</tbody>
</table>

Source: FBI Uniform Crime Report Data Tool.
There were decreases in all types of reported index property crime from 2011 to 2016.

Total property crime volume was down 23% from 2011 to 2016.

Each of the three offenses comprising index property crime had reported decreases from 2011 to 2016. The only notable uptick during this period was for motor vehicle theft in 2016, with a 14% increase over the previous year.

The total decrease in reported violent crime between 2011 and 2016 masks an increase since 2014, with increases in most violent crime categories.

Total violent crime volume was down 2% from 2011 to 2016... but rose 6% in the last two years.

The majority of the violent crime increase is due to an increase in aggravated assaults, but homicides and rapes increased as well.

Violent crime increased in Cleveland, Dayton, and Toledo between 2011 and 2016 but decreased in five other large cities.


Note: Cleveland was not included in the 2015 UCR data.
Every year there are many more reported homicides and aggravated assaults than there are arrests for those offenses.

**Percent Change**

**Murder**

- **2011–2016**: ↑ 27%
- **2014–2016**: ↑ 41%

**Aggravated Assault**

- **2011–2016**: ↑ 7%
- **2014–2016**: ↑ 9%

**Source**: FBI Uniform Crime Report.
Arrests for low-level offenses drive most arrest activity.

**Arrests in Ohio, 2016**

- **Part I Arrests (19%)**
  - Larceny...
  - Agg. Assault
  - Burglary
  - Robbery
  - Motor vehicle theft
  - Rape
  - Murder
- **Part II Arrests (81%)**
  - Drug Violations
  - Other assaults
  - DUI
  - Disorderly...
  - Liquor...
  - Vandalism

**Total Arrests 213,801**

Note: Other assaults, often called simple assaults, are assaults and attempted assaults where no weapon was used or no serious or aggravated injury resulted to the victim. Stalking, intimidation, coercion, and hazing are included.

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Between 2011 and 2016, opioid overdose deaths tripled, driving the significant increase in total drug overdose deaths.

- Between 2011 and 2016, all drug overdose deaths increased by 129% and opioid overdose deaths tripled.
- In 2016, 86 percent of drug overdose deaths were opioid-related.
- In 2016, Ohio spent $124 million on medication-assisted treatment for opioid use.

Source: Ohio Department of Health 2016 Ohio Drug Overdose Data: General Findings
Drug overdose deaths are concentrated in the Southwest region of the state.

Counties with Highest Age-Adjusted Unintentional Drug Overdose Death Rates, per 100,000

Montgomery: 42.5 (320 deaths in 2016)

  Brown: 41.0 (18 deaths in 2016)
  Butler: 40.5 (211 deaths in 2016)
  Clermont: 39.5 (96 deaths in 2016)
  Adams: 37.2 (12 deaths in 2016)
  Clark: 36.6 (73 deaths in 2016)
  Trumbull: 34.2 (111 deaths in 2016)
  Scioto: 34.1 (35 deaths in 2016)
  Clinton: 34.0 (12 deaths in 2016)
  Ross: 33.4 (40 deaths in 2016)

Source: Ohio Department of Health 2016 Ohio Drug Overdose Data: General Findings.
The growth in opioid overdose deaths between 2011 and 2016 outpaced traffic fatalities and homicides.

Arrests for drug violations increased between 2011 and 2016, peaking in 2014.

Arrests for drug abuse violations increased 12%, from 28,943 in 2011 to 32,324 in 2016.

North and South Dakota are the only states that had a larger percent increase than Ohio.

5,609 people were committed to ODRC for a drug offense in 2016.

Between 2011 and 2016, ODRC saw an increase in commitments for drug offenses.

Between 2011 and 2016, ODRC saw an increase in commitments for drug offenses. Here is a breakdown of the data:

- **Drug possession**: +32%
- **Drug trafficking**: -20%
- **Illegal manufacture**: +78%
- **Other drug offenses**: -33%

In 2016, 5,609 people were committed to ODRC for a drug offense. These numbers are sourced from ODRC Commitment Sheets.
One in six people admitted to prison are involved in opioid use.

Drug Involvement as Percent of Admissions, by Drug Type, 2005–2015

Cocaine / Crack  Opioids

Note: ODRC Intake Sample Series. Percentages reflect drugs used alone or in combination with other drugs.

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**Major New Challenges to Public Safety and Public Health**

- Recent increases in most violent crime categories
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**Persistent Barriers to Reinvesting in Public Safety and Health Challenges**

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The rate of people on probation in Ohio is among the highest in the country.

Probationers per 100,000 Adult Residents, 2015

- Ohio: 2,706 people on probation per 100,000 adults
- Ranked 3rd
- 243,710 probationers at the end of FY2015
- 1 in 48 Adult Ohioans on probation

Note: Probation rates for Alaska and Oregon unknown
ODRC reports that probation violators routinely make up 21–24 percent of commitments.

Probation Violator Commitments to ODRC, 2011–2016

In 2016, probation violators accounted for 23% of commitments to prison.

Between 2011 and 2016, 21 counties received probation improvement and incentive grants. Probation violators accounted for 21% of commitments from these counties.

Ohio has raised the bar for probation practices but large challenges remain.

<table>
<thead>
<tr>
<th>Probation officers and practices</th>
<th>Ohio HB 86 (2011)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Required probation officer job posting</td>
</tr>
<tr>
<td></td>
<td>• Required probation officer training standards</td>
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<tr>
<td></td>
<td>• Required risk assessment</td>
</tr>
<tr>
<td></td>
<td>• Required to sort people by risk level</td>
</tr>
<tr>
<td></td>
<td>• Required single supervision agreements</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Data collection</th>
<th>Supreme Court reporting requirements:</th>
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<tbody>
<tr>
<td></td>
<td># placed on probation</td>
</tr>
<tr>
<td></td>
<td># terminated by type of termination</td>
</tr>
<tr>
<td></td>
<td># under probation supervision (monthly)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prioritize programs for higher-risk populations</th>
<th>CBCF/CCA admission standards</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Remaining Challenges</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No tracking of population</td>
<td></td>
</tr>
<tr>
<td>No enforcement of standards</td>
<td></td>
</tr>
<tr>
<td>No technical assistance resources</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Lack of data definitions, (e.g., type of termination)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited usage, at local discretion</td>
</tr>
</tbody>
</table>

| F4/F5 and probation violators continue to drive ODRC commitments. |
Ohio does not collect statewide probation data so current perspective is limited to three measures in Bureau of Justice Statistics data.

Ohio lacks basic information:
- How many people are on felony versus misdemeanor probation?
- How do dispositions to probation vary by county, offense, criminal history, etc.?
- What are demographics and risk levels of people on probation?
- How many people on probation are arrested while on supervision?

Texas
- Monthly systemic probation data
- Formula and incentive funding
- Promotes EBP to counties (e.g., Bexar) with high probation violator rates
- Promotes effective violation response
- More expansive list of probation EBP in statute


<table>
<thead>
<tr>
<th>Year</th>
<th>Probation Population</th>
<th>Probation Entries</th>
<th>Probation Exits</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>253,497</td>
<td>156,000</td>
<td>131,555</td>
</tr>
<tr>
<td>2012</td>
<td>243,710</td>
<td>137,800</td>
<td>122,881</td>
</tr>
<tr>
<td>2013</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Bureau of Justice Assistance Probation and Parole in the United States.
Ohio’s criminal justice system faces major new challenges and three persistent barriers to solving these challenges.

Major New Challenges to Public Safety and Public Health

- Recent increases in most violent crime categories

Persistent Barriers to Reinvesting in Public Safety and Health Challenges

- Ohio still lacks a coherent strategy for recidivism reduction for the huge population under probation supervision
- Ohio’s sentencing structure is ad hoc, convoluted, and opaque
- Prison crowding and costs remain high
Ohio sentencing benchmarks reflect the history of sentencing in the U.S.

**Indeterminate sentencing**
- Legislatures set ranges
- Judges choose
- Parole boards release

**Determinate sentencing**
- CA, IL, IN, ME

**Sentencing guidelines**
- States & federal

**“Tough” policies**
- Mandatory minimums
- Three strikes
- Truth-in-sentencing
- Life without parole

**Right to a Jury on Sentencing Factors**
- 2000 – Apprendi
- 2004 – Blakely
- 2005 – Booker
- 2013 - Alleyne

**Event Timeline**
- 1970
- 1980
- 1990
- 2000
- 2010
- 2017

**Events**
- 1984 – SB 199
- 1996 – SB 2
- 2006 - State v. Foster
- 2011 – HB 86
General Assembly’s sentencing policy approach in SB 2 was upended by Foster in 2006.

“trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences.”

“Where sentencing is left to the unguided discretion of the judge, there is no judicial impingement upon the traditional role of the jury.”
Ohio’s determinate prison sentencing ranges are straightforward.

<table>
<thead>
<tr>
<th>Level</th>
<th>Guidance</th>
<th>Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>F-1</td>
<td>Presumptive prison</td>
<td>3–11 years</td>
</tr>
<tr>
<td>F-2</td>
<td></td>
<td>2–8 years</td>
</tr>
<tr>
<td>F-3</td>
<td>No guidance other than Purposes and Principles</td>
<td>9–36 months or 12–60 months</td>
</tr>
<tr>
<td>F-4</td>
<td>1-year community control for some; 11-factor guidance</td>
<td>6–18 months</td>
</tr>
<tr>
<td>F-5</td>
<td></td>
<td>6–12 months</td>
</tr>
</tbody>
</table>
Ohio’s “quick reference guide” has seven pages of dense, difficult descriptions of hyper-legislated sentencing laws.

Contents:
- Purposes and principles
- Factors to consider
- Mandatory prison terms
- Length of mandatory terms
- Optional prison terms
- Length of optional terms
- Sanctions
- Other sentencing considerations

MANDATORY PRISON TERMS

“Note: The General Assembly frequently changes this list and doesn’t always include changes in [§2929.13(F)]’s list. Always check individual offenses. . . .”
The guide reflects the length and complexity of the law.

One statute
R.C. § 2929.14
Definite Prison Terms

13 pages
100 paragraphs
≈8,000 words
85 “ifs”
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Ohio has the second-highest incarceration rate in the area and the 13th-highest in the country.

### 2015 Incarceration Rates per 100,000 Residents

- **Kentucky**: 489
- **Ohio**: 449
- **Michigan**: 429
- **Indiana**: 412
- **Pennsylvania**: 387
- **West Virginia**: 386
- **Wisconsin**: 377
- **Illinois**: 360

**Nearby States’ Rank:**

- Kentucky – 489
- Ohio – 449
- Michigan – 429
- Indiana – 412
- Pennsylvania – 387
- West Virginia – 386
- Wisconsin – 377
- Illinois – 360

Source: Bureau of Justice Statistics Prisoners in the United States in 2015.
Since 2000, the ODRC population increased 9 percent, and modest growth has continued since 2007 even though commitments fell by 9,000.

Under the state’s most recent projections, the prison population is expected to remain stable with only modest growth through 2020.

Source: DRC Prison Population Projections.
Lengths of stay are increasing across felony levels.

Average Length of Stay in Prison by Offense Degree, in Months

Source: Ohio Department of Rehabilitation and Corrections Time Served Reports by calendar year. Numbers for 2016 are preliminary.
ODRC reports that consecutive sentences have increased for all felony levels since *Foster*, and decreased little after HB 86.

**Percent of Multiple Conviction Commitments with Consecutive Terms Imposed, by Felony, FY2000–FY2015**

<table>
<thead>
<tr>
<th>Felony</th>
<th>Pre 2006</th>
<th>Post 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>F1</td>
<td>41%</td>
<td>46%</td>
</tr>
<tr>
<td>F2</td>
<td>32%</td>
<td>39%</td>
</tr>
<tr>
<td>F3</td>
<td>35%</td>
<td>42%</td>
</tr>
<tr>
<td>F4</td>
<td>32%</td>
<td>40%</td>
</tr>
<tr>
<td>F5</td>
<td>27%</td>
<td>40%</td>
</tr>
</tbody>
</table>

Ohio’s general fund spending on corrections approaches $2 billion annually.

Overview

1. New Challenges
2. Persistent Challenges
3. Justice Reinvestment
A data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety

The Justice Reinvestment Initiative is supported by funding from the U.S. Department of Justice’s Bureau of Justice Assistance (BJA) and The Pew Charitable Trusts.
Justice reinvestment prioritizes public safety.

“Reduce recidivism” means people who commit crimes are held accountable, receive the intervention they need to change their behavior, and do not reoffend.

“Repair harm” means victims are safe, have access to help, understand how the criminal justice system works, see accountability, and heal.

“Prevent offenses” means a state uses policing strategies and public safety approaches to decrease crime and violence, not just reported incidents of crime.

“Build trust” means communities heavily impacted by crime and incarceration are supported, and conditions of distrust are directly addressed.

In Ohio: Develop a statewide public safety strategy to reduce crime, improve behavioral health treatment, and adopt more cost-effective sentencing, corrections, and supervision policies.
Recent increases in most violent crime

Recap:
• Increases in most violent crime between 2011 and 2016.
• Every year there are many more reported homicides and aggravated assaults than there are arrests for those offenses.
• Low-level crimes drive arrest activity and limit law enforcement’s capacity to respond to violent crime.

Key Questions:
• What is driving upticks in violent crime?
• What does the research say works to address violence?
• To what degree can reducing recidivism help drive down crime?

Potential JR 2.0 Approach:
• Analyze data to quantify people arrested for violent crime and their previous interaction with the criminal justice system or status on supervision—pretrial, probation, community corrections, or post-release control.
• Engage and survey law enforcement to clarify needs and goals.
• Identify how state policymakers can best support local law enforcement in addressing violent crime.
Recap:
• Overdose deaths increased 129% and opioid overdose deaths tripled, 2011–2016.
• In 2016, Ohio spent $124 million on medication-assisted treatment for opioid use.
• Increases in drug abuse are apparent in arrests and prison admissions.

Key Question:
• How can the response to people with behavioral health needs in the criminal justice system be improved to:
  o Enhance identification of people with behavioral health needs in the criminal justice system?
  o Ensure an array of timely, specialized treatment options?
  o Increase treatment’s effectiveness at improving public safety and health?
  o Strengthen state and local collaboration between behavioral health and criminal justice agencies?

Potential JR 2.0 Approach:
• Analyze data to understand the overlap between criminal justice and behavioral health populations.
• Coordinate with stakeholders to assess the availability of behavioral health treatment.
• Identify opportunities to increase connections to timely, specialized treatment.
(3) Large and fragmented probation system driving one-quarter of prison admissions

Recap:
• Ohio has the third-highest probation rate and fourth-largest probation population in the U.S.
• Probation violators make up 21–24% of prison commitments.
• Revocation pressure on prison population can be affected using state improvement and incentive funding.
• There is no statewide recidivism-reduction strategy for probation.

Key Question:
• How can the consistency and effectiveness of probation be improved statewide while respecting local control?

Potential JR 2.0 Approach:
• Work with counties to understand data collection and reporting challenges to help the state better contribute to this effort.
• Analyze data, if available, to understand violations and responses leading to revocation or incarceration.
• Conduct focus groups to identify local supervision challenges and work to improve the ability of probation officers to decrease the number of total violations and revocations to prison.
• Review law and policy related to supervision practices and strengthen foundation for counties to adopt EBP.
Recap:
• The current sentencing system has contributed to crowded prisons and large misdemeanor and felony probation populations.
• The use of aggravating and mitigating findings to guide sentencing has failed.
• Ohio law shows a micromanaged approach to sentencing policy that is needlessly complex.

Key Question:
• How can Ohio sentencing laws be refocused and simplified to prioritize incarceration for the most serious and violent offenses while facilitating recidivism reduction among people on supervision?

Potential JR 2.0 Approach:
• Explore using BCI, ODRC prison data, and individual county sentencing data to better understand the system due to lack of statewide sentencing data.
• Use practitioner interviews (prosecution, defense, judiciary) to inform recommendations.
• Explore the capacity of Criminal Sentencing Commission to evaluate proposed sentencing changes in the future and provide objective impact analysis.
Recap:
- Ohio has the second-highest incarceration rate (449) among neighboring states.
- Modest growth in prison population continues, despite fewer commitments.
- Growth and crowding are projected into the future.
- Corrections spending is the seventh-highest among all states.

Key Question:
- How can Ohio use sentencing and probation reforms to ease crowding and generate savings for reinvestment in strategies to increase public safety at the local level?

Potential JR 2.0 Approach:
- Analyze data to identify sentencing patterns and drivers of incarceration.
- Analyze impacts of recent policy changes.
- Improve probation and community corrections to reduce prison admissions.
Ohio data analysis is challenging because of database structures and silos at the state and local levels.

<table>
<thead>
<tr>
<th>Data Type</th>
<th>Source</th>
<th>Goals for Analysis</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime and Arrests</td>
<td>Ohio Bureau of Criminal Investigation</td>
<td>- Crime and arrest trends</td>
<td>Requested August 15; Submitted data assurance documents October 2; data expected December 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Arrest trends for those on community supervision</td>
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<tr>
<td></td>
<td></td>
<td>- Disposition trends</td>
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<td></td>
<td></td>
<td>- Re-arrest recidivism analysis</td>
<td></td>
</tr>
<tr>
<td>Sentencing</td>
<td>Ohio Courts Network</td>
<td>- Sentencing trends</td>
<td>Data will not meet project’s needs</td>
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<tr>
<td></td>
<td></td>
<td>- Criminal history comparisons for sentences</td>
<td></td>
</tr>
<tr>
<td>Prison (admissions, releases,</td>
<td>Ohio Department of Rehabilitation and</td>
<td>- Sentencing trends</td>
<td>Requested September 8; ODRC data meeting October 4; submitted research application October 13;</td>
</tr>
<tr>
<td>and population snapshots)</td>
<td>Correction</td>
<td>- Length of stay trends</td>
<td>data expected December 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Re-arrest recidivism analysis</td>
<td></td>
</tr>
<tr>
<td>Probation Supervision</td>
<td>Ohio Department of Rehabilitation and</td>
<td>- Sentencing trends</td>
<td>Requested September 8; ODRC data meeting October 4; submitted research application October 13;</td>
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<tr>
<td></td>
<td>Correction</td>
<td>- Length of stay trends</td>
<td>data expected January 15 (probation) and February 15 (PRC)</td>
</tr>
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<td></td>
<td></td>
<td>- Re-arrest recidivism analysis</td>
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<tr>
<td>Post-release Control Supervision</td>
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<tr>
<td>Community Based Correctional</td>
<td>Ohio Department of Rehabilitation and</td>
<td>- Sentencing trends</td>
<td>Requested September 8; ODRC data meeting October 4; submitted research application October 13;</td>
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<td>Facility</td>
<td>Correction</td>
<td>- Length of stay trends</td>
<td>data expected January 15</td>
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<td>- Re-arrest recidivism analysis</td>
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<tr>
<td>Jail</td>
<td>Counties</td>
<td>- Length of stay trends</td>
<td>Still scoping</td>
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<tr>
<td></td>
<td></td>
<td>- Pretrial/sentence population trends</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>- Re-arrest recidivism analysis</td>
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<tr>
<td>County Probation</td>
<td>Counties</td>
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<td>- Length of stay trends</td>
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<td></td>
<td></td>
<td>- Re-arrest recidivism analysis</td>
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</table>
Ohio’s justice reinvestment process will extend through November 2018 with at least four working group meetings.

**First Committee Meeting**
- Public safety and Drivers of Crime/Arrests
  - Examine local and regional trends
  - Explore which high volume crimes drive statewide trends

**Second Committee Meeting**
- Sentencing and Sorting of Cases
  - Examine sentences using BCI criminal history data
  - Research relevant case law
  - Provide examples of statutory changes

**Third Committee Meeting**
- Community Supervision, Programs, and County Innovations
  - Delve into county-based probation systems
  - Analyze county-level probation and CBCF data
  - Provide recommendations to reduce recidivism

**Fourth Committee Meeting**
- Behavioral Health Systems
  - Review behavioral health system’s intersection with criminal justice system
  - Promote collaboration across systems to improve behavioral health outcomes
Thank You

Patrick Armstrong, Senior Policy Analyst
parmstrong@csg.org

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