

The background of the entire page is the Maine State Flag, which is blue with a yellow star in the upper right. A red ribbon with the word "DIRIGO" in white is draped across the center. Below the ribbon is the state seal, which depicts a moose standing on a rocky shore next to a tree. To the left of the seal is a man in a brown coat and hat holding a scroll, and to the right is a sailor in a blue uniform holding an anchor. A white banner at the bottom of the seal contains the word "MAINE".

Justice Reinvestment in Maine

Improving Supervision
and Data Collection

Overview

Maine faces a number of pressing public safety challenges. The opioid crisis has created substantial operational and resource challenges for both local and state criminal justice and behavioral health systems in Maine, exacerbating existing stress on those systems.¹ Further, despite having the nation's second-lowest incarceration rate and a steady decline in overall reported crime, Maine's prison population has increased in recent years, particularly the female prison population.² Probation³ revocations account for more than 40 percent of prison admissions in Maine, which many state leaders attribute to a lack of community-based programming and resources (both quantity and quality) for people with mental illnesses and substance use disorders.⁴

In the summer of 2019, Maine leaders from all three branches of government requested support from the U.S. Department of Justice's Bureau of Justice Assistance (BJA) and The Pew Charitable Trusts (Pew) to utilize a Justice Reinvestment approach to address these and other criminal justice challenges. As public-private partners in the federal Justice Reinvestment Initiative (JRI), BJA and Pew approved Maine state leaders' request and asked The Council of State Governments (CSG) Justice Center to provide intensive technical assistance. Although the project initially had a broad scope of work, as it progressed, the interbranch Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners (Commission) worked with the CSG Justice Center to develop a set of proposed policies focused on narrower goals. The aim of these policies was

to improve access to and availability of quality behavioral health resources; improve success on probation; and improve data collection, monitoring, and information sharing to better understand trends and racial, ethnic, gender, and geographic disproportionalities in the criminal justice system.

Analysis conducted throughout the project culminated in four policy options to address the state's criminal justice and behavioral health challenges. In late February 2020, the Joint Standing Committee on Criminal Justice and Public Safety reviewed draft legislation—Legislative Request (LR) 3256—but stakeholder opposition surfaced soon after, delaying a public hearing on the bill draft. While action on some parts of the bill were still pending, the Maine legislature adjourned early due to the COVID-19 pandemic.

Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners

The 20-member commission included state leaders representing all three branches of Maine government as well as criminal justice system stakeholders from local governments, nonprofit organizations, and more. The commission met three times between October and December 2019 to review analyses and discuss system challenges and policies.

Commission Members

Co-chairs

Susan Deschambault, State Senator

Rachel Talbot Ross, State Representative

Members

Denise Altvater, Coordinator, Wabanaki Youth Program

Anne “Pinny” Beebe-Center, State Representative

Michael Cote, York County Commissioner

Susan Gagnon, Director of Adult Community Corrections, Maine Department of Corrections (MDOC)

Francine Garland-Stark, Executive Director, Maine Coalition to End Domestic Violence

Joseph R. Hanslip, Member of the Public

Anne Jordan, Criminal Process & Specialty Dockets Manager, Administrative Office of the Courts

E. Mary Kelly, Judge, Portland District Court

Randall Liberty, Commissioner, MDOC

Maeghan Maloney, District Attorney, Kennebec and Somerset Counties

Jenna Mehnert, Executive Director, National Alliance for Mental Illness Maine

Matthew Morgan, Attorney

Jessica Pollard, Director, Substance Abuse and Mental Health Services, Maine Department of Health and Human Services

Kim Rosen, State Senator

Alisa Ross, Assistant Attorney General

William Stokes, Justice, Maine Superior Court

Jeff Trafton, Sheriff, Waldo County

Elizabeth Ward Saxl, Director, Maine Coalition Against Sexual Assault

Data Collection

Case-level data was provided to the CSG Justice Center by the Maine Department of Corrections (MDOC), the Administrative Office of the Courts (AOC), the Maine Department of Public Safety (DPS), and the Maine Prosecutors’ Association. In total, the CSG Justice Center analyzed more than 1.5 million individual data records from MDOC, AOC, and DPS spanning 10 years, including arrest activity, court case filing and sentencing, supervision and prison populations, and length of time served in prison and on supervision. A system-spanning analysis on this scale had not previously been undertaken in Maine and was critical to the CSG Justice Center’s ability to deliver comprehensive, systemic analysis of adult criminal justice processes to the Commission.

Additional context and information was provided by more than 100 in-person meetings and conference calls with prison and probation leadership and officers; judges, prosecutors, and defense lawyers; sheriffs and municipal law enforcement officials; behavioral health leadership and service providers; staff from Maine Pretrial Services; a representative for the Penobscot Tribe and a member of the Wabanaki Confederacy; municipal and county officials; victims and their advocates; people in the criminal justice system and their families and advocates; and others.

Key Challenges

Maine's criminal justice and behavioral health systems are struggling to meet the needs of people who have substance use disorders and mental illnesses. Substance addiction issues are often linked to property and drug crimes, which, in Maine, commonly result in expensive short stays in prison or jail.⁵ Further, many admissions to prison in Maine are due to probation revocations, a pattern that often underscores a lack of quality community-based services.

Commission discussions, comprehensive stakeholder engagement, legal review, and analysis of Maine data identified the following key challenges and related findings:

1. Lack of coordinated, quality behavioral health resources.

Maine's opioid crisis continues to place an enormous strain on state and local public safety and behavioral health systems in a state that tends to rely on law enforcement and correctional responses since no crisis behavioral health system exists.⁶ There are good examples of local collaboration, treatment, and support services across systems,⁷ but Maine lacks robust local-state collaboration to scale up these efforts.

2. Increase of women in the justice system.

Felony arrests of women increased overall from 2008 to 2018 and rose 26 percent for Class C felonies, such as theft, operating a motor vehicle with a suspended license, and drug possession. More than half of all felony arrests in 2018 for women were for property and drug offenses compared to just 31 percent for men.⁸ Maine's female prison population increased more than 50 percent between 2014 and 2019,⁹ while the male prison population increased only 2 percent during that time. Women represented about 10 percent of the prison population—244 incarcerated women at the apex in July 2018—and 21 percent of the probation population.¹⁰ Women in prison and on probation have unique needs and require specialized responses to reduce recidivism.

3. Reliance on short sentences to prison and jail instead of probation.

More than 80 percent of felony sentences in fiscal year (FY) 2018 involved a period of incarceration in jail or prison. Only one in eight people sentenced for a Class C felony with zero or one prior convictions were sentenced to straight probation between FY2016 and FY2019.¹¹ Prison sentences of less than a year accounted for more than one-third of all felony prison sentences in FY2019.¹² While affording little time for correctional treatment, short periods of incarceration also disrupt employment, housing, and parental rights, and are typically associated with higher rates of recidivism than probation.¹³

4. Prison admissions driven by revocations from probation.

In 2017, 44 percent of Maine's prison admissions were due to probation violations. Forty-one percent of those revocations were for a technical violation of probation, such as failed drug tests or failure to comply with programming.¹⁴ Effective supervision is hindered by high caseloads, staff turnover, lack of specialized training, lack of capacity for specialized caseloads, and a lack of community-based risk-reduction programming and behavioral health treatment options. While the state employs a graduated sanctions matrix to guide sanctions while a person is on supervision, the length of stay for a revocation to prison is not capped.¹⁵

5. Limited and inconsistent demographic data.

The availability and quality of criminal justice data across state agencies, local law enforcement, county jails, and community service providers is inconsistent, resulting in a lack of key data on race, gender, and other factors, which hinders a thorough assessment of important dynamics in the state's criminal justice system. Maine also has limited capacity to match data across agencies on people with behavioral health needs who are in the criminal justice system.

Summary of Proposed Policy Options and Impacts

The policy options proposed by the commission and listed below are designed to achieve the following goals:

- Strengthen community behavioral health resources through increased coordination with the criminal justice system.
- Increase probation usage and resources to strengthen supervision.
- Reduce recidivism with improved programming and collaboration.
- Collect better data to drive policymaking.

Summary of Policy Options

1. Strategically deliver state support to local communities to improve access to and quality of community-based behavioral health services.
2. Create a presumption that probation is the most appropriate sentence for some felonies and monitor the routine use of short prison sentences.
3. Promote an evidence-based, effective continuum of correctional care that spans institutional and community corrections and promotes public safety.
4. Prioritize collection and analysis of reliable and valid criminal justice data.

Projected Impact

Although the entire policy package seeks to improve outcomes for people in the criminal justice system, only policy option 2 yields averted costs by reducing the prison population. The other policy options seek to help the state strategically improve aspects of the criminal justice and behavioral health systems. Implementing presumptive probation is projected to avert more than \$4.95 million in total costs by reducing the prison population by an average

of 90 people per year through the end of FY2025.¹⁶ The averted costs would fund enhanced access to and availability and quality of community-based behavioral health treatment options and additional probation officers to effectively supervise people in the community. Presumptive probation would lead to a projected increase in the probation population, which is expected to grow by an average of 521 people per year through the end of FY2025 at a total cost of more than \$2.65 million (see Figure 1).¹⁷

Figure 1. Summary of Presumptive Probation Policy Potential Averted Costs, FY2021–FY2025*

	FY2021	FY2022	FY2023	FY2024	FY2025
Prison Bed Reduction at Fiscal Year End	-23	-108	-108	-107	-106
Averted Cost Per Fiscal Year	-\$0.1M	-\$0.9M	-\$1.3M	-\$1.3M	-\$1.3M
Increase of People on Probation at Fiscal Year End	141	477	668	662	655
Cost Per Fiscal Year	\$0.0M	\$0.4M	\$0.7M	\$0.8M	\$0.8M
Total Averted Cost Per Fiscal Year	-	\$0.5M	\$0.6M	\$0.6M	\$0.6M

*The CSG Justice Center’s impact analysis is based on historical Maine AOC sentencing trends and Maine DOC prison admission trends. The baseline population projection assumes an average annual decrease rate of less than 1 percent per year, in line with recent decreases in sentencing trends and the prison population. Averted costs were calculated using the MDOC marginal cost of \$12,462 per person per year and an estimated cost of \$1,166 per person per year for probation. By averting some of the projected prison population, MDOC would avoid the costs of some of the current prison beds, though some of the averted costs would be offset by an increase in the probation population.

Adopting a policy that limits the length of stay in prison for people whose probation violations are not new crimes would yield a small projected impact on the prison population—an average of 31 fewer people per year through the end of FY2025. Even such a limited impact would avert more than \$1.8 million in costs through 2025.¹⁸ Because many people currently spend time in jail prior to a revocation hearing, county jail population data is needed to determine the potential cost of this policy change for counties and the state, which subsidizes county jail costs.

Future Investment

The proposed policy options require initial and continued state investment for Maine to reach its goals. A proposed annual investment of approximately \$6.4 million starting in FY2021 and continuing through FY2025 (see Figure 2)

does not represent an outright expenditure of state dollars, but instead uses existing funding (30 percent of \$18 million state dollars allocated through county jails to “community corrections,”¹⁹ or \$5.4 million annually) to more effectively support community corrections and deliver quality, accessible behavioral health services outside of jails. Current funding for community corrections should be allocated to a newly created Community Justice Behavioral Health Council, which would coordinate local resources, help expand some programs statewide (i.e., Maine Pretrial Services, co-response models,²⁰ diversion opportunities), promote collaboration between state and local agencies, and fund and evaluate grants for local justice behavioral health programs. New investments (approximately \$1 million) are proposed for Maine’s criminal justice agencies, primarily for staff positions to implement the policy options.

Figure 2. Potential Annual Investment for Justice Reinvestment Policy Options, FY2021–FY2025

		Annual Investment
Repurposed Funds	Community Justice Behavioral Health Council Grants	\$5.4M
	Community Justice Behavioral Health Council Grants: 3 FTEs to support grantmaking/coordination	\$180K
New Investments	Department of Corrections – Probation: 7 FTES	\$500K
	Attorney General: 1 FTE to advise on domestic violence response	\$75K
	Attorney General: 1 FTE for profiling research	\$75K
	Criminal Law Advisory Commission: 1 FTE for sentencing research	\$75K
	Maine Health Data Organization: 1 FTE for behavioral health data match	\$75K
Total Investment		\$6.38M

Proposed Policy Option Details

1

POLICY OPTION

Strategically deliver state support to local communities to improve access to and quality of community-based behavioral health services.

Background

- **Maine's drug overdose death rate has been among the nation's highest in recent years, largely due to opioids, but is starting to decline.** Between 2007 and 2017, the number of drug overdose deaths in the state increased 167 percent, from 159 to 424.²¹ However, from 2017 to 2018, the number of drug overdose deaths in Maine fell more than 15 percent to 354 deaths.²² In 2017, there were 360 opioid-related overdose deaths in Maine, making the state's opioid overdose death rate 29.9 per 100,000 residents. In 2018, the state's opioid overdose death rate fell to 23.4 per 100,000 residents.²³
- **The percentage of Mainers diagnosed with Serious Mental Illness (SMI) is above the national average.** From 2014 to 2015, 5.1 percent of the Maine population had SMI in the past year, compared to a national annual average of 4.1 percent during the same period. During each of the four reporting periods between 2011 and 2015, Maine's annual average percentage of people with SMI in the past year was above the national average.²⁴
- **Maine has a housing availability crisis that adversely impacts people in the criminal justice system.**²⁵ During the JRI process, criminal justice and behavioral health stakeholders consistently noted housing shortages throughout Maine,²⁶ particularly in rural areas, that make it difficult for MDOC, supervision officers, and behavioral health providers to find housing for people who are reentering the community. People who have been incarcerated only once are 6.7 times more likely to be homeless than the general public.²⁷ And people in prison or jail who have behavioral health needs are 1.5 times more likely to be homeless than other incarcerated people.²⁸
- **Local law enforcement agencies do not have sufficient resources to respond to people with mental illnesses and substance use disorders.** Maine lacks sufficient crisis services to meet current demand; opportunities for law enforcement drop-off at hospitals, crisis centers, or health providers that are fully equipped to handle people in crisis; and pre-arrest diversion opportunities.²⁹
- **Criminal justice and behavioral health leaders and practitioners do not receive adequate behavioral health training.** Additional training on stigma reduction and basic information on substance use disorders and mental illnesses is lacking for law enforcement, corrections, and court staff. Similarly, training on stigma reduction and basic education on criminogenic risk and needs is lacking for behavioral health staff.³⁰
- **Coordination between correctional facilities and community-based behavioral health service providers is insufficient.** There are no standard protocols for information sharing and collaboration between justice and behavioral health systems, and in-reach by community-based behavioral health service providers is inadequate to support diversion and reentry.³¹
- **Access to and availability of quality behavioral health resources for people on probation varies greatly across the state.** The square mileage served by each of Maine's three probation regions varies dramatically, with two regions supervising individuals in large areas of rural Maine. Probation officers working in these regions report having very few behavioral health resources to refer people to. And, even when there are quality resources available, lack of transportation and long travel distances make them nearly inaccessible.

- **Maine is already taking a number of actions to address the state’s behavioral health challenges, but more work is needed.** To address the ongoing opioid crisis, multiple executive orders and the Director of Opioid Response support the implementation of medication-assisted treatment in prison and jails.³² The opioid response strategy also includes educating law enforcement officers on substance and opioid use disorders and supporting alternatives to incarceration.³³ One way Maine is addressing the ongoing behavioral health and substance use needs in the community is through Behavioral Health Homes, which support people with mental illnesses, and Opioid Health Homes, which can conduct in-reach in correctional facilities.³⁴ Intensive Case Management services are located in jails to identify and support people with mental illnesses, substance use disorders, and intellectual disabilities.³⁵ The Department of Health and Human Services is working toward piloting a crisis center in Cumberland County.³⁶

Policy Option Details

A. Provide statutory authority and direction to create a new “Community Justice Behavioral Health Council” that will fund criminal justice and behavioral health grants and programs to meet the needs of people in their communities. The purpose of the council is to advise and assist the executive, legislative, and judicial branches of state government on an array of criminal justice issues. The council will focus on improvements to local law enforcement responses, diversion, bail decisions, pretrial services, sentencing, supervision, reentry from jail or prison, and behavioral health services for people in or at risk of entering the criminal justice system.

Initial funding for council-administered grants should be transferred from the current “community corrections” portion of the county jail operations fund (34-A MRSA §1210-D). This approach should be coordinated with the state’s efforts to subsidize county jail operations so that sheriffs can continue providing programs in jails. The council could help coordinate services like those in the following non-exhaustive list:

- Maine Pretrial Services across all 16 counties
- Intensive case management services in jails and prisons, including screenings for homelessness and housing needs
- Removal of barriers to successful community reentry, such as transportation, housing, childcare, etc.
- Systems navigator “in-reach” roles that aid incarcerated people to make connections with community-based service providers prior to release
- Multi-agency collaborations to respond to mental health or substance use crises in the community
- Any other services proposed at the local, municipal, county, tribal, or statewide levels

2

POLICY OPTION

Create a presumption that probation is the most appropriate sentence for some felonies and monitor the routine use of short prison sentences.

Background

- **The majority of felony sentences in Maine result in incarceration.**³⁷ Despite having one of the nation's lowest rates of adult incarceration, more than 80 percent of felony sentences in FY2018 in Maine involved a period of incarceration in jail or prison.³⁸
- **Straight probation is not frequently used.** The use of "straight" probation (probation without a period of incarceration beforehand) is rare for all levels of felonies, most remarkably for Class C sentences, the lowest felony level, which includes theft and drug possession.³⁹
- **Short prison sentences of less than one year are common.** While most states use the one-year sentence as the demarcation between misdemeanors and felonies, Maine allows prison sentences as short as "nine months and a day," which, with credit for time served, typically do not allow enough time for meaningful programmatic intervention. Prison sentences of less than a year accounted for more than one-third of all felony prison sentences in FY2019.⁴⁰ The prevalence of these short sentences rose 21 percent between FY2016 and FY2019.⁴¹ While such short sentences are sometimes necessary, they simultaneously offer too little time for correctional treatment and disrupt employment, housing, and other key factors that provide stability.

Policy Option Details

A. Create a presumption that probation is the most appropriate sentence for Class C property and drug offenses and Class B drug possession. Allow for departure from the presumption in aggravated cases. Implementing this policy will reduce the fiscal and human cost incurred by relatively short incarceration sentences.

B. Leverage the grant-making capacity of the Community Justice Behavioral Health Council (see Policy Option 1) and the collaborative continuum of correctional care (see Policy Option 3) to discourage short prison sentences and monitor their impact. These policies will make more treatment resources available in the community; incentivize sentencing to probation as the most effective means of connecting people to treatment and programming; and discourage the use of short prison sentences that often disrupt progress toward positive behavior change in the community. Tracking short sentences to prison also provides a single data point that Maine can become accustomed to monitoring as the state moves toward greater reliance on systemic data analysis (see Policy Option 4).

3

POLICY OPTION

Promote an evidence-based, effective continuum of correctional care that spans institutional and community corrections and promotes public safety.

Background

- **MDOC operates evidence-based assessment, case planning, case management, and discharge planning practices within institutions and community corrections, but the implementation of these practices is inconsistent across the entire correctional continuum.** While MDOC assesses people in prison and on supervision for criminogenic risk, about one-third of cases in recent years were missing risk information.⁴² Additionally, the risk assessment used by the MDOC has not been validated since 2012.⁴³ Risk assessment information is not always available, and supervision case planning is inconsistent across risk levels. Although supervision officers create and monitor case plans for people who are assessed as being at a moderate or high risk of reoffending, people assessed as being at lower risk levels do not receive case planning that connects them to programming and services throughout their time on supervision. Further, communication of risk-focused discharge planning from institutional to community corrections is limited or is delivered to community supervision officers a few days prior to a person's release onto community supervision.
- **Although probation officers must attend initial and annual training, the training does not focus on effective strategies for evidence-based supervision or for supervising specialized populations, including evidence-based gender-responsive practices.** Currently, all probation officers must complete mandatory eight-week in-service initial training on firearms and situational awareness and six-week training on programs and policies. Additionally, probation officers must complete 40 hours of annual professional development training. However, none of this training is required to focus on evidence-based principles of interventions in community corrections.⁴⁴ Further, the MDOC does not administer agency-wide training for probation staff on how to effectively supervise women in the community. Finally, there is little coordination between institutional corrections and community corrections regarding gender-responsive assessment results, case planning, and discharge planning.

- **In many areas of the state, community corrections staff must operate as a “one-stop-shop” for all client needs.** Maine is a predominantly rural state. Probation offices that serve rural areas report having limited community-based service provider resources. The lack of available services makes probation officers the sole resource for all client needs—many of which probation officers reported feeling unqualified to address properly. Probation officers lack training beyond Mental Health First Aid, Crisis Intervention Training, and motivational interviewing to address the criminogenic risks and needs of clients.⁴⁵
- **Revocations from community corrections combined with siloed correctional practices lead to a cycle of reincarceration.** In 2017, 44 percent of Maine's prison admissions were due to probation violations. Forty-one percent of those revocations were for a technical violation of probation.⁴⁶ This high rate of revocation combined with limited communication of case planning and case management between community corrections and institutional corrections creates a revolving door in and out of Maine's prisons.
- **Arrests involving pretrial violation of conditions of release (VCR) account for more than one-fifth of arrests in Maine.** When a person is released on bail pending trial, they may have to abide by certain conditions. Violating those conditions may result in arrest, either as the primary charge or in conjunction with another arrestable offense (in which case VCR would be the secondary charge). Arrests that include VCR as either the primary or secondary charge accounted for more than 20 percent of all arrests in the state in 2018.⁴⁷
- **Despite recent decreases in reported domestic violence assaults, domestic violence still accounts for a significant portion of Maine's homicides.** Between 2008 and 2018, there was a 30-percent decrease in reported domestic violence assaults in Maine. In 2018, a domestic violence assault was reported to law enforcement every 2 hours and 22 minutes, and domestic violence assaults accounted for 34 percent of the total assaults reported to law enforcement, a decrease from 2017.⁴⁸ In 2018, 38 percent of homicides were attributed to domestic violence.⁴⁹

Policy Option Details

A. Require MDOC to implement and expand evidence-based strategies to address individuals' criminogenic risk and needs. To improve outcomes and reduce recidivism, evidence-based strategies must focus on positive behavior change for all individuals, whether they are in MDOC facilities or in the community.

B. Require meaningful collaboration across governmental and community-based service providers. This should be achieved through an intentional correctional strategy that prioritizes gender-specific, trauma-informed, and behavioral health-focused criminogenic risk assessment, training, programming, and interventions for all people in the justice system.

C. Integrate improved access and availability of quality crisis services and behavioral health treatment options into community corrections. Additionally, train all corrections staff on how to recognize the signs and symptoms of mental illnesses, substance use disorders, and co-occurring disorders and how to refer people for screening, assessment, and treatment within correctional facilities and the community. The training should include cross-system coordination with the correctional health provider and community-based behavioral health treatment providers to support connections to diversion and reentry opportunities.

D. Limit the use of VCR for violations of conditions that do not endanger others. Decriminalize some violations of conditions of release, including those related to failure to find or seek employment or an educational program; failure to comply with curfew; possession or use of alcohol or drugs; and failure to report to a defense attorney on a regular basis. Use of VCR should be limited to instances when the underlying offense is subject to a prison term of one year or more.

E. Limit the permitted periods of incarceration for the first two violations of probation conditions presented in court that are not new crimes. The court may impose a term of confinement for up to 60 days for the first violation brought before the court that is not a new crime and up to 120 days for the second violation.

F. Fund the attorney general to employ a domestic violence specialist. The employee would work with district attorneys on best practices for addressing domestic violence and consult on responses to domestic violence offenses throughout the state. This approach would reinforce the attorney general's commitment to public safety, while promoting leadership from district attorneys at the local level on domestic violence issues.

4

POLICY OPTION

Prioritize collection and analysis of reliable and valid criminal justice data.

Background

- **Analyses of Maine arrest, court, and prison data showed that racial disproportionality increased as individuals progressed through the criminal justice system.** Five percent of all arrests in Maine in 2018 were of Black people, even though they accounted for just 2 percent of the state's general population. Eight percent of felony case filings in FY2018 were for Black people, and they accounted for 12 percent of all sentences to prison.⁵⁰
- **Maine is one of the few states in New England that does not collect data on traffic stops in a central location.** Siloed collection of traffic-stop information by local law enforcement prevents the state from analyzing the data and uncovering any potential racial disparities.⁵¹
- **Inconsistent availability and quality of criminal justice data across state agencies and local jails complicates the analysis of criminal justice trends in Maine.** Data on race, gender, and other critical demographic factors is missing in many low-level misdemeanor arrest records, hindering a thorough analysis of racial and gender dynamics in Maine's criminal justice system.

Policy Option Details

- A. Prioritize collection and analysis of comprehensive, accurate criminal justice system data to inform policy-making.** All data collection and analyses should include demographic information—race, gender, and county of residence—of people in the criminal justice system.
- B. Require criminal justice agencies to analyze sentencing data systematically and regularly.** This function should be conducted by dedicated, full-time staff reporting to a body such as a sentencing commission.
- C. Require the attorney general to conduct new research on law enforcement traffic encounters.** This would allow the state to understand any disparate effects in those first contacts with law enforcement and the decisions that stem from them as well as create a baseline for efforts to reduce any disparities.
- D. Increase data transparency across agencies.** Encourage Maine's criminal justice and human service agencies to routinely share and report high-quality data in adherence with information sharing regulations to better understand and monitor trends and drivers in arrests, sentencing, incarceration, probation supervision, and more.
- E. Require the Maine Health Data Organization to conduct a match of case-level data across health care, human services, and criminal justice data systems.** This would enable the organization to identify the prevalence and service needs of high-cost, high-frequency utilizers of multiple systems and determine ways to better to serve those people.

Looking Ahead

Stakeholder opposition to LR 3256, which embodied the policy options above, arose before the Criminal Justice and Public Safety Committee convened a public hearing on the bill draft in early March 2020. After the hearing, a pared-down Justice and Behavioral Health Council was the only consensus item remaining. On March 17, 2020, the Maine legislature ordered the immediate adjournment of the legislative session, and all bills not directly related to the governor’s omnibus budget or support for COVID-19 were not heard. LR 3256 will not be carried over when the 130th Maine Legislature convenes its first session.

Despite some opposition to the bill draft, there was considerable consensus among stakeholders that the JRI process resulted in policy options that deserve further exploration (e.g., presumptive probation), and even greater consensus on the need for strengthening probation and pursuing a sustained and strategic local-state collaboration

between justice and behavioral health stakeholders. The process also resulted in a better understanding of one point of contention among stakeholders, which could likely be resolved with further discussion: the difference between funding “community corrections,” as proposed in Policy Option 1⁵² and the proposed draft committee amendment to a separate bill, Legislative Document (LD) 973, An Act to Stabilize County Corrections.⁵³ Whereas the former would provide an improved funding mechanism and preserve the existing funding for community corrections, LD 973 would narrow the broad definition of “community corrections” currently in place (see endnote 19) and only allow continued funding for pretrial services, conditional release programs, and other jail-based programs and services to be determined at a later date. The amendment would also reduce community corrections funding from 30 percent to 25 percent of the total state commitment.

Endnotes

1. Holly Hedegaard, Arialdi Miniño, and Margaret Warner, “Drug Overdose Deaths in the United States, 1999–2017,” NCHS Data Brief, no. 329 (Hyattsville, MD: National Center for Health Statistics, 2018), https://www.cdc.gov/nchs/data/databriefs/db329_tables-508.pdf#3. All years in this report are calendar years unless otherwise noted. Dates or time spans pertaining to fiscal years are denoted with “FY.”
2. Federal Bureau of Investigation, *Crime in the United States, 2017* (Washington, DC: United States Department of Justice, 2017), <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017>; Jennifer Bronson and E. Ann Carson, *Prisoners in 2017* (Washington, DC: Bureau of Justice Statistics, 2019) <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=6546>; Ryan Thornell, 2017 Year End MDOC Adult Data Report (Augusta, Maine: Maine Department of Corrections, 2018) <https://www.maine.gov/corrections/quality-assurance/2017%20Year%20End%20Adult%20Data%20Report.pdf>; Ryan Thornell, January 2019 MDOC Adult Data Report (Augusta, Maine: Maine Department of Corrections, 2019) <https://www.maine.gov/corrections/quality-assurance/January%202019%20Monthly%20Adult%20Data%20Report.pdf>.
3. Probation in Maine is overseen by the Maine Department of Corrections.
4. Ryan Thornell, 2017 Year End MDOC Adult Data Report (Augusta, Maine: Maine Department of Corrections, 2018) <https://www.maine.gov/corrections/quality-assurance/2017%20Year%20End%20Adult%20Data%20Report.pdf>; Ryan Thornell, January 2019 MDOC Adult Data Report (Augusta, Maine: Maine Department of Corrections, 2019) <https://www.maine.gov/corrections/quality-assurance/January%202019%20Monthly%20Adult%20Data%20Report.pdf>; Phone and in-person discussions between The Council of State Governments Justice Center and leadership from the Maine Department of Corrections, March–June 2019.
5. Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007–2009 (Washington, DC: Bureau of Justice Statistics, 2017). This is based on national data indicating that the majority of people in prison and jail for property or drug offenses meet the DSM-IV criteria for drug dependence or abuse.
6. Jeanne Lambrew and Randall Liberty, “Commentary: Working together to reach Maine people at risk and in crisis,” centralmaine.com, February 19, 2020, accessed March 31, 2020, <https://www.centralmaine.com/2020/02/19/commentary-working-together-to-reach-maine-people-at-risk-and-in-crisis/>.
7. Maine Municipal Association, “Policing More with Less,” legislative bulletin, March 6, 2020.
8. The Council of State Governments Justice Center analysis of Maine Department of Public Safety arrest data, 2008–2018.
9. Thornell, Maine Department of Corrections 2019 Year End Report.
10. *Ibid.*
11. The Council of State Governments Justice Center analysis of Maine Administrative Office of the Courts sentencing data, FY2016–FY2019.
12. While most states use the one-year sentence as the misdemeanor/felony, jail/prison demarcation, Maine allows prison sentences as short as “nine months and a day,” which, with credit for time served, typically do not allow enough time for meaningful programmatic intervention.
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17. The CSG Justice Center developed this five-year (FY2021–FY2025) impact projection using historical data and assumptions based on the recent trends in court sentences and prison admissions and estimated cost of probation supervision at \$1,166 per year.
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19. 34-A MRSA § 1210-D(2) notes that “community corrections” includes “preventive or diversionary correctional programs, pretrial release or conditional release programs, alternative sentencing or housing programs, electronic monitoring, residential treatment and halfway house programs, community correctional centers and temporary release programs from a facility for the detention or confinement of persons convicted of crimes.”
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