

# Rhode Island Justice Reinvestment Working Group

## *Policy Development Workshop*

*December 1, 2015*

**The Council of State Governments Justice Center**

**Carl Reynolds, Senior Legal and Policy Advisor**

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# Draft Framework of Challenges and Strategies

## *Challenge*

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## *Strategy*

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1

### **Decisions to detain and release are not informed by assessments of risk and need**

People are booked into the ACI and arraigned without an individualized assessment to ensure those who pose a risk are supervised and those who need treatment are diverted appropriately.

**Assess, divert and supervise individuals appropriately at the front end of the court system**

2

### **Probation laws are outdated and ineffective**

Statutes enable probation terms tied to long suspended sentences, conditions are set without assessment and are inflexible once established, and responses to probation violations are costly and ineffective at changing behavior.

**Establish a modern, cost-effective legal foundation for probation sentencing and supervision**

3

### **Probation supervision practices and resources are not reducing recidivism**

The current allocation of resources for probation supervision and the lack of evidence-based programming does not effectively reduce recidivism.

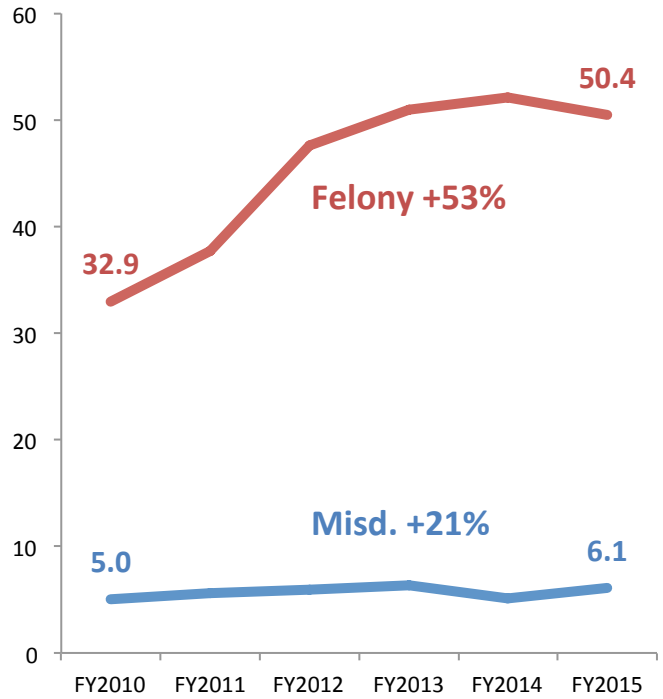
**Increase public safety by strengthening probation supervision and the quality of community-based programs to reduce recidivism**

# Challenge 1

## Decisions to detain and release are not informed by assessments of risk and need

People are booked into the ACI and arraigned without an individualized assessment to ensure those who pose a risk are supervised and those who need treatment are diverted appropriately.

Length of Stay Pretrial for New Commitments to ACI



Each year over 2,200 felony new commitments are booked into the ACI.

Felony new commitments are held 50 days prior to release, on average.

Length of stay pretrial is increasing, which research suggests yields worse public safety outcomes.

Unlike most states with unified corrections systems, no pretrial tool is used before arraignment to assess risk of reoffense or failure to appear.

Domestic violence potential danger or lethality is not determined prior to release; assessment could identify those in need of supervision upon release from the ACI.

Many diversion options exist but the lack of an integrated assessment of who might be eligible for which options delays and limits utilization.

### Assess, divert and supervise individuals appropriately at the front end of the court system

#### Goals of pre-arraignment / pretrial efforts:

- Identify those more likely to reoffend upon release, including domestic violence dangerousness & lethality
- Identify those more likely to fail to appear for future court hearings
- Reduce length of stay pretrial
- Target pretrial supervision and services
- Screen for behavioral health disorders
- Identify individuals most suitable for diversion & connection to behavioral health services if released pretrial

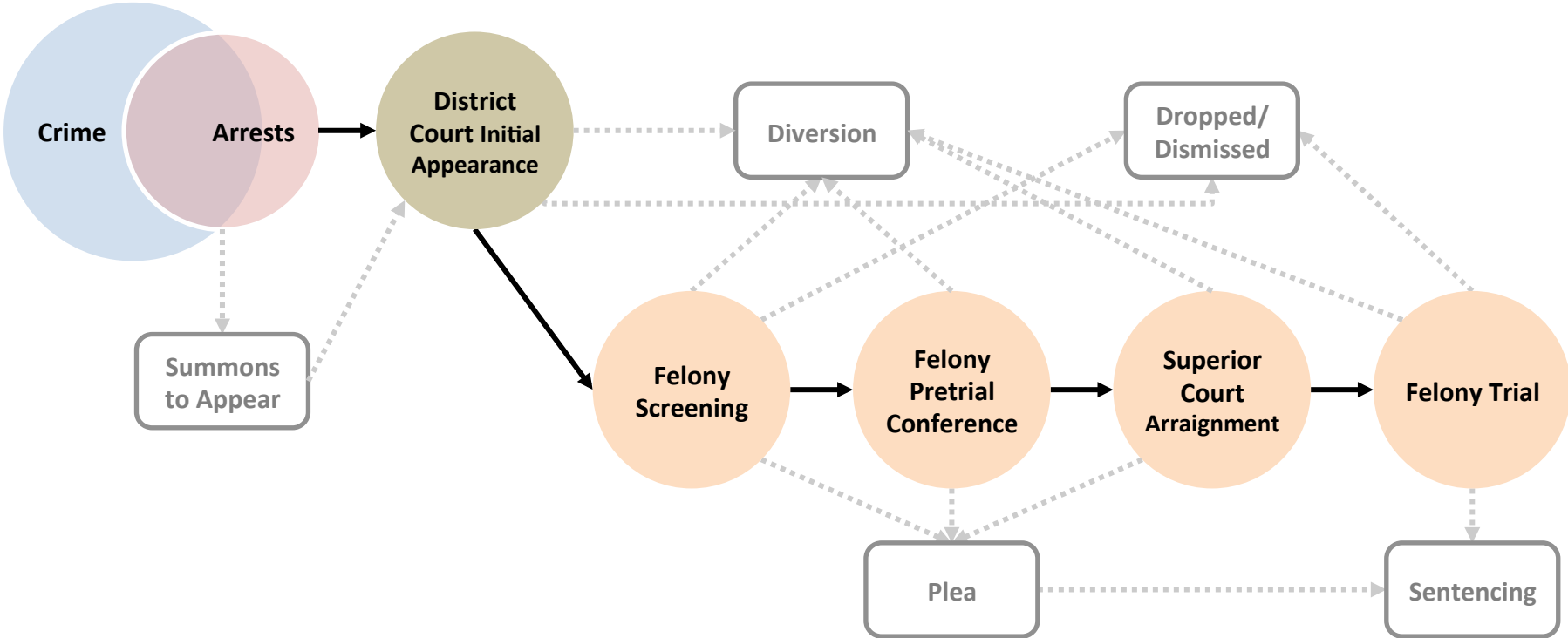
#### Screening & assessment prior to arraignment must be:

- Efficient to collect
- Validated for Rhode Island
- Designed to balance the rights of the defendant while informing pretrial decision-making to increase diversions and provide appropriate supervision and services

# Questions for Discussion of Strategy 1

Which defendants should be assessed pre-arraignment?

What are the priorities among the many goals that assessment can accomplish?



# Challenge 2

## Probation laws are outdated and ineffective

Statutes enable probation terms tied to long suspended sentences, conditions are set without assessment and are inflexible once established, and responses to probation violations are costly and ineffective at changing behavior.

The state's laws on probation sentencing and supervision are relatively thin and most haven't been updated in 30-60 years.

The length of probation terms is typically tied to the length of the suspended sentence even though the law does not require it.

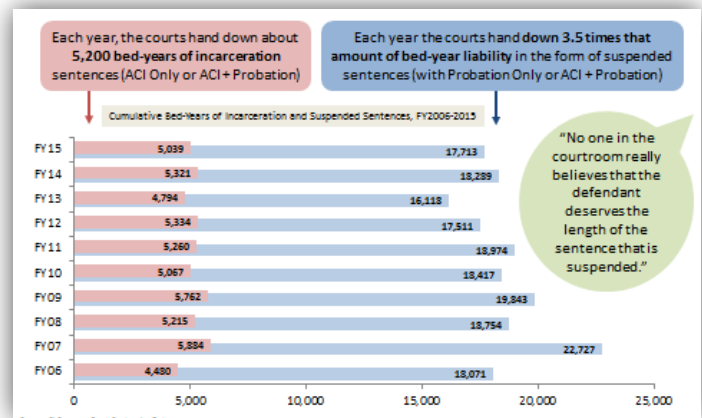
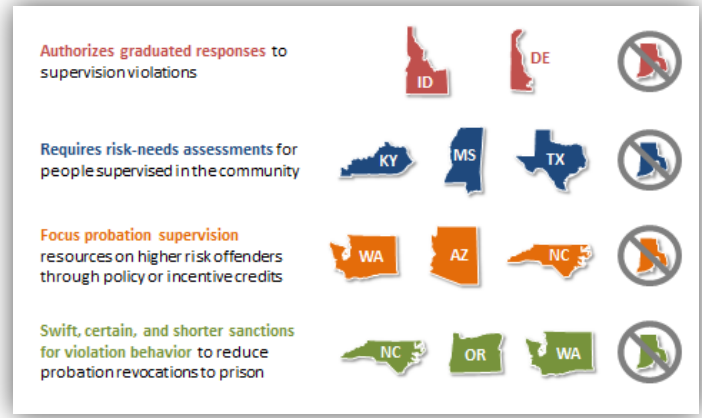
Probation terms for felonies average 4.9 years compared to the national average of 3.2. These long terms have led Rhode Island to have the second highest portion of adults on probation in the country (1 in 35).

Requiring individuals to serve their suspended sentences would be unaffordable for the state.

Even if just a third of felony probationers were revoked to serve out their suspended sentences in the ACI, Rhode Island would have one of the highest incarceration rates in the country.

Recidivism rates for people sentenced to probation in RI are lower than for people sentenced to a term at the ACI with probation to follow.

Responses to violations of probation conditions, and probation recidivism generally, are costly, with an estimated 61% of FY2015 ACI admissions being probationers failing on supervision.

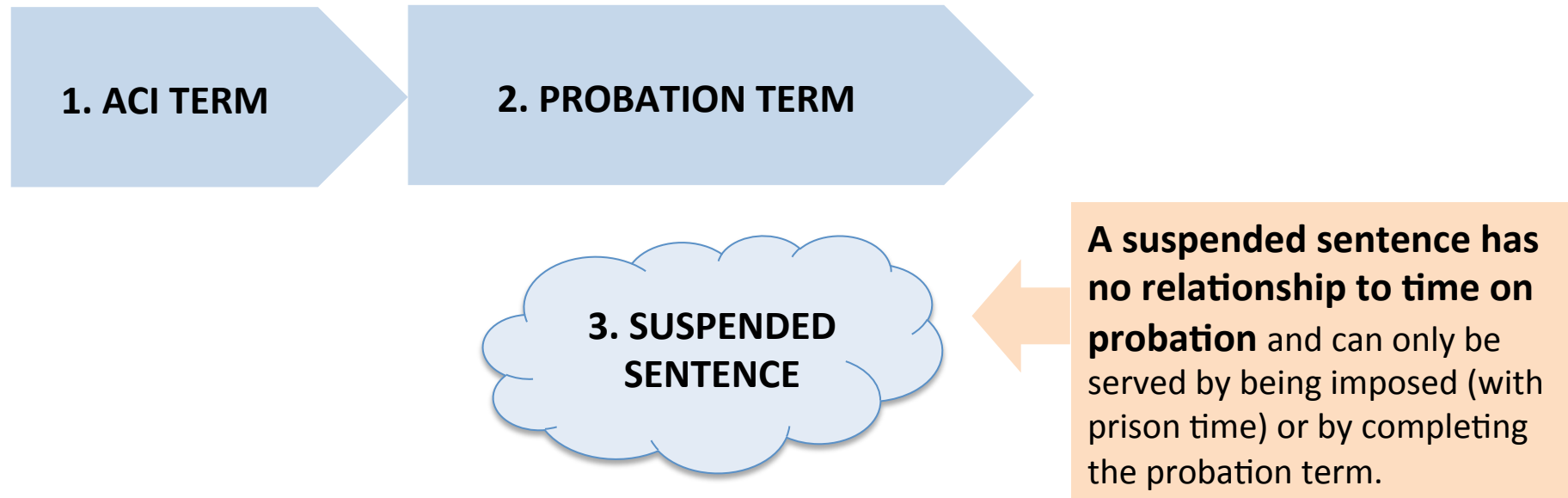


# *The purposes of probation and the suspended sentence must be clear to the working group and in any proposed revisions to the law*

Three components of a typical prison sentence in Rhode Island:

1. ACI term (which can be reduced via good time and parole release)
2. Probation term (which cannot be reduced, and which alone is not a conviction)
3. Suspended sentence (typically matching the probation term)

The ACI term and probation terms *can be served* by the passage of time.



### Establish a modern, cost-effective legal foundation for probation sentencing and supervision

- A. Articulate the purpose of probation and recognize the primary role that it currently holds in RI
- B. Clarify the purpose of the suspended sentence versus the probation sentence and limit probation terms (but not suspended sentences) to the time when recidivism is most likely to occur
- C. Require that conditions of supervision are driven by assessments of risk and needs, and allocate resources accordingly (Strategy 3)
- D. Provide for restitution to continue after probation, if needed
- E. Adjust the state's low burden of proof and the defendant's high degree of liability for violations, so that the current, expensive responses to violations can be more cost-effective



## Questions for Discussion of Strategy 2

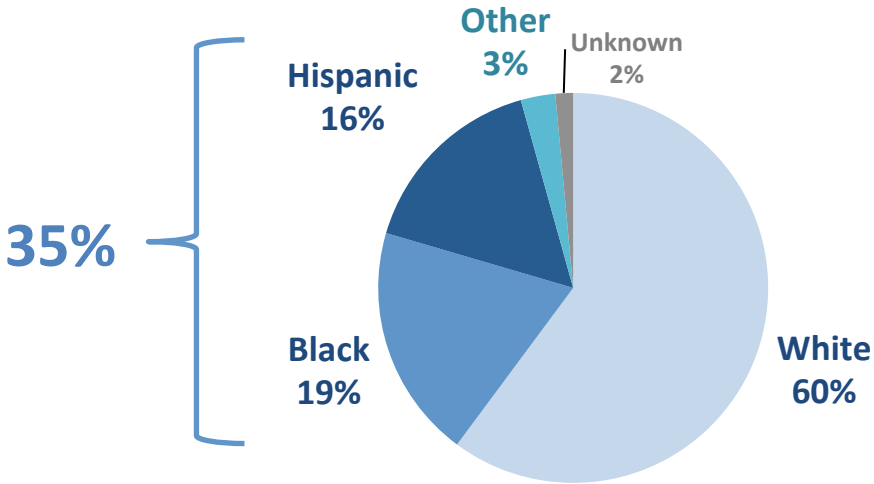
- A. Are exceptions needed if probation terms can be no longer than 3 years, when most recidivism is likely to occur?
- B. How do judges set special conditions related to treatment without an assessment?
- C. Most states employ the “civil case” burden of proof for violation hearings; what would be lost or gained by adopting that standard?
- D. A growing number of states are seeing benefits by increasing certainty and reducing the severity of sanctioning violations. What would need to shift in Rhode Island to accomplish this?
- E. Which individual offenses lack distinctions within types of conduct, that could yield more structure in penalties?

# Final question for Strategy 2: How can Rhode Island address the large population currently on probation?

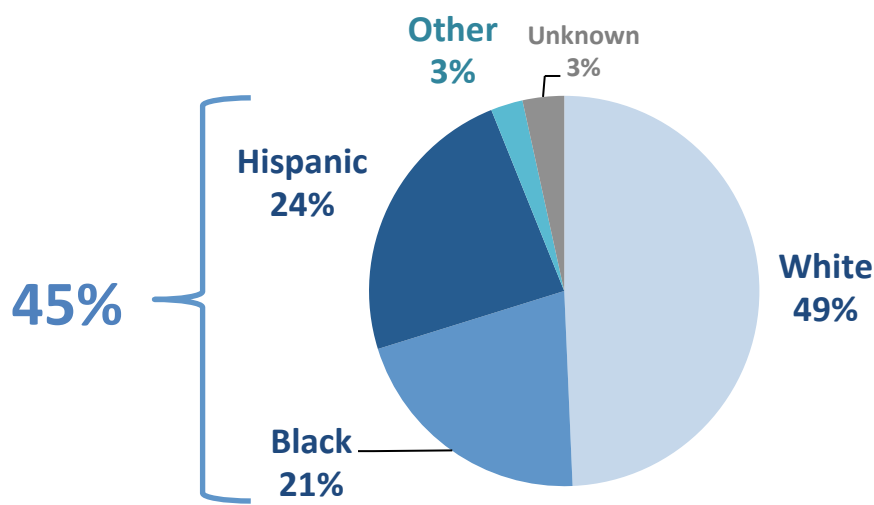
Assuming consensus that terms should be shorter in future cases...

- What process could be employed?
- Which people (if any) who are currently on probation should be considered?

Active Probation Population by Race/Ethnicity, FY2015



Banked Probation Population by Race/Ethnicity, FY2015



# Challenge 3

## Probation supervision practices and resources are not reducing recidivism

The current allocation of resources for probation supervision and the lack of evidence-based programming does not effectively reduce recidivism

Despite having more individuals on probation per capita than 48 other states, Rhode Island's probation supervision practices do not adhere to evidence-based practices.

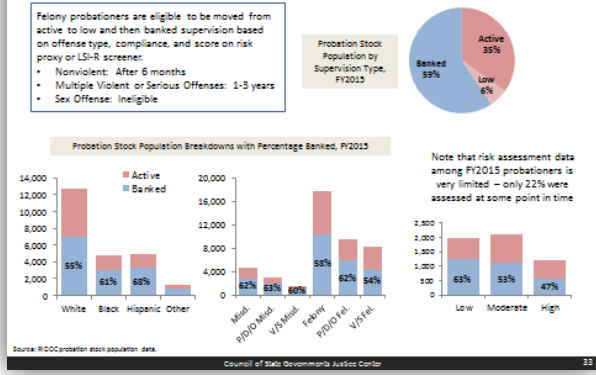
Despite high caseloads and preliminary use of a risk screening tool, the state has yet to use risk information to drive caseloads for high risk individuals down to a level whereby existing probation staff could employ practices shown to reduce recidivism.

Responses to probation violations are inconsistent and inefficient.

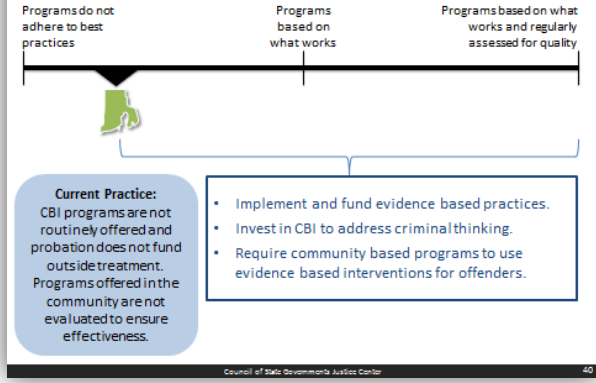
Cognitive behavioral programs are not routinely offered and probation does not fund treatment placements.

Programs offered in the community are not evaluated to ensure effectiveness.

Most probationers are not actively supervised and that decision has been primarily based on time under supervision



### 4. Implement Proven Programs: Probation offers minimal Cognitive-Behavioral Interventions (CBI)



### Increase public safety by strengthening probation supervision and the quality of community-based interventions to reduce recidivism

#### Supervision

- A. Require the RIDOC to use evidence-based practices, including the use of a validated risk and needs assessment to drive supervision intensity levels.
- B. Require low caseloads for officers supervising people who are high-risk for reoffending, or high-need for behavioral health intervention.
- C. Transition from a paper-based file system to a computerized case management system.
- D. Fund and require community-based cognitive behavioral program(s) to address criminal thinking for high or moderate-risk people on probation.

### Increase public safety by strengthening probation supervision and the quality of community-based interventions to reduce recidivism

#### Interventions

- A. Expand probation connections to behavioral health treatment, including cognitive-behavioral programs, and incentivize Medicaid payments for improved access and quality of community behavioral health treatment.
- B. Expand the capacity and improve the quality of Batterer Intervention Programs.
- C. Support more training for law enforcement encounters with the mentally ill.
- D. Urge the RIDOC to consider offering medication assisted treatment (MAT) immediately prior to reentry as feasible and medically appropriate, provided aftercare services in the community can be ensured.

## *Additional challenges reflect outdated policies for victims of crime, and the need for sustained attention to criminal justice*

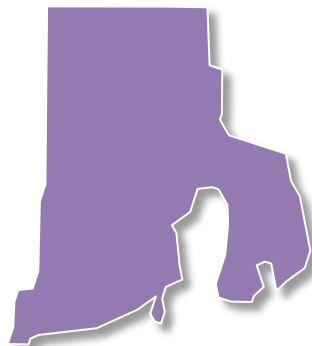
### **Victims:**

- A. Expand eligibility for the victim compensation program
  - Remove time restrictions for reporting to law enforcement and applying to the program
  - Reimburse funeral/burial expenses for any homicide
  - Separate prior bad acts from current eligibility
- B. Increase compensation benefit caps for certain crime-related expenses
- C. Improve required notification throughout the criminal legal system unless the victim opts out

### **Sustainability:**

- A. Adopt risk and need assessment from pretrial through parole
- B. Improve data collection and monitoring of key metrics including race and recidivism to understand the impact of policy changes

# Thank You



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***Rhode Island Justice Reinvestment  
Final Working Group Meeting  
Tuesday, Dec. 15<sup>th</sup> 4:00-7:00  
Department of Administration Conference Room A***

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