



STATE REPRESENTATIVE
18th ASSEMBLY DISTRICT

February 13, 2020

Written Testimony of State Representative Evan Goyke

Re: Assembly Bill 830 & Assembly Bill 831

Chairman Schraa and Members-

Thank you for holding a public hearing on Assembly Bill 830 and Assembly Bill 831. I appreciate the opportunity to testify in support of both pieces of legislation.

Criminal justice reform has become a national, bi-partisan success story. Both federal and state-led initiatives have resulted in reduced prison costs while maintaining public safety. To date, 45 states have implemented some degree of criminal justice reform. Many of these states enacted reforms to address rising prison populations, costs, and to avoid the massive costs of constructing new prison facilities. Today Wisconsin faces this reality and a similar choice.

In the 2019-2021 Budget, the Legislature approved a 5% increase in the Department of Corrections budget, with an annual budget now above \$1.3 Billion. Included in the budget was an estimate that the prison population will grow roughly 600 additional inmates by the end of the biennium – which would place Wisconsin's prison population at an all-time high of 24,350 inmates.

Overcrowded prisons are less safe for both inmates and guards. As of Friday, February 7th, 2020, Wisconsin's prisons were at 132% of their designed capacity, with an additional 537 individuals housed in county jails throughout the state. At \$51.50 per day, per inmate, (\$18,800 a year per inmate) the overcrowded prison system cost taxpayers \$27,650 today just in payments to county jails alone.

Building a new prison may cost more than \$300 million. In addition to the capital costs, operating a new prison comes with an ongoing annual cost of anywhere from \$20 million to \$40 million depending on the capacity and level of security. These projections do not include recent legislation that has passed the Assembly that would further increase the prison population. The problem is getting worse and we face a choice.

Do we build a new prison to accommodate the growth? Or do we reform our criminal justice system to safely reduce the population? I make the case for reform.

Built from the experiences of other states to safely reduce the prison population and reinvest the savings to reduce crime I introduced AB 830 and AB 831. These bills were drafted in consultation with stakeholders interested in criminal justice reform from across the political spectrum, including majority party legislators, conservative and liberal leaning advocacy groups, and the Department of Corrections, among others.

Each bill follows the same framework: **Reform-Report-Reinvest**. Each bill includes statutory reforms to safely reduce the prison population; each bill includes increased reporting and data collection to ensure the reforms produce the intended results; and finally, each bill directs the reinvestment of savings into proven recidivism reducing programming.

Assembly Bill 830 focuses on vocational earned release programs (ERP). Wisconsin law currently offers limited earned release from prison for non-violent individuals that are found by the sentencing court to have an Alcohol or Other Drug Addiction (AODA) need and complete treatment while in prison. This program has been successful and bi-partisan, including an expansion in the 2017-18 state budget. AB 830 uses the existing non-violent criteria and eligibility procedures in current law, but expands the programs beyond AODA needs to include inmates participating in vocational, educational, and recidivism reduction programs.

This legislation incentivizes the completion of programming that makes us safer. Individuals released with improved education and job skills are more likely to find employment, which can reduce the likelihood of reoffending. The bill further requires the DOC to report annually on the success of these programs, including the recidivism rates of those that participate, and to study and report on the development of a facility for geriatric inmates. Lastly, the bill requires the savings generated from reduced prison costs to be invested into expanding capacity in treatment, vocational, and educational programs in our prison system.

Assembly Bill 831 makes important reforms to Wisconsin's revocation system. Current law gives the DOC discretion to revoke an individual's supervision. Revocation of supervision is the largest source of prison admissions, with over 3,400 individuals returned to prison solely on the revocation of supervision. Many of these individuals have been alleged to have committed a new offense, however, there are many who have not. AB 831 targets the revocations that were based on non-criminal violations of supervision.

This legislation places a maximum of 30 days of incarceration for a non-criminal violation of supervision, with the important exceptions of violating a no-contact order, absconding, or for repeated non-criminal violations. This bill does not apply to individuals required to report as a registered sex offender, nor would it change the power of the DOC to revoke an individual's supervision if there is an allegation of new criminal conduct.

Additionally, the bill improves the use of the "swift and certain sanctions" program created in 2013 Act 196 to allow the DOC greater use of short term sanctions. Sanctions are often served in county jails, which allows the DOC to respond to violations of supervision through incarceration, but without returning the individual to prison. Lastly, the bill requires the DOC to report annually on the success of these programs and to reinvest the savings into expanded capacity in treatment alternative programs.

These bills will not drastically reduce our prison system – but they will stop the growth. Larger, more comprehensive reforms are necessary to realize the savings of other states, like Michigan or Texas, that have closed facilities.

Reading the fiscal estimates, you will see that AB 830 could apply to 2,991 inmates. If only 25% of these inmates (about 750 inmates) had their sentences reduced by one year, the savings would be \$14 million.

The fiscal estimate for AB 831 shows that during the 18 months from January 2017 to June 2018, 229 individuals were incarcerated for an average of 15 months on technical violations that would be prohibited under the bill, a cost – or – potential savings of \$5.2 million. The fiscal estimate also does not capture the savings from reducing the short term sanction program from 90 days to 30 days.

Dozens of states have made similar reforms to revocations and earned release. Of those, seven states enacted policies very similar to the bills before you today. In six of seven states, the crime rate has dropped since enactment. The savings can be massive. For example, in Louisiana, a total of \$12 million were saved in the first year alone and under their re-investment law, 70% (\$8.4 million) was re-invested in treatment programs.

Conservative and Liberal organizations have supported these bipartisan reforms, including here in Wisconsin where conservative-leaning groups like Americans for Prosperity, Tommy Thompson Center, The Badger Institute, Right on Crime have joined with liberal-leaning groups like the ACLU and WISDOM in working to bring this legislative reality to Wisconsin. These groups in Wisconsin, like their counter parts around the country, have conducted or reviewed the growing evidence that criminal justice reform can be done safely.

We can achieve both less crime and less incarceration. AB 830 and 831 begin a transition to a more effective and efficient criminal justice system in Wisconsin and avoid the costly results of inaction.

Thank you for the opportunity to testify and I welcome any questions you may have.



SHAE SORTWELL

STATE REPRESENTATIVE • 2nd ASSEMBLY DISTRICT

Hearing Testimony
Assembly Committee on Corrections
February 13, 2020
Assembly Bill 831

Thank you Chairman Schraa and members of the Assembly Committee on Corrections.

As I mentioned the other day when the Assembly was taking up several crime bills, I believe there are two parts to good criminal justice reform.

One side is making sure those who are a threat to society are kept from harming innocent victims.

And the other side to this coin is acknowledging that many who commit crimes will re-enter society and we should do everything we can to ensure that they are adding to society and not detracting from it.

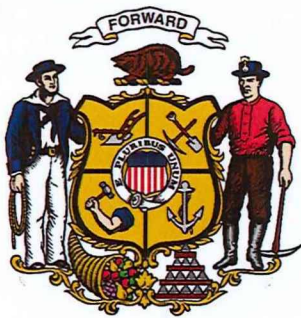
I believe this bill is part of that equation and I was more than happy to join Rep Goyke on it.

I truly do believe that supervision by the Corrections Department can be helpful in re-integrating people from the environment of prison to now being in real society.

I believe the principle is not all that different from how a parent deals with their children. When children are young, we as parents pretty much make all their decisions. What they eat, what they wear, where they go to school, etc. But as our children get into their teenage years, we start to give them more freedom and let them make more decisions for themselves, but we don't simply go from making all their decisions to letting them make all their own decisions. There is a transition.

I believe that 5 years is plenty to provide that transition. In fact, more than that is counter-productive. The standards for people under supervision are often higher than the standards of law for everyone else. Standards such as not drinking, a perfectly legal activity for the regular citizen. While these standards might be good to help someone stay on the straight and narrow in their transition, if these restrictions are kept for too long, those being supervised are more likely to break this rule than those in regular society are not held to. Think again of our children as they transition. Teenage years only last from 13 to 18, when you reach adulthood. And 5 years is plenty.

Rep. Shae Sortwell



Wisconsin Department of Corrections

Governor Tony Evers | Secretary Kevin A. Carr

Testimony for the Assembly Committee on Corrections

Thursday, February 13, 2020

AB 830 and AB 831

Thank you Chairman Schraa and committee members for the opportunity to testify in support of AB 830 and AB 831. I am Paulina de Haan, Legislative Advisor for the Office of the Secretary, at the Department of Corrections (DOC).

Across the Country, states, both red and blue, have been changing their approach to criminal justice, from an old school, ineffective mentality of “lock them up and throw away the key,” to a smart, safe, and rehabilitative approach that supports the transition of formerly incarcerated people back into our community to become employable, tax paying citizens. States like Texas and Michigan changed laws and policies, reduced their prison population, closed prisons, and saved the taxpayer money; all while increasing public safety.

AB 830 and AB 831 changes Wisconsin’s trajectory and puts our state on a path toward criminal justice reform. These bills align our state with the growing number of states who have committed their resources into evidence-based programming and treatment reforms that put more focus on supporting a person’s transition back into the community so that they can be successful.

AB 830 creates a vocational earned release program that mirrors the framework of our current Earned Release Program (ERP) connected to substance use disorder treatment. The DOC implements ERP based on a robust suitability criteria and evidence-based programming, and we would do the same for this proposed vocational ERP. Secretary Carr is committed to prioritizing and increasing programming at all of our facilities to provide adults in custody with the necessary tools, training, and treatment to become tax-paying citizens. AB 830 is aligned with our goals.

AB 831 places limitations on seeking revocations and expands the ability to utilize the short-term sanction program in circumstances when a person under supervision waives their right to a hearing. Reducing revocations has been a priority for this administration and the DOC is working on proposals and policies changes to affect that change. AB831 establishes clear parameters to limit the use of revocation where appropriate.

The DOC is appreciative of the opportunity to engage with the bill authors to develop language that can work for our department and we will continue to engage in discussions to garner the necessary resources to make criminal justice reform a reality for the state of Wisconsin.

Thank you for your time.



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Kelli S. Thompson
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Assembly Committee on Corrections
Assembly Bills 830 & 831
Thursday, February 13, 2020

Chairman Schraa and Members,

Thank you for holding this hearing on Assembly Bills 830 and 831. The State Public Defender (SPD) provides representation of financially eligible individuals charged with a crime and also provides representation in revocation cases. In addition, the SPD sits on the State Criminal Justice Coordinating Council which, since its inception nearly a decade ago, has worked to identify evidence-based practices that will increase public safety and reduce the harm to communities, promote fairness in the criminal justice system, and to use resources effectively. These bills are examples of evidence-based practices that will accomplish these evidence-based goals.

Assembly Bill (AB) 830 provides an opportunity for an eligible inmate to earn release to parole if they complete a substance abuse or vocational readiness training program. Research shows that, other than anti-social cognition, treatment for substance use disorders and the ability to find and maintain employment have some of the most significant impacts on the future risk of recidivism.

During the 2016 Legislative Council Study Committee on Reducing Recidivism and Removing Impediments to Ex-Offender Employment, the committee heard from several employers that one of the most significant barriers to expansion of existing Wisconsin based businesses or for businesses seeking to relocate to Wisconsin was the lack of available workforce. As has been noted time and again by multiple business groups, Wisconsin's workforce is aging and young employees are not staying in the state. There are approximately 22,000 inmates in Wisconsin's prisons, nearly 95% of whom will at some point return to their communities. Proposals such as AB 830 will provide incentives for eligible inmates to participate and will increase public safety by helping to address issues which have a direct impact on future recidivism.

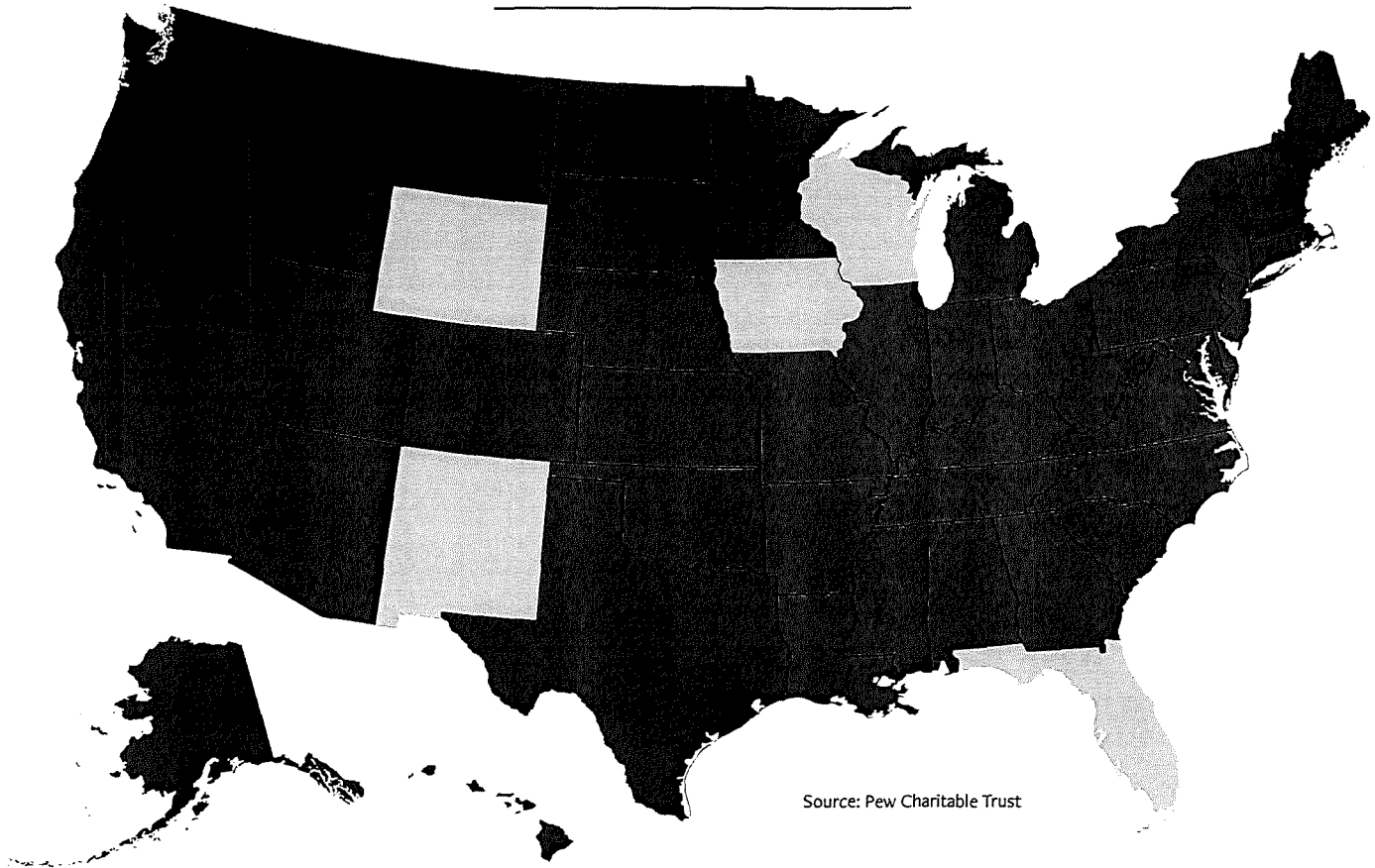
Assembly Bill (AB) 831 limits the potential length and reason for revocation of community supervision. Research in this area demonstrates that even short periods of incarceration have a measurable impact on future likelihood of new criminal activity. Recent data analysis by the Badger Institute and Professor Cecilia Klingele also shows that the plurality of prison admissions are for parole revocations. By limiting the reasons individuals on supervision can be revoked to those that present the most significant harm to the community and limiting the amount of time that a person can be re-incarcerated following revocation, AB 831 takes an important step towards increasing public safety and a more effective use of resources.

Both AB 830 and 831 contain provisions that implement a justice reinvestment system. Simply put, the savings realized through implementation of these policies are redirected back to enhance and expand evidence-based programming that reduces recidivism. This allows success to build on success. It also allows an increased funding for proven programs within the Department of Corrections which are currently under resourced such as substance abuse treatment and cognitive thinking programs.

These are concepts that are supported by evidence, research, and are proven to have an impact in practice when implemented in other states. Though time left in this legislative session is short, we hope that Assembly Bills 830 and 831 can serve as a starting point for this and more robust evidence-based reforms in the near future.

Criminal Justice Reform in America

45 States and Congress have enacted criminal justice reforms



Congressional Action: The First Step Act, 2018

The First Step Act allows eligible inmates with certain offenses who complete programming to earn time credit and earlier community placement, provides programs to reduce the risk that prisoners will reoffend upon release from prison, restricts the use of restraints on pregnant women, expands compassionate release, establishes a risk and needs assessment at the federal level Bureau of State Prisons system, and reforms the use of some mandatory minimum sentences. Bipartisan support, signed into law December 21st, 2018.

Texas and Michigan are two states with sustained, successful criminal justice reform.

Texas

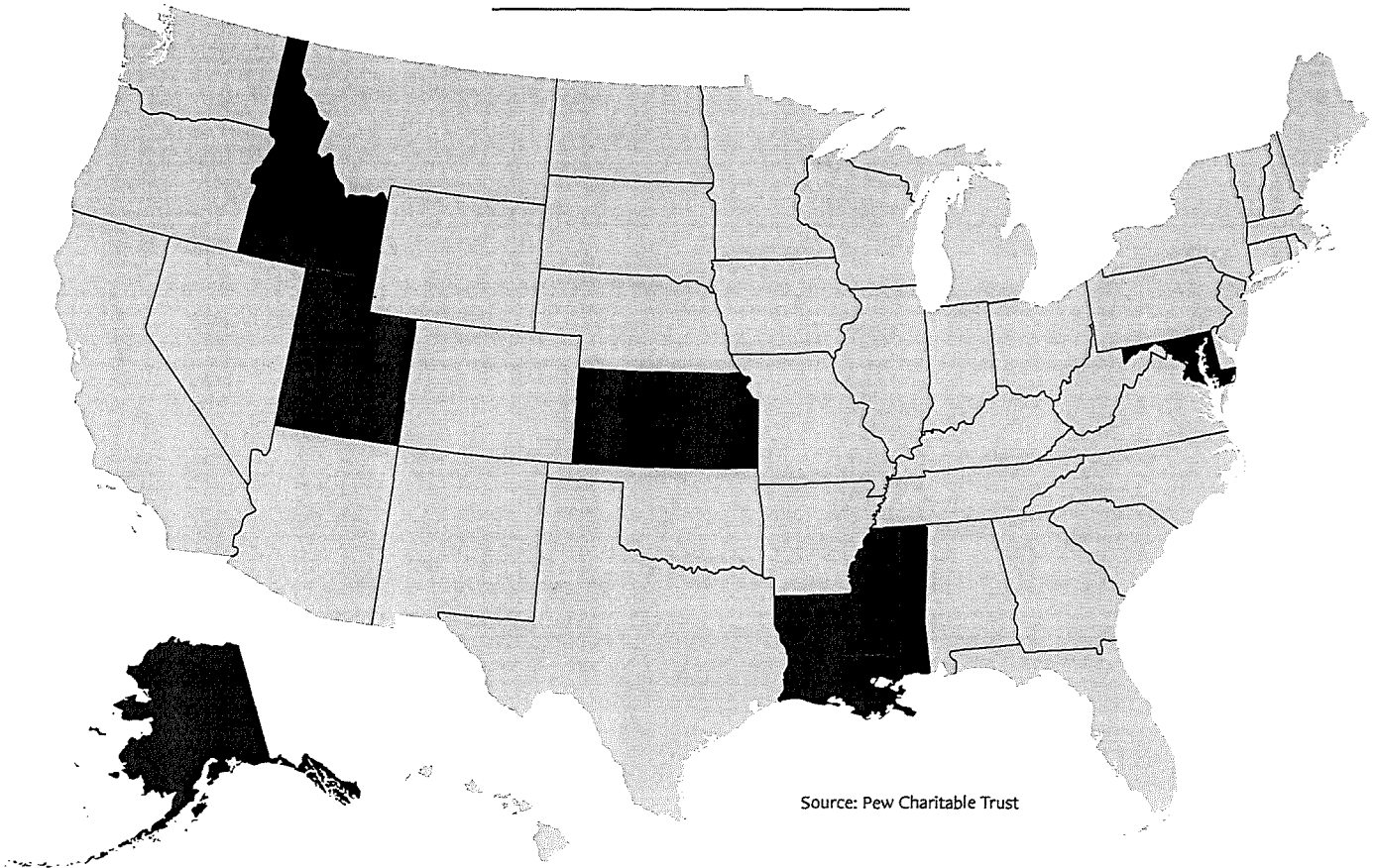
- Republican governor and Republican majorities in the House and Senate
- 2007–present
- Dozens of individual bills. Reduced probation terms, improved behavioral health interventions, authorized graduated responses for violations, among others
- Saved \$400 million annually, avoided building a new prison, instead closed four (to date)

Michigan

- Democratic governor and Republican majorities in the House and Senate; reforms also signed into law by former Republican Governor
- 2010–present
- Over a dozen individual bills. Expanded Earned Release, capped Crimeless Revocations Cap, reduced sentences for low risk individuals on parole, expanded eligibility for geriatric and medical parole
- Saved \$38 million in 2018–19, avoided building a new prison, closed multiple prison facilities

Criminal Justice Reform in Wisconsin

Seven states enacted similar reforms to address Crimeless Revocations, Earned Release, and Compliance Credit on Supervision



**Crime went *down*
in 6 of 7 states
after reform**



These seven states recently passed legislation addressing revocation, earned or early release from prison, and community supervision. No state-level justice system is identical, but these states have passed reforms very similar to those proposed in LRBs 4355 (Vocational Earned Release), 4356 (No Crimeless Revocation), and 4357 (Compliance Credit for Supervision). Several more states—more than 20—have enacted reforms similar to parts of the package of the three bills introduced in Wisconsin.

Louisiana and Maryland enacted very similar legislation and had the following experiences:

Louisiana

- Divided government: Democratic governor, Republican majority in both the House and Senate
- Legislation signed June 15, 2017
- Strengthened alternatives to revocation, reduced prison terms for low risk individuals, Removed barriers to successful re-entry
- Saved \$12.2 million in 2018. 70% reinvested in programming
- Statewide crime rate has fallen since enactment

Maryland

- Divided government: Republican governor, Democratic majority in both the House and Senate
- Legislation signed May 19, 2016
- Expanded Earned Release, limited incarceration for Crimeless Revocation, lowered intensity of supervision for low-risk individuals, expanded eligibility for compassionate release
- Saved \$8 million in 2018
- Statewide crime rate has fallen since enactment



Louisiana's 2017 Criminal Justice Reforms

The most incarcerated state changes course

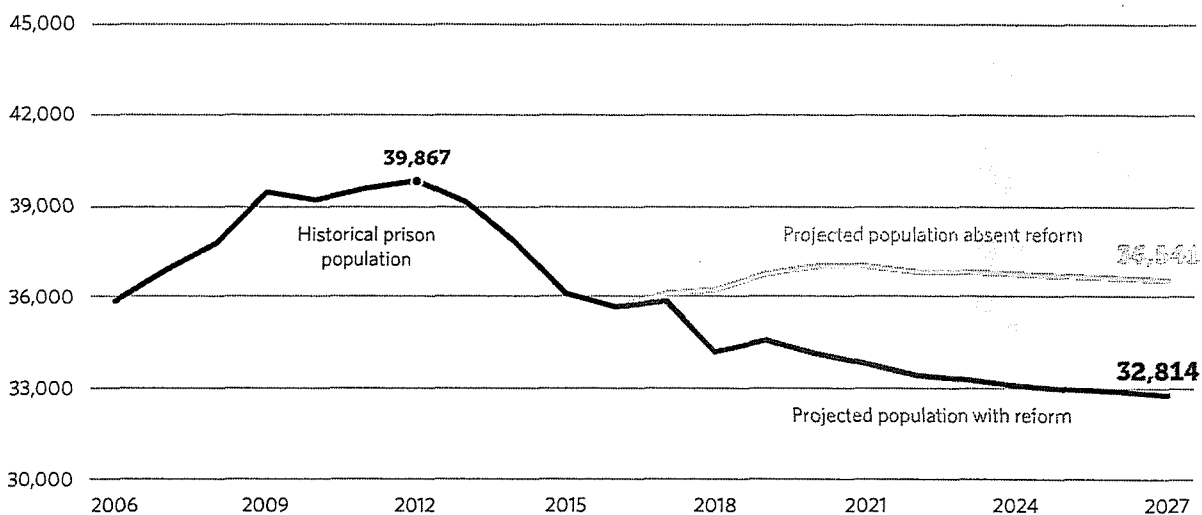
Overview

On June 15, 2017, Louisiana Governor John Bel Edwards (D) signed the most comprehensive criminal justice reform in state history. Six Republicans, two Democrats, and one independent authored the bipartisan package of 10 bills, which should enable Louisiana to shed its long-held status as the state with the nation's highest imprisonment rate by the end of 2018. Their efforts received widespread support, earning endorsements from the state district attorneys association, business and faith leaders, and diverse coalitions of advocates and community members. The measures steer people convicted of less serious crimes away from prison, strengthen incarceration alternatives, reduce prison terms for those who can be safely supervised in the community, and remove barriers to re-entry. Over 10 years, the reforms are projected to reduce the prison and community supervision populations by 10 and 12 percent, respectively. Lawmakers also committed to reinvest 70 percent of the estimated \$262 million savings in local programs that reduce reoffending and support crime victims.

Figure 1

Reforms Expected to Cut Prison Population 10 Percent

Number of Louisiana prisoners projected with and without changes in the law



Source: Louisiana Justice Reinvestment Task Force

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Bill Sponsors

A bipartisan group of lawmakers sponsored 10 bills that became Louisiana's comprehensive criminal justice reform package. (See pages 10-18 for more information.)



Senator Dan Claitor (R):

S.B. 16 permits most people originally sentenced to life as juveniles to be considered for parole after 25 years in prison.



Representative Walt Leger (D):

H.B. 489 mandates the collection of data to monitor the reforms and requires the state to redirect 70 percent of corrections savings to community-based prison alternatives, victim services, and recidivism-reduction programs in state prisons and parish jails.



Senator Daniel Martiny (R):

S.B. 139 broadens eligibility for parole and other prison release provisions; expands eligibility for probation; reduces maximum probation terms; and adopts evidence-based sanctions and incentives to improve community supervision outcomes.



Representative Julie Emerson (R):

H.B. 519 simplifies the occupational licensing process for state residents with criminal convictions.



Senate President John Alario (R):

S.B. 220 and S.B. 221 reduce penalties for drug, property, and other nonviolent crimes and modify habitual-offender penalties to make them comparable to those in other states.



Representative Joseph Marino (I):

H.B. 680 temporarily suspends child support obligations for inmates incarcerated for more than six months.



Representative Stephen Dwight (R):

H.B. 116 streamlines registration for victim notification and ensures that victims can request safety measures as a condition of a prisoner's release.



Representative Helena Moreno (D):

H.B. 681 lifts the ban on public assistance benefits for people with drug convictions.



Representative Tanner Magee (R):

H.B. 249 tailors criminal justice fines and fees to a defendant's ability to pay by creating a payment plan and debt forgiveness incentive for those facing financial hardship.

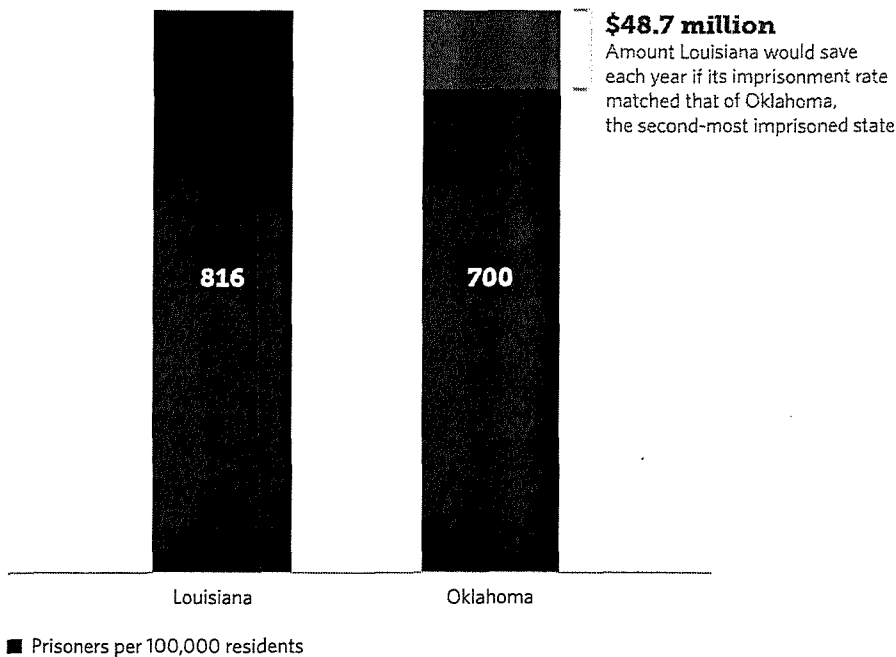
Background

Louisiana's prison population peaked in 2012 at roughly 40,000, a fivefold increase since the late 1970s, growing much faster than the state's overall population.¹ Between 2012 and 2015, statutory and administrative changes that expanded evidence-based correctional practices helped lower the number of prisoners by 9 percent while crime also declined.² Even with this reduction, however, Louisiana still had more prisoners per capita than any other state and nearly double the national average.³

These high levels of imprisonment came at great cost to Louisiana taxpayers. In fiscal year 2017, lawmakers appropriated \$625 million for adult corrections—the state's third-largest expenditure behind education and health care.⁴ The consequences of these high costs can be best understood by comparing Louisiana with other states. For example, had Louisiana's 2014 imprisonment rate been the same as Oklahoma's—the nation's second-most-imprisoned state—Louisiana would have spent roughly \$49 million less annually.⁵ (See Figure 2.) Highlighting the burden of being number one in imprisonment, Gov. Edwards and Department of Corrections Secretary James LeBlanc called for reforms that would “reduce the state prison population significantly with the modest goal of not having the highest incarceration rate in the country.”⁶

Figure 2

Taxpayers Incurred High Cost of Being in Most Incarcerated State Imprisonment rates and associated cost differential, Louisiana and Oklahoma 2014



Note: Louisiana pays \$24.39 per capita per diem to house state prisoners in local jails.

Sources: U.S. Department of Justice, Bureau of Justice Statistics; Louisiana Revised Statutes 15:824

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Louisiana Justice Reinvestment Task Force

In 2015, the state Legislature created the Louisiana Justice Reinvestment Task Force to develop recommendations for sentencing and corrections policies and practices that would improve public safety and reduce spending. The task force consisted of legislators, judges, prosecutors, defense attorneys, law enforcement officials, the corrections secretary, and the state sentencing commission chair, as well as faith leaders and victim and community advocates. It held public meetings, town halls, and victim advocate roundtables and formed subgroups to generate policy options for sentencing, community corrections, and budgetary issues. The Department of Corrections and the courts contributed staff support, and The Pew Charitable Trusts and the Crime and Justice Institute provided nonpartisan data analysis and technical assistance as part of the Justice Reinvestment Initiative, a public-private partnership between Pew and the U.S. Department of Justice's Bureau of Justice Assistance.

Task force members

Secretary James LeBlanc (Chair), Louisiana Department of Corrections

Sheriff Michael Cazes, West Baton Rouge

Senator Dan Claitor, Louisiana state Senate

Flozell Daniels, Foundation for Louisiana

Public Defender James Dixon, Louisiana Public Defender Board

District Attorney Bofill Duhé, 16th Judicial District

Judge Bonnie Jackson, 19th Judicial District Court

Chief Justice Bernette Johnson, Louisiana Supreme Court

Judge Lori Landry, 16th Judicial District Court

Representative Terry Landry, Louisiana House of Representatives

Representative Walt Leger, Louisiana House of Representatives

Representative Sherman Mack, Louisiana House of Representatives

Senator Daniel Martiny, Louisiana state Senate

Reverend Gene Mills, Louisiana Family Forum

Judge Laurie White, Louisiana Sentencing Commission

“[T]he passage of the sprawling 10-bill incarceration package ... is the boldest change of direction for Louisiana since the reform of New Orleans public schools after Hurricane Katrina.”

The Advocate, “Our Views: At Last, A Real Shot at Prison Reform” (editorial, June 7, 2017)

Key findings

The task force identified six principal factors that contributed to Louisiana's highest-in-the-nation imprisonment rate.

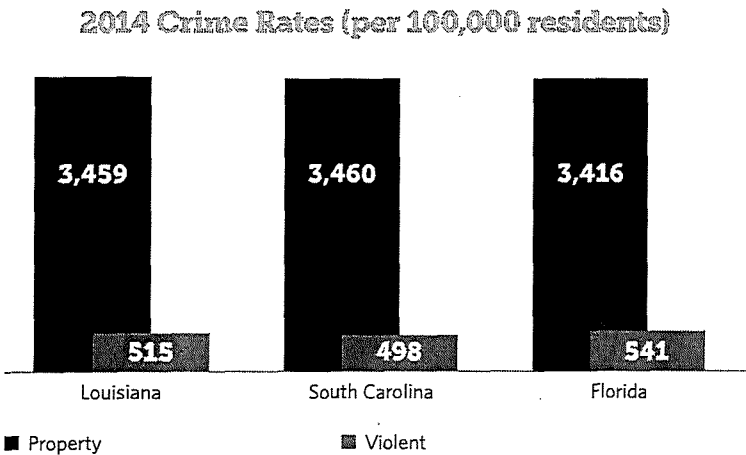
Unusually high admissions for nonviolent crimes

Although Louisiana's crime rates were nearly identical to South Carolina's and Florida's, the state was sending people to prison for nonviolent crimes at twice and nearly three times the rates of those states, respectively.⁷ (See Figure 3.) The 10 most common convictions resulting in prison sentences in Louisiana were nonviolent, led by drug possession.⁸

Figure 3

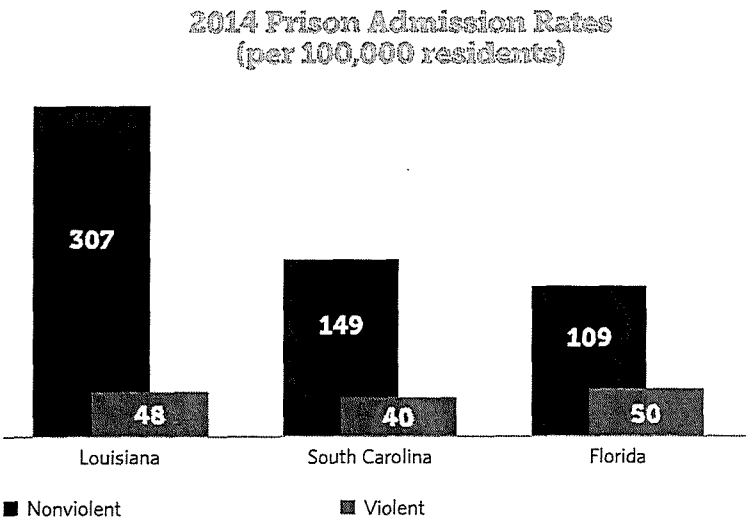
Louisiana Sent More People to Prison for Nonviolent Offenses Than Comparable States Did

2014 crime and prison admission rates for Louisiana, South Carolina, and Florida



Sources: Federal Bureau of Investigation, Uniform Crime Reports, "Crime in the United States, 2014"; South Carolina Department of Corrections, "South Carolina's Prison System—Report to the Sentencing Reform Oversight Committee" (Nov. 23, 2015); Florida Department of Corrections, "General Characteristics of FY 2013-14 Admissions" (2014); Louisiana Department of Corrections

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Longer prison terms and narrower parole eligibility

The task force found that Louisiana inmates were entering prison with longer sentences and fewer opportunities to earn release than those admitted five to 10 years earlier. Between 2010 and 2015, average sentence lengths for common nonviolent crimes increased by 10 months.⁹ Further, the number of inmates who had been in prison for at least 10 years increased by more than 2,400 between 2006 and 2015, accounting for nearly 1 in 5 state prisoners by the end of that decade. In addition, nearly 5,000 individuals were serving life sentences without the possibility of parole, many of whom would have been eligible for parole in other Southern states, including Alabama, Arkansas, Georgia, Mississippi, and Texas.¹⁰

Meanwhile, the Legislature adopted 80 new restrictions on parole eligibility between 2006 and 2015. Two-thirds of those new rules applied to nonviolent crimes.¹¹

Large and growing number of people supervised in the community

Long supervision terms—stretching well beyond the period when probationers and parolees were most likely to reoffend—contributed to caseloads averaging 139 people per officer.¹² At the end of 2015, Louisiana’s probation and parole officers supervised more than 70,000 people, an increase of more than 10,000 in just 10 years. The task force found that these large caseloads led to high failure rates, which in turn accounted for most of Louisiana’s annual prison admissions; that sanctions for violating supervision conditions were inconsistently applied; and that incentives for compliance were inadequate.¹³

“ The business community is committed to being part of the solution by expanding job opportunities and hiring rehabilitated inmates, but lawmakers must take the first step by casting their votes in favor of reform.”

Stephen Waguespack, president and CEO, Louisiana Association of Business and Industry
(guest column, *The Advocate*, May 24, 2017)

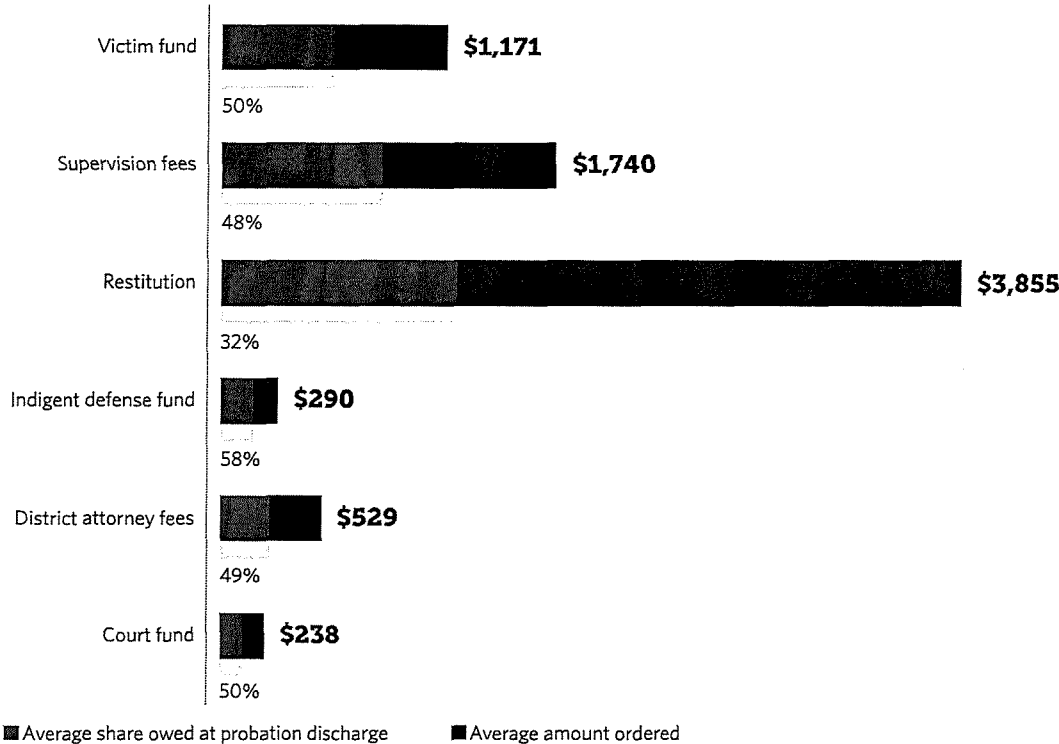
Significant criminal justice debts and other barriers to successful re-entry

Beyond requirements that people convicted of crimes pay restitution to crime victims, plus fines collected as a part of their punishment, Louisiana’s statutes authorized the imposition of hundreds of additional fees on those convicted of crimes. These include payments to cover the costs of law enforcement, prosecution, court services, and supervision as well as local jurisdiction surcharges and offense-specific charges for DWIs, drug-related crimes, and other offenses.¹⁴ Although defendants typically agree to fines, fees, and costs as part of plea agreements, the court in most cases was not making determinations regarding their financial ability to meet those obligations.¹⁵ Louisiana’s statutes offered no guidance on the use of waivers for criminal justice debt, nor did they address payment plans or debt forgiveness.¹⁶

The task force found that on average, felony probationers still owed a third of their restitution amounts and half of their other costs and fees at the end of their supervision terms. (See Figure 4.) Because many people with criminal convictions have difficulty finding a job and do not have a reliable income, their court-ordered payments can accrue and harm their financial stability.¹⁷ Further, the state’s penalties for failure to pay these debts in full,

including incarceration and suspension of a driver's license, were compounding the already substantial barriers to re-entry, such as restrictions on employment and public assistance and child support arrears from periods of incarceration.¹⁸

Figure 4
Fees Exceeded What Average Louisiana Probationers Could Afford
 Amounts ordered and owed at discharge, 2015



Note: The data are limited to financial obligations tracked by the Louisiana Department of Probation and Parole. Average dollar amounts include only those individuals ordered to pay the fees specified in each category above.

Source: Louisiana Department of Corrections

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“Financial obligations in excess of what an offender can reasonably pay undermine the primary purpose of the justice system which is to deter criminal behavior and encourage compliance with the law. Financial obligations that cause undue hardship on the offender should be waived, modified, or forgiven.”

Louisiana H.B. 249 (2017 regular session)

Budgetary decisions inconsistent with long-term goals

In the years before Louisiana's justice reinvestment process, the Department of Corrections had achieved measurable savings by investing in programs in state prisons to *reduce recidivism and help prisoners make the transition back into the community*.¹⁹ Lawmakers did not, however, fund sufficient programming for state inmates housed in parish jails or offer local governments financial incentives to develop and expand community-based diversion programs, such as specialty courts and treatment services for substance use disorders, that could lessen the flow of people into the state prison system.

The state had also dramatically scaled back behavioral health services. Between 2012 and 2015, the number of adults served by *community programs* was cut more than 40 percent, from about 38,000 to just over 21,000. Meanwhile, 13 percent of state inmates in 2016 had serious mental illness (about three times the rate in Louisiana's general population), and 70 percent had a substance use disorder (*roughly eight times the rate among the general population*).²⁰

Inadequate services and supports for crime victims

In roundtable discussions and public testimony, crime victims and their advocates called for increased transparency in and access to the justice system, noting inefficiencies in the state's notification system and the lack of a mechanism to allow victims to offer input on parole conditions that could affect their safety.²¹ They also asked that restitution be prioritized over other criminal justice fines and fees and recommended more state investment in safety planning, trauma-informed services, and shelters and transitional housing.

“ We can improve public safety and prevent others from experiencing ... the anguish that far too many families in our state experienced as the result of the violence that plagues our communities. We can do this while reducing our reliance on incarceration, building a stronger system of community accountability, and promoting healing for victims of violent crimes and their families.”

Deborah Cotton, victim advocate (op-ed, *The Advocate*, March 21, 2017)

Louisiana Voters Prioritize Alternatives to Incarceration

High levels of public support for criminal justice reform were critical to the enactment of Louisiana's new laws. Research by a bipartisan polling team revealed that state voters favored alternatives to imprisonment that hold people accountable for criminal behavior, enhance public safety, and save taxpayer dollars.

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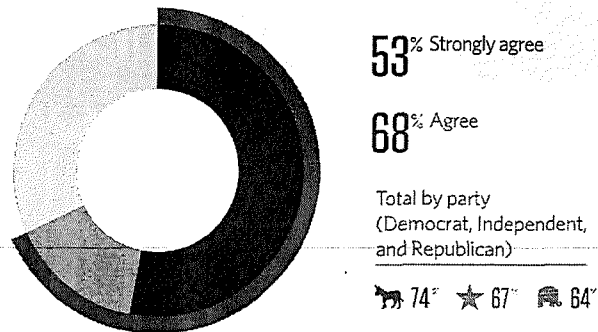
The survey of 600 likely voters, commissioned by Pew and conducted in March 2017, found that:

- 3 in 4 voters supported eliminating mandatory minimum sentences and giving judges more discretion over criminal penalties.
- Nearly 2 in 3 believed that fewer people should be sent to prison for nonviolent crimes and that eligibility for alternatives such as probation and parole should be expanded.
- Nearly 2 in 3 voters favored reducing penalties for lower-level drug offenses while maintaining those for serious drug trafficking.
- 3 in 4 thought most noncriminal probation and parole violations did not warrant incarceration and that other sanctions, such as community service, would be appropriate.
- Nearly 9 in 10 voters favored tying the amount of monthly criminal justice fines and fees to a defendant's income.

Figure 5

Across Party Lines, Louisiana Voters Prioritized Cutting Recidivism Over Length of Prison Terms

Participants were asked whether they agreed with the following statement: "It does not matter whether a nonviolent offender is in prison 15 or 20 or 24 months. What really matters is that ... when these offenders do get out, they are less likely to commit another crime."



Source: Telephone survey of 600 voters representing the likely 2018 Louisiana electorate conducted for The Pew Charitable Trusts by the Mellman Group and Public Opinion Strategies between March 27 and 30, 2017

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* The Mellman Group and Public Opinion Strategies conducted the survey March 27-30, 2017. The poll had a margin of error of plus or minus 4.0 percentage points at the 95 percent confidence level, and higher for subgroups. The top line can be found at: http://www.pewtrusts.org/-/media/assets/2018/02/louisiana_statewide_survey_2017.pdf

Comprehensive legislative reform package

In March 2016, the task force presented Gov. Edwards and the Legislature with 21 consensus recommendations, which became the basis of a package of 10 bills. After extensive vetting in legislative committees and negotiations with the Louisiana District Attorneys Association, all 10 bills passed with strong bipartisan majorities. The governor signed them into law June 15, 2017.



Governor John Bel Edwards signs the 10 justice reinvestment bills June 15, 2017.

The legislation has four primary objectives:

Prioritize prison space for those who pose a public safety threat

To steer people with less serious offenses away from prison and reduce the length of imprisonment for those who can be safely supervised in the community, the law:

- **Expands probation and other prison alternatives.**
 - Establishes probation eligibility for third-time nonviolent felonies and certain first-time violent crimes.
 - Broadens eligibility for Louisiana's substance abuse probation program, which combines supervision with drug treatment and counseling, to crimes other than drug possession.
 - Opens drug courts and substance abuse probation to those convicted of certain violent crimes.

- **Tailors drug sentences by weight.**
 - Reduces maximum terms of incarceration for drug possession involving small amounts of controlled substances.
 - Creates penalty tiers for drug sales and manufacturing according to the weight of the substances involved in the offense.
- **Reduces habitual-offender penalties.**
 - Reduces mandatory minimum sentences for most second and third offenses and grants judges discretion to disregard minimum sentences outlined in the habitual-offender statute if they would be cruel and unusual.
 - Eliminates the possibility of a life sentence for a fourth nonviolent conviction.
 - Shortens the “cleansing period”—the time before a felony can no longer be used to enhance a subsequent penalty—for nonviolent offenses.

“ We’re hoping that, with these changes, we can generate some savings, build up these services, and lower our incarceration rate safely. That’s why we’re behind it.”

E. Pete Adams, executive director, Louisiana District Attorneys Association
(news conference, May 16, 2017)

Table 1

Louisiana Reforms Lower Drug Penalties and Habitual-Offender Sentences

Example: Penalties for cocaine offenses under previous and current laws, by conviction type and number

Crime	Law	Standard penalty	Sentence ranges under the habitual-offender statute		
			2nd offense	3rd offense	4th offense
Cocaine possession < 2 grams	Prior law	0-5 years	<u>2.5</u> -10 years	<u>3.3</u> -10 years	<u>20 years</u> -life
	Current law	0-2 years	<u>8 months</u> -4 years	1-4 years	<u>20 years</u>
Cocaine sale > 4 grams	Prior law	<u>2</u> -30 years	<u>15</u> -60 years	<u>20</u> -60 years	<u>20 years</u> -life
	Current law	1-10 years	<u>3.3</u> -20 years	<u>5</u> -20 years	<u>20 years</u>

Note: This table represents changes to drug penalties and to the formula for enhancing sentence ranges under the habitual-offender statute. Underlined numbers reflect mandatory minimum sentences. The sentence ranges in this table apply only to individuals with less serious, nonviolent criminal histories.

Sources: Senate Bills 220 and 221 (Louisiana Reg. Session 2017); Louisiana Revised Statutes 15:529.1, 40:966-970

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- **Simplifies property crime statutes and raises the felony theft threshold.**
 - Eliminates numerous specialty crime categories that are duplicative of other theft, property damage, and burglary offenses.
 - Creates a single penalty structure for most property crimes and raises to \$1,000 the dollar value at which theft is considered a felony.
 - **Reduces penalties for other crimes and recategorizes certain offenses as nonviolent.**
 - Brings minimum and maximum penalties for various crimes more in line with those in other states and removes certain offenses from the violent crimes list.
 - *Creates a task force to categorize felony offenses.*
 - Establishes a working group to develop a felony classification system based on the seriousness of offenses that would create standard sentencing and release provisions.
 - **Expands parole eligibility for some violent offenses.**
 - Allows parole consideration for those sentenced for violent crimes who have served 65 percent of their sentences and have no prior violent convictions (see Table 2) and those who have served 75 percent and have one prior violent conviction, unless they are otherwise ineligible for parole consideration.
-

“ Last month, Louisiana passed one of the most ambitious criminal-justice reform packages in the country—10 new laws that make important changes to everything from drug sentences, parole and community supervision to re-entry and victims’ rights. It would have been remarkable coming from any state. It’s historic coming from Louisiana.”

The New York Times, “Louisiana’s Big Step on Justice Reform” (editorial, July 19, 2017)

“ Louisiana is on the verge of a wide-ranging criminal justice overhaul aimed at curbing the highest incarceration rate in America.”

The Wall Street Journal, “Change and Culture Collide in America’s Prison Capital” (May 25, 2017)



Grace has been extended to each of us. Now, within the criminal justice system, we must consider intentionally extending that same grace to the eligible and willing residents of our jail and prison system."

Gene Mills, president, Louisiana Family Forum (op-ed, *The Advocate*, Oct. 4, 2016)

Table 2

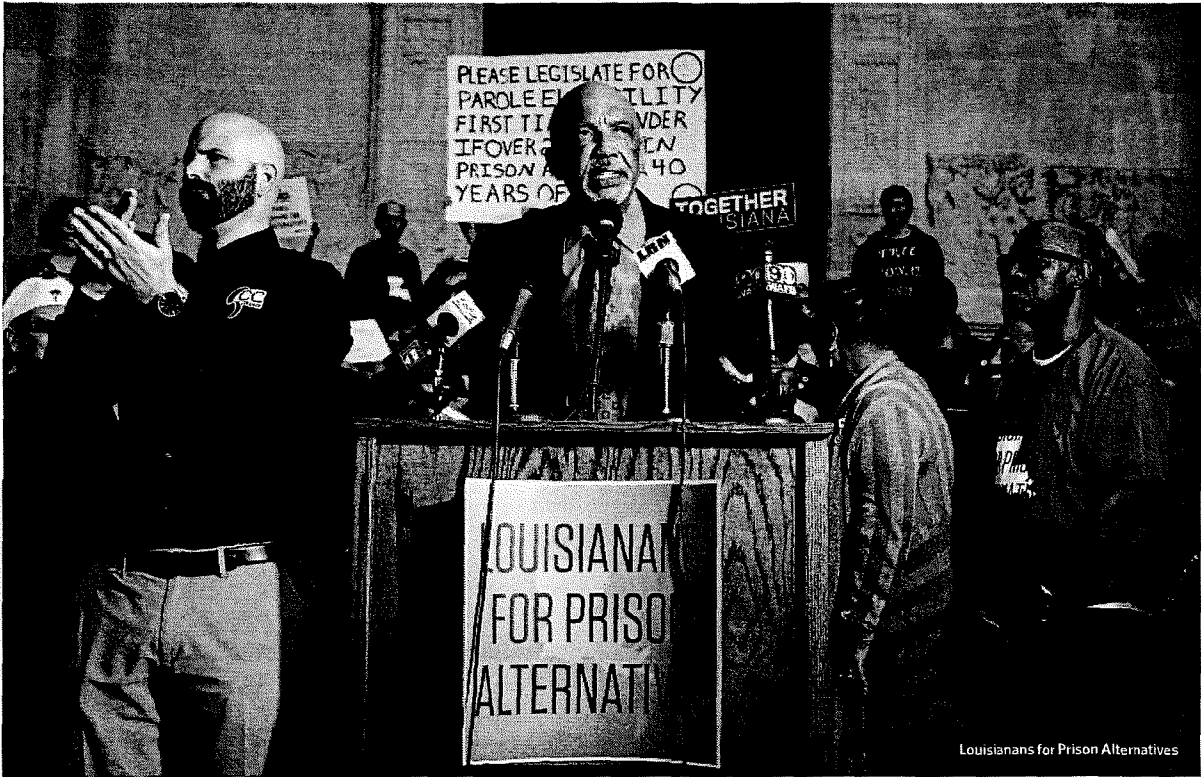
Louisiana Expanded Parole and 'Good Time' Eligibility

Percentage of sentence required before consideration for release under previous and current law, by conviction type and prior history

		Percentage of sentence for parole eligibility		Percentage of sentence for "good time" release eligibility	
		Prior law	Current law	Prior law	Current law
Nonviolent conviction					
Prior convictions	None	25%	25%	40%	35%
	1 nonviolent	33%	25%	40%	35%
	2 or more nonviolent	Ineligible	25%	40%	35%
	1 violent	33%	25%	40%	35%
	2 or more violent	Ineligible	25%	40%	35%
Violent conviction					
Prior convictions	None	75%	65%	85%	75%
	1 nonviolent	75%	65%	85%	75%
	2 or more nonviolent	Ineligible	65%	85%	75%
	1 violent	75%	75%	Ineligible	Ineligible
	2 or more violent	Ineligible	Ineligible	Ineligible	Ineligible

Sources: Senate Bill 139 (Louisiana Reg. Session 2017); Louisiana Revised Statutes 15:571.3 and 574.4

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State Representative Terry Landry (D) speaks at a rally for criminal justice reform at the Louisiana State Capitol in Baton Rouge on April 20, 2017.

- **Streamlines parole release for nonviolent crimes.**
 - Expands parole eligibility to those who have served 25 percent of their sentences for nonviolent crimes, and authorizes their release without a hearing when certain conditions are met. (See Table 2.)
- **Institutes a medical treatment furlough policy.**
 - Authorizes the release and transfer of prisoners with significant health and mobility issues to off-site medical facilities and provides for parole supervision for the remainder of their sentences.
- **Establishes parole consideration for some of Louisiana's longest-serving prisoners.**
 - Creates retroactive and prospective parole eligibility for most people who have served 25 years of life sentences imposed for crimes they committed as juveniles.
 - Makes individuals convicted of second-degree murder between 1973 and 1979 parole eligible.
- **Improves crime victim notification and protections.**
 - Allows victims to submit a "re-entry statement" to the parole board that can include a request for proximity and contact restrictions for the victims' protection.
 - Requires the development of an electronic victim registration and notification system.

Strengthen community supervision

To expand the use of evidence-based community supervision practices that reduce recidivism, the law:

- **Focuses probation and parole officers' time on high-risk periods.**
 - Reduces maximum probation terms for nonviolent crimes from five to three years to concentrate officers' time on the period when those under supervision are most likely to fail.
- **Provides incentives for probationers and parolees to meet their supervision conditions.**
 - Establishes "earned compliance credits" for nonviolent crimes, a policy that awards 30 days off of community supervision terms for every full calendar month of compliance.
- **Requires that successfully completed probation time for nonviolent convictions be credited toward prison sentences imposed for probation violations.**
 - Reduces the time a person revoked from probation serves behind bars by deducting time spent in compliance with supervision. This change was modeled on a policy already in place for those on parole.
- **Establishes swift, certain, and proportional sanctions for supervision violations.**
 - Gives probation officers blanket authority to use administrative sanctions, such as increased reporting, community service, and short jail stays, for probationers with nonviolent convictions who fail to comply with the terms of their supervision. Similar powers had already been granted for all parolees.
 - Prohibits the use of jail as a sanction for first and second low-level violations.
 - Modifies the use of jail sanctions under Acts 402 and 299, which were adopted in 2007 and 2015, respectively, and allow for alternatives to complete revocation of community supervision:²²
 - Authorizes an unlimited number of jail sanctions for probationers and parolees.
 - Caps stay at 15, 30, and 45 days for the first, second, and subsequent sanctions, respectively. (See Table 3.)
 - Broadens the categories of misconduct that can be addressed with Act 402/299 jail sanctions.
 - Expands the pool of violations for which officers can respond with administrative sanctions.

Table 3

Louisiana Made Intermediate Sanctions More Proportional to Violations

Jail terms under previous and current law, by supervision type and sanction

Act 402/Act 299 sanction number	Prior law		Current law
	Probation	Parole	Probation and parole
First	90 days	90 days	15 days
Second	Ineligible	120 days	30 days
Third or more	Ineligible	180 days	45 days

Source: Senate Bill 139 (Louisiana Reg. Session 2017); Louisiana Revised Statutes 15:574.9; Louisiana Code of Criminal Procedure section 900

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Reducing the Footprint of Community Supervision

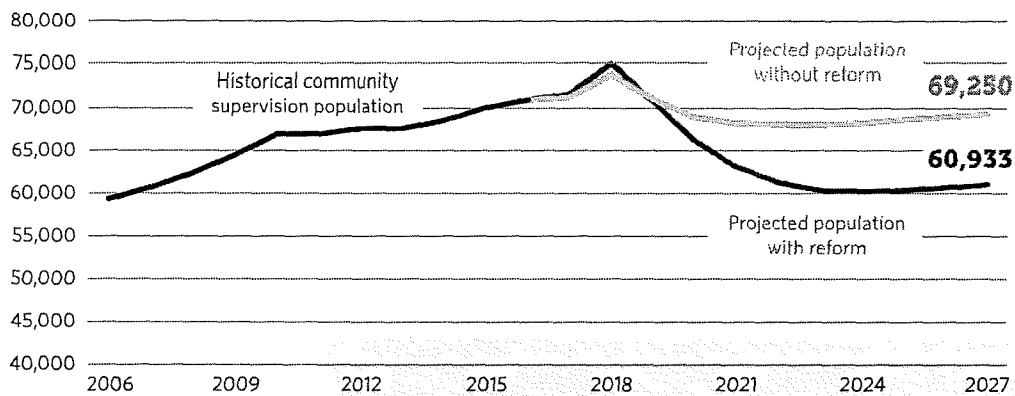
Because parolees and probationers are most likely to violate their conditions or commit new crimes during the first year of supervision, the public safety benefit of monitoring them after that time drops significantly.^{*} Despite research that supports front loading resources during this early phase, average probation and parole terms in Louisiana stretched well beyond that high-risk period, contributing to a swelling supervision population and high caseloads: In 2016, the average officer supervised 139 individuals.[†] In addition, the state's court and corrections system lacked a consistent process for discharging those who had been successful.

By capping probation terms and adopting a system of earned compliance credits, Louisiana aimed to focus its limited resources on the highest-risk stage and reserve extended periods of supervision for those who fail to comply with their conditions. The Louisiana Department of Corrections and the Justice Reinvestment Task Force estimate that these statutory changes will reduce the community supervision population by 12 percent by 2027, dropping average caseloads to 119 cases per officer.

Figure 6

Louisiana Projects 12% Drop in Community Supervision Population

Estimated number of probationers and parolees 2017-27, with and without reform



* National Research Council, "Parole, Desistance From Crime, and Community Integration" (2007); Ryken Grattet, Joan Petersilia, and Jeffrey Lin, "Parole Violations and Revocations in California" (2008); The Pew Charitable Trusts, "Maximum Impact: Targeting Supervision on Higher-Risk People, Places, and Times" (2009).

† Louisiana Department of Corrections.

Source: Louisiana Justice Reinvestment Task Force

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“ We shouldn't incarcerate people just because they're poor. Or just because they're addicted. Or just because they don't have a home. But we've done that for way too long.”

Craig Webre, sheriff, Lafourche Parish (op-ed, *The Times-Picayune*, April 23, 2017)

Eliminate barriers to re-entry

To smooth prisoners' re-entry into the community and the workforce and to promote their long-term success and financial stability, the law:

- **Tailors criminal justice fines and fees to a defendant's ability to pay.**
 - Requires courts to determine ability to pay fines, fees, and restitution before ordering and enforcing them in felony cases. If payment of the full amount would cause hardship, the court must waive the obligations or create a payment plan.
 - Matches monthly payments to each defendant's wage for an eight-hour workday, ensuring that the financial burden is adjusted according to the amount of money earned and requires that half of each payment go toward victim restitution when ordered rather than justice system operations.
- **Creates a debt forgiveness incentive to reward consistent payment.**
 - Forgives remaining debt for those who make regular monthly payments for 12 months or half the supervision term, whichever is longer.
- **Modifies penalties for failure to pay.**
 - Limits penalties such as incarceration and driver's license suspension to those cases in which a person was able but refused to pay fines and fees.
 - Prohibits a court from extending a probationary period for the purpose of collecting unpaid financial obligations, except for a single six-month extension for victim restitution, under certain circumstances.
- **Suspends child support during incarceration.**
 - Requires temporary suspension of child support orders for those incarcerated for 180 days or more in order to bolster inmates' long-term financial stability and help ensure consistent payment of child support over time. Payment orders resume after release.
- **Simplifies the application process for professional licenses.**
 - Eliminates waiting periods and provisional licensure for those with nonviolent and non-sex offense convictions who seek a professional license.
- **Lifts restrictions on public assistance programs.**
 - Eliminates constraints that had prevented people with drug convictions from getting public assistance through the Supplemental Nutrition Assistance and the Temporary Assistance for Needy Families programs.

Reinvest prison savings to reduce recidivism, support victims

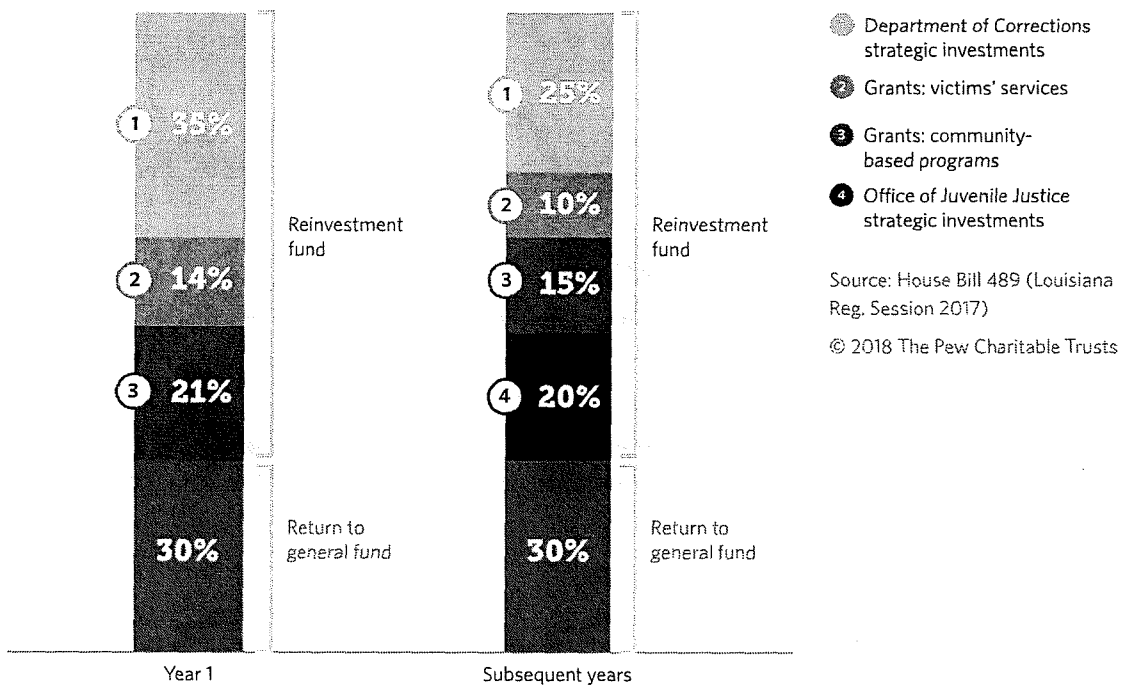
To reduce reoffending, provide services for crime victims, and save taxpayers money, the law:

- **Returns to the Louisiana general fund 30 percent of the annual savings arising from the reforms.**
 - Requires the Department of Corrections to calculate and report the annual surplus budgeted for housing state inmates as population and costs decline and treats 30 percent of that surplus as net savings to the state.
- **Reinvests 70 percent of the savings in recidivism reduction and victim support programs.**
 - Obliges the state to carry over 70 percent of the surplus to the following year's budget for programs and services, including:
 - Incentive grants to parishes, judicial districts, and nonprofit community partner organizations to expand evidence-backed prison alternatives.
 - Competitive grants for victims' services, treatment, and transitional housing as well as victim-focused training for justice system professionals.
 - Targeted investments in community supervision and recidivism reduction programming in prisons, jails, and work release facilities.
 - Juvenile justice initiatives and programs.

Figure 7

Corrections Savings Will Support Recidivism Reduction and Victim Programs

Expected distribution of reinvestment funds in first and subsequent years after reform





Flozell Daniels Jr., president and CEO of Foundation for Louisiana, speaks at a rally April 20, 2017.

Supporting organizations

Local organizations

- Baton Rouge Area Chamber
- Baptist Community Services
- Broussard Chamber of Commerce
- Chamber Southwest Louisiana
- Crowley Chamber of Commerce
- Foundation for Louisiana
- Greater New Orleans Inc.
- H.O.P.E. Foundation
- Jefferson Chamber of Commerce
- Louisiana Association of Business and Industry
- Louisiana Center for Children's Rights
- Louisiana Conference of Catholic Bishops
- Louisiana Department of Corrections
- Louisiana District Attorneys Association
- Louisiana District Judges' Association (supported nine of the 10 bills)
- Louisiana Family Forum
- Louisiana Interchurch Conference
- Louisiana State Bar Association
- Louisianans for Prison Alternatives
- New Orleans Chamber of Commerce
- One Acadiana
- The Pelican Institute
- Right on Crime, Louisiana
- Smart on Crime, Louisiana
- Vera Institute of Justice, New Orleans
- Voices of the Experienced

National organizations

- American Civil Liberties Union
- American Conservative Union Foundation
- Americans for Tax Reform
- Drug Policy Alliance
- Families Against Mandatory Minimums
- FWD.us
- Law Enforcement Leaders
- Prison Fellowship
- Right on Crime
- Southern Poverty Law Center
- U.S. Justice Action Network



I am not proud of our title as the most incarcerated state. But that's going to be part of our history rather than our future."

Gov. John Bel Edwards, signing the justice reinvestment bills

Acknowledgments

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Endnotes

- 1 Unless otherwise noted, the Louisiana Justice Reinvestment Task Force's technical assistance staff analyzed all figures cited in this report using data from the Louisiana Department of Corrections and the U.S. Department of Justice, Bureau of Justice Statistics.
- 2 *Ibid.*
- 3 *Ibid.*
- 4 State of Louisiana, "Governor's Executive Budget, Fiscal Year 2016-17" (2016) http://www.doa.la.gov/opb/pub/FY17/FY17_Executive_Budget.pdf.
- 5 See La. R.S. 15:824 for local housing per diem rate for state inmates, <http://www.legis.la.gov/Legis/Law.aspx?d=79341>.
- 6 Letter from Gov. Edwards and Secretary LeBlanc to Louisiana Justice Reinvestment Task Force members (Jan. 13, 2017).
- 7 Crime rates and population figures from the Federal Bureau of Investigation, Uniform Crime Reports, "Crime in the United States, 2014," <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014>. Admissions rates from the South Carolina Department of Corrections, "South Carolina's Prison System—Report to the Sentencing Reform Oversight Committee" (Nov. 23, 2015); Florida Department of Corrections, "General Characteristics of FY 2013-14 Admissions" (2014), http://www.dc.state.fl.us/pub/annual/1314/stats/ia_genadm.html; and Pew analysis of data from the Louisiana Department of Corrections.
- 8 *Ibid.* Violent crimes are defined in Louisiana Revised Statutes 14:2(B).
- 9 The Department of Corrections and task force technical assistance staff reviewed 800 randomly selected case files focused on prisoners released in 2010 and 2015 who had been admitted to prison for a primary offense that was one of the 16 most common nonviolent crimes at admission.
- 10 Louisiana Department of Corrections; for parole eligibility in other Southern states, see the Sentencing Project, "Life Goes On: The Historic Rise in Life Sentences in America" (2013), <http://sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf>.
- 11 Louisiana Department of Corrections, "PED Hot List" (2015 listing), available upon request from Department of Corrections.
- 12 National Research Council, "Parole, Desistance From Crime, and Community Integration" (2008), <https://doi.org/10.17226/11988>; Ryken Grattet, Joan Petersilia, and Jeffrey Lin, "Parole Violations and Revocations in California" (2008), <https://www.ncjrs.gov/pdffiles1/nij/grants/224521.pdf>; The Pew Charitable Trusts, "Maximum Impact: Targeting Supervision on Higher-Risk People, Places, and Times" (2009), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2009/07/17/maximum-impact-targeting-supervision-on-higherrisk-people-places-and-times>; Pete Fremin, director of probation and parole, Louisiana Department of Corrections, pers. comm.
- 13 State of Louisiana, "Louisiana Justice Reinvestment Task Force Report and Recommendations" (2017), http://www.lasc.org/documents/LA_Task_Force_Report_2017_FINAL.pdf.
- 14 See, for example, La. CCrP 887, 890.2, 895.1, 895.4; La. R.S. 13:722, 13:841.4, 13:847, 13:853, 13:995.29, 13:1000.13, 13:1381 et seq., 13:1894.2, 13:2106, 13:2496.4, 13:3049, 13:5535, 13:5722; 14:98 et seq., 15:168, 15:176, 15:255, 15:541-543, 15:574 et seq., 16:16 et seq., 40:2266.1, 46:1816, and 46:2633.
- 15 State of Louisiana, "Louisiana Justice Reinvestment Task Force Report and Recommendations" (2017).
- 16 See La. R.S. 13:4206, 15:175; La. CCrP 884, 887; La. Dist. Ct. Rule 8.0.

- 17 Alexes Harris, Heather Evans, and Katherine Beckett, "Drawing Blood From Stones: Legal Debt and Social Inequality in the Contemporary United States," *American Journal of Sociology* 115, no. 6 (2010), <http://faculty.washington.edu/kbeckett/articles/AJS.pdf>; Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, "Criminal Justice Debt: A Barrier to Reentry," Brennan Center for Justice (2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>; Karin D. Martin, Sandra Susan Smith, and Wendy Still, "Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create," Harvard Kennedy School, Executive Session on Community Corrections (2017), https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/shackled_to_debt.pdf.
- 18 See La. CCrP 884, 885.1, 886, 893, 900; La. R.S. 9:315.1, 9:314.14, 9:315.23, 15:542, 37:31-37:36, 40:501, 46:233.2, and 47:1676.
- 19 State of Louisiana, "Government Efficiencies Management Support Final Report" (2014), <http://www.doa.la.gov/Publications%20Documents/Louisiana%20Government%20Efficiencies%20Management%20Support%20Final%20Report%205-29-14.pdf>.
- 20 Substance Abuse and Mental Health Services Administration, Uniform Reporting System, "Louisiana 2012 Mental Health National Outcome Measures," <https://www.samhsa.gov/data/sites/default/files/URSTables2012/Louisiana.pdf>; Substance Abuse and Mental Health Services Administration, Uniform Reporting System, "Louisiana 2015 Mental Health National Outcome Measures," <https://www.samhsa.gov/data/sites/default/files/Louisiana.pdf>; Raman Singh, medical director of Louisiana Department of Corrections, pers. comm (October 2016); Substance Abuse and Mental Health Services Administration, "Behavioral Health Barometer Louisiana, 2015" (2015), https://www.samhsa.gov/data/sites/default/files/2015_Louisiana_BHBarometer.pdf.
- 21 Anne Seymour, "Victim/Survivor/Advocate Roundtables Summary Report and Priorities," prepared for the Louisiana Justice Reinvestment Task Force (January 2017).
- 22 Act 402 (2007) and Act 299 (2015) established intermediate 90- to 180-day jail sanctions that are less severe than the complete revocation of community supervision for those who violate the terms of their probation or parole. La. R.S. 15:574.9; La. CCrP 900.

For further information, please visit:

pewtrusts.org/publicsafety

Contact: Fred Baldassaro, director, communications

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Project website: pewtrusts.org/publicsafety

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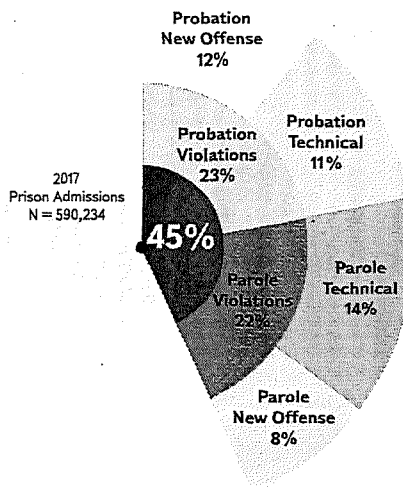
How Supervision Violations Are Filling Prisons and Burdening Budgets



Probation and parole are designed to lower prison populations and help people succeed in the community. New data show they are having the opposite effect. Until now, national data regarding the impact of probation violations on prison populations have been unavailable, resulting in a lopsided focus on parole. The Council of State Governments (CSG) Justice Center recently engaged corrections and community supervision leaders in 50 states to develop the first complete picture of how probation and parole violations make up states' prison populations. The analysis revealed a startling reality.

45% OF STATE PRISON ADMISSIONS

nationwide are due to violations of probation or parole for new offenses or technical violations.¹



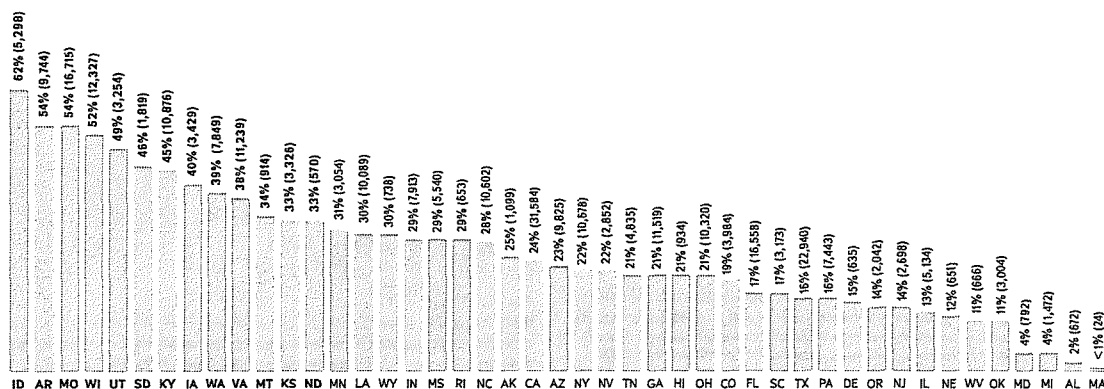
Technical violations, such as missing appointments with supervision officers or failing drug tests, account for nearly 1/4 OF ALL STATE PRISON ADMISSIONS.

On any given day, **280,000 PEOPLE** in prison—nearly **1 IN 4**—are incarcerated as a result of a supervision violation, costing states more than **\$9.3 BILLION ANNUALLY.**

Technical supervision violations account for **\$2.8 BILLION** of this total amount, and new offense supervision violations make up **\$6.5 BILLION.** These figures do not account for the substantial local costs of keeping people in jail for supervision violations.

IN 13 STATES, MORE THAN 1 IN 3 PEOPLE in prison on any given day are there for a supervision violation.

Proportion of State Prison Populations That Are Due to Supervision Violations²



Data on violations as a proportion of prison population not available for CT, ME, NH, NM, VT.

1. Whether an incarceration is the result of a new offense or technical violation is often difficult and problematic to delineate, even in states with available data. Most states do not consider a supervision violation to be the result of a new offense unless a new felony conviction is present, meaning technical violations may include misdemeanor convictions or new arrests. "Prison" includes county jail if the county was reimbursed by the state for a person's incarceration, which occurs in some, but not all, states. Supervision violations may include revocations (i.e., unsuccessful terminations of supervision and completion of a sentence in prison or jail) or short-term sanctions (i.e.,

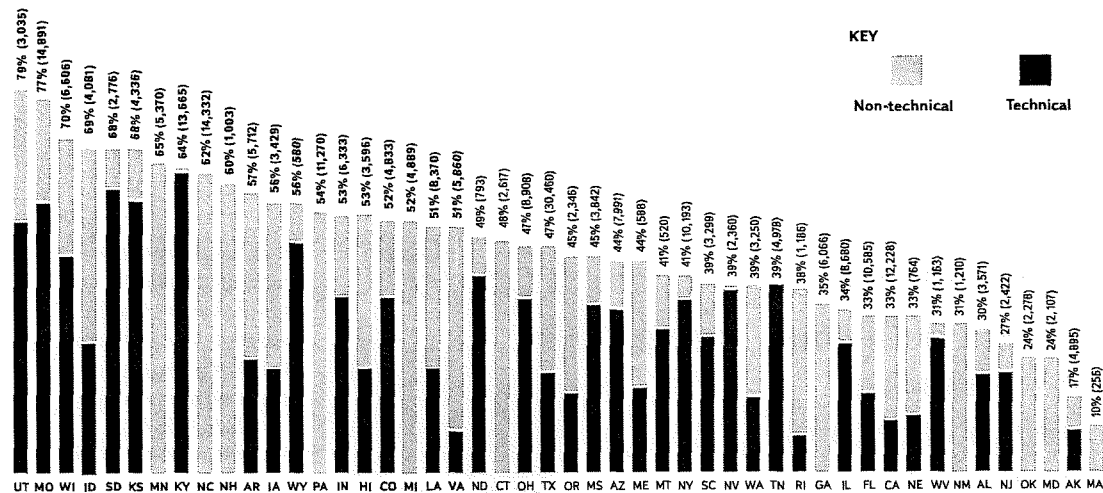
probation or parole jurisdiction is maintained and the person is incarcerated for a short period of time in prison or jail). Not all states impose or include short-term sanctions in their count of supervision violations. See state-specific snapshots for more information on state-specific definitions. In states where technical violations were not provided, all violations and associated costs were counted as new offense violations.

2. Illinois, Maryland, Michigan, New York, and Pennsylvania include only parole/post-release supervision violations, and Delaware, Oklahoma, and West Virginia include only probation violations.

IN 20 STATES, MORE THAN HALF OF PRISON ADMISSIONS are due to supervision violations.

Variation in these proportions across states is shaped by the overall size of each state's supervision population, how violations are sanctioned, whether those sanctions are the result of incarceration paid for by the state or county, and how well state policy and funding enable probation and parole agencies to employ evidence-based practices to improve success on supervision.

Proportion of State Prison Admissions That Are Due to Supervision Violations³



Technical breakdown not available for CT, GA, MA, MD, MI, MN, NC, NH, NM, OK, and PA. Data on violations as a proportion of prison admissions not available for DE and VT.

KEY QUESTIONS STATES SHOULD ASK

As state leaders begin to address supervision violations in their state, these questions should guide decision-making:

- How many people in your state are on probation or parole?
- How are technical violations handled in your state?
- What impact do supervision violations have on local jails in your state?
- How do your state's policies impact the length of time that people are on probation and parole?
- For what types of new offenses are people on supervision being sent to prison?
- What has your state done to scale up implementation of supervision practices and programs designed to reduce new criminal behavior?
- How much does your state invest in supervision annually? How much do supervision violations cost your state annually?

Learn more about how probation and parole violations impact prison admissions and population in your state at <https://csgjusticecenter.org/confinedandcostly/>.

3. Data reflects annual admissions for 2017 except in Virginia, where 2016 was the latest year available. Tennessee did not provide the number of new offense supervision violations, as these are counted as non-violation admissions. Ohio counts new offense probation violations as non-violation admissions. Technical breakdown was only included if both the total number and technical number of violations were provided for probation and/or parole/post-release supervision.

Methodology

In 2018, the CSG Justice Center developed a survey to collect data on the impact of supervision violations on prison admissions and population and distributed the survey to corrections departments in all 50 states. Forty-six states submitted survey data, and data was acquired through other means (i.e., publicly available reports) in an additional three states. In total, data was acquired on at least one of the requested metrics for 49 states. For complete methodology, see <https://csgjusticecenter.org/confinedandcostly/methodology/>.



Justice Center
THE COUNCIL OF STATE GOVERNMENTS



WISCONSIN

Supervision Violation Data Snapshot

Probation and parole are designed to lower prison populations and help people succeed in the community. New data show they are having the opposite effect. Until now, national data regarding the impact of probation violations on prison populations have been unavailable, resulting in a lopsided focus on parole. The Council of State Governments (CSG) Justice Center recently engaged corrections and community supervision leaders in 50 states to develop the first complete picture of how probation and parole violations make up states' prison populations.

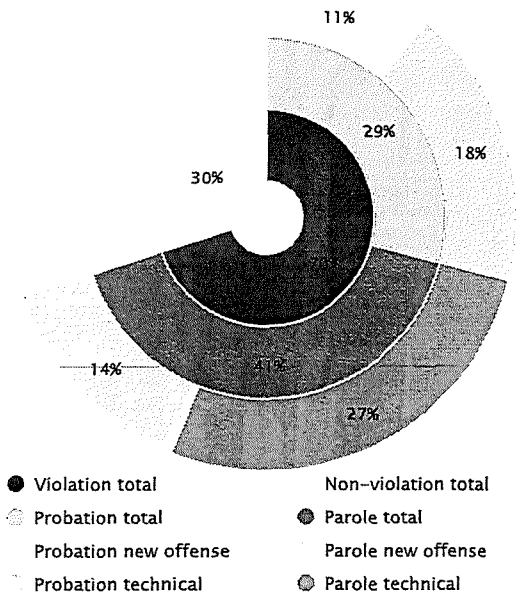
This snapshot shows available supervision violation data for this state.

70% OF PRISON ADMISSIONS
are for supervision violations

52% OF PEOPLE IN PRISON
are incarcerated for supervision violations

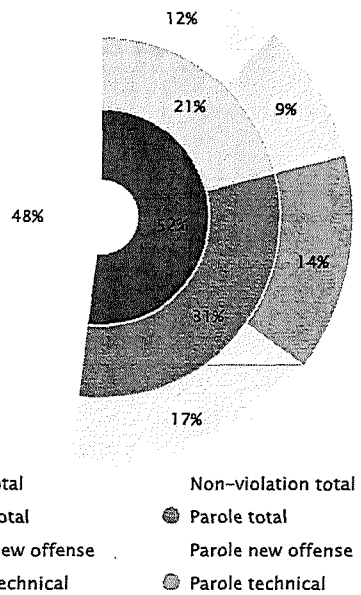
2017 Prison Admissions

45% technical total*



2017 Prison Population

23% technical total*



* Whether an incarceration is the result of a new offense or technical violation is often difficult and problematic to delineate, even in states with available data. Most states do not consider a supervision violation to be the result of a new offense unless a new felony conviction is present, meaning technical violations may include misdemeanor convictions or new arrests.

On any given day in Wisconsin, **12,327 people** are incarcerated as a result of a supervision violation at an annual cost to the state of **\$451 million**. Technical supervision violations account for **\$197 million** of this total amount, and new offense supervision violations make up **\$254 million**. These figures do not account for the substantial local costs of keeping people in violation.

Additional State Notes

Admission figures include alternatives to revocation (ATRs), short-term sanctions, interstate compact, and people returning from serving sentences in other states. A small number of people (fewer than five) admitted for short-term sanctions were included in total admissions but were not included in the violation admissions count because the admission type for sanctions does not specify whether the person was on probation or post-prison supervision. Some people admitted to prison for violations of supervision will eventually receive a new sentence for the behavior that led to the revocation; however, if this occurs long after the admission to prison, this will not be reflected in the admission type.

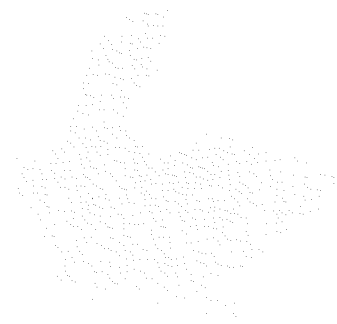
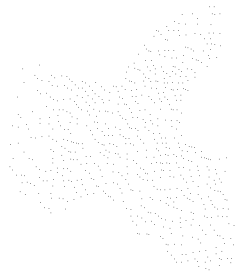
For more information, see [our methodology](#).



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NEWS

Maryland Leads as Prison Populations Continue to Decline

Sentencing reforms still curbing mass incarceration, but some eye reversals.

By NICOLE LEWIS

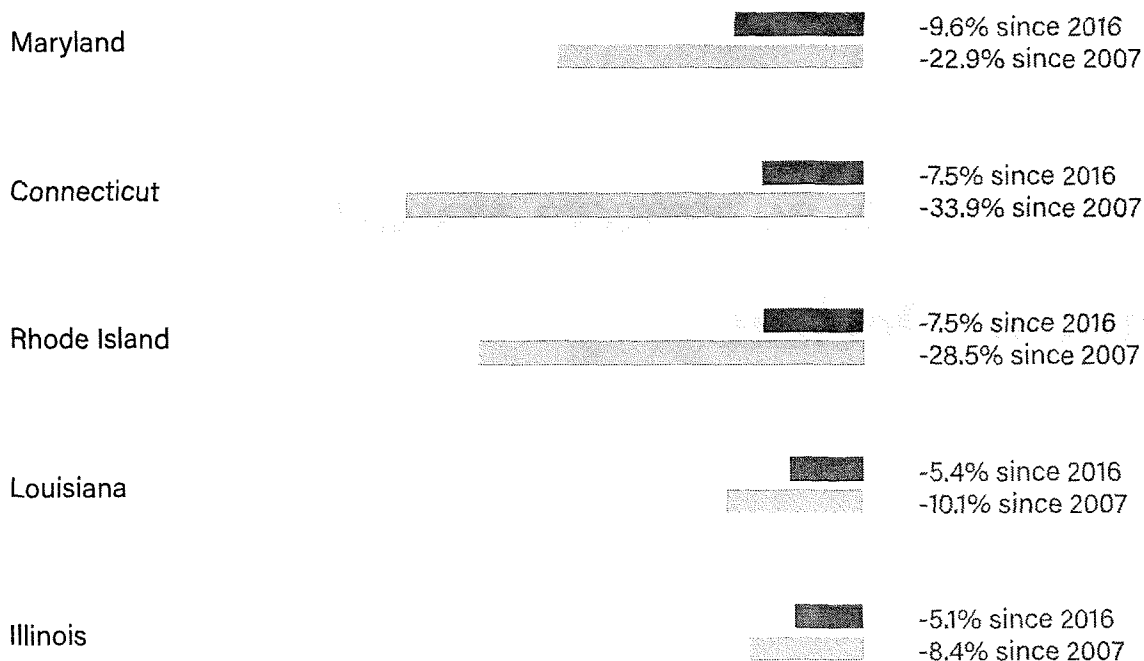
Graphics by KATIE PARK

In 2017, the U.S. prison population dropped below 1.5 million people for the first time since 2004, according to a [new report by the nonprofit Vera Institute of Justice](#). A decline in several states with large prison populations, including Maryland, Louisiana and Illinois, is responsible, along with a drop in federal prisoners.

Maryland saw the largest drop, with 1,916 people exiting state custody, representing a 9.6 percent decrease, according to the report. Louisiana and Illinois, each with larger populations, lost 1,943, or 5.4 percent, and 2,230, or 5.1 percent, respectively. Although the prison population in each state has been declining for several years, between 2016 and 2017, Maryland and Louisiana experienced the largest single year decreases in their prison populations in a decade.

Researchers credit sentencing and other criminal justice reforms that have passed in each of the states in recent years for the decline. Yet, despite the declines in Louisiana and Maryland, some lawmakers are pushing to scale back some of the law changes, citing rising violent crime rates.

States with largest percent decrease in prison population from 2016-2017



Source: Bureau of Justice Statistics Prisoners Series, *Vera People in Prison 2017*.

In 2016, Maryland Gov. Larry Hogan, a Republican, signed the Justice Reinvestment Act into law, calling it “the largest and most comprehensive criminal justice reform to pass in Maryland in a generation.” The bill reduced sentences for some low-level drug crimes, eliminated mandatory minimum sentences and improved parole and probation policies.

The new legislation was the result of several years of research and advocacy led by Pew Charitable Trust and the Bureau of Justice Assistance. In 2006, BJA and Pew launched the Justice Reinvestment Initiative to help states reduce their swelling prison populations. Since 2007, 34 states have adopted new legislation developed through the initiatives.

Louisiana also signed on. In 2017, Louisiana Gov. John Bell Edwards, a Democrat, signed into law a series of bills that some have been hailed as the most comprehensive reforms in the state’s history. For years Louisiana has had the highest incarceration rate in the country. With the new legislation, which reduces penalties for repeat offenders, offers more alternatives to incarceration, and reduces maximum penalties for drug crimes, the state is poised to shed its long held title. Some of the effects of the legislation were felt almost immediately when nearly 2,000 inmates were released from prison in November due to a change in the way the state calculated prisoner’s good time.

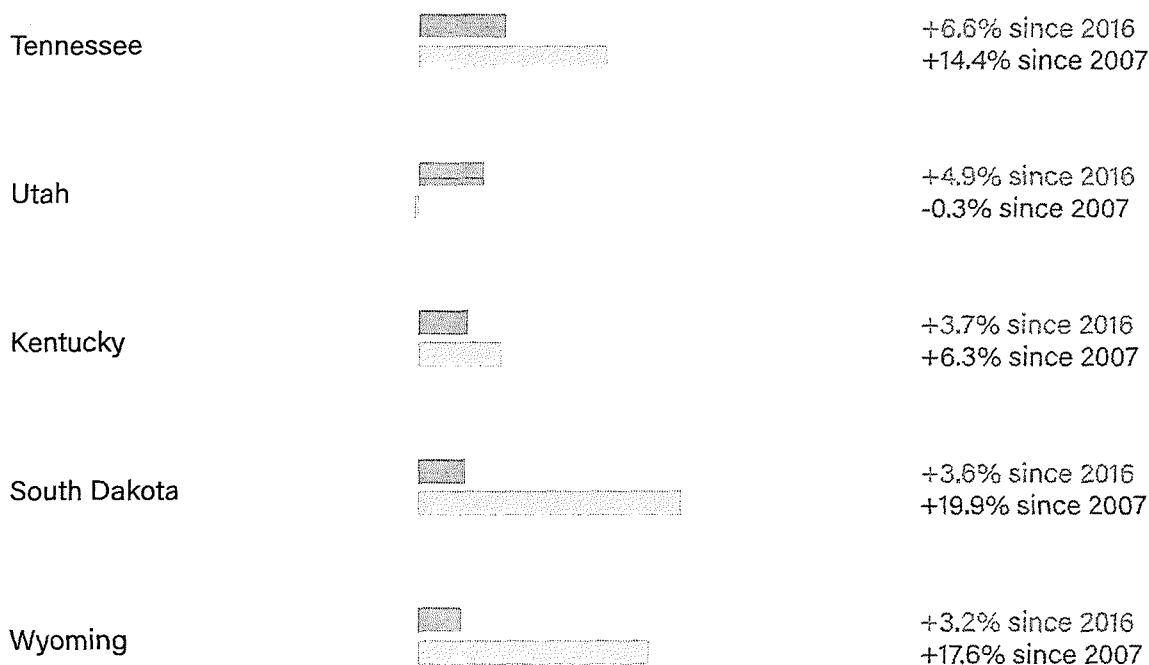
In 2015, Illinois Gov. Bruce Rauner signed an executive order creating a commission on criminal justice and sentencing reform. The commission was tasked with understanding the main drivers of incarceration in the state and proposing reforms to reduce the population by 25 percent by 2025. At the start of 2017, Rauner signed several measures to achieve his goal, including eliminating mandatory minimums for some crimes.

The report's authors hope the timely snapshot of the country's prison population—gathered from state corrections websites and interviews—can help continue to move the needle on criminal justice reforms. The federal Bureau of Justice Statistics releases official data on state and federal prisoners every year, which includes detailed demographic information, but the 2017 data won't be available until the end of 2018.

“There is a lot of talk about reform in states where the prison population is still growing,” said Jacob Kang-Brown, one of the report's authors. “For these states it is important to know that many places that are seeing success aren't driving up the crime rates.”

In several states, the prison population increased between 2016 and 2017.

States with largest percent increase in prison population from 2016-2017



Source: Bureau of Justice Statistics Prisoners Series, *Vera People in Prison 2017*.

While 30 states reduced their numbers, in 20 states the prison population increased between 2016 and 2017. Tennessee topped the list with a 6.6 percent increase, or more than 1,000 prisoners. Kentucky rose by 3.7 percent, or slightly more than 800 prisoners.

Data show that the majority of prisoners in Maryland and Louisiana are incarcerated for non-violent crimes. But a recent spike in the violent crime rate in each state has sparked an interest in revisiting some of the landmark legislation. In 2017, Maryland had 343 homicides, a record-setting number. And in April 2018, lawmakers passed a sweeping crime bill to address the violence.

Critics of the bill argue it threatens to undermine some of the progress made by the previous legislation in reducing mass incarceration. Moreover, they argue, the legislation was hastily put together and not data-informed.

“There is a feeling that something has to be done,” said Keith Wallington, state based strategist at Justice Policy Institute. “No one can ignore the fact that there is an increase in violent crime, but they never could identify what to do.”

In Louisiana, lawmakers are debating a set of bills that could roll back some of the 2017 legislation. Some prosecutors argue that newly released inmates have left prison only to commit new crimes, and that reduced sentences weaken prosecutors ability to encourage drug users to go to treatment or comply with the terms of their probation.

Pete Adams, executive director of Louisiana’s District Attorney Association, doesn’t see the new bills as a rolling back of last year’s legislation. Instead, he says, the focus should be on spending the money saved on locking people up on programs that help inmates participate productively once released.

“This will not have a long term reduction in incarceration rates if we don’t spend the resources required to provide rehabilitation, education, and mental health treatment to help turn people around,” Adams said. “If we let people out without any support, we are gonna see them again, and when they come back they come in for a longer period of time.”

Correction: An earlier version of this story misattributed a quote to Oliver Hinds, the report's lead author. The quote, taken during a phone interview with several people present, came from Jacob Kang-Brown, another author of the report. ¶¶



Getty Images

To Safely Cut Incarceration, States Rethink Responses to Supervision Violations

Evidence-based policies lead to higher rates of parole and probation success

Overview

Recent research from The Pew Charitable Trusts found that about 4.5 million people in the United States are on community supervision as of 2016. Probation and parole provide a measure of accountability while allowing those who would otherwise have been incarcerated or have already served a term behind bars to meet their obligations to their families, communities, and victims.

People under supervision are expected to follow a set of rules, such as keeping appointments with probation or parole officers, maintaining employment, not using alcohol or other drugs, and paying required fees. Failure to follow the rules—referred to as technical violations—may result in revocation of the supervision and in some cases a term of incarceration. A 2019 report by the Council of State Governments showed that technical violations account for almost 1 in 4 admissions to state prison and \$2.8 billion in annual incarceration costs.¹

Such technical revocations are costly, and failure to comply with supervision conditions does not necessarily indicate that a person presents a public safety threat or will engage in new criminal activity. Further, although studies have not demonstrated that incarcerating people for breaking the rules of supervision reduces recidivism, they have found that long periods of incarceration can make re-entry more difficult, causing people to lose their jobs, homes, and even custody of their children.²

This brief examines policies that states implemented through the Justice Reinvestment Initiative (JRI) that have reduced technical revocations, highlights some of the results of those changes, and provides sample legislation for each policy. JRI is a public-private partnership among Pew, the U.S. Department of Justice's Bureau of Justice Assistance, state governments, and technical assistance providers; it seeks to improve public safety and control costs by prioritizing prison space for people sentenced for the most serious offenses and investing in evidence-based alternatives to incarceration and other programs shown to reduce recidivism. These state efforts have not been without challenges, and more can be done to improve supervision outcomes. Nevertheless, the examples provided show that states can take meaningful steps to reduce prison populations and protect public safety while strengthening systems of supervision and services in the community.

Reforms aim to improve supervision outcomes

Research and experience have revealed effective supervision strategies that protect public safety, reduce costs, and help people on parole and probation get their lives on track. Increasing the number of people who successfully complete supervision and reducing revocations became goals of many states participating in JRI. In corrections system analyses conducted during state JRI processes, many states identified supervision revocations for technical violations as a driver of prison admissions. For example:

- In Alabama, people who violated the conditions of their supervision accounted for 40 percent of prison admissions in fiscal year 2013.³
- Mississippi found that between fiscal 2002 and 2012, the number of prison admissions resulting from revocations of parole or probation climbed 84 percent. In 2012, they exceeded admissions for new sentences, and 3 in 4 were for technical violations.⁴
- In Utah, 43 percent of people admitted to prison in 2012 had no new criminal conviction, up from 38 percent in 2002. Eighty percent of people on probation and 63 percent of those on parole who were sent to prison for technical violations were originally convicted of nonviolent crimes.⁵
- Probation revocations accounted for more than half of North Carolina's new prison admissions in fiscal 2009, and more than three-quarters stemmed from technical violations.⁶

Through JRI, over 30 states passed policies to reduce the number of people in prison for technical violations while protecting public safety. However, many states still are struggling with this issue.

By improving community corrections and directing resources to those who need them, states can provide long-term reductions in recidivism. As part of their JRI reform packages, 35 states enacted policies to increase success rates among people on supervision and develop alternatives to technical revocation. (See Table 1.)

These policies fall into four categories:

- Tailoring supervision strategies toward behavioral change for those at the highest risk of reoffending.
- Providing positive incentives for people on supervision.
- Using administrative responses to violations.
- Capping or reducing jail or prison time for violations and limiting the conditions under which incarceration may be used to respond to a technical violation.

Table 1

Most Justice Reinvestment States Implemented Reforms to Improve Supervision Outcomes

Enacted policies to reduce parole and probation revocations, by state

	AK	AL	AR	AZ	CA	CO	CT	DE	GA	HI	ID	IL	IN	KS	KY	LA	MD	MI	MO	MS	MT	NC	ND	NE	NH	NV	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	WA	WI	WV				
Establish/expand earned discharge from probation/parole	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Authorize administrative jail sanctions in lieu of revocations	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Authorize administrative responses to violations	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Cap revocation time	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Require evidence-based practices	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Require/improve risk-needs assessment	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Reduce probation terms	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Improve behavioral health interventions	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Source: The Pew Charitable Trusts, "35 States Reform Criminal Justice Policies Through Justice Reinvestment" (2018), https://www.pewtrusts.org/-/media/assets/2018/07/pspp_reform_matrix.pdf

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Policy examples

The following sections provide descriptions of each policy area, the evidence base, and evaluated state examples that demonstrate impacts on incarceration and public safety.

Tailoring supervision strategies to focus on behavioral change for those at the highest risk of reoffending

Research has shown that when supervision agencies prioritize staff time and dollars for those who are most likely to reoffend, outcomes improve for people on probation and parole. One primary evidence-based supervision practice that, when applied correctly, can help states better target resources and lead to substantial reductions in recidivism is the risk-need-responsivity (RNR) principle.⁷ The principle is an assessment methodology that enables parole and probation officers to develop case plans that include programming and treatment tailored to individuals' needs and direct more intense supervision toward those deemed higher risk. Using the RNR principle, agencies assess individuals on the following measures:

- **Risk:** Which of the static factors known to boost the risk of reoffending, such as criminal history and age of first arrest, are present in this individual?
- **Need:** Which dynamic needs, such as substance use disorders, could be addressed to reduce the likelihood of reoffending?
- **Responsivity:** What types of treatment and programming would be most effective in helping this person be successful on supervision, given his or her learning style, experiences, etc.?

Interventions based in RNR principles that have produced the most consistently positive results provide education, treatment for substance use disorders and other health problems, and strategies to change thinking and behavior away from crime.⁸ Increasing the rates of participation in such programs has been shown to reduce recidivism, while supervision without treatment or risk-focused programming does less to improve outcomes and can increase technical violations.⁹

Additionally, most people who reoffend after leaving prison do so within a year of release.¹⁰ Directing community supervision resources and support services toward the first days, weeks, and months post-incarceration or of a sentence to probation is a cost-effective approach to improving outcomes for public safety and people on supervision.

JRI example

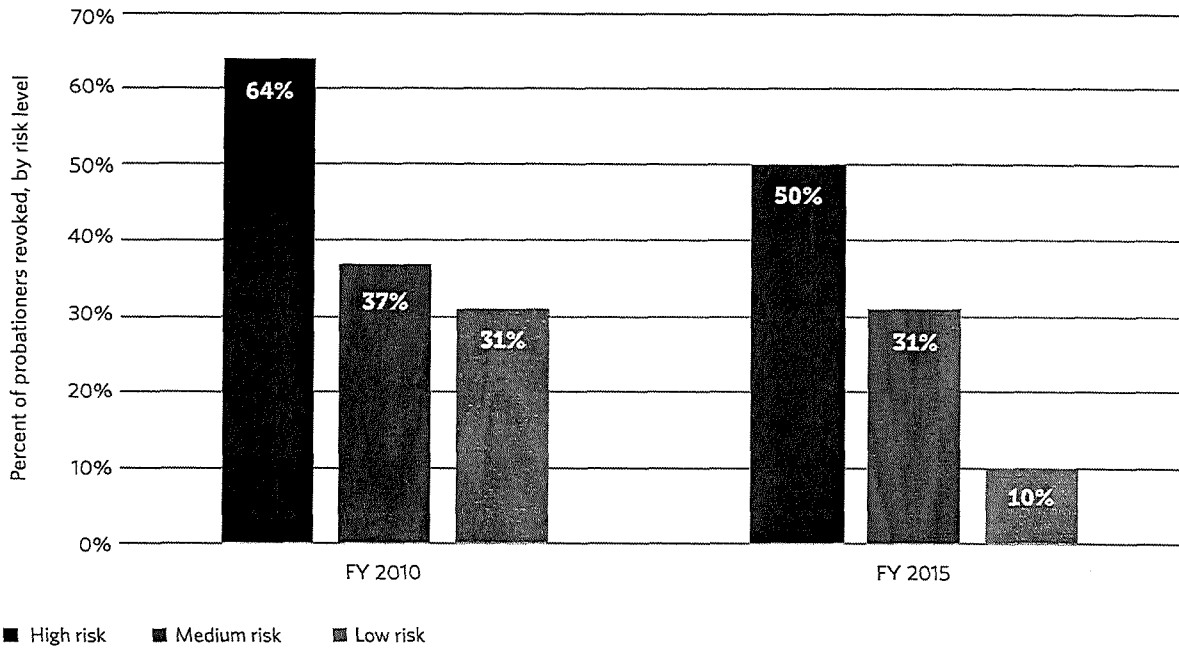
North Carolina

North Carolina's 2011 Justice Reinvestment Act requires probation officers to assess people on supervision for their risk of reoffending and to supervise them accordingly. It also sets a caseload goal of no more than 60 high- and moderate-risk individuals per probation officer. In addition, every person incarcerated for a felony conviction must receive nine to 12 months of post-release supervision. Together with other reforms, these changes contributed to a 50 percent decline in revocations and a drop in overall prison admissions of 21 percent.¹¹ (See Figure 1.) Further, the number of people entering prison from probation on new felony offenses decreased from 1,505 in 2013 to 1,370 in 2016.¹² Data further indicate that the adoption of risk-based supervision in the state has improved outcomes for individuals across risk categories.¹³

Figure 1

Fewer People Sent to Prison From Probation in North Carolina After Policy Changes

Revocation rates by risk level, fiscal 2010 and 2015



Source: North Carolina Department of Public Safety, "Justice Reinvestment Performance Measures, North Carolina Fiscal Year 2014-15" (2016), <https://files.nc.gov/ncdps/documents/files/JRPerformanceMeasures2016.pdf>

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For samples of enacted legislation for these policies, see the appendix.

Earned compliance credits and other positive reinforcements

Earned compliance credit policies enable people on supervision to earn time off their sentence for every month in which they comply with supervision conditions. States use various formulas to determine the circumstances under which individuals may earn and lose credits and how much time they will receive off their terms per credit. In addition to acting as an incentive, earned compliance credits also help agencies reduce caseloads and direct limited resources to people at the greatest risk for reoffending.

Considerable research and the opinions of those on supervision indicate that earned compliance credits and other incentives such as gift cards or other nominal rewards, verbal praise or acknowledgement, and adjustment of supervision conditions are effective. In one survey, people on parole said that early discharge was a strong incentive to participate in programming and comply with supervision conditions.¹⁴ Another study found that adding positive reinforcements increased the odds of success on intensive supervision.¹⁵ In Utah, 70 percent of people on supervision said that incentives as simple as verbal praise and recognition motivated them to improve their behavior.¹⁶ Further, a recent 14-state evaluation of people on supervision who were convicted of serious and violent offenses found that praise from a supervision officer significantly reduced rates of substance use and criminal reoffending.¹⁷ In addition, practitioners have found that involving individuals on supervision in the process of designing incentives can enhance their effectiveness.¹⁸

Research also indicates that the use of proportional and timely sanctions in conjunction with rewards is an effective strategy to promote compliance. The optimal ratio is four (or more) rewards per sanction.¹⁹

JRI example

Missouri

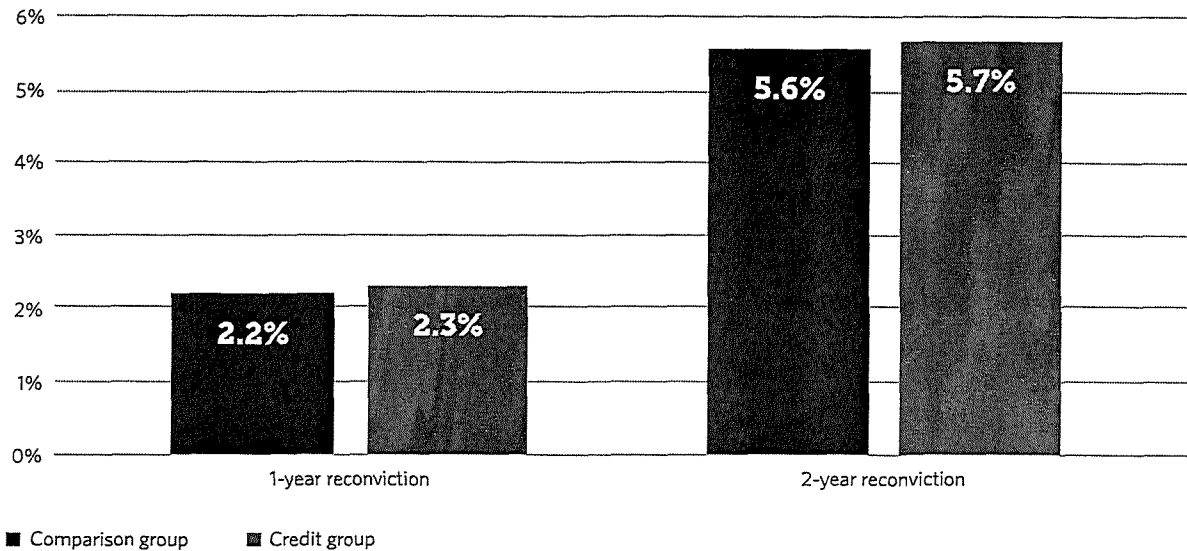
Legislation passed by the Missouri Legislature in 2012, H.B. 1525, created a policy that allows people to earn 30 days off their supervision time for every full calendar month they remain in compliance. Eligible individuals include those convicted of lower-level felonies who had been under supervision for at least two years.

In the first three years of the program, 36,000 people reduced their terms by an average of 14 months, cutting the supervised population by 18 percent and caseloads by almost 16 percent. People released through the earned compliance credit policy had no statistically significant increase in two-year reconviction rates compared with those released before the policy.²⁰ (See Figure 2.)

Figure 2

Earned Compliance Did Not Affect Recidivism in Missouri

Reoffense rates for those released from supervision, before and after implementation of credits



Source: The Pew Charitable Trusts, "Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety" (2016), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/missouri-policy-shortens-probation-and-parole-terms-protects-public-safety>
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For samples of enacted legislation for these policies, see the appendix.

Administrative responses to technical violations

Administrative responses to technical violations give supervision officers alternatives to revocation to prison or jail that can be implemented without a court or parole board hearing. Agencies often use a grid or matrix that weighs the seriousness of the violation and the person's risk level to determine the appropriate sanction, such as an earlier curfew, community service, enhanced supervision, home detention, a short jail stay, or confinement in a facility designed to address underlying causes of the violation.²¹ For violations that stem from an identified need, officers can also use nonpunitive responses, such as substance use treatment in response to ongoing positive drug tests. In some states, administrative sanctions have also been authorized for low-level offenses in lieu of formal criminal charges. For best outcomes, responses should include sanctions and incentives.

Violating a condition may not mean the person on supervision has become a public safety threat or will engage in new crime.²² The use of administrative responses is grounded in evidence showing that the certainty of punishments is more important than their severity.²³ Learning theory—the idea that people will choose behaviors that result in positive outcomes over those that have negative consequences—also supports the use of administrative responses, particularly those that include incentives for compliance and meeting goals.²⁴ Further, many violations reflect long-standing and chronic behaviors, which can be most effectively addressed with a combination of accountability through fair, quickly imposed responses and incentives and programming that offers motivation to change negative behavior.²⁵ Research indicates that community-based responses are at least as effective in changing behavior and promoting supervision success as jail terms and cost less.²⁶ In fact, one study indicated that jail sanctions can increase the likelihood of future revocation, rearrest, and reconviction.²⁷

However, studies show that statutory or procedural change alone is not enough. Implementation is also important: Buy-in from community corrections staff, strong teamwork, collegiality, and communication have been shown to play critical roles in the success of administrative sanction policies.²⁸

JRI examples

South Carolina

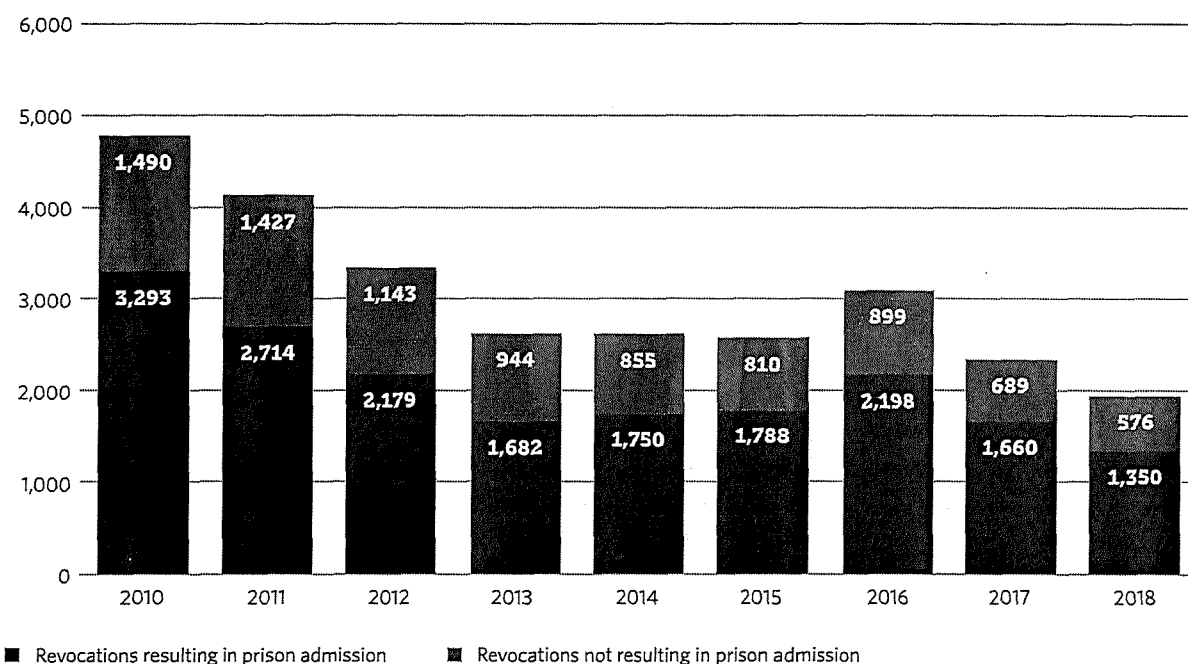
As part of its 2010 JRI reform package, S.B. 1154, South Carolina instituted policies to reduce the number of people incarcerated for supervision noncompliance. The law allows officers in the Department of Probation, Parole, and Pardon Services to use administrative responses to violations in lieu of prison. The sanctions imposed by officers may not be more restrictive than those available to the Parole Board and the courts and may not include revocation. Other provisions to address revocations include improving parole supervision and providing compliance credits. The portion of the act related to administrative sanctions went into effect in January 2011.

A 2017 Urban Institute evaluation of South Carolina's reforms concluded that between fiscal 2010 and 2015, the use of administrative responses increased 42 percent: Those who began supervision after implementation of the law were 33 percent less likely to be incarcerated or reincarcerated after one year than those who began in 2010.²⁹ And more recent state data show that this trend has continued. The number of revocations resulting in prison admissions in 2018 was less than half of the 2010 figure.³⁰ (See Figure 3.) The state estimated that during that same period it saved over \$39 million by revoking 1,633 fewer people from supervision.³¹ Further, analysis of FBI crime data shows that both the violent and property crime rates in South Carolina dropped by more than 15 percent over the same five-year span.³²

Figure 3

South Carolina Prison Admissions for Rule Violations Fell by More Than Half After Reforms

Technical revocations by sanction, 2010-18



Source: South Carolina Department of Probation, Parole, and Pardon Services, "Report to the Sentencing Reform Oversight Committee" (2018), <https://www.dppps.sc.gov/content/download/169830/3865404/file/SROC+Report+11+30+2018-+FINAL.pdf>

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Texas and Pennsylvania

Several states developed specialized centers, including day reporting centers and secure residential facilities, where people who violated conditions of their supervision could be sent in lieu of prison or jail. The availability of appropriate, quality treatment and programming is critical to the success of these centers.³³ In Texas from 2006 through 2008, individuals were sent to intermediate sanction centers for an average stay of 60 days, during which they received targeted services for needs known to be associated with higher levels of criminal behavior.³⁴ These facilities increased availability of treatment and facilitated a reduction in parole revocations of 25 percent. Similarly, a study of a western Pennsylvania program showed that those sent to a day reporting center had fewer rearrests than members of a control group who received a sanction including incarceration.³⁵

For samples of enacted legislation for these policies, see the appendix.

Capping or reducing prison or jail time for technical revocations

Sixteen states have enacted legislation capping the length of time a person could be incarcerated for a technical revocation. How and when such limits are used and the maximum period of incarceration allowed vary significantly across states. Often, the allowable time behind bars increases with the number of revocations. Some states also restrict the conditions under which a person could be incarcerated for technical violations, such as limiting it to commission of a new crime or after multiple technical violations.

In general, sentence severity has not been found to affect the level of crime in society: Longer, more costly prison stays do not reduce reoffending more than shorter, cheaper ones, while consuming resources that could be directed toward more evidence-based responses.³⁶ And incarceration is not more effective in reducing recidivism; in fact, one study found that people on probation who served a period of confinement had higher rates of recidivism than those who were sanctioned and remained in the community.³⁷

JRI example

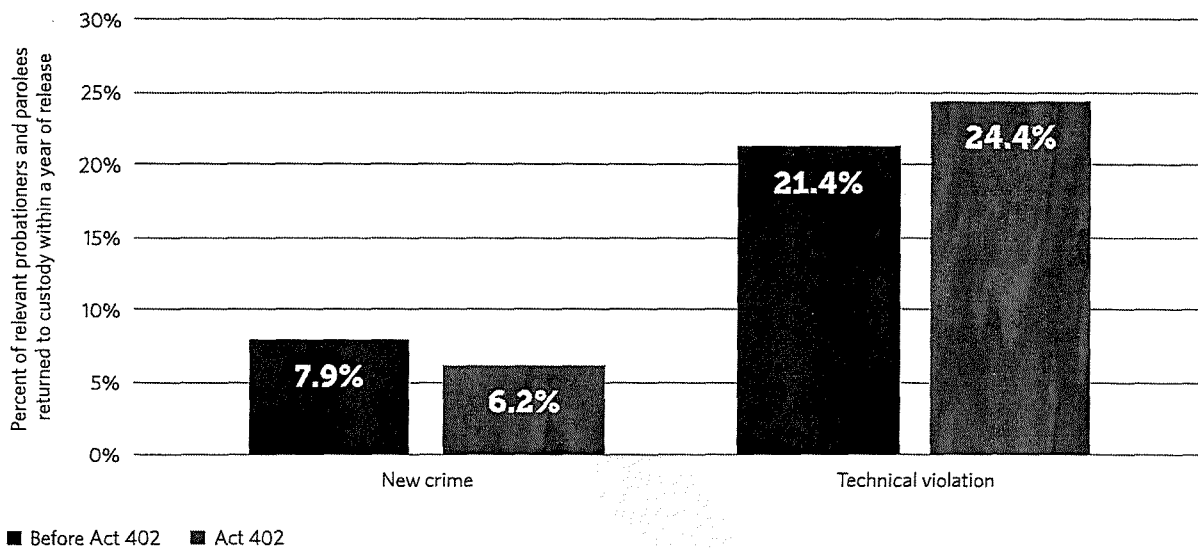
Louisiana

Louisiana's 2007 reform legislation, Act 402, set a 90-day limit on incarceration of people on probation or parole for nonviolent offenses who violate their supervision terms. A 2014 Pew-commissioned evaluation of this cap found that reducing the amount of time people spent incarcerated for a revocation did not negatively affect public safety. (See Figure 4.) Comparisons of similar populations whose supervision was revoked before implementation of Act 402 (between 2000 and 2004) and afterward (September 2007 to April 2012) show that a smaller share of the latter group than of the former (6.2 versus 7.9 percent) was incarcerated for a new offense during a one-year follow-up period. The proportion of those whose supervision was revoked and who were sent to prison for technical violations after the act went into effect was higher (21.4 versus 24.4 percent), possibly because they spent more of the follow-up period under supervision. In addition, the 90-day cap resulted in approximately 2,034 fewer nights spent in jail and prison each year and saved an average of \$17.6 million in annual corrections costs.³⁸

Figure 4

Louisiana's Cap on Supervision Revocations Maintained Public Safety

Percentage of individuals reincarcerated within a year of release from a jail or prison term for a revocation, before and after Act 402, by offense type



Note: Data reflect similar individuals whose supervision was revoked between 2000 and 2004 (before implementation of Act 402) and from September 2007 to April 2012 (after Act 402).

Source: The Pew Charitable Trusts, "Reducing Incarceration for Technical Violations in Louisiana" (2014), <https://www.pewtrusts.org/-/media/assets/2014/11/psppreducingincarcerationfortechnicalviolationsinlouisiana.pdf>

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For samples of enacted legislation for these policies, see the appendix.

The public strongly supports reducing technical revocations

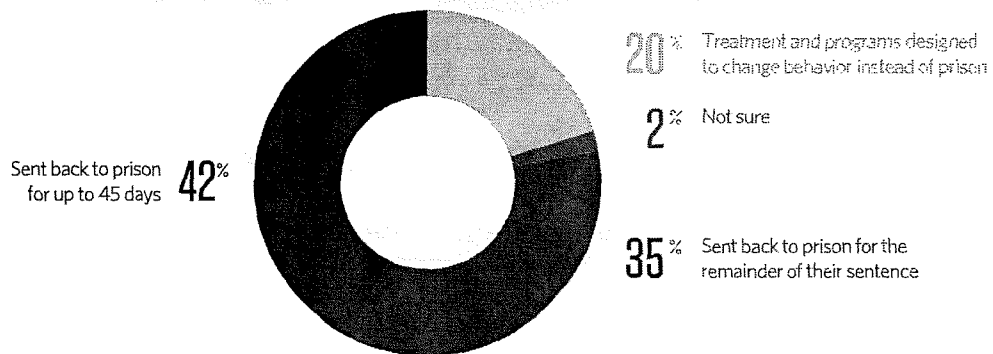
A 2016 public opinion poll in Maryland showed that across age groups and political ideologies, most voters, including a majority of crime victims, did not believe people should be sent to prison for the remainder of their sentences for technical violations.³⁹ More than 6 in 10 respondents (62 percent) said people on parole or probation who commit technical violations should serve either no prison time or no more than 45 days. (See Figure 5.)

Figure 5

Maryland Voters Back Limited Use of Prison for Technical Violations

Respondents were asked which statement comes closer to their points of view about responding to a violation of the rules of supervision, for example, failing a drug test or missing a curfew, that is not another crime

62% of Marylanders believe people on supervision who commit technical violations should serve either no prison time or no more than 45 days



Source: The Mellman Group and Public Opinion Strategies telephone survey of 600 voters, Feb. 17-21, 2016

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States face ongoing challenges in reducing revocations

Reducing the number of supervision revocations for technical violations is a complex process involving multiple stakeholders at different levels of government. Although some states have been able to do this successfully and safely, others have faced challenges such as:

- A lack of clear direction to correctional and court personnel that slows or prevents adoption of new policy, leaving in place revocation practices that initially led to high revocation rates.
- Slow implementation of evidence-based supervision models by probation and parole agencies and accompanying culture shifts.
- Inadequate resources to address the opioid crisis, leading to unanticipated increases in violations.

Some states have addressed these challenges by:

- Reinvesting JRI savings into treatment and other evidence-based programs that have been shown to improve outcomes for people on supervision.
- Providing resources and establishing requirements for officer and manager training on evidence-based practices.
- Instituting reporting requirements that track adherence to guidelines for technical violation revocations and requiring the use of high-quality, evidence-based practices.
- Creating incentives for supervision officers for reducing returns to prison on technical violations and using evidence-based practices.
- Providing treatment and services before release from prison for those entering supervision and developing case plans with the supervision agency to assist in the transition back into the community.

Conclusion

Parole and probation provide an alternative to incarceration for people who the courts and correctional authorities determine should be supervised in the community. They also offer an opportunity to deliver services that address underlying issues such as substance use and mental health disorders. People under supervision need to be held accountable for failing to abide by the rules, but revocations to prison and jail strain correctional systems and consume scarce resources that could be spent to promote public safety. Improvements such as tailoring supervision strategies toward reducing reoffending, providing positive incentives, using administrative responses, and limiting the use of incarceration for violations are effective in reducing technical violations, helping states safely reduce prison populations, and increasing the number of people who successfully complete community supervision.

Appendix: Sample legislation

More than 30 states have enacted legislation to address technical violations of supervision. The examples below provide language from these state laws that other jurisdictions may consider when implementing policies that have the potential to reduce incarceration, costs, and recidivism, while protecting public safety and increasing supervision success rates.

Policy: Require/improve risk-needs assessment

South Carolina

Board of Probation, Parole and Pardon Services, qualifications, training, assessment tool

SECTION 46. Section 24 21 10 (F) The department must develop a plan that includes the following:

- (1) establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions;
- (2) establishment of procedures for the department on the use of the validated assessment tool to guide the department, parole board, and agents of the department in determining supervision management and strategies for all offenders under the department's supervision, including offender risk classification, and case planning and treatment decisions to address criminal risk factors and reduce offender risk of recidivism; and
- (3) establishment of goals for the department, which include training requirements, mechanisms to ensure quality implementation of the validated assessment tool, and safety performance indicators.

(G) The director shall submit the plan in writing to the Sentencing Reform Oversight Committee no later than July 1, 2011. Thereafter, the department must submit an annual report to the Sentencing Reform Oversight Committee on its performance for the previous fiscal year and plans for the upcoming year.⁴⁰

Policy: Require evidence-based practices

Georgia

SECTION 2-3.

Said title is further amended by revising subsections (g) through (j) of and adding a new subsection to Code Section 42-3-2, relating to the creation of the Board of Community Supervision and its duties, to read as follows:

“(g)(1) As used in this subsection, the term:

- (A) ‘Evidence based practices’ means supervision policies, procedures, programs, and practices that scientific research demonstrates reduce recidivism among individuals who are under some form of correctional supervision.
- (B) ‘Recidivism’ means returning to prison or jail within three years of being placed on probation or being discharged or released from a department or jail facility.

(2) The board shall adopt rules and regulations governing the management and treatment of probationers and parolees to ensure that evidence based practices, including the use of a risk and needs assessment and any other method the board deems appropriate, guide decisions related to managing probationers and parolees in the community. Any risk and needs assessment instrument shall be revalidated by January 1, 2019, and every five years thereafter. The board shall require DCS to collect and analyze data and performance outcomes relevant to the level and type of treatment given to a probationer or parolee and the outcome of the treatment on his or her recidivism and prepare an annual report regarding such information which shall be submitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on State Properties Judiciary and the Senate State Institutions and Property Judiciary Committee.

(3) Using evidence based practices, the board shall evaluate the quality of the programming utilized at day reporting centers by January 1, 2019, and every five years thereafter, and shall publicly publish its report.

(h)(1) The board, acting alone or in cooperation with the State Board of the Technical College System of Georgia or other relevant educational organizations and agencies, may provide educational programs for probationers and shall exercise program approval authority. The board may enter into written agreements with other educational organizations and agencies in order to provide probationers with such education and employment skills most likely to encourage gainful employment and discourage return to criminal activity. The board may also enter into agreements with other educational organizations and agencies to attain program certification for its vocational and technical education programs."⁴¹

Policy: Establish/expand earned discharge from probation/parole

Utah

(7) (a) The department shall establish a program allowing an offender on probation under Section 77-18-1 or on parole under Subsection 76-3-202(1)(a) to earn credits for the offender's compliance with the terms of the offender's probation or parole, which shall be applied to reducing the period of probation or parole as provided in this Subsection (7).

(b) The program shall provide that an offender earns a reduction credit of 30 days from the offender's period of probation or parole for each month the offender completes without any violation of the terms of the offender's probation or parole agreement, including the case action plan.

(c) The department shall maintain a record of credits earned by an offender under this Subsection (7) and shall request from the court or the Board of Pardons and Parole the termination of probation or parole not fewer than 30 days prior to the termination date that reflects the credits earned under this Subsection (7).

(d) This Subsection (7) does not prohibit the department from requesting a termination date earlier than the termination date established by earned credits under Subsection (7)(c).⁴²

Policy: Authorize administrative responses to technical violations

Idaho

The state board of correction shall promulgate rules in consultation with the Idaho supreme court to: ... Establish a matrix of swift, certain and graduated sanctions and rewards to be imposed by the board in response to corresponding violations of or compliance with the terms or conditions imposed. Sanctions for violations shall include, but are not limited to, community service, increased reporting, curfew, submission to substance use assessment, monitoring or treatment, submission to cognitive behavioral treatment, submission to an educational or vocational skills development program, submission to a period of confinement in a local correctional facility for no more than three (3) consecutive days and house arrest. Rewards for compliance shall include, but are not limited to, decreased reporting and transfer to limited supervision.⁴³

Policy: Cap or reduce prison or jail time for technical revocations

Nebraska

(7) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a felony has committed or is about to commit a violation while on probation, the probation officer shall consider:

- (a) Whether the probation officer is required to arrest the probationer pursuant to subsection (10) of this section;
- (b) The probationer's risk level, the severity of the violation, and the probationer's response to the violation; and
- (c) Whether to impose administrative sanctions or seek custodial sanctions or revocation pursuant to subsection (8) of this section.

(8) The following sanctions may be imposed or sought by the probation officer, with approval from his or her chief probation officer or such chief's designee, for felony probationers:

- (a) One or more administrative sanctions;
- (b) A custodial sanction of up to three days in jail or up to thirty days in jail, to be imposed by the court. Custodial sanctions may be combined with one or more administrative sanctions; or
- (c) Formal revocation proceedings, however formal revocations may only be instituted against the probationer for a substance abuse or noncriminal violation if the probationer has served ninety days of cumulative custodial sanctions during the current probation term.

(9) If administrative sanctions are to be imposed by the probation officer pursuant to subsection (8) of this section, the probationer must acknowledge in writing the nature of the violation and agree upon the sanction. Prior to acknowledging the violation and agreeing upon the sanction, the probationer must be presented with a violation report and advised of the right to a hearing before the court on the alleged violation. The probationer has the right to decline to acknowledge the violation and request a court hearing. If the probationer declines to acknowledge the violation, the probation officer shall submit a written report to the sentencing court, with a copy to the county attorney of the county where probation was imposed, describing the alleged violation or violations and requesting that administrative sanctions or a custodial sanction of up to thirty days in jail be imposed.⁴⁴

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