U.S. Department of Justice
National Institute of Corrections

NIC Advisory Board Hearing
August 22-23, 2012

Balancing Fiscal Challenges, Performance-based Budgeting and Public Safety:

A Compilation of Panel Testimonies

NIC
National Institute of Corrections

NIC ADVISORY BOARD PUBLIC HEARING
"Balancing Fiscal Challenges, Performance-based Budgeting and Public Safety"
Department of Justice, Washington, DC
Wednesday, August 22, 2012

8:30-8:40	**Welcome and Introductory Remarks**	**Diane Williams**, Chair, NIC Advisory Board; President and CEO, *Safer Foundation*
8:40-8:50	**Statement from Director Samuels**	**Charles E. Samuels**, Director *Federal Bureau of Prisons*
8:50-9:00	**Statement from Director Thigpen**	**Morris Thigpen**, Director *National Institute of Corrections*
9:00-9:10	**Panel Kick-off**	**Max Williams**, NIC Advisory Board; President and CEO, *The Oregon Community Foundation*
9:10-10:40	**Briefing on the Fiscal Costs of Corrections in the United States**	**Dr. Reginald Wilkinson**, President *Ohio College Access Network* **Dr. Mary Livers**, Deputy Secretary *Louisiana Office of Juvenile Justice* **James A. Gondles**, Executive Director *American Correctional Association* **Adam Gelb**, Director, Public Safety Performance Project *Pew Center on the States*
10:40-11:00	***Break***	
11:00-12:30	**Outcome-based Budgeting: Process and Practice**	**Chris Innes**, Chief, Research and Information Services *National Institute of Corrections* **Brian Sigritz**, Director of State Fiscal Services *National Association of State Budget Officers* **Karen Wilson**, Partner *PricewaterhouseCoopers* **Theresa Lantz**, Consultant, Retired Commissioner of Connecticut
12:30-1:30	***Lunch – Justice Café***	
1:30-2:30	**Cost-Effective Strategies for Meeting Policy Requirements and Legislative Mandates**	**Franklin Amanat, Esq**., Supervisory Assistant United States Attorney and Deputy Chief, Civil Division *U.S. Attorney's Office Eastern District of New York* **Gary Mohr**, Director *Ohio Department of Rehabilitation and Correction*
2:30-2:45	***Break***	
2:45-4:15	**Reengineering Population Management**	**Michael Jacobson**, President and Director *Vera Institute* **Dr. James Austin**, President *JFA Institute* **Ed Monahan**, Public Advocate *Kentucky Department of Public Advocacy* **Stan Hilkey**, Sheriff *Mesa County Sheriff's Department*
4:15-4:30	**Closing Comments**	**Diane Williams**, Chair, NIC Advisory Board **Max Williams**, NIC Advisory Board

As of 08/08/12

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8:30-8:40	**Welcome and Recap of Day 1**	**Diane Williams**, Chair, NIC Advisory Board; President and CEO, *Safer Foundation* **Max Williams**, NIC Advisory Board; President and CEO, *The Oregon Community Foundation*
8:40-10:15	**Budgetary Approaches to Providing Services for Offender Health Care**	**Dr. Newton Kendig**, Assistant Director, Health Services Division, *Federal Bureau of Prisons* **Dr. Jim Degroot**, Mental Health Director *Georgia Department of Corrections* **Joseph Ponte,** Commissioner *Maine Department of Corrections* **J. John Ashe**, Superintendent *Hampden County Correctional Center*
10:15-10:35	***Break***	
10:35-12:00	**Innovative Cost-Saving Strategies**	**Captain A. Martin Johnston**, Chief Pharmacy Logistics Support *Federal Bureau of Prisons* **Bernard Warner**, Secretary *Washington State Department of Corrections* **Gary VanLandingham**, Director, Results First *Pew Center on the States*
12:00-1:00	***Lunch***	
1:00-2:00	**Opportunity versus Obligations**	**Madeline "Mimi" Carter**, Principal *The Center for Effective Public Policy* **Sandra Matheson,** Director *State Office of Victim/Witness Assistance* **Mindy Tarlow**, Chief Executive Officer *Center for Employment Opportunities*
2:00-2:15	***Break***	
2:15-2:45	**Capability and Capacity: Understanding NIC's Delivery of Services**	**Jim Cosby**, Chief, Community Services Division *National Institute of Corrections*
2:45-3:15	**Identifying and Responding to the Future Cost Needs of Corrections in the United States Advisory Board Roundtable Discussion**	**Diane Williams**, Chair, NIC Advisory Board
3:15	**Closing**	**Diane Williams**, Chair, NIC Advisory Board **Morris Thigpen**, Director *National Institute of Corrections*

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NIC ADVISORY BOARD PUBLIC HEARING

"Balancing Fiscal Challenges, Performance-based Budgeting and Public Safety"

Department of Justice, Washington, DC

Wednesday, August 22, 2012

9:10-10:40 a.m.

Briefing on the Fiscal Costs of Corrections in the United States

Panel Testimony

Mary L. Livers, PH.D., MSW

Louisiana Office of Juvenile Justice

Good morning,

My name is Mary Livers and I am from Baton Rouge, Louisiana. Thank you for inviting me here today to speak on such a timely topic.

For over 30 years, I have been a part of leadership in both adult and juvenile corrections agencies in four states. One thing has remained constant: the pendulum swings in both directions and the one thing that we can count on is change. My passion for positive change and moving systems and people forward has been a major part of my career.

So, my comments here today will show that I have a strong bias toward productive change and organizational learning. I believe that the major role of leadership in correctional organizations is to lead positive change in individuals and in the organization to better meet our missions.

With every crisis come an opportunity and the current trend for "less government" and "fiscal constraint" does provide both challenges and opportunities.

A wise mentor taught me early in my career that "sometimes the best things in life are forced upon us." As human beings sometimes it takes a "crisis" to force the kind of transformational change that is needed to move an agency forward.

Our basic sociology courses teach us that it is the very nature of bureaucracies to build and expand, sometimes to the point of "mission creep" just to ensure the survival of the members, or for the sheer power of having the most resources. So, strictly from a functional and

practical standpoint, it is good to have periods of time that forces us to analyze our mission and to find ways to do more with less. However practical, it is a painful and dramatic process for the organization and the people who depend on the organization to sustain their livelihoods and for those who have become accustomed to "the way things are."

Although difficult, painful, disheartening and humbling, a leader must seize the opportunity and "never waste a crisis."

Fiscal Strategies

Every corrections chief is facing the same challenge across the country. The directive is to cut their budgets drastically. It is only in the past few years that adult correctional populations have begun to even slightly decrease (BJS reported a 0.6% decline in the adult prison population in 2010, the first decline in the total prison population in nearly four decades), and appropriated dollars for corrections continue to go down.

Corrections chiefs across the country have been very creative in finding ways to trim their operational cost. Traditional posts in towers have been replaced with cameras and detection devices. Fewer staff are needed as the result of these changes. Smaller units, with a higher cost to operate have been closed, and the population shifted to larger units for greater economies of scale. In some cases, entire prisons have been closed and offenders moved into local jails, or prisons operated by local departments.

The biggest cost of any corrections agency is staffing, which is usually, the only place administrators can turn to in order to achieve the kind of cuts that are demanded in the current environment. This task of finding

the “right” balance of personnel to provide a safe environment and making necessary cuts in personnel dollars is a serious proposition. As an administrator, safety of the staff and the offenders must guide the decision making.

“Thinning the Soup or Transformational Change”

There are two basic strategies that may be used in decisions to decrease budgets. One simply “thins the soup” by taking across the board cuts from all budget divisions. The other option is transformational which means taking targeted cuts where inefficiencies exist and where but for the budget crisis, change would be almost impossible. Depending on how major the reductions are needed, determines whether one or both strategies are possible or needed.

I am currently the agency head of the statewide Louisiana Office of Juvenile Justice which oversees all community based services and secure facilities for juveniles in the Louisiana. Over the last four years, we have experienced a 41 million dollar reduction in our budget which reflects a 25% decrease. We have gone from 1275 employees to 990 employees so we are working with 285 fewer staff without a significant decrease in the overall number of youth we serve. This reflects a 22% decrease in staffing. It is really a great tribute to the dedicated staff and talented administrators in our agency that we have taken these kinds of cuts and are still producing positive outcomes.

Our reforms efforts in Louisiana have, without a doubt, been transformational. There have been 3 major areas of change in our agency:

1. Programmatic changes

When considering cuts to the budget, we had the opportunity to eliminate programs that we considered under performing and/or duplicative. In addition, we were able to identify what we considered to be our core mission, focus our resources on our core mission and shift responsibility of certain programs to another agency with a more like mission.

For instance, OJJ was funding a treatment program in the community with a price tag of 8 million per year. In reality, the program was basically an alternative school program with some behavioral health services. We eliminated the program and shifted the decision on funding to the local school boards, who had the funding for educating the youth. Such a change, would not have been possible but for the need to tighten our spending practices.

It is critical that valid outcome measures and data be available to support such a decision. It is extremely difficult if not impossible to counter the effects of powerful persuasive anecdotal testimony without accurate data. In addition to focusing on more outcome driven programming, an agency gets to truly reflect on what services the agency and the clients need and not just what services it has been providing because they have had the funds in the past. We tracked the youth who are no longer receiving the services, and have found that these youth are actually doing better or as well as when they were receiving these services.

OJJ is fortunate that we implemented some evidence based practices prior to the height of our fiscal downturn. As a result of those practices, they created some efficiencies that parallel the cuts our

agency realized. For example, we implemented an assessment tool that directed appropriate placement of youth in services. We saw a shift in needed services from out of home services to community based services. The shift in services based on need decreased our numbers in more expensive out of home placements and more accurately addressed the needs of the youth. As the result of the risk instrument, youth with low to moderate needs are being provided services in the community, instead of costly residential services. This reflected an approximately 15 million dollar cost avoidance over the past 2 fiscal years.

2. Outsourcing

Privatization in the corrections field is well known and constantly debated. Not only is the trend continuing for states to look for wholesale contracts for operating residential facilities, but there is a growing trend of compartmentalizing privatization of specialized services. For instance, many state run facilities are looking to have private contracts for specialized services such as food service, medical or mental health care, commissaries and inmate banking, and laundry services. These “mixed models” are proving to be beneficial in many states across the country. As with all operations, whether private or public, the service will only be as good as the written standards (contract) dictate, and the appropriate safeguards and monitoring in place.

Other areas where outsourcing of services is common in juvenile justice arenas is in the provision of community based services and non-secure residential placements.

3. Consolidation of Office Functions

Many agencies, especially in the juvenile justice area are having their "back office" functions consolidated into a larger system, such as adult corrections or other public safety type agencies. This type of change is usually forced upon the agency, forcing us to depend on the efficient operations of another agency to help meet our specific mission.

Louisiana has experienced this situation with state financial functions like finance, human resources, and IT being done by the Department of Office and Management with the State Police. Our central office operations have been reduced from approximately 100 to about half of that at under 50 staff. This challenges the agencies involved to examine and reinvent its infrastructure and ways of doing business. Communication with the other agency and a constant review and flexibility by both agencies of operations is necessary in this scenario. It is extremely important to set up regular checks and balances and communication strategies to ensure that the "minor" agency gets the services delivered to meet the mission.

4. Increased Collaborations with Other Agencies

Another positive result that has occurred with lack of funding has been an increased amount of partnerships, especially public/public partnerships between state agencies or state and federal agencies.

In juvenile justice specifically, juvenile justice agencies are partnering with child welfare agencies about dual served youth and with the department of educations around interventions that start prior to the juvenile justice system. Partnerships with health departments around mental health services, such as coordinated systems of care, are also on

the rise and create opportunities to take advantage of other funding sources, like Medicaid, to the benefit of both parties and the youth.

5. Infrastructure Changes

Transformation changes also often require restructuring the organization to support a leaner workforce or span of control and responsibility. With the reduction of 50% of our central office staff, the role of central office has been adjusted. Instead of office staff providing direct support, the staff at our central office is now more in a consultant, liaison, and quality control role. Often, central office and administrative job descriptions and duties are reinvented. For example food services directors or facility medical treatment directors become contract monitors and a liaison with the contracted providers, as opposed to directing a staff.

Data and outcome measures become extremely important to gage performance. Valid accountability mechanisms must be put into place. Agencies must rely on data to support successful implementation of contracts and programs. Research and up to date knowledge of best practices by the agency as well as community providers is essential.

Contract language and meaningful policy plays a significant role with privatization, outsourcing and consolidations. The written word is the primary tool an agency has to ensure providers perform up to agency expectations. Legal teams and contract monitors play a larger, more significant role in determining providers and performance compliance.

How NIC Can Help

1. Technical Assistance

As a practitioner, I have benefited many times over the years with NIC supported technical assistance from subject matter experts. I have found this to be extremely valuable. Areas which I think will be extremely valuable in offering TA assistance going forward are:

- Staff planning and staff reduction planning;
- Short term and long term evidence or best practice program planning;
- Operational efficiencies with subject matter experts (i.e., laundry, food service, safety and sanitation, delivery of training, to name a few).

The ability of NIC to quickly respond to a request for TA by funding a subject matter expert to address a specific need is extremely helpful, and to take advantage of that "crisis" opportunity I spoke of earlier.

2. Training and Capacity Building through Information Sharing

The NIC "networks" and specific training opportunities for Deputy Directors, Women Executives, and Executive Trainings provide a valuable opportunity to develop supportive relationships to call upon in times of need for administrators. Gaining the most up to date knowledge on germane topics, and the chance to interact with others in like positions at the academy is extremely helpful in using the network to advance best practices in the field. This has been extremely

valuable to me as a practioner, as I have developed a network of respected professionals I feel I can ask for help at any time.

3. Content Areas to Target

With the fiscal challenges that we currently face, and will face for many years to come, it is imperative that financial literacy be emphasized. Our supervisors and managers as well as our administrators need to be literate in RFP's, RFI's, contracts, and quality assurance and performance measurements. NIC should consider e-learning, or webinars, or the development of "Tool Kits" to disseminate the content of these subject areas.

In conclusion, how successful we operate with reduced resources is determined by how successfully we have adjusted to the increased demands for doing more with less. NIC can and should play a major role in helping agencies make transformational changes with efficiency, and at the same time, implementing promising and best practices. NIC can play a major role in supporting the field to make short and long term adjustments to our operations to ensure that we meet our mission, and serve the public with integrity and good stewardship of their resources.

Thank you for this opportunity to make my views known.

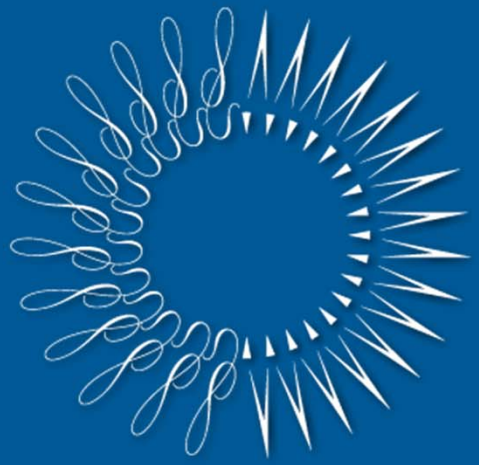
Mary L. Livers

Jim Gondles

Testimony Topics

Mr. Gondles will cover trends in international correctional systems including the Americas, Middle East, Asia and Europe. The trends include:

- Training for staff on security operations
- Training for staff on treatment operations
- Establishment of standards
    - Accreditation
- Partnership with other associations



THE PEW CENTER ON THE STATES

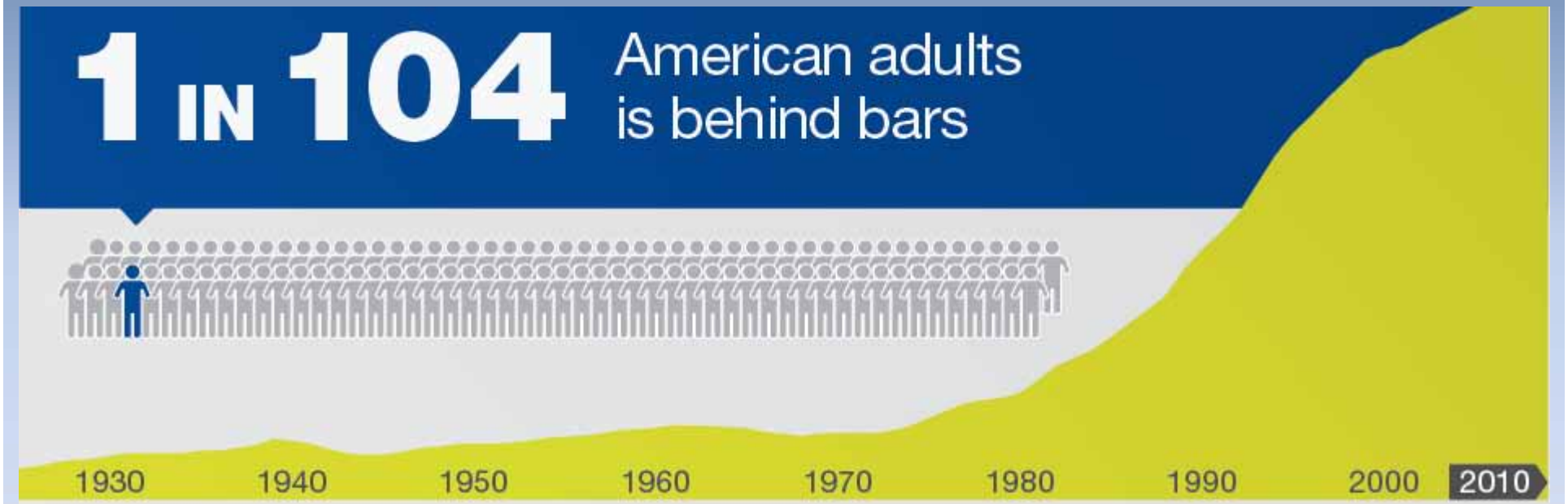
High Cost, Low Return

Testimony to the National Institute of Corrections Advisory Board
August 22, 2012

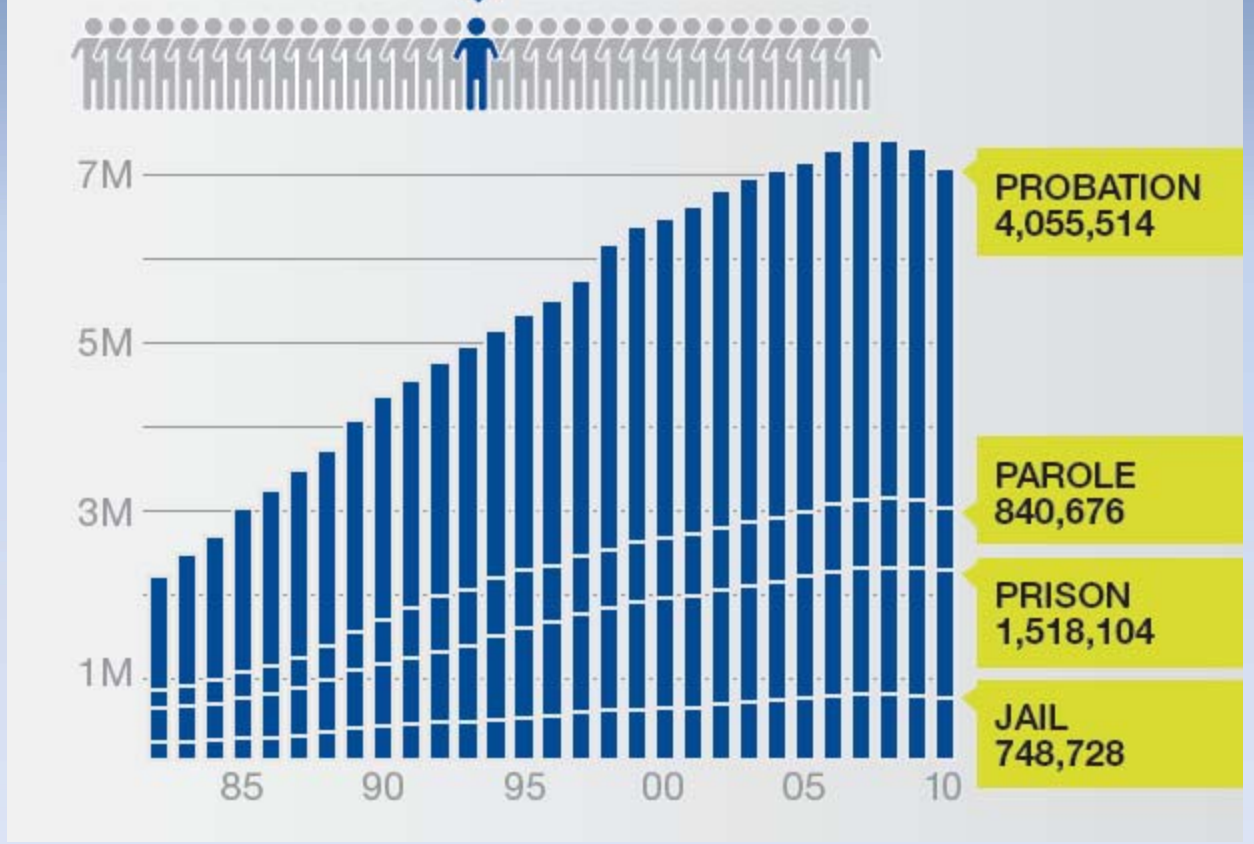
Adam Gelb, Director
Public Safety Performance Project

Key Points

1. Corrections Costs Have Exploded
2. Total Cost is Higher Than Meets the Eye
3. Longer Time Served is a Major Growth Driver
4. Public Safety Payoff is Low
5. Policy Makers and the Public Want a Better Return on Investment


1 IN 104
American adults
is behind bars
1930
1940
1950
1960
1970
1980
1990
2000
2010

1 IN 33 American adults is under correctional control




1 IN 4
of the world's inmates is in a U.S. prison or jail
United States
2,266,832
36 European countries with the largest inmate population
1,797,750


1 IN 14
state general fund dollars is spent on corrections
$$$$$$$$$$$$$$$
Total Expenditures for State Corrections
$52 BILLION
$12 BILLION
FY 1987
2011(est.)

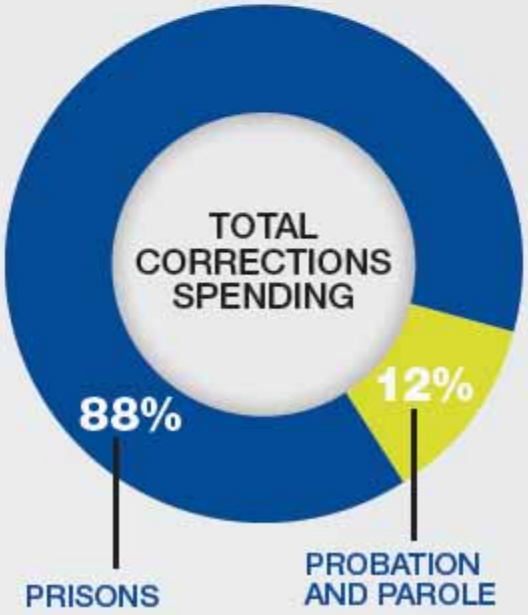
1 IN 8 state employees works in corrections

Top five state employee functions:

1 IN 9

corrections dollars is spent on community supervision

$$$$$$$$$$



Prison Day Costs 23 Times More

One day
in prison
costs more than
23 days
on probation

$78.95
Average

$3.42
Average

Probation Agencies

Prison Systems

Costs Often Outside Prison Budgets

Centralized for Administrative Purposes

- Employee Benefits and Taxes
- Pension Contributions
- Retiree Health Care Contributions
- Capital Costs
- Judgments and Claims
- Private Prisons
- Statewide Administrative Costs

Inmate Services

- Hospital Care
- Educational and Training

Underfunded Retirement Benefits

- Underfunded Pension Contributions
- Underfunded Retiree Health Care Contributions

Source: Vera Institute of Justice, *Price of Prisons*

Total Cost Significantly Higher than DOC Budgets

14%

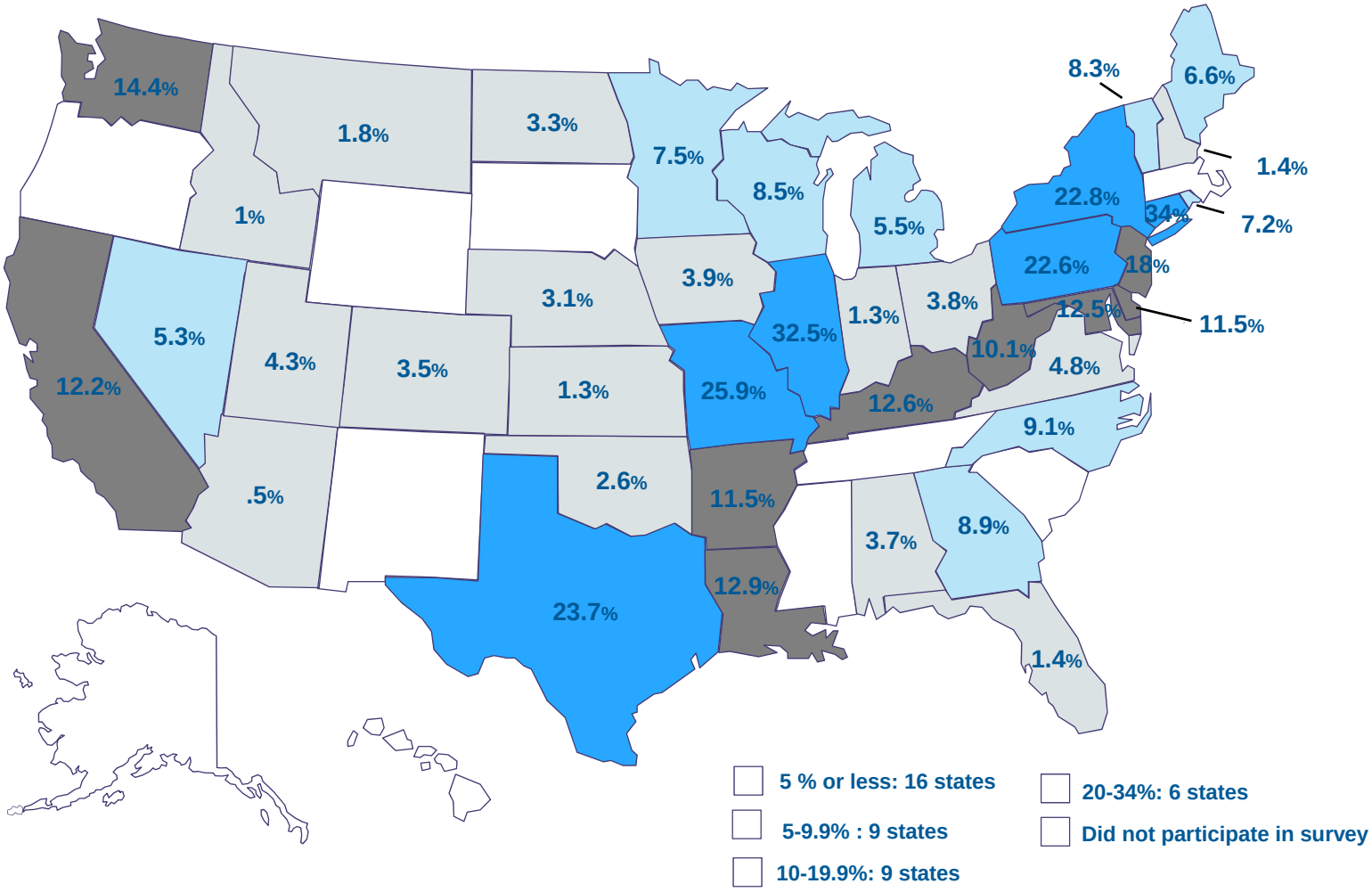
(40 states)

$39 billion

$33.5 billion

Source: Vera Institute of Justice, *Price of Prisons*

Wide Variation in State Budgeting Methods



Source: Vera Institute of Justice, *Price of Prisons*

Illinois: Total Cost 32.5% Above IDOC Budget

Taxpayer Costs (dollars in millions)	
IDOC prison budget	$1,177
Other state costs	
Employee benefits	$163.8
Pension contributions	$152.5
Underfunded pensions	$11.3
Retiree health care contributions	$48.4
Underfunded retiree health care	$99.1
Capital costs	$64.8
Statewide administrative costs	$26.1
Subtotal: Other state costs	$566.1
TOTAL TAXPAYER COST	$1,743.2

Source: Vera Institute of Justice, *Price of Prisons*

Total Costs Above DOC Budgets

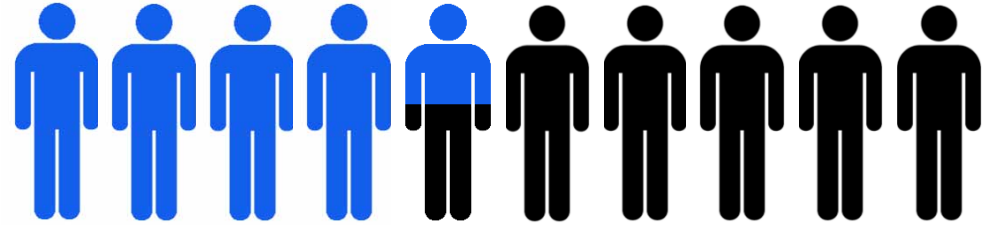
- Underfunded contributions to retiree health care for corrections employees — $1.9B
- States' contributions to retiree health care on behalf of their corrections departments — $837M
- Employee benefits, such as health insurance — $613M
- States' contributions to pensions on behalf of their corrections departments — $598M
- Capital costs — $485M
- Hospital and other health care for the prison population — $335M
- Underfunded pension contributions for corrections employees — $304M

Source: Vera Institute of Justice, Price of Prisons

National Recidivism Rate Remains High

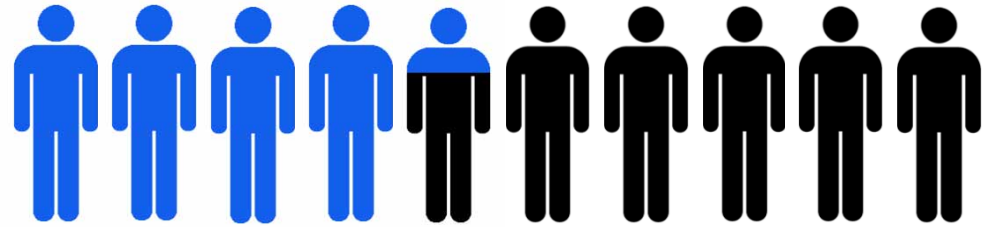
More than 4 out of 10 adult offenders return to prison within three years of their release.

1999 - 2002



45.4%

2004 - 2007

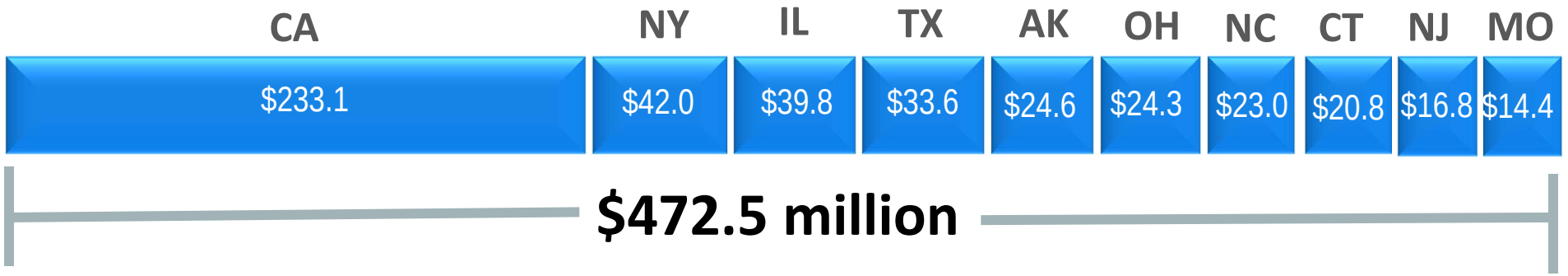


43.3%

Source: Pew Center on the States, *State of Recidivism*

Protecting Public Safety and Cutting Costs

If 10 states reduced recidivism by 10 percent:

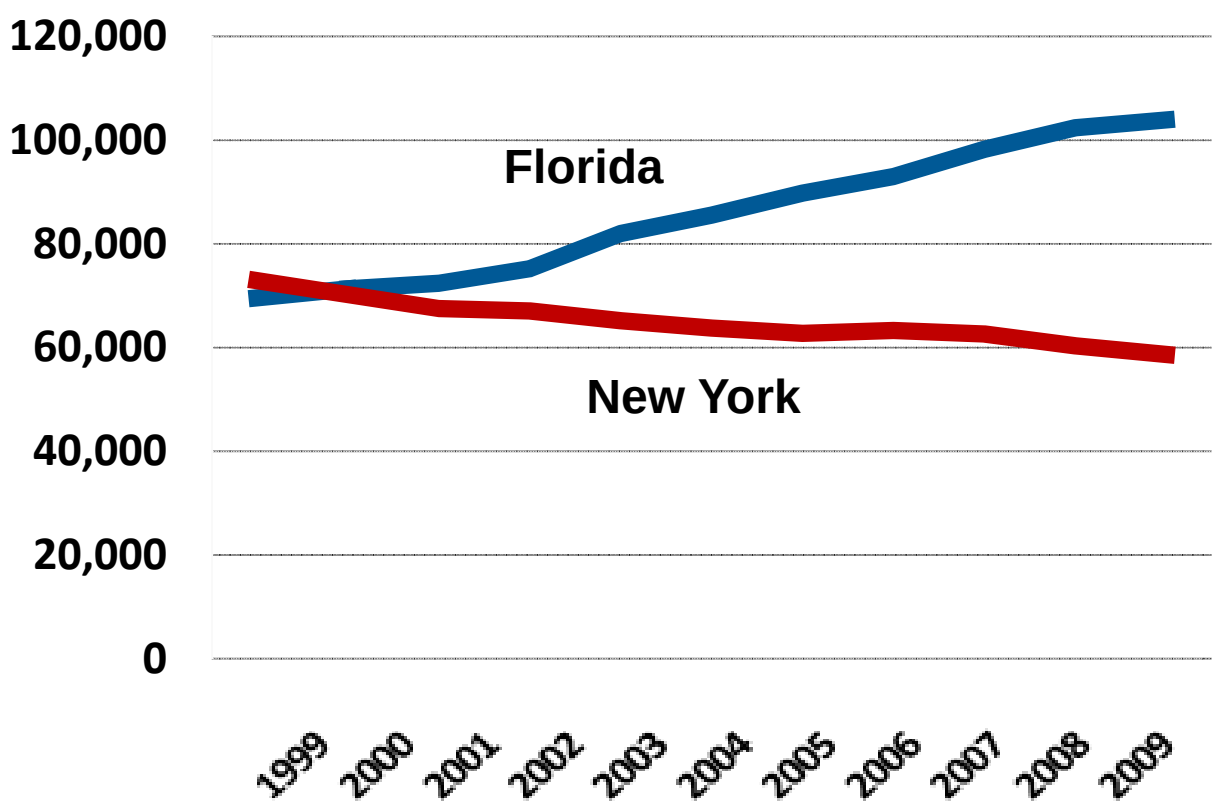


Potential Cost Savings

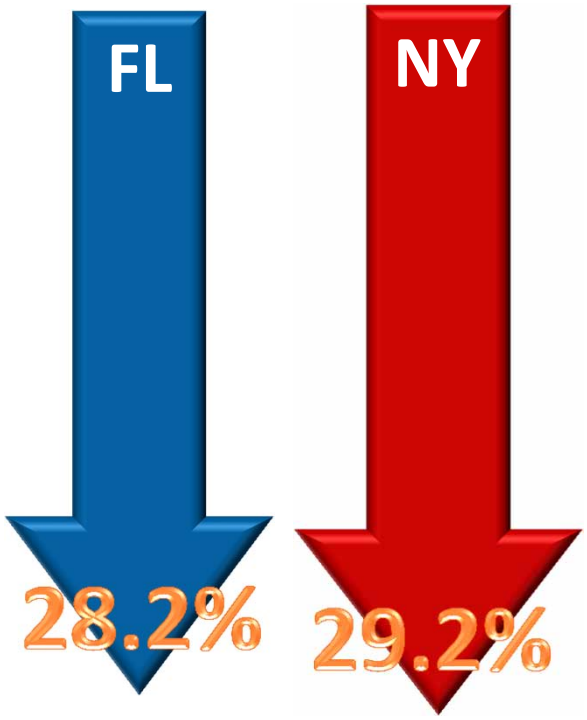
Source: Pew Center on the States, *State of Recidivism*

A Tale of Two States

Prison Population



Crime Rate



Measuring Time Served

1. National Corrections Reporting Program data (1990-2009)

2. 35 states reporting, 89 percent of all releases in 2009

3. Calculated estimates using a three-year moving average, focused solely on first releases

4. Broken down by offense type

Key National Findings

1. Prison time served grew 36% between 1990 and 2009 – 9 months longer – to about 3 years

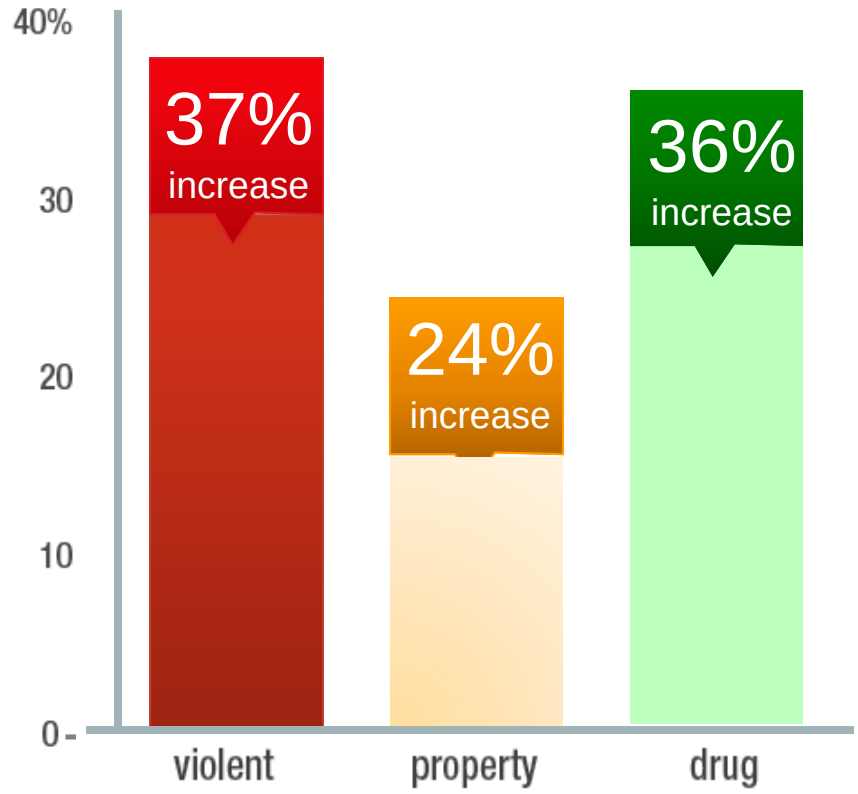
2. Sharpest growth between 1995 and 2000

3. Significant variation by offense type

Source: Pew Center on the States, *Time Served*

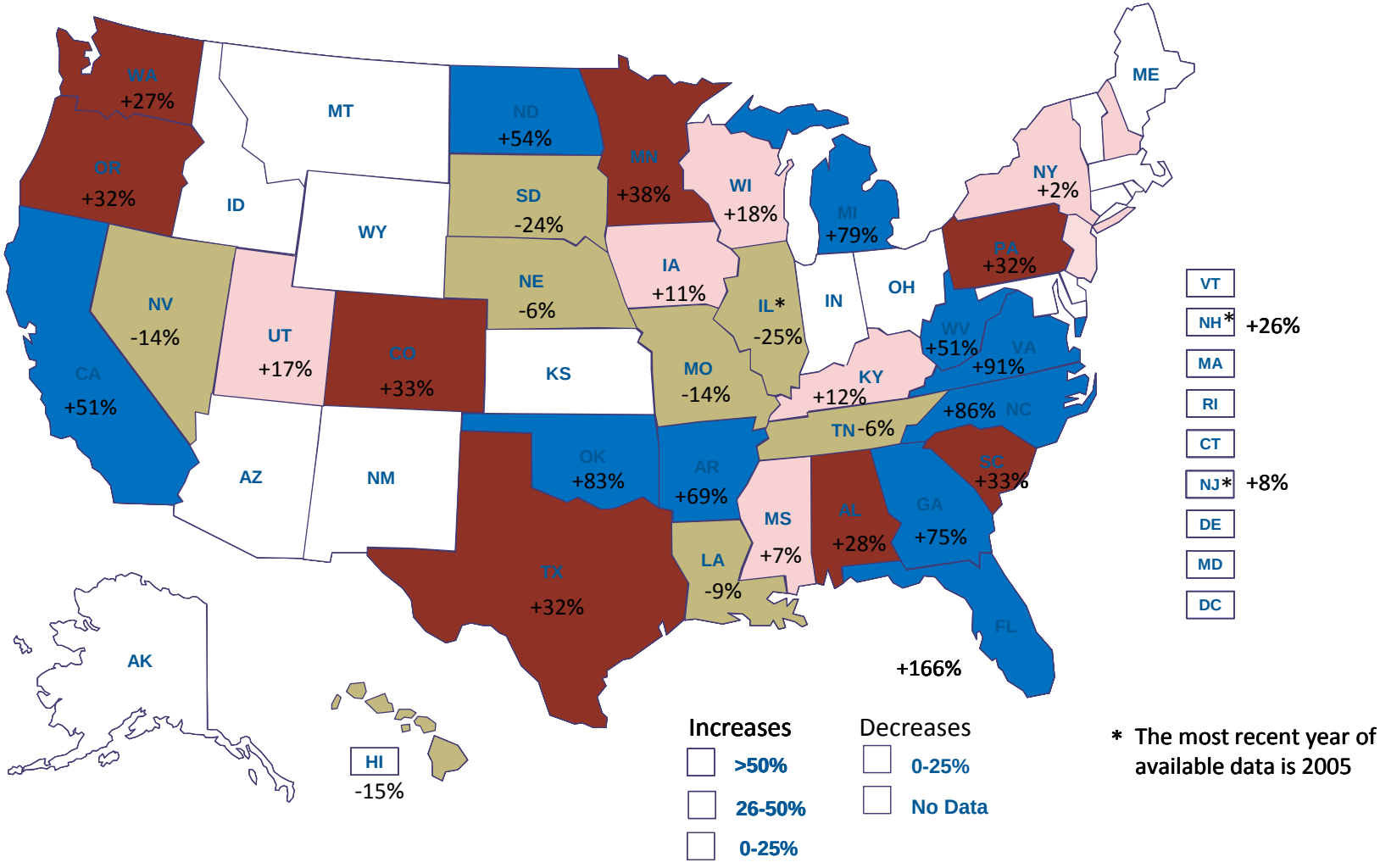
Drug, Violent Grew at Similar Place

Percent Increase in Average Time Served, 1990 to 2009



Source: Pew Center on the States, *Time Served*

Changes Vary Widely Across States

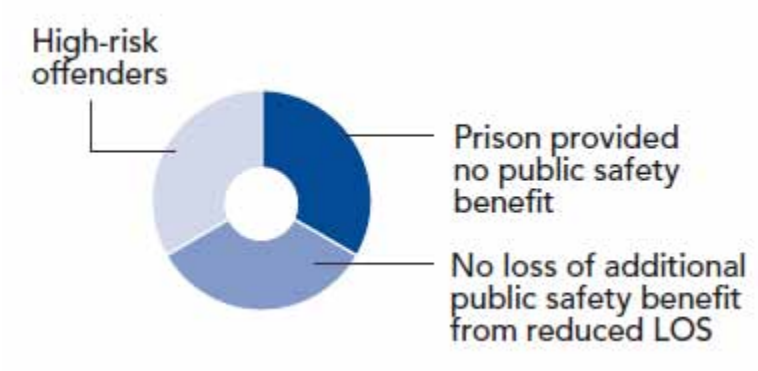


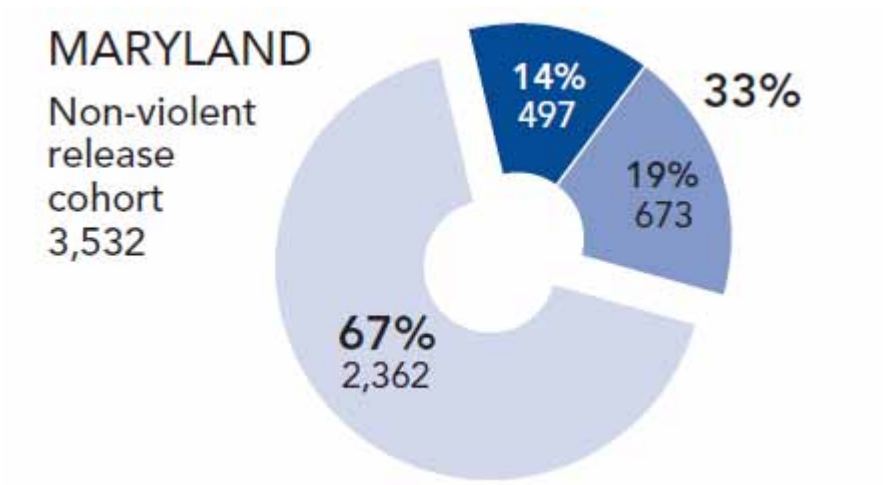
Source: Pew Center on the States, *Time Served*

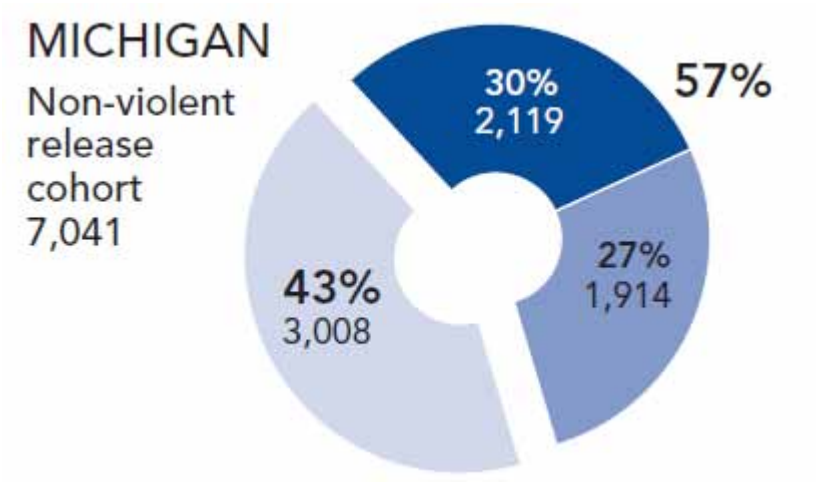
High Cost to States

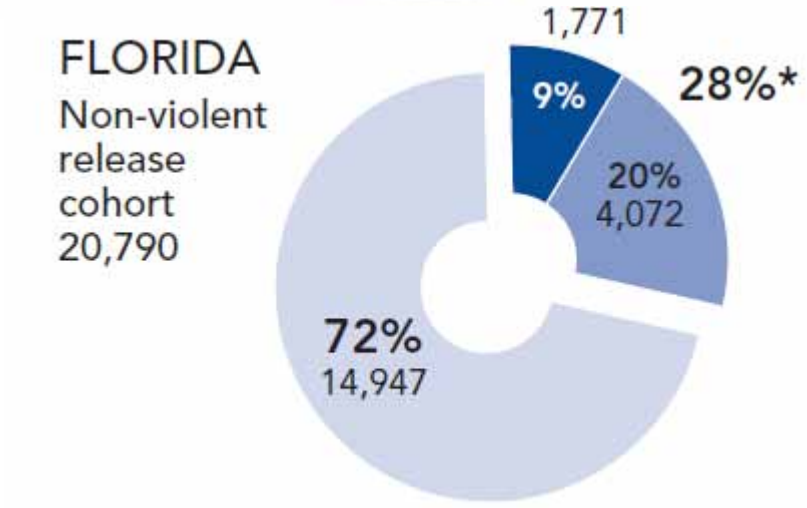
Source: Pew Center on the States, *Time Served*

Thousands Could Serve Less Time









Source: Pew Center on the States, *Time Served*

Possible Savings from Time Served Reductions

Average Daily Population (Low-Risk, Non-Violent Offenders only)

Maryland (2004)

# Identified	Reduced ADP	% Rearrested
1,036	770	8.1%

$30M in Savings

Michigan (2004)

# Identified	Reduced ADP	% Rearrested
3,080	3,280	9.3%

$92M in Savings

Florida (2004)

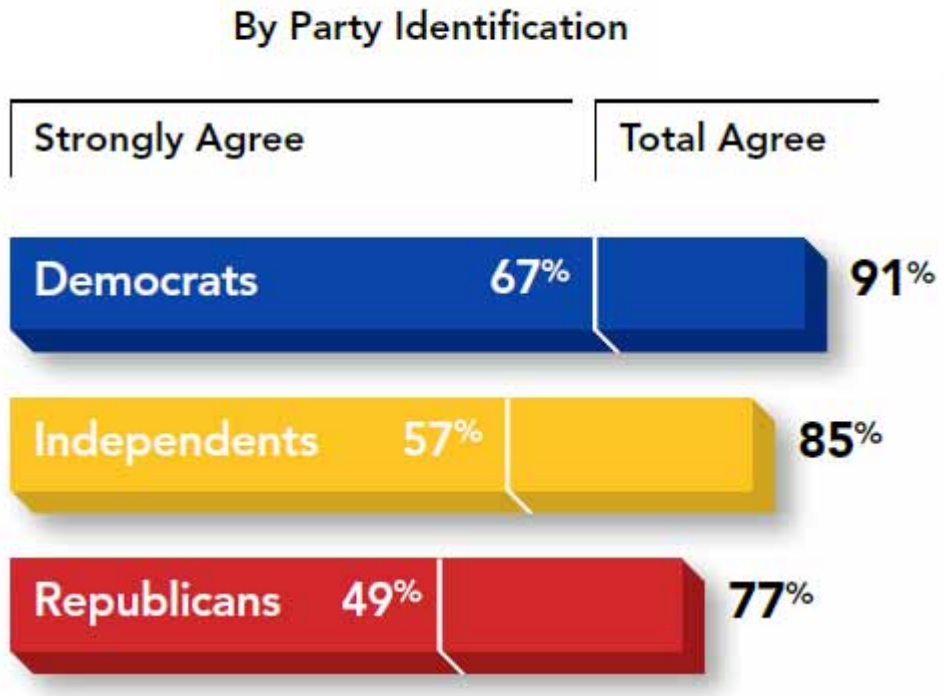
# Identified	Reduced ADP	% Rearrested
4,544	2,640	11.3%

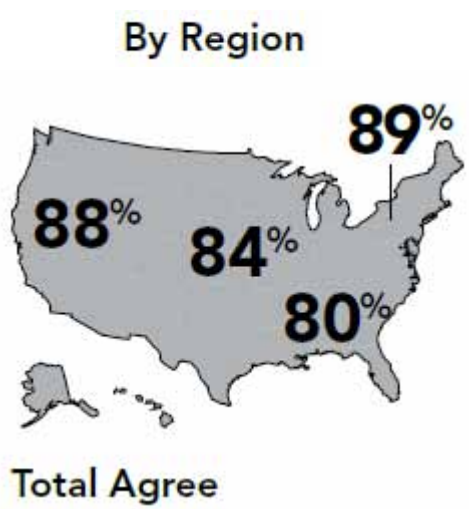
$54M in Savings

Source: Pew Center on the States, *Time Served*

The Bottom Line: Shift Resources

"Some of the money that we are spending on locking up low-risk, non-violent inmates should be shifted to strengthening community corrections programs like probation and parole."

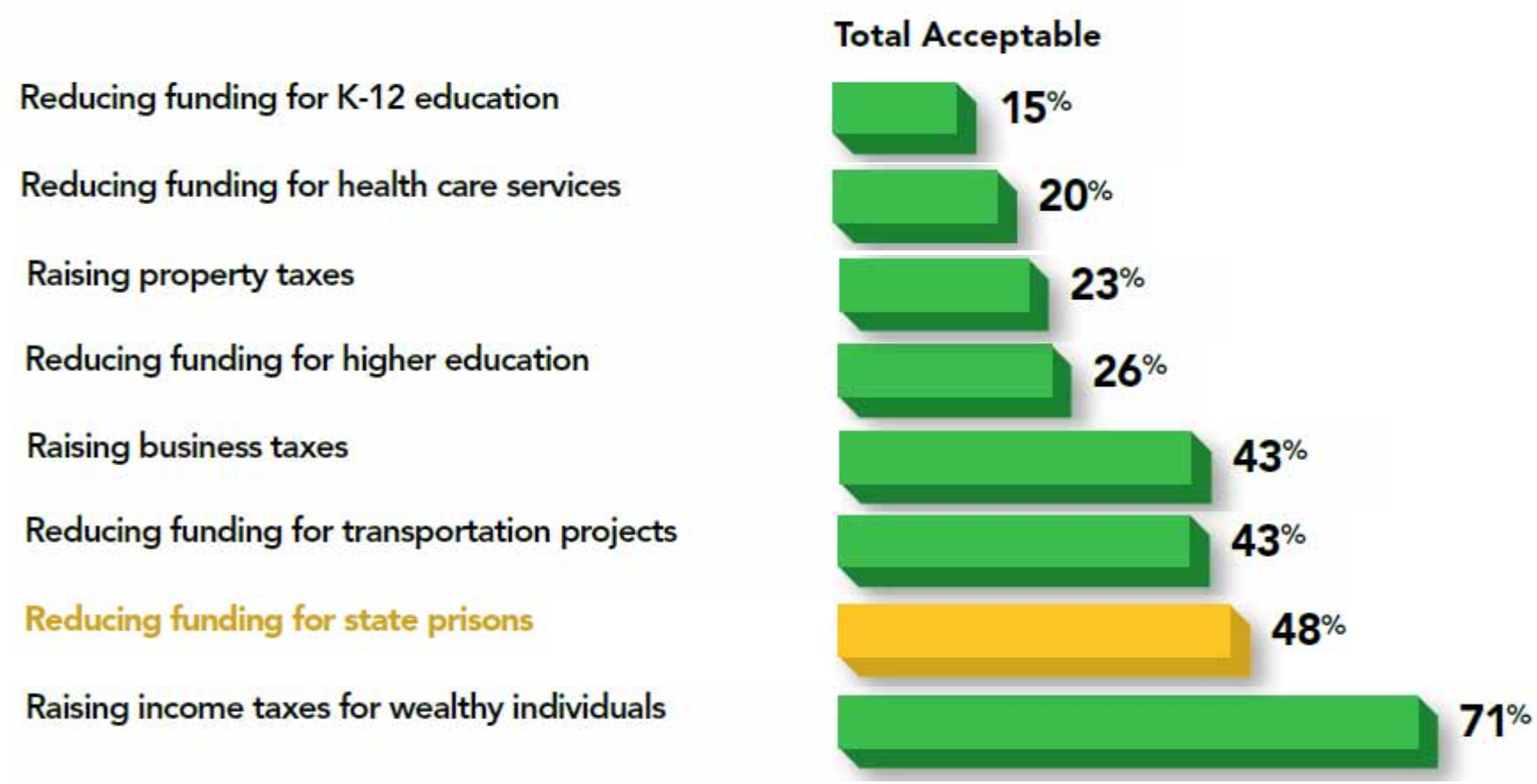




Source: Pew Center on the States, *Public Opinion*

Underlying Attitudes

Voters are more willing to raise taxes on the wealthy or reduce funding for state prisons than they are to consider other types of funding reductions.



Source: Pew Center on the States, *Public Opinion*

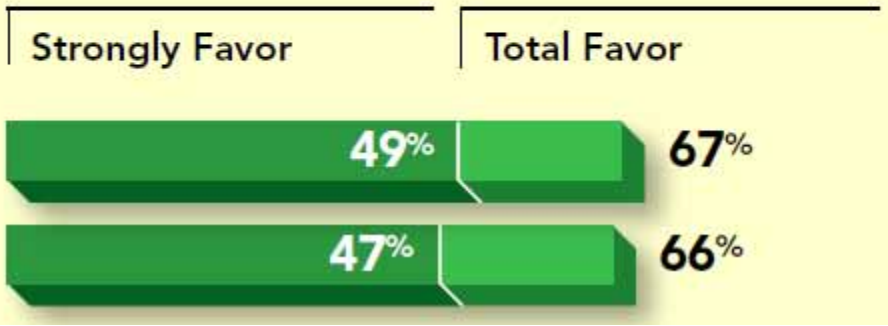
Divert Lower Risk Offenders from Prison

Source: Pew Center on the States, *Public Opinion*

Public Support: Property Crime Penalties

Raise the Felony Theft Threshold

"Many states have a law that stealing property valued over $500 is a felony crime, and thus the offenders face at least one year in prison. Some states have raised this felony threshold from $500 to $1,000 [or] $1,500. Do you favor or oppose a proposal to raise the threshold to $1,000 [or] $1,500 in your state?"

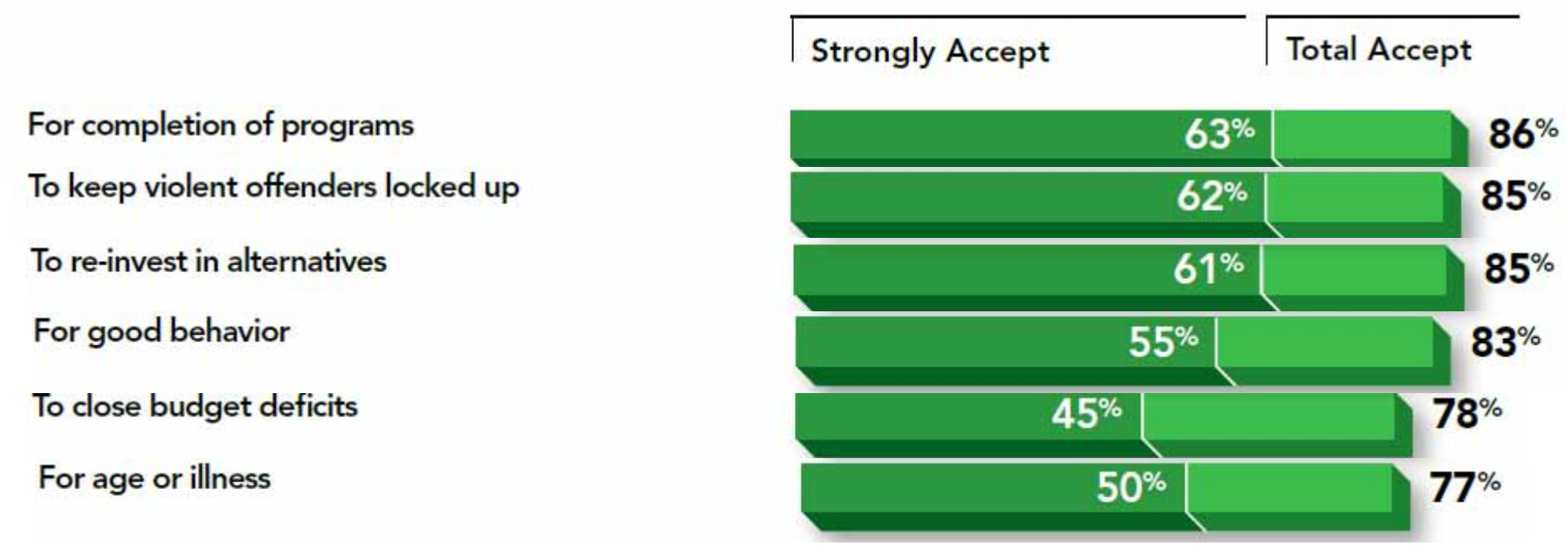


Source: Pew Center on the States, *Public Opinion*

Reduce Time Served for Non-Violent Offenders

All the approaches examined to reduce prison time served are broadly acceptable to voters.

Voters strongly support reducing prison time for low-risk, non-violent offenders for a variety of reasons:

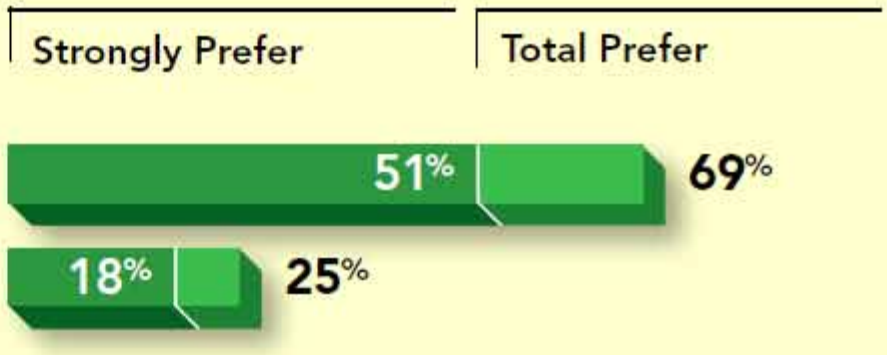


Source: Pew Center on the States, *Public Opinion*

Mandate Supervision vs. Max Out Sentence

Non-Violent Offenders

When given a choice between non-violent offenders serving a full 3-year prison sentence or 2 years of a 3-year sentence plus 1 year of mandatory supervision, voters prefer the mandatory supervision option.



Total Prefer	PARTY AFFILIATION			GEOGRAPHIC REGION				HOUSEHOLD TYPE		
	Democrats	Independents	Republicans	East	South	Midwest	West	Violent Crime Victim	Non-Violent Crime Victim	Law Enforcement Member
With Supervision	72%	67%	67%	70%	65%	70%	73%	74%	74%	67%
No Supervision	23%	25%	26%	23%	27%	24%	23%	21%	21%	28%

Source: Pew Center on the States, *Public Opinion*

Business Leaders Speak Out

Kentucky

Dave Adkisson

President & CEO, Kentucky Chamber of Commerce

Chairman of the Board, American Chamber of Commerce Executives

Florida

Barney T. Bishop III

President and Chief Executive Officer, Associated Industries of Florida

Illinois

Frank H. Beal

Executive Director, Chicago Metropolis 2020

Board Member, Business and Professional People for the Public Interest

Michigan

James R. Holcomb

Vice President for Business Advocacy and Associate General Counsel, Michigan Chamber of Commerce

Oregon

Erin Hubert

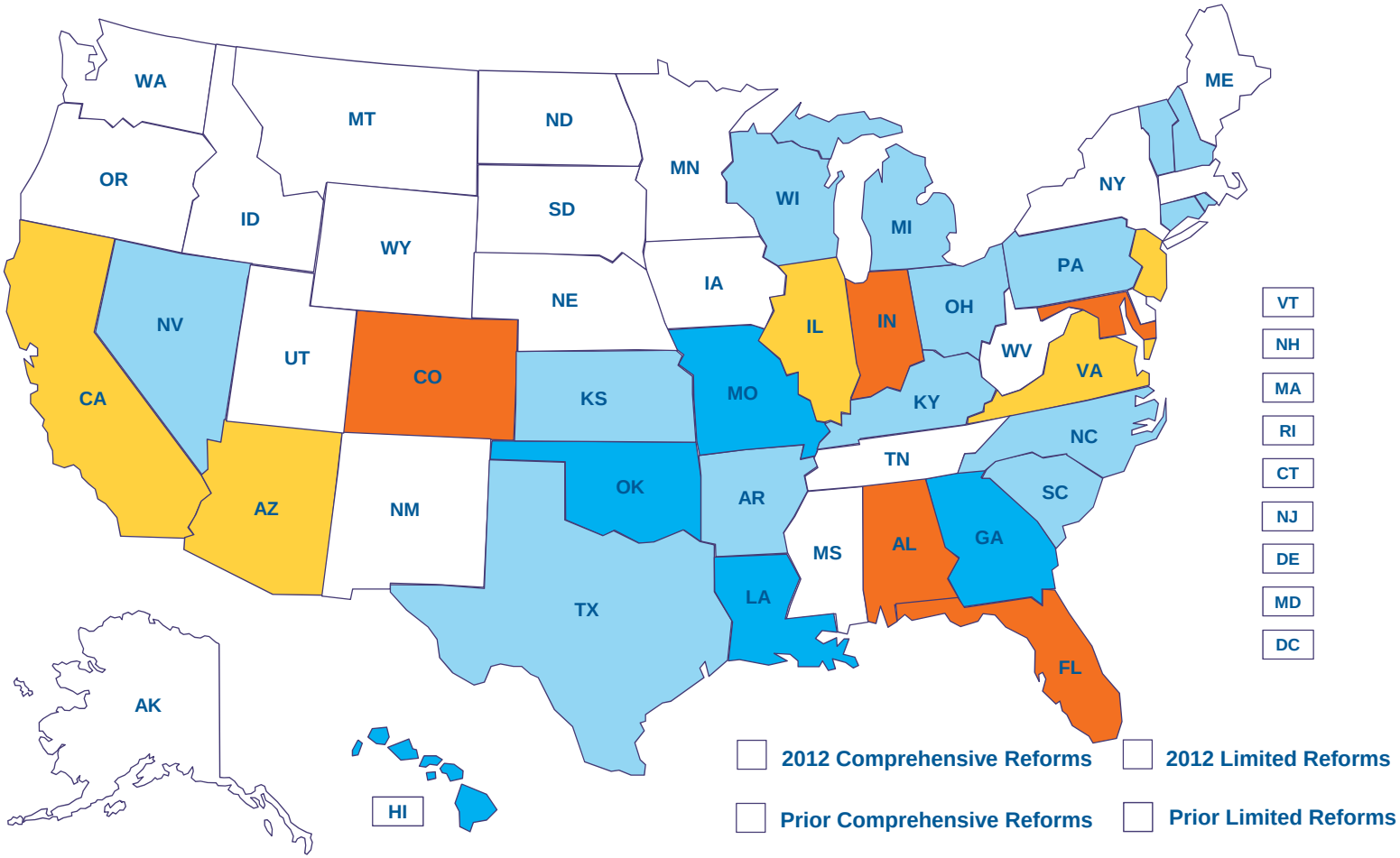
Vice President and General Manager, Entercom Radio

Board Chair, Citizens Crime Commission

"...Conservatives are known for being tough on crime, but we must also be tough on criminal justice spending..."

- Jeb Bush, *former Governor of Florida*
- Newt Gingrich, *American Solutions for Winning the Future*
- Grover Norquist, *Americans for Tax Reform*
- Edwin Meese III, *former U.S. Attorney General*
- William J. Bennett, *former Education Secretary, "Drug Czar"*
- Asa Hutchinson, *former U.S. Attorney, DEA Administrator*
- Pat Nolan, *Justice Fellowship, former CA House Republican leader*
- David Keene, *American Conservative Union*
- Richard Viguerie, *ConservativeHQ.com*
- Tony Perkins, *Family Research Council*
- Ward Connerly, *American Civil Rights Institute*
- John J. DiIulio, Jr., *University of Pennsylvania*

Diverse States Pursuing Justice Reinvestment



National Institute of Corrections Advisory Board Public Hearings

"Balancing Fiscal Challenges, Performance-Based Budgeting, and Public Safety"

Outcome-Based Budgeting: Process and Practice

Christopher A. Innes, Ph.D.
Chief, Research and Information Services Division, NIC

August 27, 2012
Washington, D.C.

National Institute of Corrections

Historical Trends in American Corrections

Three broad, long-range trends frame the current position and immediate future of corrections in the United States

Crime rates, which began to rise in the 1960s and then fell in the 1990s.

Incarceration rates, which began to rise in the 1970s and continued to rise until 2010.

Ongoing budget issues that have and will continue to constrain corrections.

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The “Big Squeeze” in American Corrections

Although crime rates have been falling for almost two decades and incarceration rates have recently fallen slightly, the correctional population remains very high.

Correctional costs are driven by the size of the correctional population, while the current state and future prospects for funding are problematic.

Our current policies and practices in sentencing and corrections encourage having a large correctional population.

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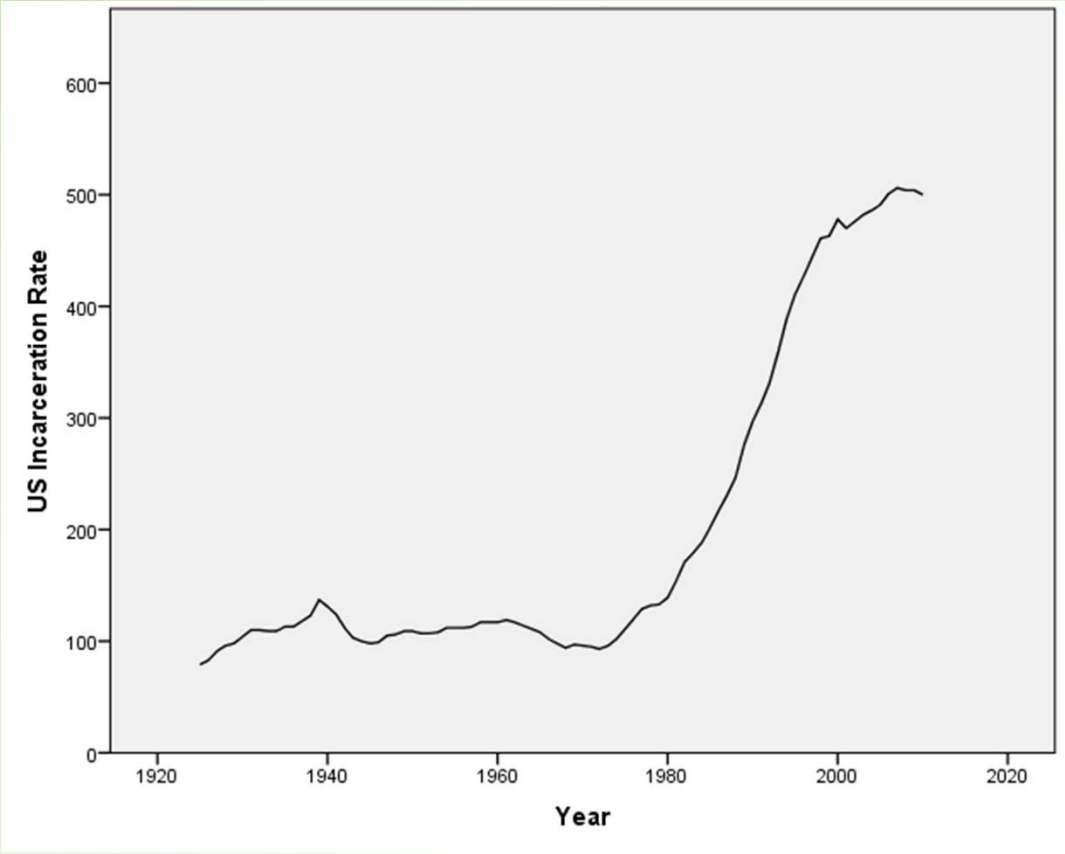
U.S. Prison Incarceration Rate by Year, 1925-2010

The U.S. sentenced prison incarceration rate remained stable, at about 100 prisoners per 100,000, for 50 years.

In the mid-1970s it began to rise, from 120 per 100,000 in 1976 to a peak of 506 per 100,00 in 2007.

In recent years, the rate of growth in the incarceration rate began to slow and in 2010 it had declined to 500 per 100,000.



Source: Bureau of Justice Statistics

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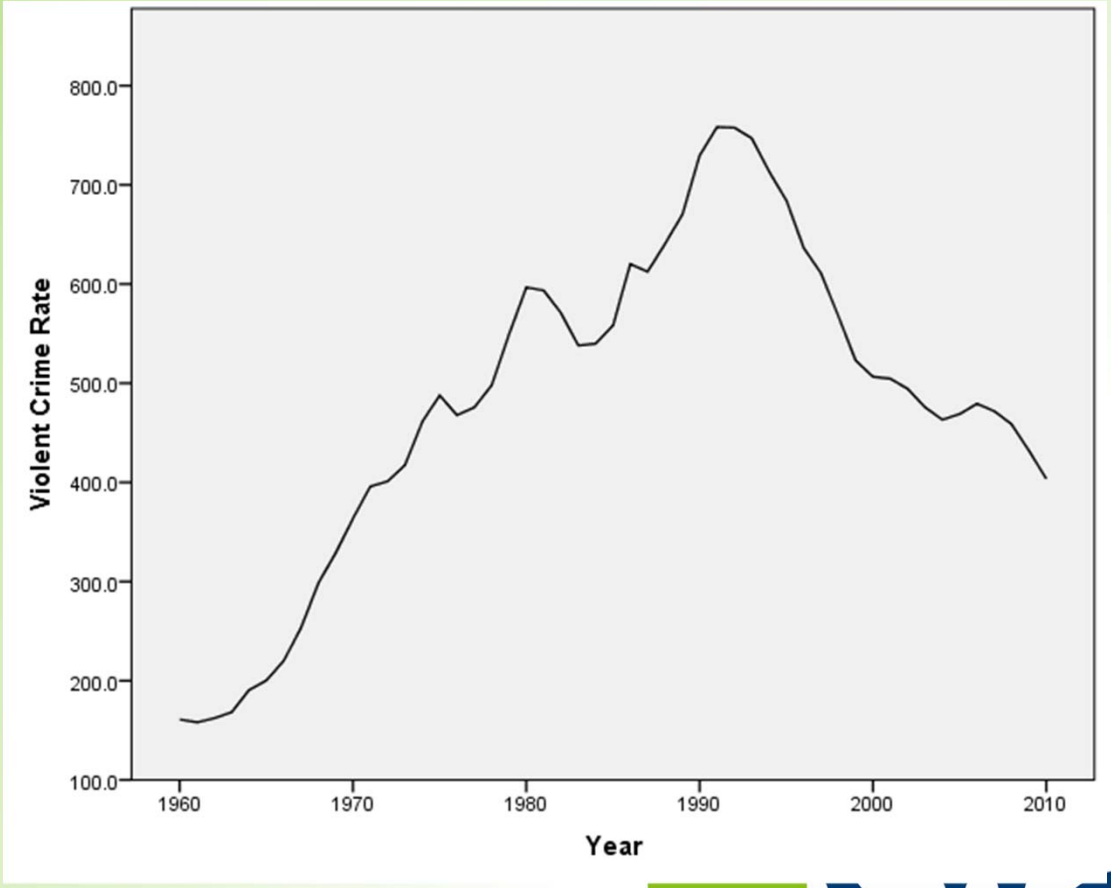
U.S. Violent Crime Rate, 1960-2010

Crime rates in the United States had been relatively stable until they began to climb in the early the early 1960s.

For example, the violent crime rate in 1960 was 160.9 crimes per 100,000 in the population. It peaked in 1994 at 713.6.

It has fallen since the mid-1990s, and in 2010 it was 403.6, about what the rate had been in 1973.



Source: FBI Uniform Crime Reports

National Institute of Corrections

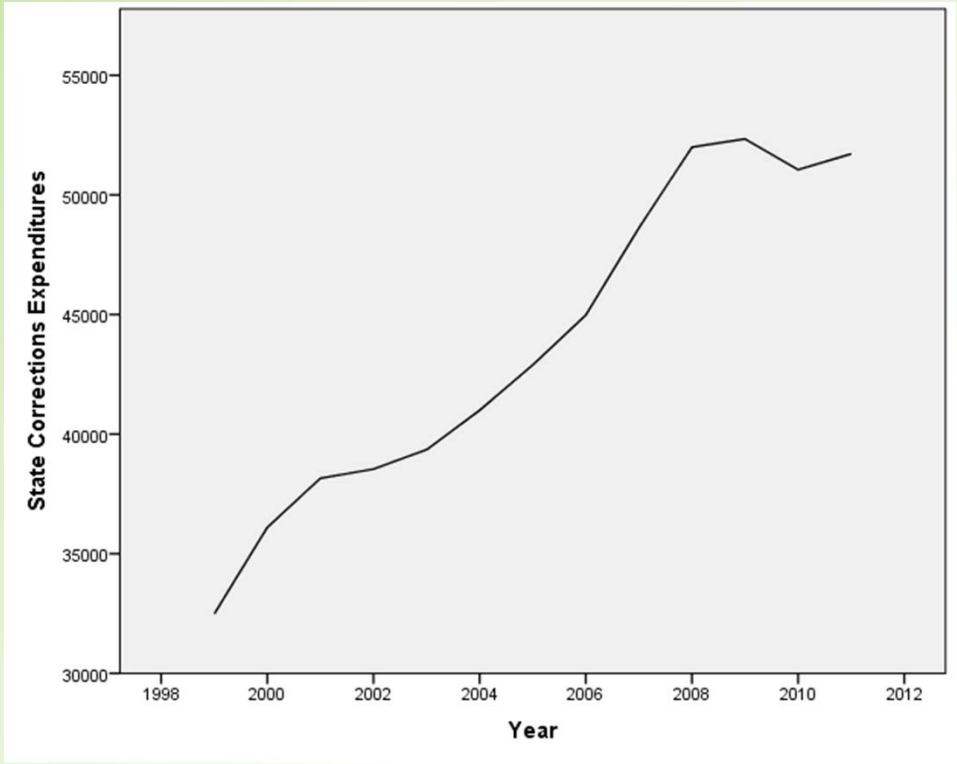
Total State Correctional Expenditures, 1999-2011

After a period of rapid growth during the 1990s, state expenditures on corrections slowed during the recession in the early 2000s.

In 2000, total state expenditures on corrections was $36.1 billion.

Expenditures flattened in 2001-2003, but rose to $40.9 by 2004.

It rose to $52.3 billion by 2009, fell in 2010 and is now expected to be up slightly, but not return to pre-2009 levels yet.



Source: National Association of State Budget Officers

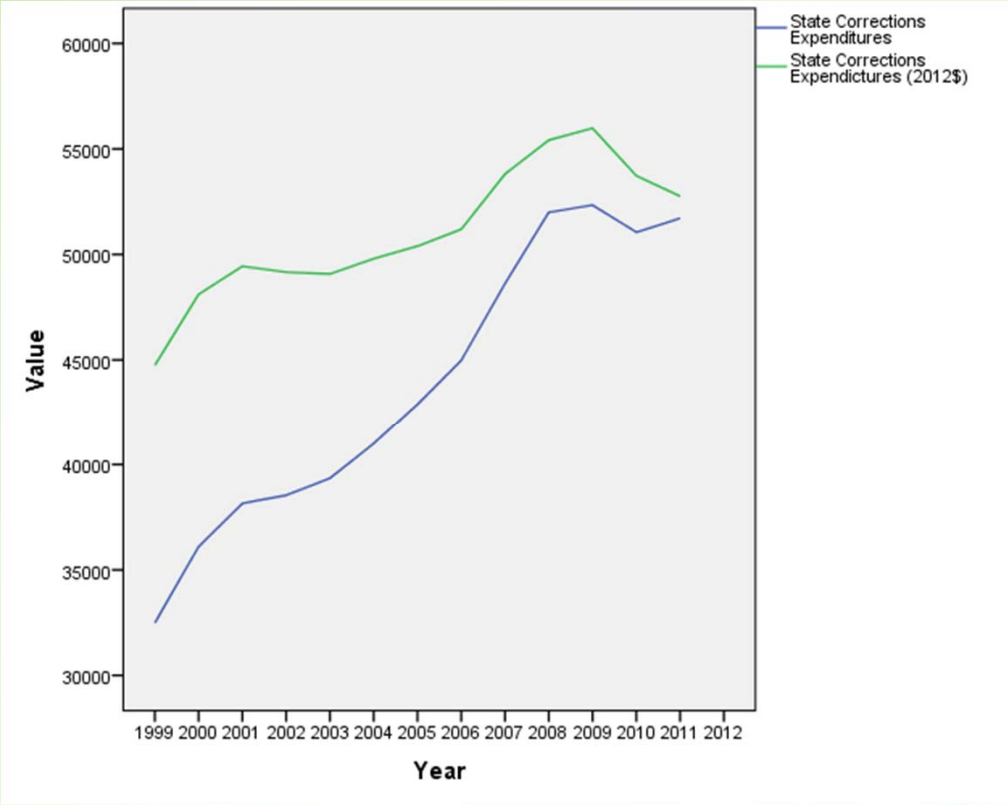
National Institute of Corrections

Total State Correctional Expenditures in Nominal and Real (2012) Dollars 1999-2011

The trend in corrections expenditures since 2000 looks different when each year's nominal amounts are adjusted for inflation using the Consumer Price Index.

Converted to 2012 dollars, the upward trend in nominal expenditures looks flatter in real (2012) dollars.

In addition, the declines in expenditures are sharper in real terms than they appear to be when based on unadjusted figures.



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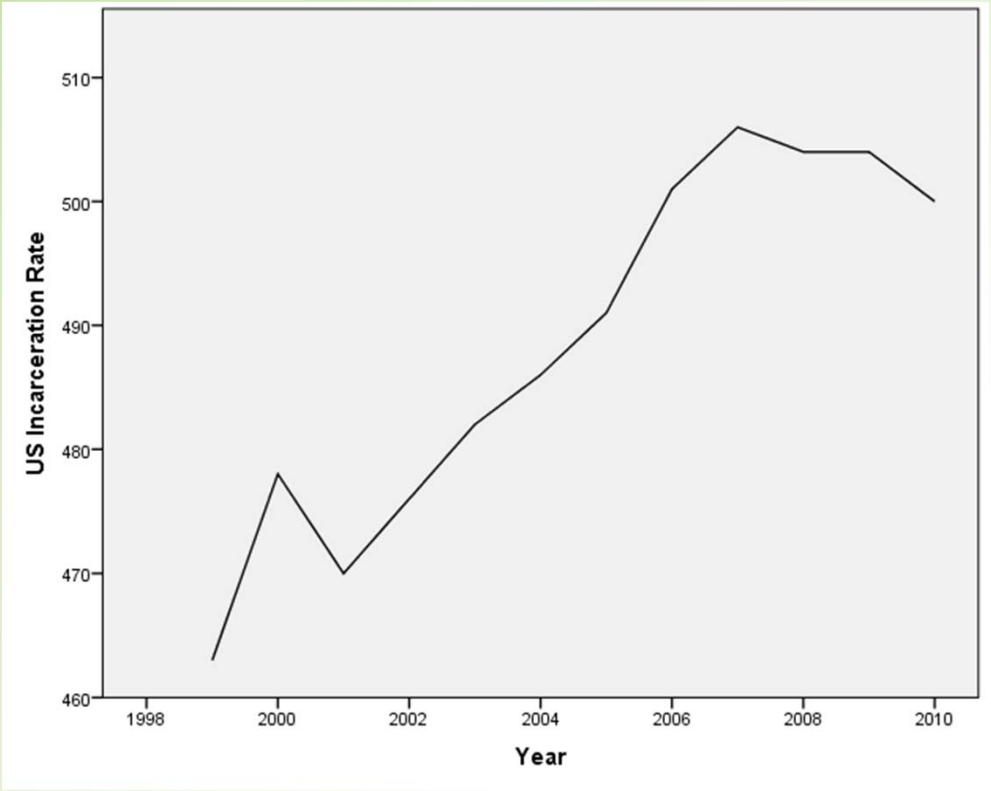
U.S. Sentenced Prison Incarceration Rate, 1999-2011

A closer look at the U.S. sentenced prison incarceration rate during the 1999 to 2011 period shows that rates were affected during periods when real expenditures were reduced.

From 2000 to 2001 the rate fell from 478 per 100,000 to 470. By 2003, it had returned to 482.

The incarceration rate peaked in 2007 at 506 per 100,000, fell to 504 in 2008 and 2009, and reached 500 in 2010.



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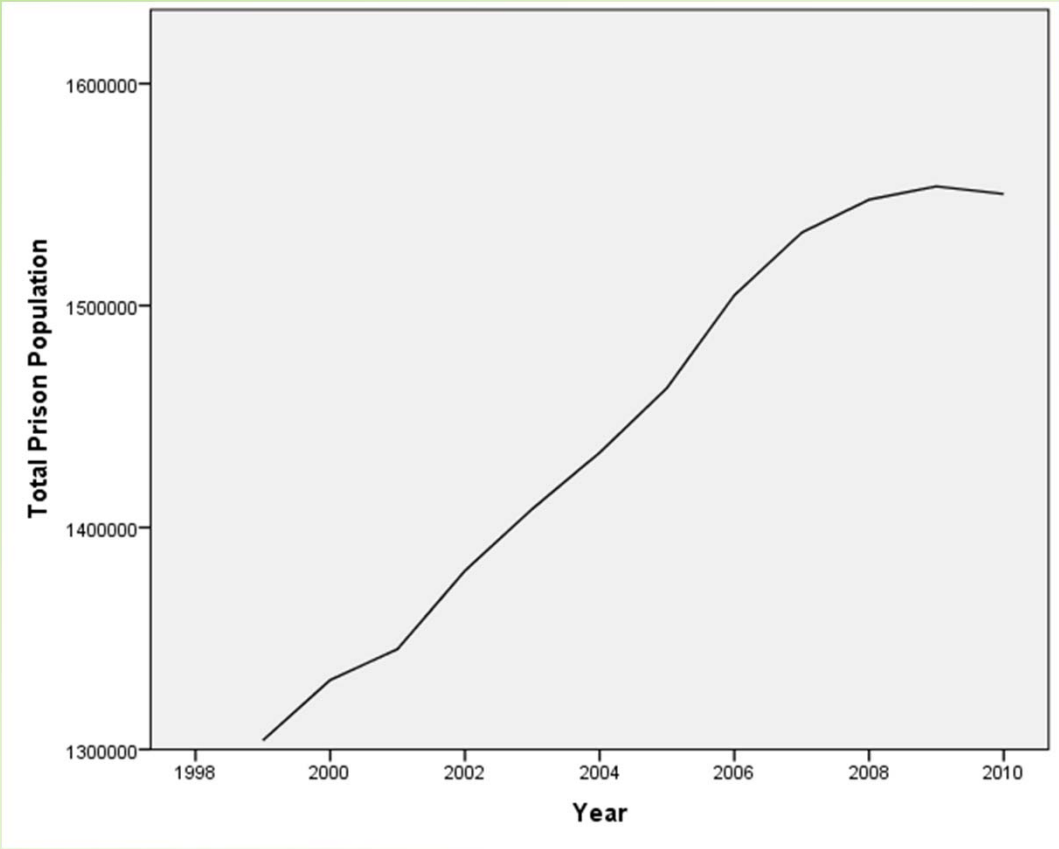
Total U.S. Sentenced Prison Population, 1999-2011

Although sentenced prison population *rates* may fall, that does not mean that the *total number* of sentenced people in prison will also fall.

Any population rate can remain stable, but still produce higher numbers if the general population itself is growing.

The U.S. population in 2000 was 281.4 million and the number of prisoners was 1.333 million (the rate was 478).

In 2010, the U.S. population was 308.7 million and the number of prisoners was 1.550 million (the rate was 500)



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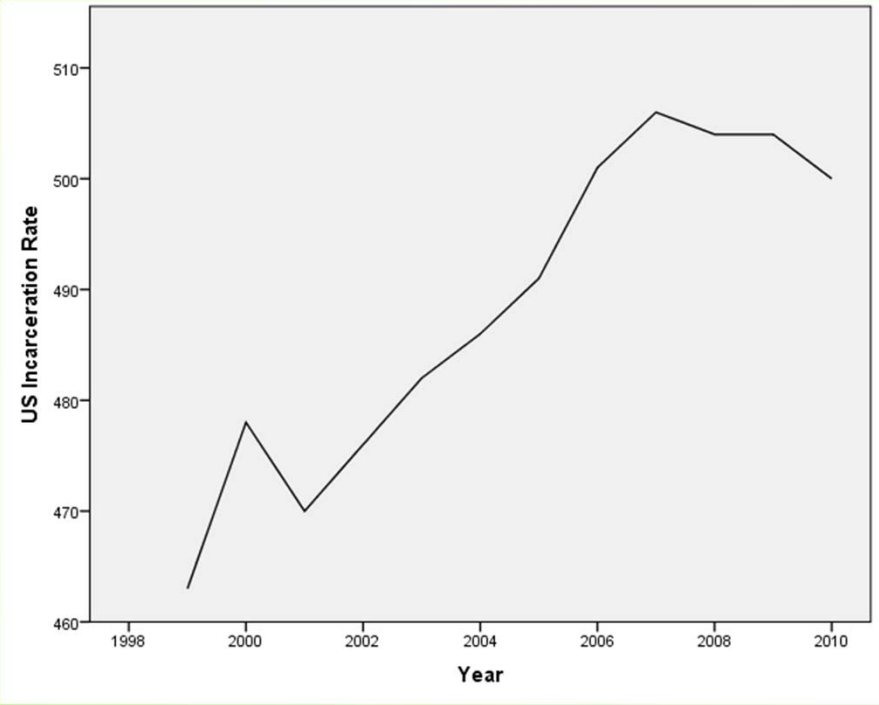
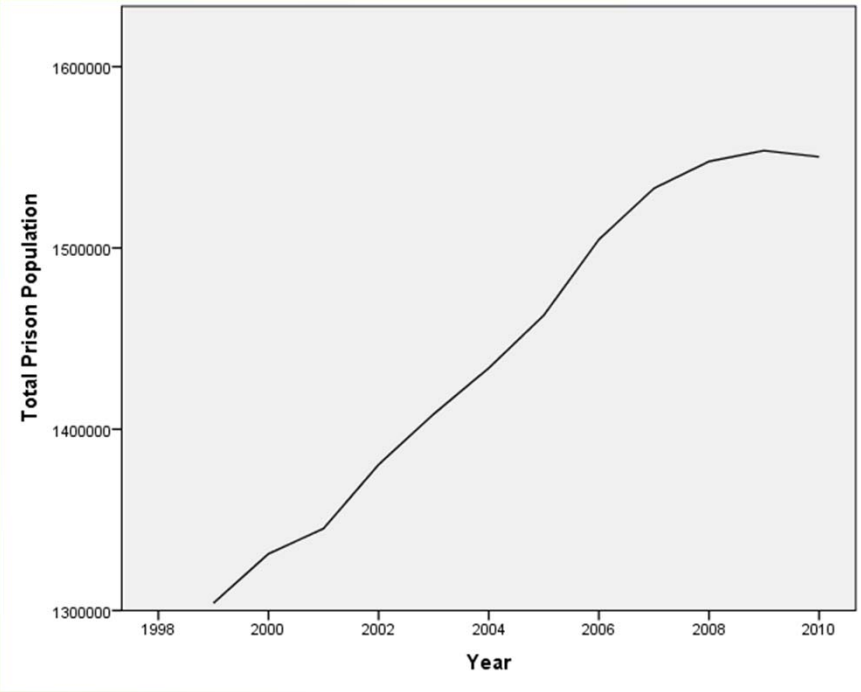
U.S. Prison Incarceration Rate and U.S. Sentenced Prison Population, 1999-2011





Even when incarceration rates are flat, total prison populations can rise.

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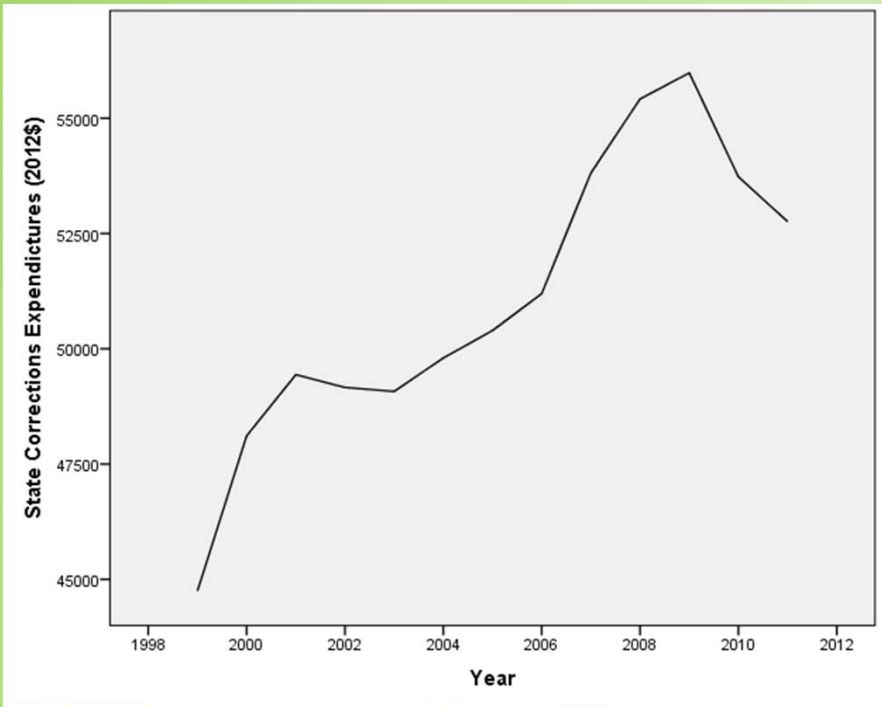
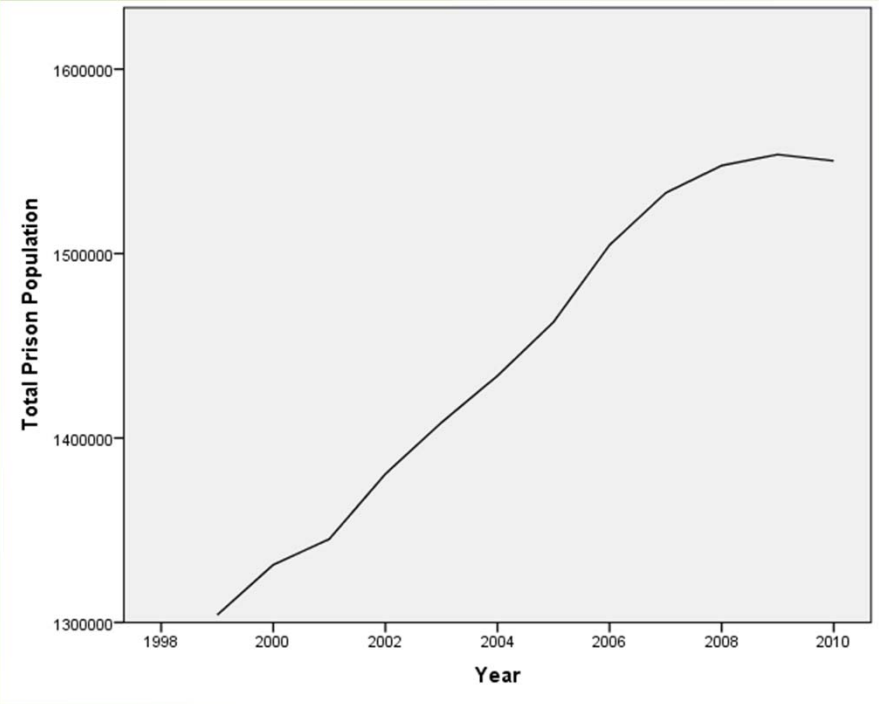
State Correctional Expenditures in Real (2012) Dollars and Total U.S. Sentenced Prison Population, 1999-2011





Expenditures in real terms have fallen while the total prison population has leveled off.

National Institute of Corrections

NIC's Cost Containment Survey

In early 2011, the NIC Cost Containment Project conducted a survey of correctional agencies.

Of the 65 responding agencies, all but one said cost containment was a significant or critical issue for their agency.

In all, 60 of the agencies said they had engaged in cost containment efforts in the last five years.

National Institute of Corrections

In the survey, the agencies reported in which areas they had tried to contain costs:

90% said staffing.
62% said medical/mental health services.
52% said population management.
38% said food service.
36% said offender programs and services.
35% said physical plant/maintenance.
31% said they had sought legislative changes.

Source: NIC Cost Containment Survey, 2011

National Institute of Corrections

By comparison, the American Correctional Association publishes an annual directory that contains detailed correctional budgets. In 2010, the state budget breakdown was:

Security and custody	28.9%
Salaries and benefits	27.6%
Health care	12.3%
Operations/Maintenance	8.7%
Community programs	6.7%
Administration	5.1%
Food service	3.2%
Treatment	2.8%
Other	3.8%

Source: American Correctional Association Directory, 2011

NIC's Cost Containment Project

www.nicic.gov

http://nicic.gov/CostContainment

National Institute of Corrections

UNITED STATES DEPARTMENT of JUSTICE

NIC National Institute of Corrections

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:: HOME > Corrections Library > Popular Topics > Cost Containment in Corrections (edit page) | (new page)

Cost Containment in Corrections

Start Here:

- Introduction to the Cost Containment Framework
- Cost Containment Framework
- Cost Containment in Corrections Resources

(edit)

Contact

- Dee Halley, Correctional Program Specialist

Across the country, correctional agencies are facing an era of fiscal austerity. They are being tasked with meeting the mission of public safety with reduced resources while maintaining effective operations and the efficient use of public funding. This has now become the "new normal".

In a 2011 survey of correctional professionals, 98.5% of the respondents indicated that cost containment is a significant or critical concern within their organizations. Ninety-two percent of the respondents indicated that their agency has engaged in targeted cost containment efforts within the past five years. These cost containment efforts were primarily the result of budget constraints due to both short and long-term economic conditions.

The primary targets for cost reductions are in the areas where correctional agencies expend the majority of their resources – staffing, offender medical/mental health services, and supervising the offender population. As they considered budget restrictions, respondents focused on three approaches:

- targeted reductions (i.e. hiring freeze, reduction in overtime);
- changes in business practices (i.e. bulk food purchasing, reducing hospital stays by inmates; more efficient pharmaceutical purchasing); and
- the use of new technology (i.e., increased web-based training, increased use of electronic monitoring, online bail system). In addition, many states have embarked on an agenda of reducing the incarcerated population with more, and dramatically less expensive, supervision in the community.

How the Corrections Cost Containment Center (CCCC) Can Help Your Agency

Library Resources Click to edit

Corrections Budgets in Free Fall: Finding Opportunities in T...

Return on Investment: Improving Results and Saving Money

(edit)

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Cost Containment Framework

The Framework Roadmap

- Step 1: Create a Steering Committee
- Step 2: Develop Scope
- Step 3: Identify and Characterize Costs
- Step 4: Evaluate and Select Cost Options for Reduction
- Step 5: Outline Strategy for Cost Containment Options
- Step 6: Assess the Risks
- Step 7: Prioritize Cost Reduction Options
- Step 8: Review Cost Containment Options with Steering Committee
- Step 9: Select Final Candidates for Cost

The Framework presents a step-by-step process that will help users consider and make meaningful, yet manageable funding decisions. Some of these steps are basic. Agency executives and their financial managers may find they have several components and structures discussed in the various steps already in place, particularly those in the initial stages. Decision-makers may not find it necessary to work-through the entire process for every decision. Others who are new to the process

NIC National Institute of Corrections

National Institute of Corrections Advisory Board Public Hearings

August 27, 2012
Washington, D.C.

Christopher A. Innes, Ph.D.
Chief, Research and Information Services Division, NIC
cinnes@bop.gov (202) 514-0098

National Institute of Corrections

Current State Fiscal Conditions & the Impact on Corrections

National Institute of Corrections

Outcome Based Budgeting: Process and Practice

August 22, 2012

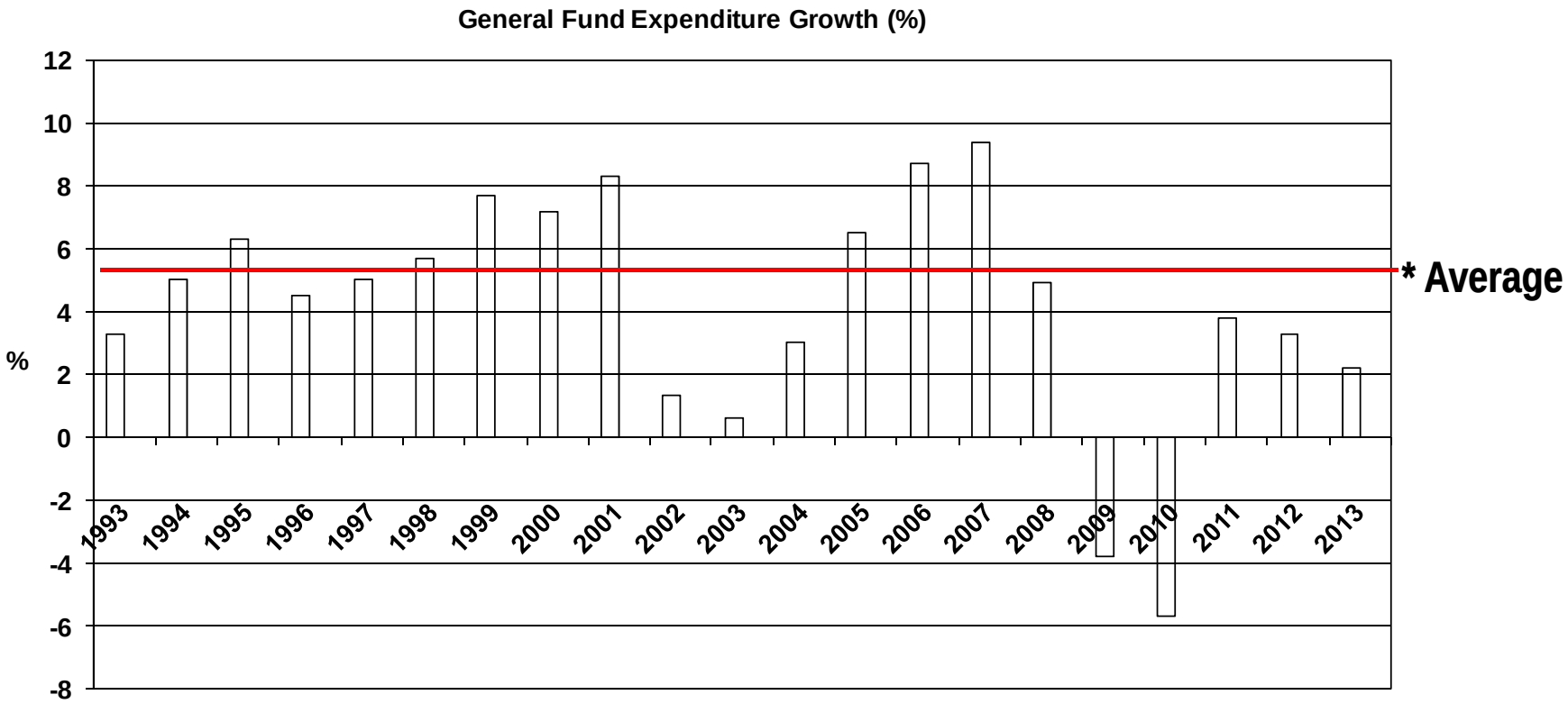
Brian Sigritz
Director of State Fiscal Studies
National Association of State Budget Officers

444 North Capitol Street, NW, Suite 642 • Washington, DC 20001 • (202) 624-5382 • www.nasbo.org

State Fiscal Overview

- The “Great Recession” was an extremely difficult fiscal period for states in all regions
- Fiscal 2013 projections show aggregate expenditures and revenues continue to improve
- For many states, general fund revenues and expenditures still below fiscal 2008
- States recovering, but not recovered
- Tight resources for corrections and other items

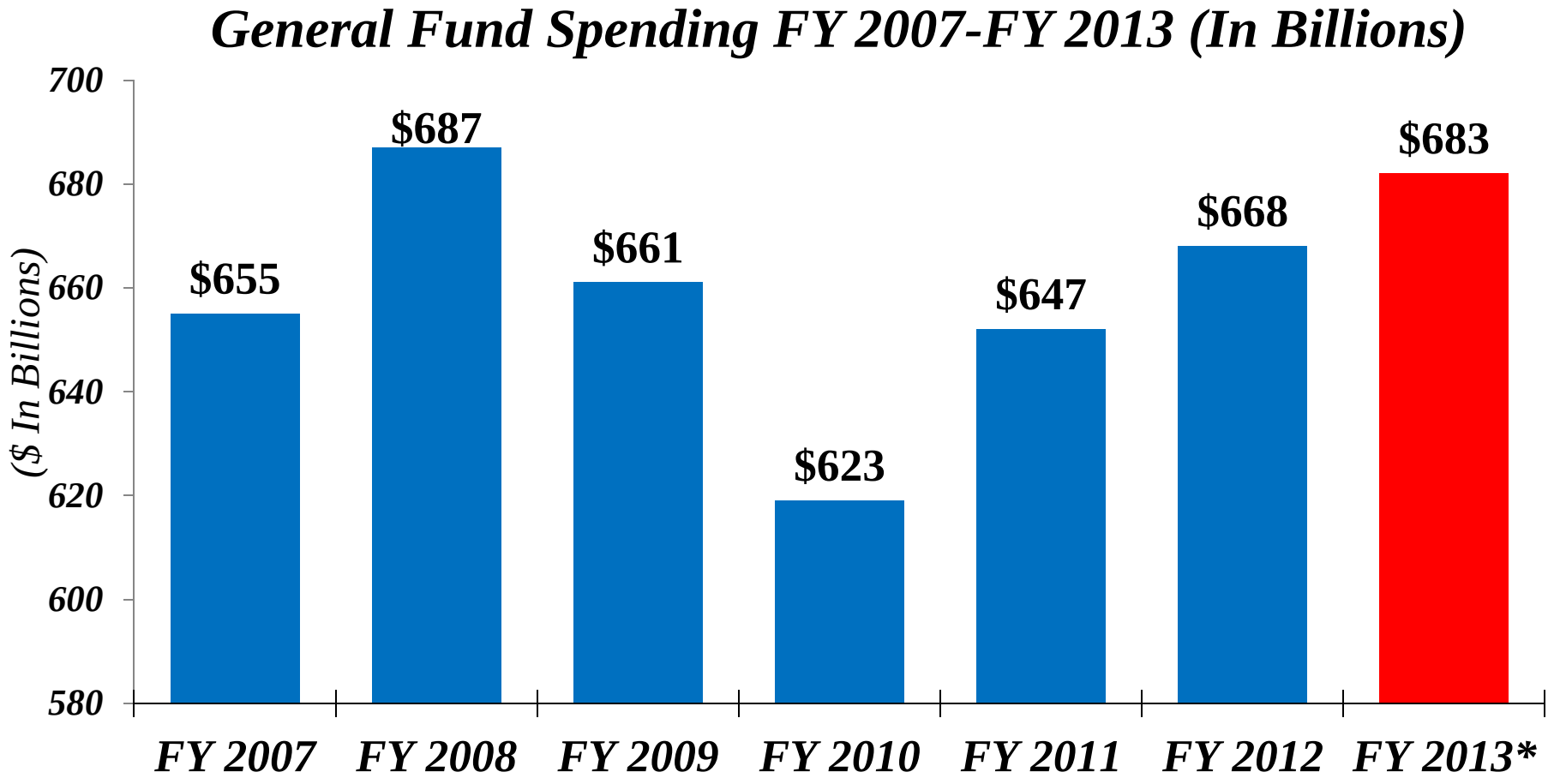
Slow Budget Growth



35-year historical average rate of growth is 5.7 percent
Source: NASBO Spring 2012 Fiscal Survey of States

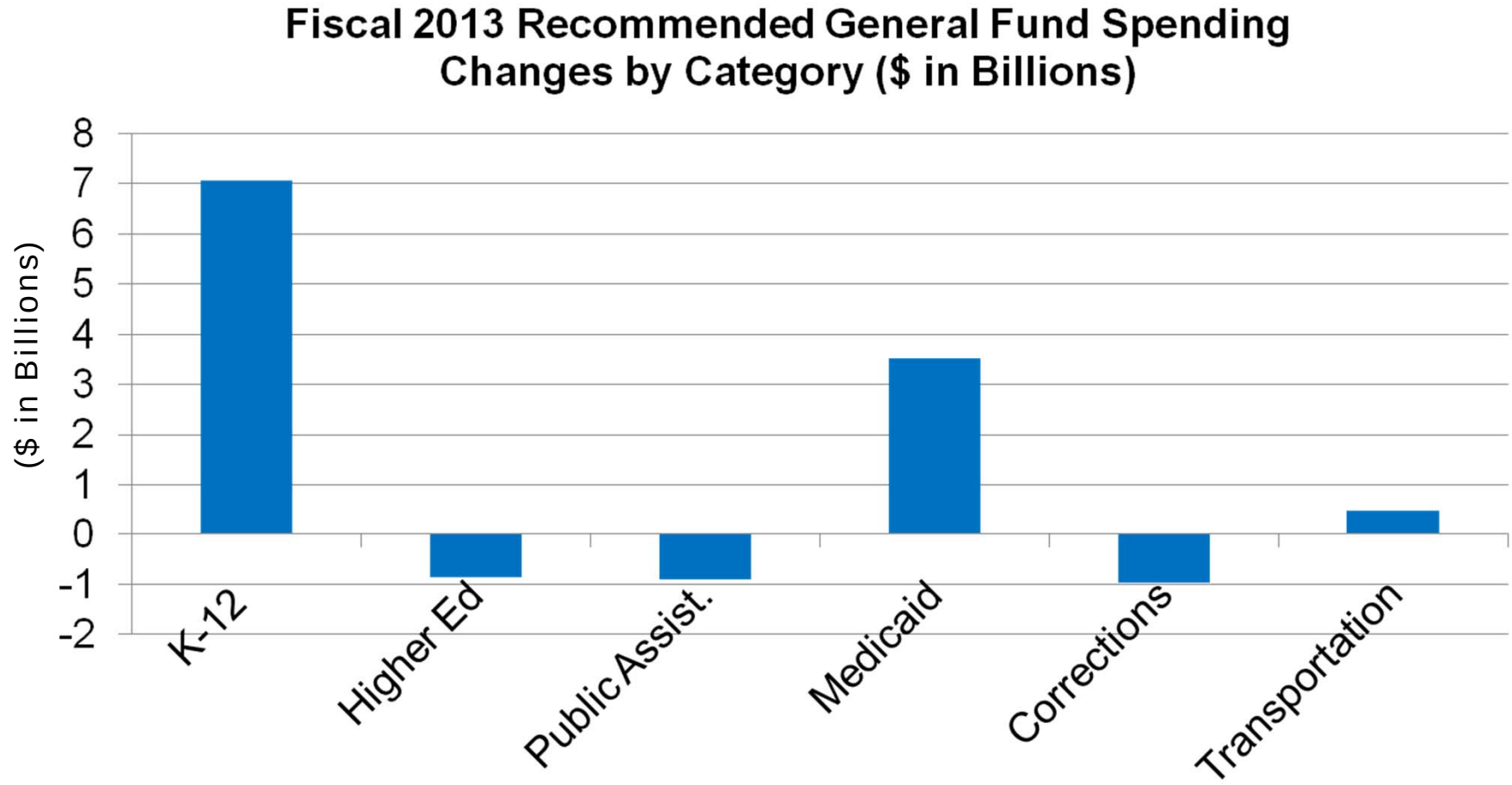
**Fiscal '12 numbers are estimated*
**Fiscal '13 numbers are recommended*

FY 2013 Recommended Spending Still $4.6 Billion Below FY 2008

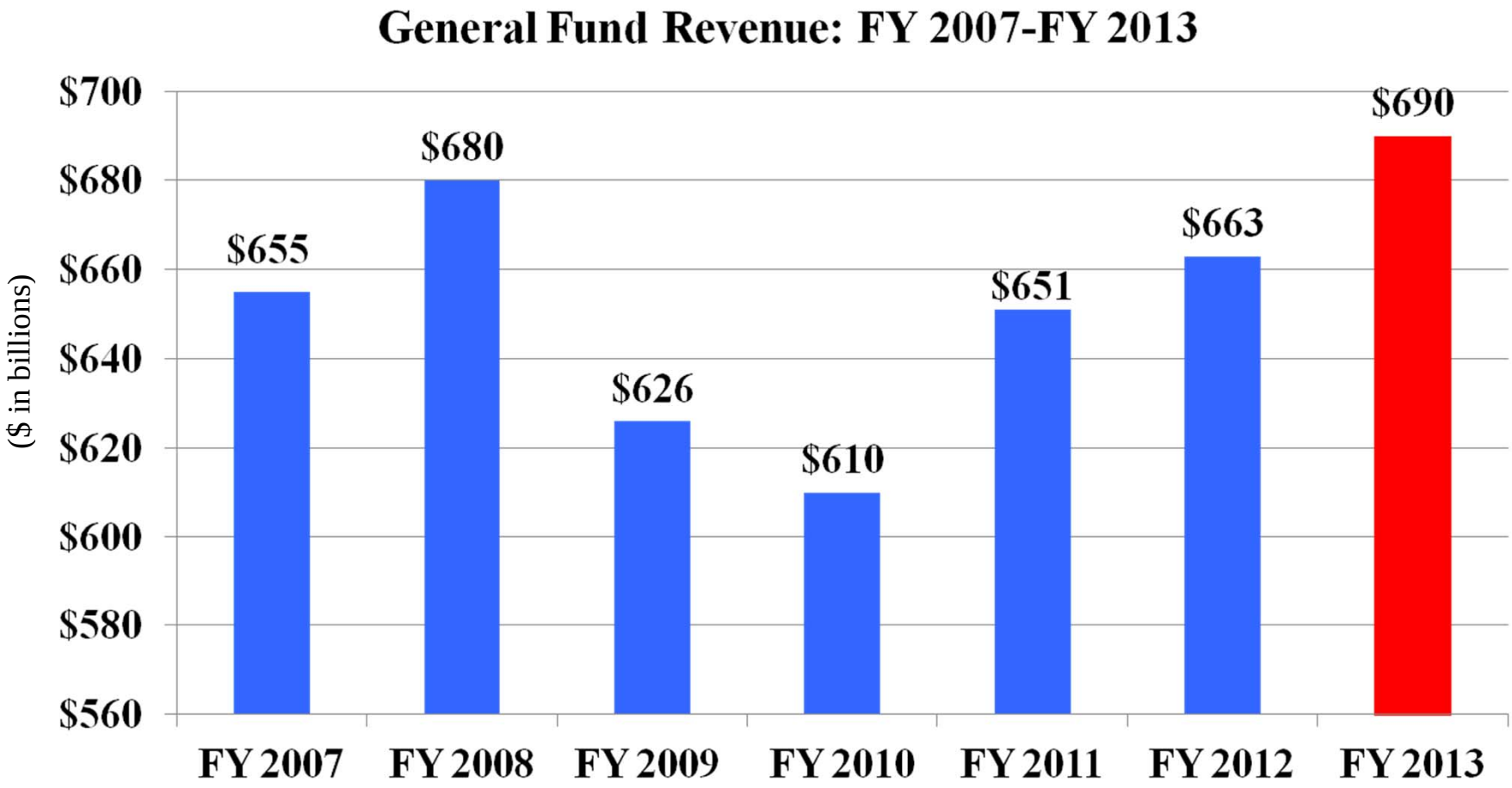


** Fiscal 2013 is Proposed Spending*

States Recommend Lower Corrections Spending in FY 2013



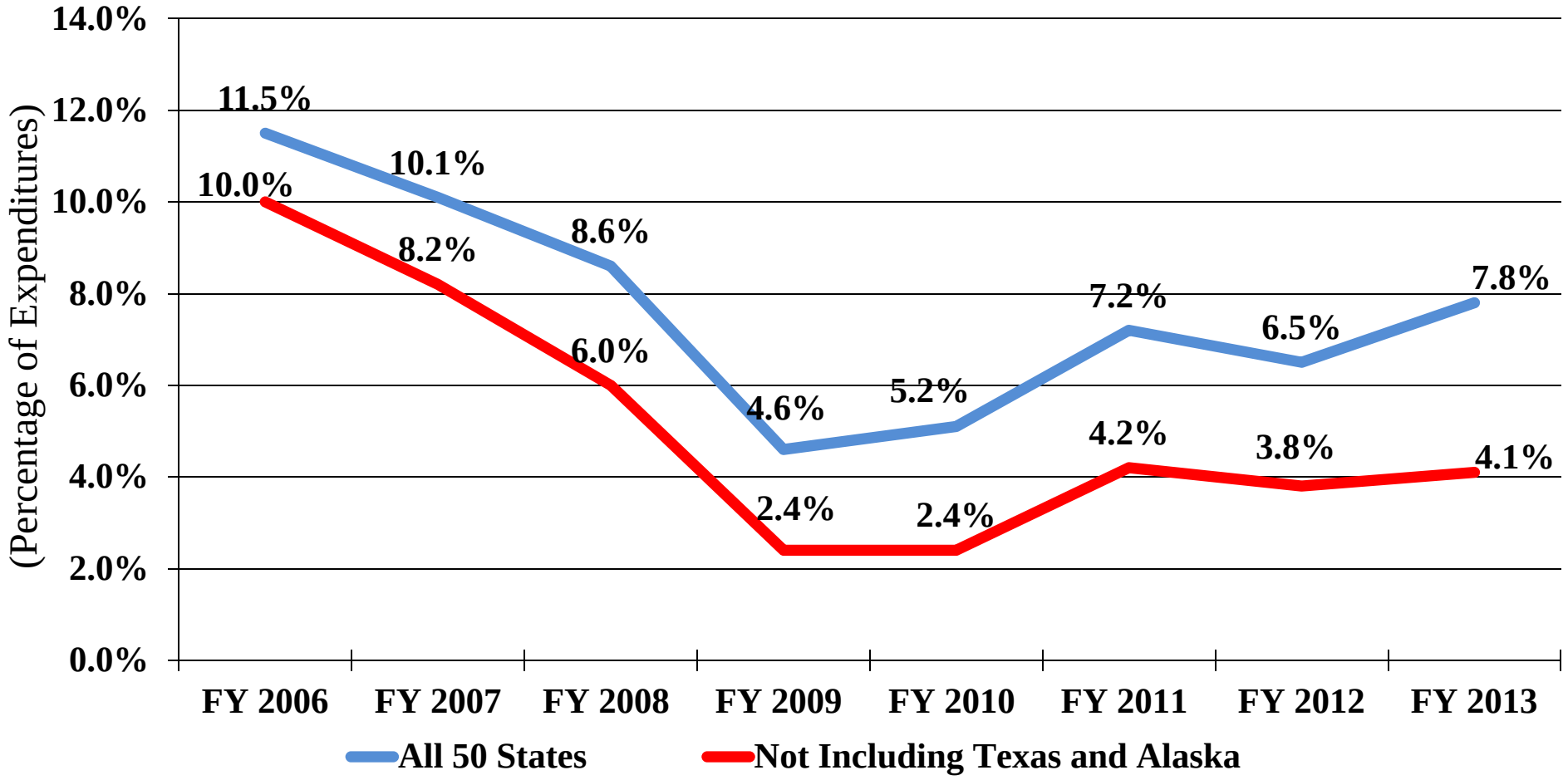
General Fund Revenue Projected to Surpass Fiscal 2008 by $10B



** FY 2007- -2011 are actual. FY 2012 is preliminary actual and FY 2013 is proposed*

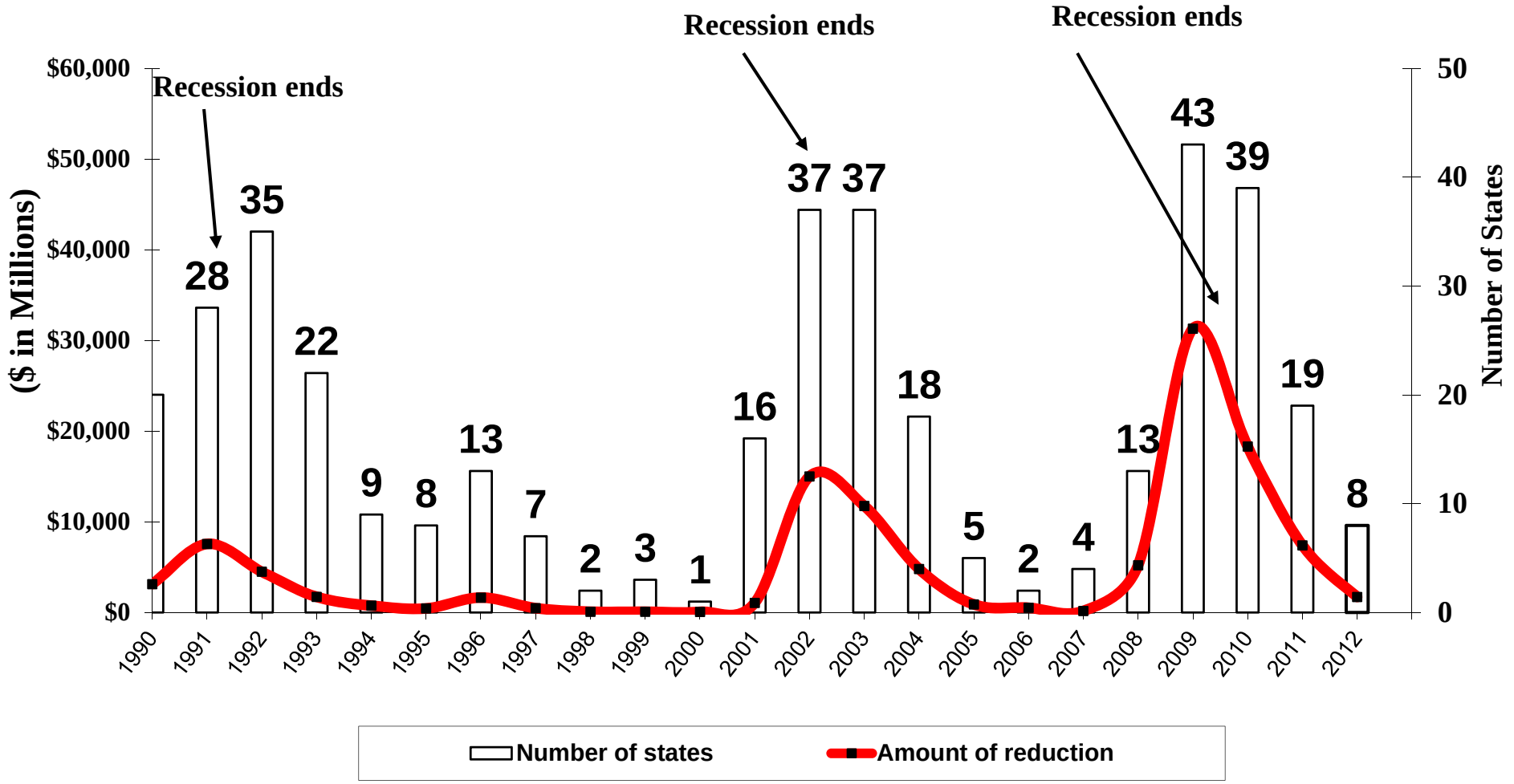
States Continue To Rebuild Reserves After Recession

Total State Balances as a Percentage of General Fund Expenditures FY 2006 – FY 2013



Minimal Mid-Year Budget Cuts in FY 2012, Eight States Cut $1.7B

Budget Cuts Made After the Budget Passed ($ millions)



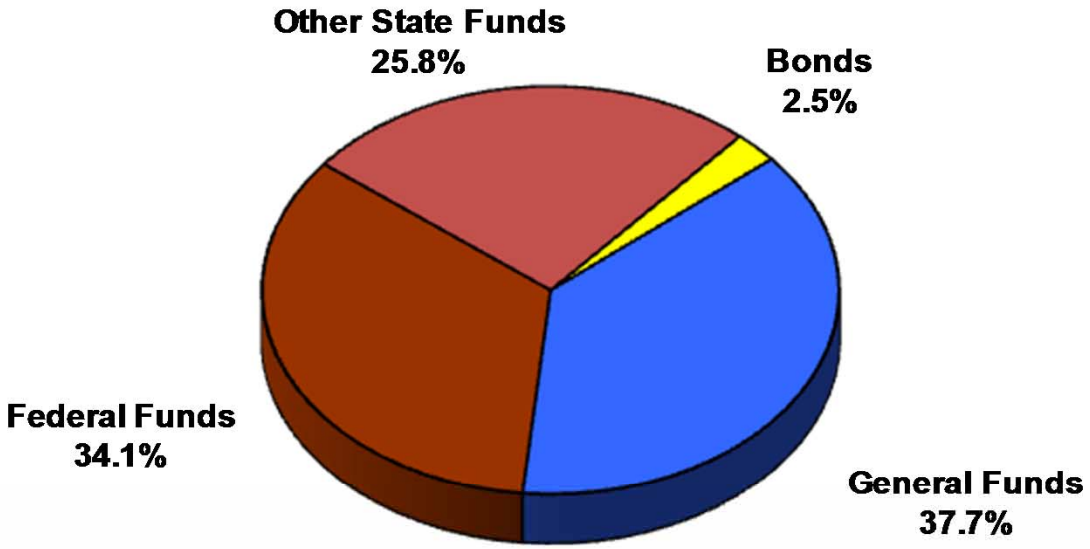
Corrections and Other Areas Saw Less Mid-Year Cuts in FY 2012

- **Corrections: 8 states**
- **Higher Education: 9 states**
- **Elementary and Secondary Education: 7 states**
- **Medicaid: 6 states**
- **Public Assistance: 3 states**
- **Transportation: 3 states**
- **Other Cuts: 8 states**

Source: NASBO Spring 2012 Fiscal Survey of States

Spending by Funding Source (High Percentage Federal)

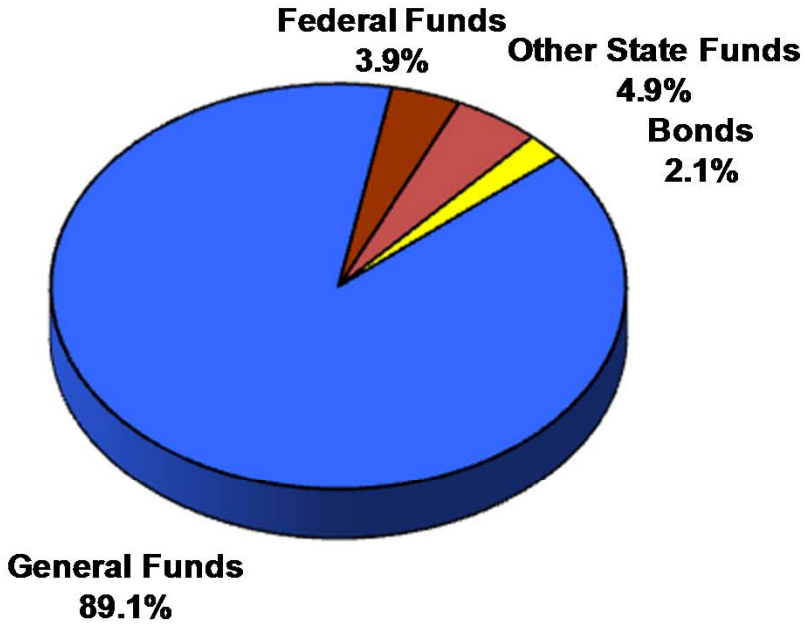
Total State Expenditures By Funding Source, Estimated Fiscal 2011



Source: NASBO 2010 State Expenditure Report

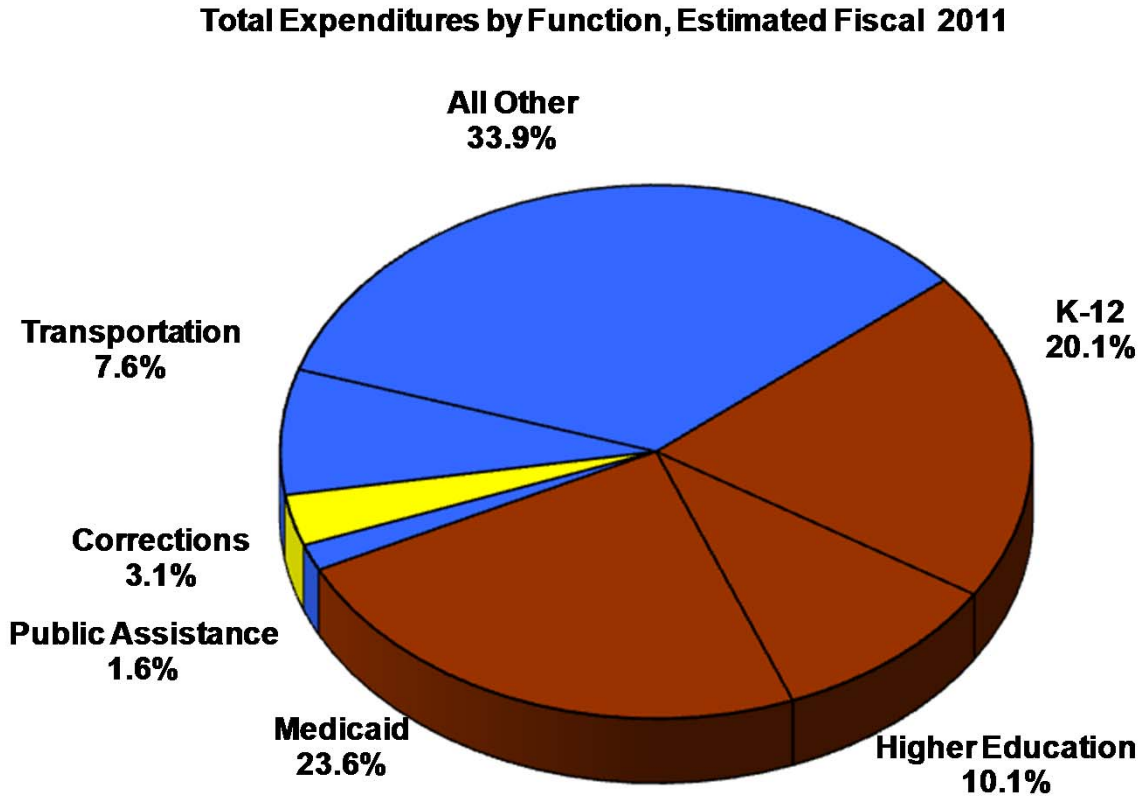
Corrections Spending by Funding Source: Largely GF

Corrections Expenditures By Funding Source, Estimated Fiscal 2011



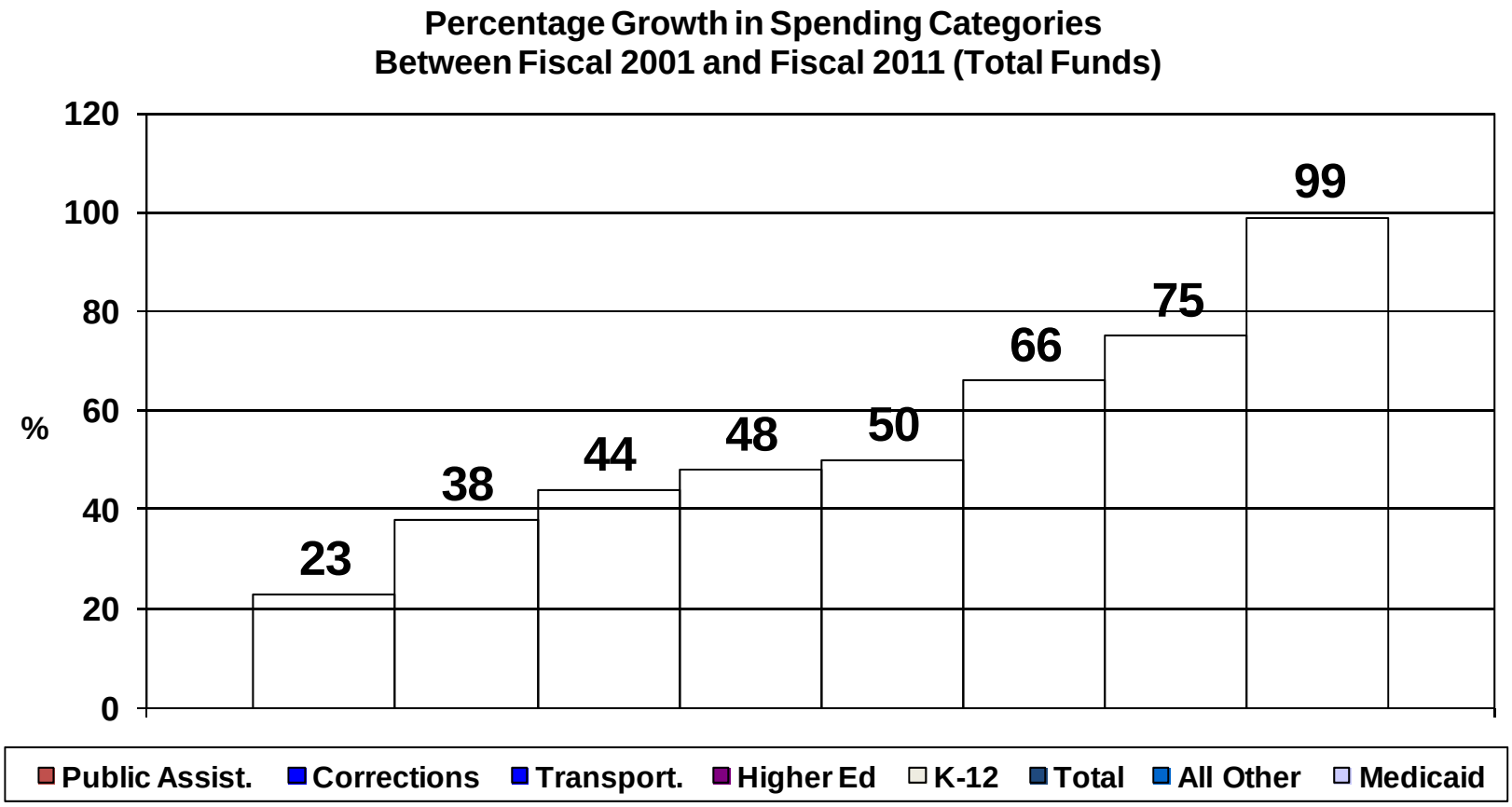
Source: NASBO 2010 State Expenditure Report

Total State Expenditures: Medicaid Grows Again



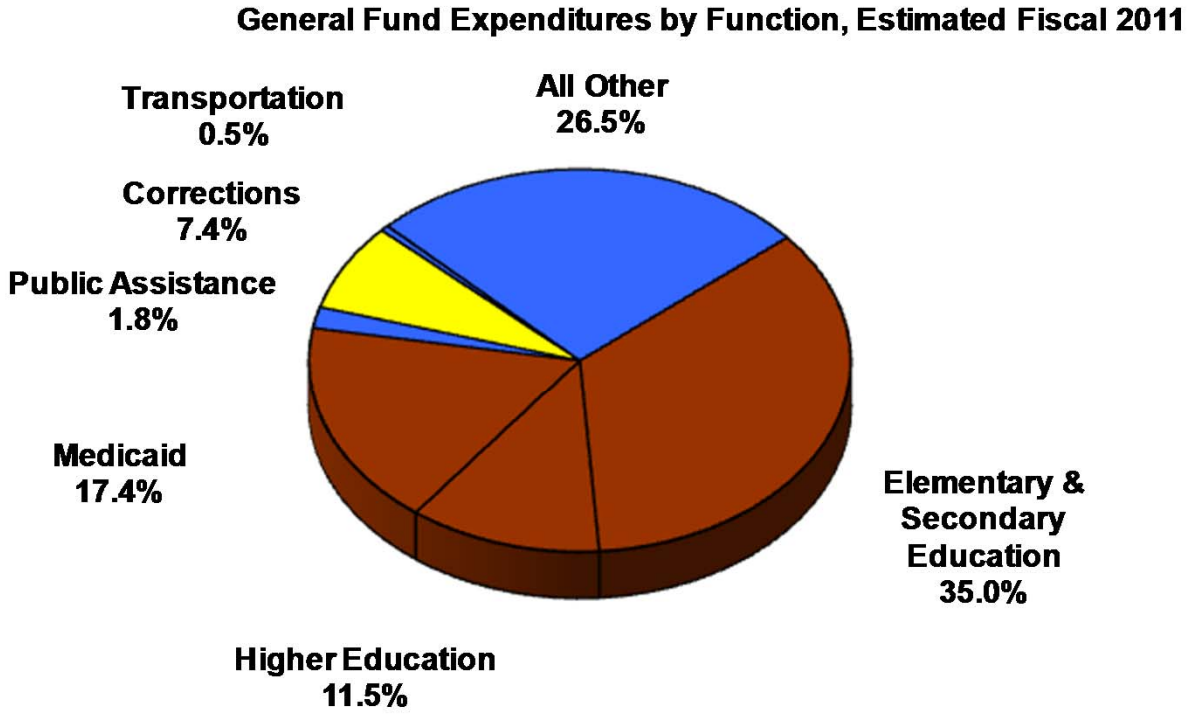
Source: NASBO 2010 State Expenditure Report

Total Expenditures % Growth Over 10 Years: Corrections at 38%



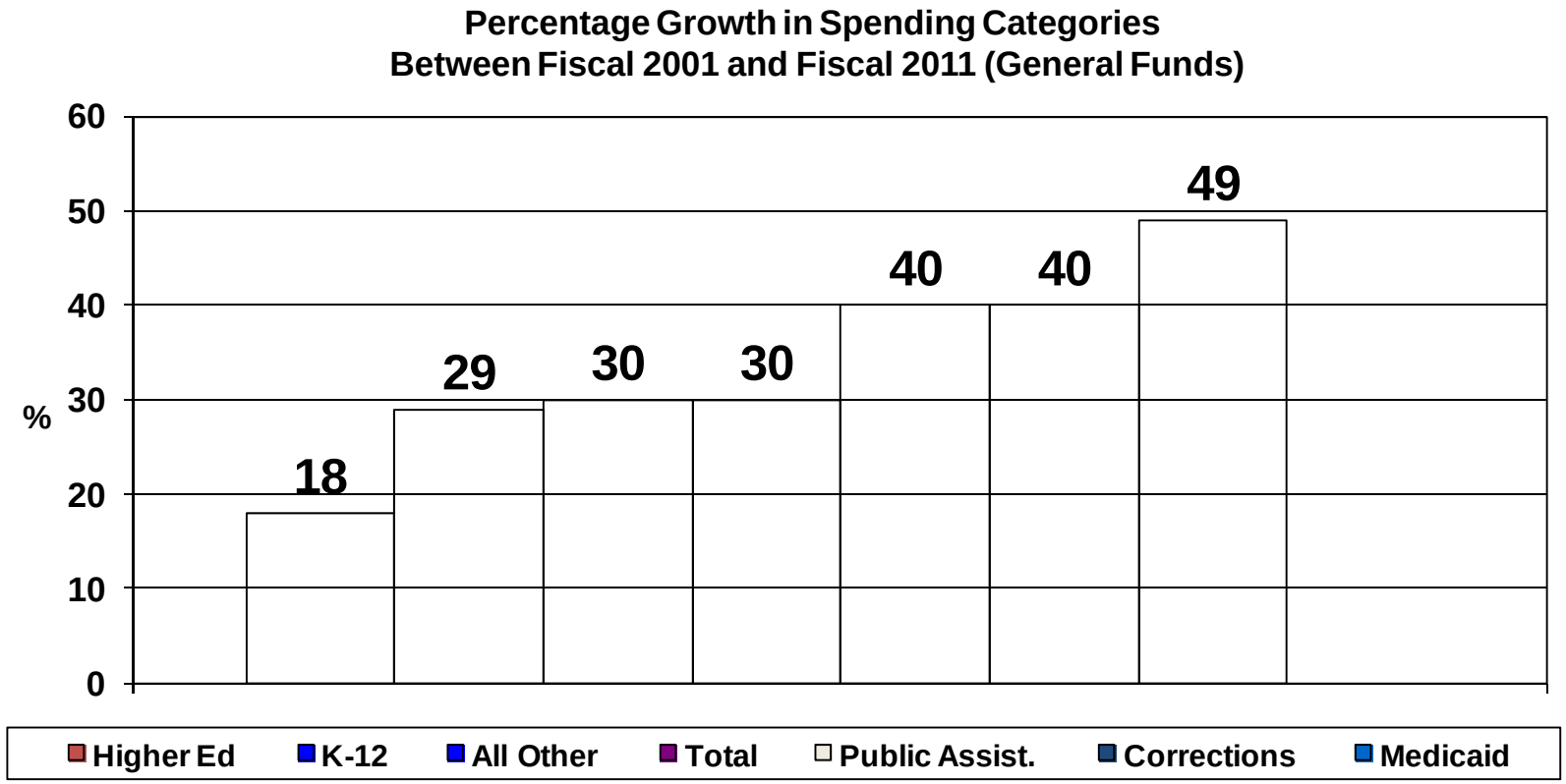
Sources: NASBO 2002 and 2010 State Expenditure Reports

General Fund: Medicaid & Education 64%; Corrections 7.4%



Source: NASBO 2010 State Expenditure Report

General Fund % Growth Over 10 Years: Corrections at 40%



Sources: NASBO 2002 and 2010 State Expenditure Reports

State Fiscal Outlook

- **Austere state budgets for at least the next several years (Slow revenue growth, ARRA declines, economic uncertainty)**
- **Health care reform, federal gov't will have an impact**
- **Tough competition for general funds and limited federal funds**
- **Dealing with long-term liabilities**
- **Slowly improving fiscal outlook, but states will continue to make difficult choices**
- **Opportunities for reform, restructuring, streamlining**

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NIC Advisory Board Hearing

Outcome-based Budgeting

Karen Wilson
Partner, PwC

August 22, 2012

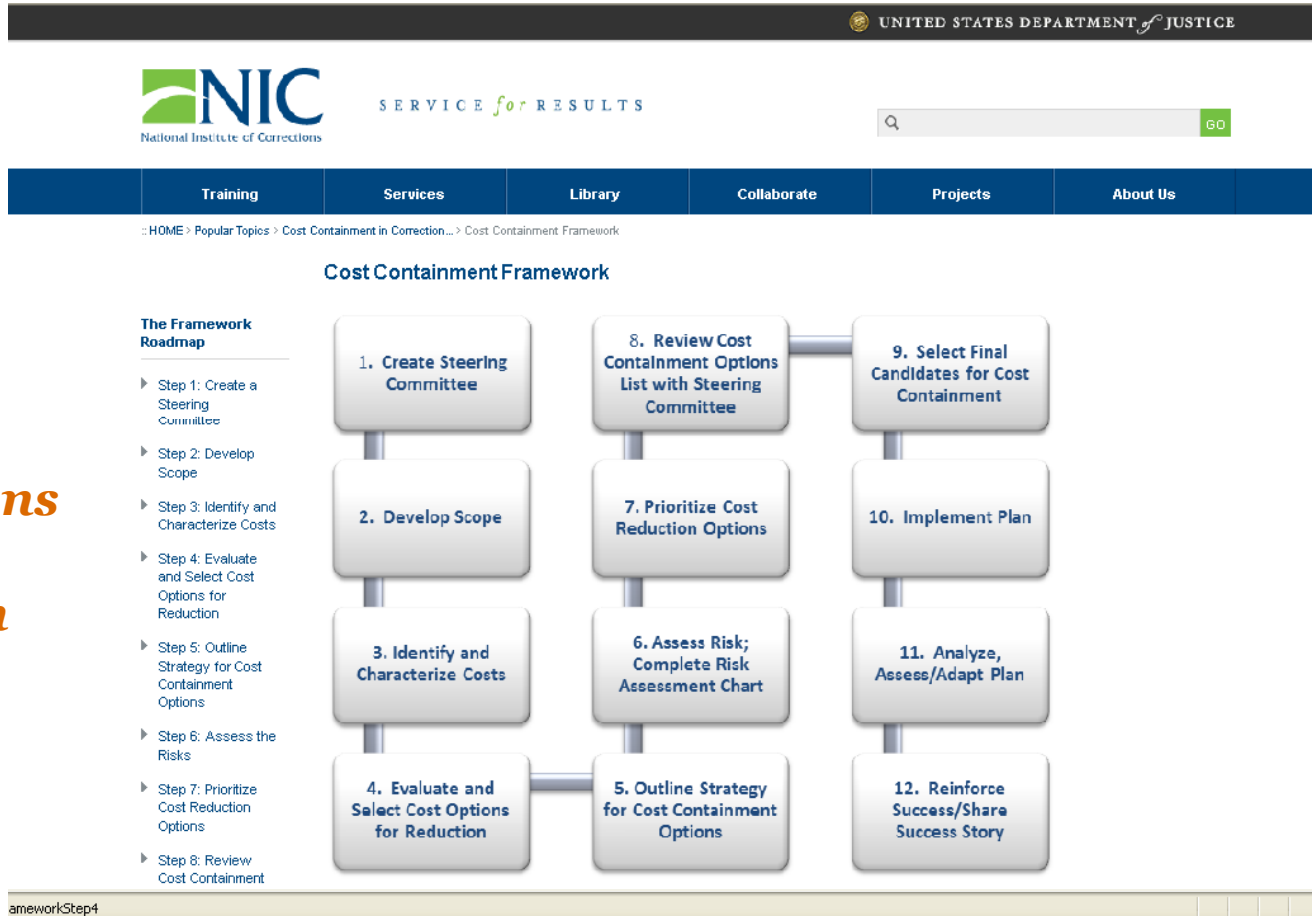
pwc

Introduction

- Background
- PwC's Public Sector Practice
  - Cost accounting and management in the public sector
- PwC's role with the Moss Group and NIC
- Context: Cost Containment in Corrections online site
  - The "framework"

The Framework

The Cost Containment Framework is a thought process with supporting tools for corrections organizations looking to contain costs



Source: http://nicic.gov/CCFramework

Principles of Cost Reduction and the Framework

- Understanding Costs and their “Behaviors”
  - Can be fixed, variable, semi-variable
  - Have “drivers” that will vary
  - Implies a different view than “traditional” budgeting
  - Allows for assessing how policy decisions might (or might not) affect cost

The Cost Containment in Corrections project is geared not towards accountants, but program officials who have a mandate to reduce cost. It is important for "lay" people to understand costs and how they behave, so they can decide how best to reduce them.

Principles of Cost Reduction and the Framework (continued)

- Risk
  - Use a risk lens when looking at cost reduction
  - Identify and analyze the risks of reducing various types of cost to ensure mission not impacted

The two principles work together – understanding a given cost lets organizations know how much reduction is possible, balanced against how much risk the organization is willing to accept in reducing it.

SYSTEMS APPROACH TO COST CONTAINMENT

Theresa Lantz

NIC Advisory Board Public Hearing
August 22, 2012

OBJECTIVES

Four overarching areas related to cost containment:

- Transformative Leadership
- Systems Approach Process and Models
- Implementation
- Sustainability

NIC HIGH PERFORMANCE MODELS

- Cost Containment Framework
- APEX Public Safety Model
- Prisons Division: Systems Approach to Organizational Performance
- APEX Change Management Model

CORRECTIONS COST CONTAINMENT CENTER (CCCC) AND FRAMEWORK

- Under a cooperative agreement with NIC, The Moss Group, Inc. has collaborated with NIC, Pricewaterhouse Coopers, stakeholders, and practitioners in the field to develop an online resource center for correctional agencies.
- Hosted by NIC, the CCCC assists correctional administrators in developing strategies for thoughtfully containing and sustaining cost in their agencies by analyzing and targeting budget expenditures.
- 12-Step Framework and Community Forum
- Thoughtful approach to strategic cost management

COST CONTAINMENT FRAMEWORK

SYSTEMS APPROACH: APEX PUBLIC SAFETY MODEL

PUBLIC SAFETY MODEL

Domains:

- Culture
- Leadership
- Strategic Planning
- Workforce Focus
- Stakeholder Focus
- Operations: Safe and Secure Supervision and Settings; Process Management
- Measurement, Analysis and Knowledge Management
- Results

SYSTEMS APPROACH: DOMAINS

Culture: How will the culture affect the CC effort? How will each CC effort affect culture?

Leadership: How does/can leadership affect CC? What do leaders need to do?

Strategic Planning: How does the CC effort support the agency's strategy (mission, vision, values, policies/procedures, etc.)?

Workforce: What are the benefits, rationale and loss for the workforce with CC effort? How can the workforce be engaged to support CC effort?

SYSTEMS APPROACH: DOMAINS

Stakeholders: What can be expected from key internal and external stakeholders? How can they be engaged to support the CC effort?

Operations: How may the CC effort affect *safe and secure supervision and settings*? What *business processes and practices* need to be addressed?

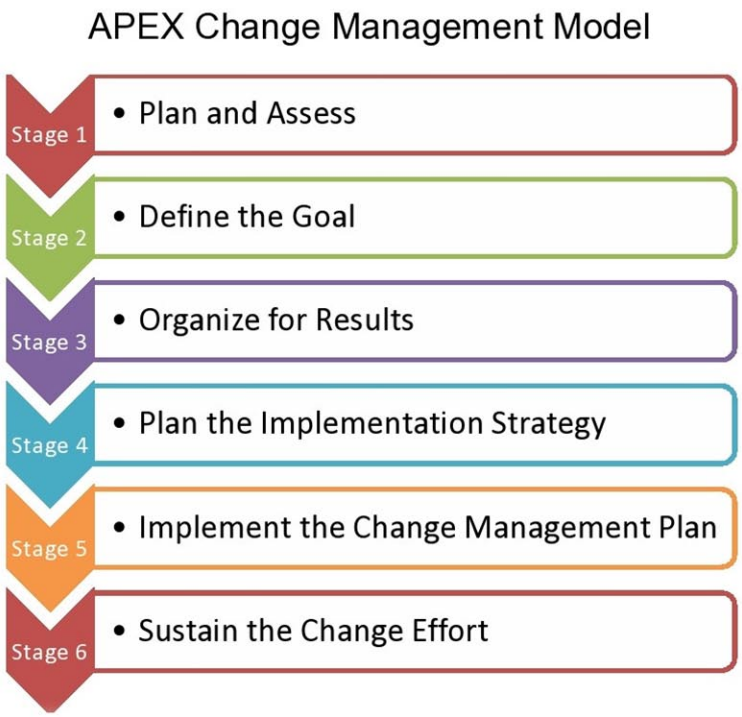
Measurement, Analysis and Knowledge Management: What performance measures need to be used to gauge success? How will data drive decisions? How will data be accessible and shared?

SYSTEMS APPROACH: DOMAINS

- Results: What outcomes are preferred and how will success be determined?

  If the desired CC effort is assessed and clearly defined, what strategic change process(es) will be utilized to ensure effective implementation and sustainability?

CHANGE MANAGEMENT PROCESS



COST CONTAINMENT FRAMEWORK

CLOSING REMARKS

- Transformative Leadership and Change
- Systems Approach Strategic Process
- Communication X 3
- Purposeful Implementation and Evaluation
- Sustainability Outcome
- Kudos to NIC
- http://nicic.gov/CostContainment
- http://nicic.gov/APEX
- Theresa Lantz: tlantz@snet.net

NATIONAL INSTITUTE OF CORRECTIONS ADVISORY BOARD
Public Hearing, Department of Justice, Washington, DC August 22-23, 2012
Balancing Fiscal Challenges, Performance-Based Budgeting, and Public Safety

Panel: "Cost-Effective Strategies for Meeting Policy Requirements and Legislative Mandates"

TESTIMONY OF F. FRANKLIN AMANAT

Honored members of the NIC Advisory Board, fellow panelists, and distinguished guests – Greetings! My name is Frank Amanat. I am an Assistant United States Attorney from Brooklyn, New York, and I appear here today in my capacity as Vice-Chairman of the Department of Justice's PREA Working Group. It is my privilege and honor to offer testimony to the Board on cost-effective strategies for meeting policy requirements and legislative mandates, specifically with respect to the Prison Rape Elimination Act, or PREA.

In the comments that ensue, I begin with a brief overview of the history and background of PREA and then describe the process that culminated in the Department's promulgation, in June of this year, of a Final Rule implementing that statute. I will offer a broad summary of the standards contained in the Final Rule and of the Department's assessment of the regulatory impact of those standards – that is to say, of their costs as compared to their benefits. I then will highlight some of the ways in which the Department's final PREA standards provide agencies with flexibility to satisfy the requirements and expectations of the statute and the implementing regulations in cost-effective ways, and I will conclude by providing a few anecdotes about how agencies have to date adopted cost-effective strategies for rape and sexual abuse prevention.

The Prison Rape Elimination Act

In unanimously passing PREA in 2003, Congress noted that the Nation was "largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates." 42 U.S.C. § 15601(12). The objective of PREA was to reduce and aspirationally to eliminate the prevalence of rape and sexual abuse in our Nation's prisons. The statute defines "prison" as "any confinement facility," including jails, police lockups, community confinement facilities (CCFs), and juvenile facilities, and defines "rape" to include a broad range of unwanted sexual activity. PREA required the Attorney General to promulgate a set of regulations that adopt national standards for the detection, prevention, reduction, and punishment of prison rape.

The statute established the National Prison Rape Elimination Commission (NPREC) to carry out a comprehensive legal and factual study of the penological, physical, mental, medical, social, and economic impacts of prison rape in the United States, and to recommend national standards to the Attorney General. According to PREA, the Final Rule adopting national standards "shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission . . . and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider." 42 U.S.C. § 15607(a)(2). PREA expressly mandates that the Department shall not establish a national standard "that would impose substantial additional costs

compared to the costs presently expended by Federal, State, and local prison authorities." 42 U.S.C. 15607(a)(3).

The Department's PREA Working Group

To develop and promulgate the required standards, the Attorney General established a PREA Working Group, chaired by the Office of the Deputy Attorney General, and including representatives from a wide range of Department components, including NIC. I had the privilege of joining the Working Group and becoming its Vice-Chair during the time I served as Senior Counsel in the Department's Office of Legal Policy; I have continued my involvement with the Working Group since returning this past January to the U.S. Attorney's Office in Brooklyn. NIC and BOP were also active members of the Working Group, and I want to thank Director Thigpen and Director Samuels for the excellent contributions their agencies made to the Working Group's deliberations and work product.

The Working Group engaged in a lengthy, multi-stage deliberative process that culminated in the publication of the Department's final PREA rule in June. A significant component of its work involved soliciting, reviewing, and deliberating on comments received at multiple stages of the process from a wide variety of stakeholders, including representatives of State and local prisons and jails, juvenile facilities, community corrections programs, lockups, State and local sexual abuse associations and service

providers, national advocacy groups, survivors of prison rape, and members of the NPREC.

Many of the comments the Department received from stakeholders related to the costs of complying with the standards and to the difficulty of developing cost-effective strategies for achieving the goals of the statute. The final standards reflect a considered analysis of these public comments and a rigorous assessment of the estimated benefits and costs of full nationwide compliance with the standards.

Indeed, because, as noted above, PREA prohibits the Department from establishing a national standard that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities, the Working Group carefully examined the potential cost implications of the standards it was considering and developing, and to this end it commissioned an independent contractor, Booz Allen Hamilton, to perform a detailed cost analysis of the standards. I was very closely involved in this aspect of the Working Group's process, supervised much of Booz Allen's work, and was the principal author both of the Initial Regulatory Impact Analysis (or cost benefit analysis) that accompanied the Notice of Proposed Rulemaking in February 2011 and of the Final Regulatory Impact Analysis that accompanied the Final Rule published this past June. These two documents presented a comprehensive assessment of the benefits and costs of the Department's proposed and final standards in both quantitative and qualitative terms.

The Department's Final PREA Rule

A comprehensive discussion of the Department's Final PREA Rule – a complex document spanning 128 three-columned fine-print pages in the *Federal Register* – is well beyond the scope of this presentation. At best, I have time to provide only a very general overview and to offer a few general observations.

Because the purposes and operations of various types of confinement facilities differ significantly, there are four distinct sets of standards, each corresponding to a different type of facility: adult prisons and jails; lockups; community confinement facilities; and juvenile facilities. The standards also include unified sections on definitions and on audits and State compliance.

In drafting the final standards, the Department balanced a number of competing considerations. In the current fiscal climate, governments at all levels of our country face budgetary constraints. The Department aimed to craft standards that will yield the maximum desired effect while minimizing the financial impact on complying jurisdictions. In addition, recognizing the unique characteristics of individual facilities, agencies, and inmate populations, the Department has endeavored to afford discretion and flexibility to agencies to the extent feasible. At the same time, the final standards provide specificity where needed to advance the goals of the statute.

The success of the PREA standards in combating sexual abuse in confinement facilities will depend on effective agency and facility leadership, and the development of an agency culture that prioritizes efforts to combat sexual abuse. Effective leadership and

culture cannot, of course, be directly mandated by rule. Yet implementation of the final standards will help foster a change in culture by institutionalizing policies and practices that bring these concerns to the fore. In addition, the standards providing for a comprehensive and independent auditing program will ensure that the fundamental requirements of the standards are reviewed and measured and, where agencies are found to be deficient, that an effective corrective action process is available.

Significant components of the Final Rule include staffing and monitoring requirements in adult and juvenile facilities; protections for juveniles confined in adult facilities; standards regarding cross-gender pat-down searches; screening of inmates for risk of sexual victimization and abusiveness; protections for lesbian, gay, bisexual, transgender, and intersex inmates; avenues for inmate reporting; exhaustion of administrative remedies; preservation of an agency's ability to place staff accused of sexual misconduct on no-contact status; and access to medical and mental health care.

Notably, the standards are generally not outcome-based, but rather focus on policies and procedures. While performance-based standards generally give regulated parties the flexibility to achieve regulatory objectives in the most cost-effective way, it is difficult to employ such standards effectively to combat sexual abuse in confinement facilities, where significant barriers exist to the reporting and investigation of such incidents. An increase in incidents reported to facility administrators might reflect increased abuse, or it might just reflect inmates' increased willingness to report abuse, due to the facility's success at assuring inmates that reporting will yield positive outcomes

and not result in retaliation. Likewise, an increase in substantiated incidents could mean either that a facility is failing to protect inmates, or else simply that it has improved its effectiveness at investigating allegations. For these reasons, the standards generally aim to inculcate policies and procedures that will reduce and ameliorate bad outcomes, recognizing that one possible consequence of improved performance is that evidence of more incidents will come to light.

While the standards aim to include a variety of best practices, the need to adopt national standards applicable to a wide range of facilities while taking costs into consideration meant that the standards do not incorporate every promising avenue of combating sexual abuse. The final standards represent policies and practices that ought to be attainable by all affected agencies, while recognizing that agencies can, and some currently do, exceed the standards in a variety of ways. The Department applauds such efforts, encourages agencies to continue and/or adopt them, and intends to support further identification and adoption of innovative methods to protect inmates from harm. Moreover, the Department is continuing its efforts to fund training, technical assistance, and other support for agencies, including through the National Resource Center for the Elimination of Prison Rape, which operates under contract with the Bureau of Justice Assistance.

Regulatory Impact (Cost vs. Benefit) of the DOJ PREA Standards

As I mentioned, the Department undertook a comprehensive assessment of the benefits and costs of its final PREA standards, in both quantitative and qualitative terms, in the Regulatory Impact Assessment (RIA) that accompanied the publication of the Final Rule. As with the rule itself, a detailed discussion of the RIA is beyond the scope of this presentation, as it is a 168-page single-spaced report chock full of data and detail, including more than six dozen tabular charts. Although I will provide a brief overview here, I encourage all participants here who wish to derive a more detailed understanding of how the PREA standards could potentially impact their operations or their budgets to review this Report, of which I was pleased to be the principal author.

The RIA estimates that full nationwide compliance with the PREA standards, in the aggregate, would cost the correctional community approximately $6.9 billion over the fifteen-year period from 2012-2026, or $468.5 million per year when annualized at a 7% discount rate. The average annualized cost per facility of compliance with the standards is approximately $55,000 for prisons, $50,000 for jails, $24,000 for CCFs, and $54,000 for juvenile facilities. For lockups, the average annualized cost per agency is estimated at $16,000.

These estimates are the costs of full nationwide compliance with, and implementation of, the national PREA standards in all covered facilities. As I will elaborate in a few minutes, however, with limited exceptions PREA does not actually require full nationwide compliance with the standards, nor does it enact a mechanism for

the Department to direct or enforce such compliance; instead, it provides certain incentives for State confinement facilities to implement them. Fiscal realities faced by confinement facilities throughout the country make it virtually certain that the total outlays by those facilities will, in the aggregate, be less than the costs calculated in the RIA. Actual outlays incurred will depend on the specific choices that State, local, and private correctional agencies make with regard to adoption of the standards, and correspondingly on the annual cash outlays that those agencies are willing and able to make in choosing to implement the standards in their facilities. The Department has not endeavored to project actual outlays.

In developing the final standards under PREA, the Department was constrained by two separate and independent limitations relating to the potential costs of the standards. The first was the requirement, set forth in Executive Order 12866, and recently reaffirmed and supplemented by Executive Order 13563, that each agency must "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)." Executive Order 13563 further directs agencies "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." E.O. 13563, § 1(c). The second limitation was the provision, set forth in the PREA statute itself, prohibiting the Attorney General from adopting any standard "that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities." 42 U.S.C. § 15607(a)(3). The RIA addresses both sets of limitations and

concludes that the Final Rule does not contravene either, and is in fact fully justified under both analyses.

With respect to the analysis called for by the Executive Orders, the RIA undertakes what is known as a break-even analysis to demonstrate that the anticipated costs of full nationwide compliance with the PREA standards are amply justified by the anticipated benefits. In this break-even analysis, the Department first attempts to monetize the benefit to society of eliminating all prison rape and sexual abuse in the facilities covered by the standards. The Department estimates that in 2008 more than 209,400 persons were victims of sexual abuse (all forms) in America's prisons, jails, and juvenile confinement centers. Of these, at least 78,500 were prison and jail inmates, and 4,300 were confined youth, who were victims of the most serious forms of sexual abuse, including forcible rape and other nonconsensual sexual acts involving injury, force, or high incidence.

The Department then estimates the monetizable benefit to an adult of avoiding the highest category of prison sexual misconduct (nonconsensual sexual acts involving injury or force, or no injury or force but high incidence) as worth about $310,000 per victim using what is known as the willingness to pay model and $480,000 per victim under what is called the victim compensation model. For juveniles, who typically experience significantly greater injury from sexual abuse than do adults, the Department values the corresponding category as worth $675,000 per victim. The maximum monetizable cost to society of prison rape and sexual abuse (and correspondingly, the

total maximum benefit of eliminating it) is thus about $46.6 billion annually for prisons and jails, and an additional $5.2 billion for juvenile facilities.

The RIA then estimates that for the costs of full nationwide compliance to break even with the monetized benefits of avoiding prison rape, the standards would have to be successful in reducing the annual number of prison sexual abuse victims by about 1,671, for a total reduction from the baseline over fifteen years of about 25,000 victims. These numbers reflect a wide range of abuse types, from incidents involving physical force and injury to incidents only involving ostensibly consensual touching. Of course, if the nation's confinement facilities spend less annually than full nationwide compliance is estimated to require, then the annual reduction in the number of prison sexual abuse victims that would need to be achieved in order for compliance costs to break even with benefits would be correspondingly lower.

The Department believes it reasonable to expect that the standards, if fully adopted and complied with, will achieve at least this level of reduction in the prevalence of prison sexual abuse. When one considers the non-monetized benefits of avoiding prison rape, which are considerable and are described in detail in the RIA, the justification for the standards becomes even stronger.

With respect to the second analysis, the one that Congress required in PREA, the Department concludes that the costs of full nationwide compliance do not amount to "substantial additional costs" when compared to total national expenditures on correctional operations. In the most recent tabulation, in 2008 correctional agencies

nationwide spent approximately $79.5 billion on correctional operations. On the other hand, the Department estimates that full nationwide compliance with the final standards will cost these agencies approximately $468.5 million per year, when annualized over 15 years at a 7% discount rate, or 0.6% of total annual correctional expenditures in 2008. The Department concludes that this does not amount to a substantial additional cost compared to total national correctional expenditures.

In assessing the nationwide compliance costs for many of the standards, the RIA examines each of the final standards in detail to determine the full implementation costs of that standard. Where possible, it distinguishes among costs applicable to prisons, jails, juvenile facilities, CCFs, and lockups.

The majority of the standards are assessed as likely having minimal to no associated compliance costs, including standard 15, which, among other things, imposes a general ban on cross- gender pat-down searches of female inmates in adult prisons and jails and in CCFs, and of male and female residents in juvenile facilities; and standard 83, which requires agencies to provide medical and mental health care assessments and treatment to victims and to certain abusers. The conclusion of zero cost for these standards is predicated on a high level of baseline compliance and on the expectation that agencies will adopt the least costly means of complying with requirements when given flexibility to determine how to apply those requirements to the specific characteristics of their agencies.

On an annualized basis, the most expensive standards, by the Department's estimate, are: standard 13, which relates to staffing, supervision, and video monitoring and would impose annual compliance costs of $120 million per year if fully adopted; standard 11, which establishes a zero-tolerance policy and requires agencies to designate an agency-wide PREA coordinator, and would cost $110 million annually if fully adopted; the training standards (31 through 35), which the Department estimates would cost $82 million per year if fully adopted; and the screening standards (41 and 42), which would have an estimated $61 million in annual costs if there were full compliance. Together, full compliance with these four standards would cost, by the Department's estimate, $372 million annually, or about 80% of the total for all of the standards.

Now, allow me to say a few more words about the $468.5 million per year figure the Department arrived at for the annualized cost of compliance with the standards and that it uses in both the break-even analysis and the substantial additional cost analysis. This figure represents the estimated costs of full nationwide compliance, which will only occur if all State, local, and private confinement facilities actually adopt the standards contained in the Final Rule and then immediately and fully implement them. In this sense, the cost impact of the Final Rule, as represented in the RIA, is essentially theoretical—in effect treating the standards as if they were binding regulations on State and local confinement facilities.

However, PREA authorizes the Department to directly procure compliance with the standards only insofar as they apply to certain federal confinement facilities. *See* 42

U.S.C. § 15607(b). For the thousands of State and local agencies and private companies that operate confinement facilities across the country, PREA provides the Department with no direct authority to mandate binding standards for their facilities. For State agencies that receive grant funding from the Department to support their correctional operations, Congress has provided that the Department shall withhold 5% of prison-related grant funding to any State that fails to certify that it "has adopted, and is in full compliance with, the national standards." For county, municipal, and privately-run agencies that operate confinement facilities, the Act lacks any corresponding sanctions for facilities that do not adopt or comply with the standards.

Despite the absence of statutory authority to promulgate standards that would bind State, local, and private agencies, other consequences may flow from the issuance of national standards that could provide incentives for voluntary compliance. For example, these standards may influence the standard of care that courts will apply in considering legal and constitutional claims brought against corrections agencies and their employees arising out of allegations of sexual abuse. Moreover, agencies seeking to be accredited by the major accreditation organizations will need to comply with the standards in the Final Rule as those organizations adopt the standards as a condition of accreditation.

Thus, due to the statutory scheme, pivotal to the effectiveness of the standards is a voluntary decision by State, county, local, and private correctional agencies to adopt the standards and to comply with them. In deciding whether to adopt these standards, agencies will of necessity conduct their own analyses of whether they can commit to

adopting the standards in light of other demands on their correctional budgets. The true cost impact of the DOJ PREA standards (which the RIA does not assess), like the true impact of the Final Rule on preventing, detecting, and minimizing the effects of sexual abuse, will depend on the specific choices that State, local, and private correctional agencies make with regard to adoption of the standards, and correspondingly on the annual cash outlays that those agencies are willing and able to make in choosing to implement the standards in their facilities.

The Department cannot assume that all agencies will choose to adopt and implement the PREA standards. Agencies assessing whether to do so may well conclude that, insofar as the standards affect their agencies, the costs *to them* outweigh the benefits *to them*, favoring a decision not to comply. A State agency might conclude, for example, that it would be cheaper and therefore preferable to forgo the 5% in grant funding than it would be to comply with the standards. The Department anticipates that most agencies will not reach that conclusion, and will instead consider the benefits of prison rape prevention not only to themselves but also to the inmates in their charge and to the communities to which the agencies are accountable.

Nevertheless, the Department cannot ignore the straitened "budgetary circumstances" confronting many correctional agencies. Congress was acutely aware of these circumstances, 42 U.S.C. § 15605(a), and its mandate to the Department was not to make matters worse by imposing unrealistic or unachievable standards but rather to partner with those agencies in adopting and implementing policies that will yield results.

The Department has concluded that the standards in the Final Rule define measures and programs that, when implemented, will prove effective in accomplishing the goals of the statute while also promoting voluntary compliance decisions by the affected agencies.

Cost-Effective Strategies for Meeting the Policy Requirements of the PREA Standards

To summarize, in crafting the national PREA standards set forth in the Final Rule, the Department was keenly sensitive to the fiscal challenges facing correctional agencies and to the potential that the cost of complying with the Department's standards could prove prohibitive in the face of such challenges. In order to advance the statute's goal of ultimately eliminating the prevalence of sexual abuse in all of America's prisons, jails, and confinement facilities, the Department was obliged to fashion standards that could be implemented in cost-effective ways, so as to maximize the extent to which agencies would choose to voluntarily comply with the standards. Of necessity, this meant adopting a primarily outcome-based rather than command-and-control approach to regulation, and the Department incorporated into many of the standards as much flexibility as to means and methods of compliance as was feasible consistent with the overall aims of the standards. In those aspects of the standards where the Department did allow for flexibility, the Department's assumption was that agencies choosing to comply with the standards would adopt the most efficient and cost-effective means of doing so.

I want to emphasize that, according to the estimates in the RIA, agencies should be able to comply with the vast majority of the national standards contained in the final

PREA rule at minimal to no cost simply by modifying existing policies or practices, and without having to take on new staff or modify existing technologies. I also want to discourage agencies from assuming that compliance with the standards will necessarily break the bank and instead encourage them to appreciate the many cost-saving and cost-minimizing features that the Department has incorporated into the standards. Again, we estimate the average annualized cost per facility of compliance with the standards as approximately $55,000 for prisons, $50,000 for jails, $24,000 for CCFs, and $54,000 for juvenile facilities. For lockups, the average annualized cost per agency is estimated at $16,000.

Some of the standards that might on their surface seem like they would be expensive to comply with actually come out of our assessment as having negligible compliance costs. A good example of this is standard 15, which, absent exigent circumstances, imposes a ban on cross-gender pat-down searches of female inmates in adult facilities. One might assume that compliance with this requirement could be costly, at least for all-female facilities that do not employ sufficient numbers of female officers to make compliance using existing staff operationally feasible. But the standard allows adult facilities at least three years to come into compliance with the pat-down search restriction, with small facilities (<50 ADP) given five years to comply. The expectation is that agencies will leverage the delayed effective date of this standard to lower or even eliminate compliance costs, by gradually incorporating the requirements of the ban on cross-gender pat-down searches of female inmates into their staffing plans and, to the

extent necessary, taking advantage of expected attrition and staff turnover to realign the gender breakdown of their staff rosters.

Even those standards that the Department estimates to be the most expensive in terms of full nationwide compliance offer many opportunities for cost-effective compliance strategies. Let me offer a few examples. Standard 13 relates to supervision and monitoring – its overall purpose is to ensure that each facility adopt an approach to the supervision and monitoring of inmates that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse. But, except in the case of secure juvenile facilities, the standard does not mandate any particular staffing ratios; nor does it require agencies to deploy video monitoring solutions or mandate any particular mix of staffing vs. video-monitoring approaches to inmate supervision. It simply requires each facility to develop and document a staffing plan, taking into account a number of specified factors, and to then use best efforts to comply with that plan on an on-going basis. The standard further requires all agencies to annually assess, determine, and document whether adjustments are needed to the staffing levels or deployment of monitoring technologies.

Due to the great variation across facilities in terms of size, physical layout, and composition of the inmate population, it would have been impractical to require a specified level of staffing. Likewise, mandating a subjective standard such as "adequate staffing" would be extremely difficult to measure. Instead, the final standard requires that prisons and jails use their best efforts to comply with their own staffing plan on a regular

basis and to document and justify any deviations. Given that staffing increases often depend on budget approval from an external legislative or other governmental entity, this provision is designed to support proper staffing without discouraging agencies from attempting to comply with the PREA standards due to financial concerns. The "best efforts" language encourages agencies to compose the most appropriate staffing plan for each facility without incentivizing agencies to set the bar artificially low in order to avoid non-compliance. But if the facility's plan is plainly deficient on its face, the facility is not in compliance with this standard even if it adheres to its plan.

Standard 11, another of the standards assessed as being among the most expensive, also offers agencies considerable flexibility. This standard calls upon agencies to designate an upper-level PREA Coordinator responsible for overseeing the agency's zero tolerance policy and its agency-wide efforts to comply with the standards. In an agency that operates multiple facilities, each facility is also asked to designate a PREA Compliance Manager to coordinate the facility's PREA efforts. But aside from requiring that the PREA Coordinator have "sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all its facilities," the standard does not mandate any particular job description for the coordinator and affords agencies considerable flexibility in how to structure the individual's responsibilities, whether the position is full-time or part-time, and whether and how to integrate these responsibilities into existing positions. Analogous flexibility is provided for the facility-specific compliance manager. Moreover, in estimating the cost of this standard over time,

the Department has assumed that the cost will likely decrease to some extent over time: as policies, procedures, and documents related to PREA compliance are developed and implemented; as agencies learn new procedures, acclimate to a new regulatory environment, and adopt best practices pioneered by other agencies with which they have been in contact through industry fora; and as agencies derive experience preparing for and submitting to PREA audits, the PREA Coordinator and PREA Compliance Manager jobs will undoubtedly require less time and effort than they did initially.

Other examples of cost-saving flexibility in the Department's standards can be found in the training standards, where the Department assumes agencies will be able to save money by relying on standardized training modules developed by the PREA Resource Center or by industry organizations, and by using technology such as streaming broadband and closed circuit television to facilitate the delivery of content.

Although the Department's PREA standards are very new and are only just now starting to be formally adopted and implemented by agencies across the country, many agencies have already begun to demonstrate considerable creativity in developing cost-effective strategies for implementing protocols and policies aimed at sexual abuse prevention. For example, the Federal Bureau of Prisons, which under the statute has a very short time to come into compliance with the standards has already done significant work to incorporate the requirements of the standards into its internal policies and culture while maintaining fiscal responsibility. To reduce the cost of ensuring that all sexual abuse victims are provided a victim advocate to help navigate through the

grievance and healing processes, some agencies in Louisiana and New Mexico where victim advocate services have not been readily available locally have successfully experimented with providing victim advocates by video conference, especially immediate intervention but also for follow-up interactions – using an approach akin to telemedicine practices in rural areas. An agency in Pennsylvania has saved money by working closely with an NGO – the Pennsylvania Coalition Against Rape – to provide victim advocate services, and by entering into MOUs with social services organizations that might otherwise be reticent to go into correctional institutions pursuant which mutually-beneficial cross-training is offered. A Louisiana agency got its PREA posters printed for free as a public service from a local printer.

A large county jail located in a college town in New Mexico has started working with film students to create comprehensive video orientation for inmates to satisfy the inmate training requirements of the standards; the students actually go to the jail to interview inmates and film the video, working with jail staff on a script and storyboard. Another jail is using the closed-circuit equipment that is already in place for court arraignments to set up distance learning for their staff through an MOU with a local SATC, to provide training on how to deal with victims of sexual abuse. Another jail has an MOU with local law enforcement to allow one of their investigators to attend training on sexual assault investigations.

In general, I want to emphasize that many of the PREA standards can be implemented at relatively low cost simply by piggybacking the incremental steps required

for compliance onto existing initiatives, practices, and training addressing other aspects of day-to-day correctional management. Agencies should take a practical approach to implementing the PREA standards and should resist the temptation to overreact to or overinterpret the PREA standards or to overestimate the costs of compliance. Look closely at all of your existing standards, policies, and procedures and carefully assess what you are already doing in the day-to-day management of your agencies. Ask yourself: what is our baseline level of compliance with the PREA standards? What still needs to be done? What are the major cost drivers underlying those incremental actions? How can we reduce those cost drivers by leveraging existing resources and initiatives?

For example, can you satisfy the reporting requirements of the PREA standards simply by adding a section on PREA compliance to an annual report your agency already prepares, whether for the Departments' Bureau of Justice Statistics or for some other entity? Would a concave mirror do just as well as a camera in a blind spot? Can we make an impact on protecting our inmates through low-cost changes to procedures such as key controls or to physical plant configurations such as closets? Can we comply with the "separate" showers requirement without building separate shower facilities simply by staggering the times when inmates are given showers? Agencies that ask themselves these types of questions as part of a practical, commonsense approach to compliance with the PREA standards will often find that creative and cost-effective but highly impactful solutions can be readily found.

Conclusion

The Department's Final PREA Rule represents the most comprehensive initiative ever undertaken to combat the phenomenon of rape and sexual abuse in America's confinement facilities. In fashioning the rule, the Department hewed closely to the Congressional mandate to develop standards that are forceful and effective in enhancing the prevention, detection, and response to prison rape, without hardening the already straitened fiscal circumstances confronting many agencies. Given the need for widespread adoption of the standards in order for them to be fully effective, the Department has maintained the compliance costs associated with the standards at a level that will promote voluntary decisions by agencies to implement them. I certainly hope that all correctional agencies across the country will make the right decision and will adopt these landmark national standards within their own correctional operations. When that happens, the standards will become effective precisely by being cost effective.

I sincerely thank the Advisory Board for having invited me to come here today to present this testimony.

END OF TESTIMONY

NIC Advisory Board Public Hearing

Balancing Fiscal Challenges, Performance-based Budgeting and Public Safety

Gary C. Mohr

Director

Ohio Department of Rehabilitation & Correction

Measures of Success

Vision

"Reduce Crime in Ohio"

Blurring the lines from prison to community.

Measures of Success

Mission

"Reduce Recidivism"

Ohio's offender recidivism rate = 31.2%
(record low)

Budget Condition

Operating with $188.2 million less over the biennium.

6% reduction in GRF dollars

FY2010 DRC accounted for 6.1% of Ohio's total GRF allocation.

FY2013 DRC now accounts for accounts for 5.2% of GRF allocation in Ohio.

System Reform

Precursors to Change

- Prison Violence
- Crowding
- The Impact of Job Loss

System Reform

Achieving a blended system

- Public – Private partnership
- Blurring the lines: Prison and Community

System Reform

System Reform

Legislative Reform

HB 86 – Sentencing Reform

- Diverting 1st time, non-violent offenders
- ORAS – offender risk/needs assessment
- 80% – sentence completion
- Certificate of Achievement & Employability

System Reform

The Department is beginning to see positive results from the Sentencing Reform legislation – HB86 – effective September 2011.

For the last 28 weeks, the prison count has been below 50,000 for the first time since 2008.

System Reform

Legislative Reform

SB 337 – Collateral Consequences

- Removes barriers to employment
- Increased public safety
- Benefit to local communities
- Certificate of Qualification for Employment

Sentence Reform & Reinvestment

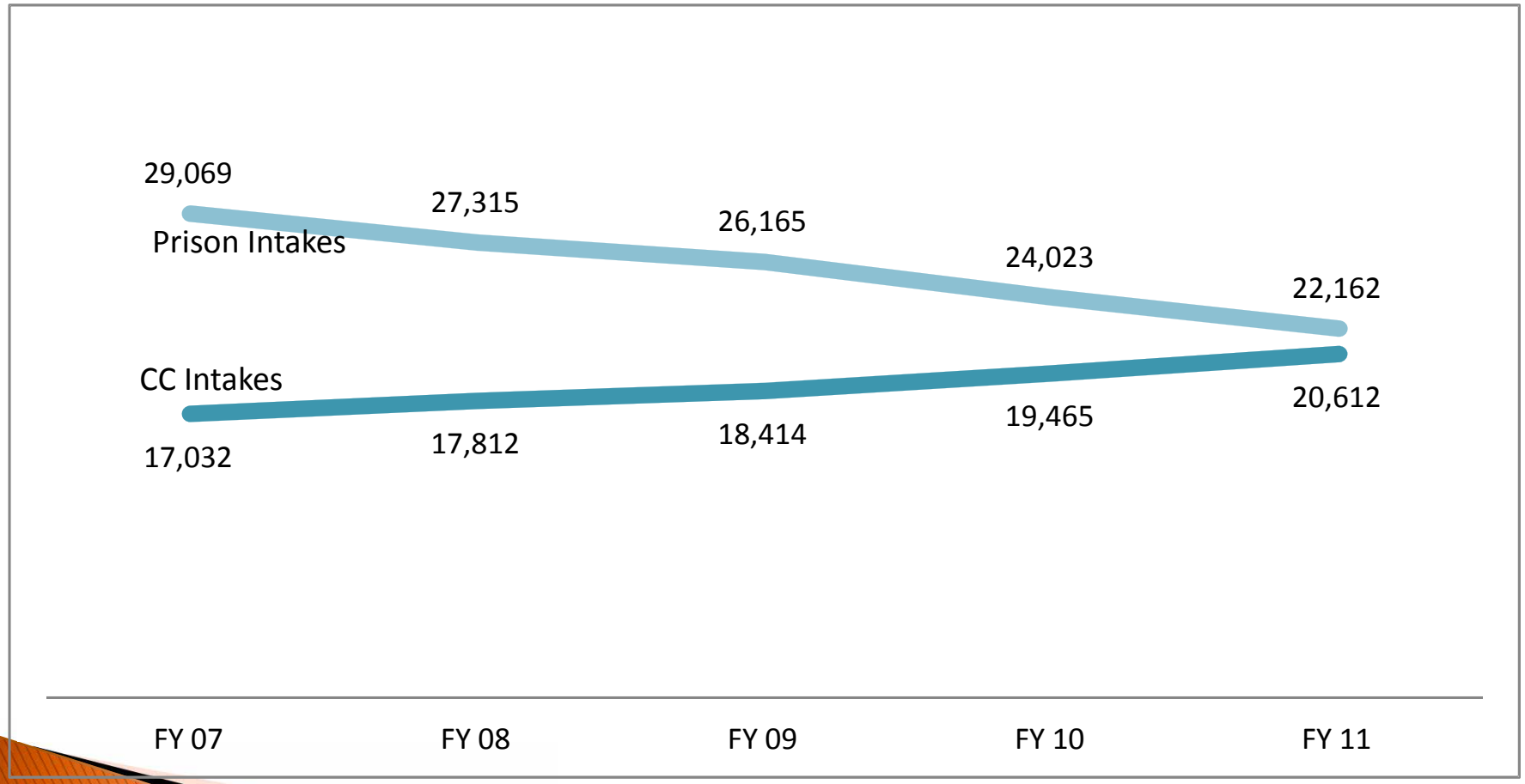
Research and results – we know it works

Reinvesting $$ in counties has a direct impact on crime and recidivism

Increased Public Safety

Result Driven Investments in Community Options

5 Year Comparison of Prison Intakes to Community Correction Intakes



The Impact of Our mission

- Increased public safety
- Reduced crime and victimization
- Expansion of offender job opportunities
- Reduced strain on social systems
- Increased tax revenue for local communities

The Impact of Our mission

Current Population (8/6/12) = 49,480

We are 312 inmates away from reaching our goal of 49,130 inmates

Questions?

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

NIC Advisory Board Panel Hearing

Balancing Fiscal Challenges, Performance-based Budgeting and Public Safety

Gary C. Mohr, Director

8/22/2012

Introduction

First I want to say thank you to the leadership and practitioners associated with NIC. I have been shaped and guided as a criminal justice professional through my affiliation with NIC since 1986, when I first consulted with the organization. Corrections is a far better place because of what you do, and how you do it.

When I became the Director of the Ohio prison system in January 2011, I challenged our staff to consider two questions. First, what would it look like if the vision of our correctional agency was to reduce crime in Ohio? And second, what would it look like if the mission of our department was to reduce recidivism in the lives of those we touch?

If it is our goal to reduce crime in Ohio and the outcome measure is to reduce recidivism in the lives of the men and women entering our system then those principles must be embedded in nearly every aspect of our operation.

Budget Condition Entering 2011

The Department of Rehabilitation and Correction received more than $300 million in federal stimulus dollars in the previous biennium that is not available in the FY2012-13 budget. We are currently operating with $188.2 million less over the biennium and nearly a 6 percent reduction in GRF dollars over FY2011 appropriations of $1.58 billion In FY 2010 DRC accounted for 6.2% of the state's total GRF allocation. The Department's budget of $1.49 billion in FY2012 and $1.48 billion in FY2013 reflects several innovative strategies as well as some very difficult and painful decisions that allow us to meet our mission and authorize us to make investments in critical areas of the agency. These measures allow me to now report that DRC accounts for 5.2 % of Ohio's GRF allocation.

My vision for transforming DRC was this: we were going to reform our system, which meant that we needed to be catalysts for change. And my vision included the use competing forces. When you put in people that are earnestly concerned about competing and have a solid framework for efficiency and enhanced effectiveness —what you can do is not just save resources, but you can literally enhance all of the operations within the system by enhancing operational standards and implementing the best practices that can be created from both the public sector and multiple private vendors.

Precursors to Change

When I was asked about accepting this position, an approach had been developed to close up to six prisons and send approximately 12,000 inmates out of state to private correctional beds at a lower per diem rate. This plan would have resulted in up to 2,400 correctional jobs being abolished, employees in every correctional institution in Ohio initiating a bumping rights process causing mass instability in the workforce and forcing inmates against their will to board buses bound out of state away from their families. This approach would have not only caused chaos in Ohio facilities, but would have been a contradiction to my role as Chair of the Reentry Coalition, which I inherited as the Director of the agency. That plan to balance our budget was not acceptable to me I would not have accepted the position of Director using this approach to reduce our budget. After a robust discussion a decision was made to go another direction, and it then became incumbent for the new director to find a better approach to address this historic shortfall. I am thankful to have John Kasich as our Governor, and my boss.

As 2010 came to a close Ohio was experiencing unprecedented levels of violence in our institutions. We had inmates who refused to come out of their cells to participate in rehabilitative programming because they were afraid they would become a victim of violence. Additionally, our system received 12,000

inmates doing 1 year or less in 2010. These offenders were typically first –time, non-violent offenders who would be better served in a community correctional environment than in a state correctional facility.

Because of budget shortages in the years preceding my acceptance as Director there had been a decision to move away from unit management. This effectively left security staff with the additional requirement of addressing offender needs for services outside the boundary of providing a safe secure environment.

1. **Violence** - Shortly after taking this position I was made aware of an alarming trend of inmate violence. If we look at assaultive and disruptive behavior involving multiple inmates we saw: an increase of over 350% from 2007 through 2010.
   This trend of violence is reiterated as I receive significant incidents 24 hours-a-day, 7 days-a-week on my cell phone.
2. **Crowding** - Also during my first week on the job I learned that we had seven facilities that were triple bunking inmates who were rule violators in disciplinary control because the system was so crowded that beds did not exist at our higher security facilities to send inmates who required a higher level of custody. I also learned that we had hundreds of inmates who were waiting for transfer to more suitable prisons for disciplinary reasons and for inmates who refuse to enter into the general population for fear of retaliation for gambling and other institutional behaviors.

3. **Reducing the Impact of Job Loss** - The chaos caused by staff bumping in our correctional system results in both significant impact to employees and families, who are Ohio citizens, but also disrupts the orderly operation of our facilities that is critical to a safe environment. It was clear that given the historic hole in the budget, staffing reductions were inevitable, but attempting to control and reduce that loss and ensuring that we maintain a priority on our core functions of supervision of inmates and offenders in the community.

The Impact of Reform Efforts in Ohio

In September 2011, the Ohio Department of Rehabilitation and Correction (ODRC) announced the results of a groundbreaking procurement that will see the state raise $72 million from the sale of one state prison to a private operator—the first sale of its kind in the nation—and two others turned over to private management, for an estimated $13 million in annualized cost savings. One additional facility formerly under private sector operation was also brought back under in-house operation.

Structural Reforms –Achieving a Blended System

In Ohio, we create an environment to encourage and recognize best practices, which means that the best practices from the state and private sector that are initiated, talked about and presented at our wardens meetings where we all learn from each other and in a very competitive way.

Secondly, we have a system of metrics that we use to gauge performance, which covers everything from violence indicators, to use of force indicators, to program completion indicators (GED, etc.), to recidivism data. And we use those to basically say, these facilities are doing this, what are you doing? We developed a dashboard approach where all of this data is visible, and it's amazing how operations just get a whole lot better when metrics are published.

And the private sector, because they have not been lifelong Ohioans in some cases, bring different approaches that we all learn from, and they learn from us as well.

This whole environment of best practices that I envisioned 18 months ago when I took this job is truly coming into fruition because our metrics are getting better.

Additional Budgetary Reforms

Institution Consolidation/Closure of Prison Camps

The Department consolidated operations of our Corrections Medical Center with the Franklin Pre-Release Center, and the Allen Correctional Institution with the Oakwood Correctional Facility, thereby gaining administrative efficiencies. We also closed camps housing minimum level inmates adjacent to our London, Ross, and Toledo Correctional Institutions. Camp inmates were transferred to appropriate and/or adjacent prison facilities. Staff reductions that resulted from these changes were accomplished through attrition.

Mental Health/Medical Services

The Bureau of Mental Health Services is planning for a functional reorganization that will result in changes to the current service delivery model. Our experiences since the *Dunn* lawsuit have shown that the numbers of Seriously Mentally Ill (SMI) offenders are not as large as was assumed when the suit was settled. The reorganization of Mental Health Services will focus the most intensive treatment on the SMI population who will continue to be prioritized. At the same time, we will retain a commitment to programming and service delivery to non-SMI offenders who are less resource intensive. Their clinical and criminogenic needs will be addressed. The overall goal is to serve the MH population in the most appropriate and least restrictive setting in a manner that is responsive to their condition and supportive of their reentry preparation.

Medical Services

At the same time we underwent significant reforms in our medical operations. Foremost, were negotiations with the Ohio State University hospitals to attempt to move towards Medicaid rates for hospitalization and other services. Our expectations were clearly communicated to OSU and my expectation was an additional $10 million savings annually in our contract. Other medical reforms included the abolishment of registered nurse 2 (RN2) positions, replacing them with RN1 positions throughout the institutions. The budget also assumes outsourcing radiographers and clerical staff to achieve further cost savings. Furthermore, infirmary operation hours at many facilities were shortened and emergency care services and protocols were established. We significantly reduced our medical costs and through peer review consults, revising procedures, contract negotiation with our central hospital provider, outsourcing medical technicians and eliminating state positions.

Prison Violence

Current reforms taking place within our system include that address the issue of prison violence and facilitate the mission of our agency to reduce recidivism among those we touch include:

<u>3-tier prison system</u>

The 3-tier model for Ohio's prisons creates multiple levels of managing offenders which coincide with the security classification system. Comprised of control prisons, general population prisons and reintegration centers, the 3-tier model constructs a graduated level of privileges designed to reward positive behavior, and provide all inmates with a sense of hope. As director I sent a letter to all 50,000 inmates stating that I hoped their stay in our system is productive, meaningful, and leads to a healthy, crime free life when released. In this letter I also acknowledged that I have zero tolerance for violence

and will be responsive to any acts of violence.

Unit Managed Prisons

Unit managed prisons are the key to delivering services to offenders because unit management places key resources in direct contact with offenders. Unit management staff can therefore be responsive to the concerns of staff and fulfill the needs of the offenders. This form of prison management allows us to pro-actively manage all facilities and maintain safety and security.

Violence Reduction in Prison

- 2007 = 1 disturbance every 8.1 days
- 2008 = 1 disturbance every 7.2 days
- 2009 = 1 disturbance every5.6 days
- 2010 = 1 disturbance Every 3.9 days
- 2011 = 1 disturbance Every 2.5 days

Disturbance is defined as 4 or more inmates involved in a single act of violence

2011 - over 1,000 inmates “refusing to lock” Due to fear for their own safety.

Violence reduction teams at each site,

Security Threat Group Gang identification in prison and in the community,

To date we have achieved a 25% decrease compared to Previous Year, which over the period of 12 months will result in over 1,000 violent acts.

Offender Assessment

Critical to our belief in making sure that the right people are placed in prison and that offenders who would be better served by community based programs was the development of a standardized assessment tool. In Ohio, the Ohio Risk Assessment System (ORAS) guides key decision makers within the entire criminal justice system in identifying offender needs and their risk to reoffend. ORAS is not designed or intended to remove discretion from decision makers but its intent is to guide professionals toward making better decisions for offenders during the various stages of criminal justice system processing.

Recently a DRC funded Halfway House designed and constructed a new facility utilizing the research based on ORAS principles. The principles state in-part that low risk offenders housed or receiving programming with designated high risk offenders could be subject to the anti-social attitudes and behaviors of the high risk group. Research indicates that low level offenders do better in housing and programming environments with other low risk offenders.

Legislative Reform

House Bill 86

House Bill 86 represents an historic piece of legislation. It came about with technical assistance from the Council of State Governments Justice Center, in partnership with the PEW Center on the States and the U.S. Department of Justice. After 18 months, bipartisan support from the General Assembly, and the leadership of Governor John R. Kasich, House Bill 86 became effective on September 30, 2011.

The new law aims to reduce crime by diverting first-time, non-violent offenders to intensive community programming and away from the corrosive influence of career criminals in Ohio's prisons. The law also seeks to reduce prison crowding and incidents of prison violence, at the same time better preparing

inmates for a successful reentry back into the community. Several provisions are grounded in evidence-based practices and principles that drive effective correctional interventions.

Under House Bill 86, the Ohio Risk Assessment System (ORAS) now guides and informs the assessment of offenders' risk and needs. Ohio is on the cutting edge in its reliance on ORAS for use in assisting decision makers in better assessing offenders' risk profiles. It will help guide staff more effectively in a manner that reduces recidivism. Over time, the use of ORAS will contribute to improvements in the use of predictive risk assessment tools, increased public safety and more successful community re-entry pathways for offenders in DRC.

Senate Bill 337 – Collateral Consequences

In 2011, the Ohio Department of Rehabilitation and Correction, in partnership with a bipartisan group of legislators and other criminal justice stakeholders under the direction of Governor John Kasich, embarked on a journey to discover the realities of the collateral consequences of a criminal conviction in the lives of Ohioans. The collaborative effort has resulted in legislation that will serve as a model for the rest of the nation.

Collateral consequences are restrictions, disabilities or punishments that result from a criminal conviction that are not administered by the criminal justice system. In the case of offenders returning to the community from Ohio prisons, the inability to obtain employment, driver's license or other benefits of citizenship can greatly increase the risk to reoffend. Currently, collateral consequences impact approximately 1.9 million Ohioans.

The bill deals with certain licensing provisions which prohibit a person with a felony or misdemeanor conviction to work in fields such as optical dispensing, construction and cosmetology. The legislation also reforms certain driving license suspensions not directly related to moving violations that are currently in statute, such as those related to child support payments and underage tobacco violations.

The bill reforms the sealing of adult and juvenile records, and modifies child support policies to allow Child Enforcement Agencies to use actual earning potential for an individual being released from incarceration based upon the new and limited earning potential. Further, the legislation prohibits courts to charge a fee when a youth applies to have his record sealed. The bill creates a Certificate of Qualification for Employment which lifts, on a limited basis, the automatic bar of collateral sanctions imposed by the law, leaving employers the ability to consider applicants on a case by case basis while providing immunity from negligent hiring.

Recidivism

In the beginning of this testimony I presented you with the new mission of our agency-to reduce recidivism among those we touch. I am glad to report that a recent review of the 2008 cohort of released offenders from our system produced a record low recidivism rate of 31.2%. This was a 10% reduction in recidivism from the cohort released in 2007. We are very encouraged by these numbers. However we are not resting on our laurels. The above noted reform efforts are all inspired by our agency vision and mission.

In keeping with our vision of reducing crime in Ohio we have allocated $10 million dollars in FY2010 in probation improvement grants. These monies are designed to make community enforcement more effect and provide suitable offenders with the level of treatment and supervision most appropriate for their rehabilitation.

The provisions set forth under the recent passage of the sentencing reform law is beginning to produce dividends. In 2011, 48% of total commitments to our system were low level felony commitments (F4/F5 level). Thus far we have seen a 7% reduction in new court commitments during the first quarter of 2012

and of those only 22% have been sentenced under HB 86 through the end of April. While this indicates a more gradual phase in of HB 86 than anticipated it does indicate that we are on the right path.

The number of supervision revocations leading to a return to prison has decreased as communities are addressing revocation behavior through local sanctions. Efforts to fund probation reform are showing clear signs of success as counties awarded DRC probation improvement grant dollars increased revocations by just 3% as compared to non-funded counties who had a 11% increase in revocations.

Additionally, tangible efforts are being made to provide offenders in our system with meaningful activities that will prepare them for successful reentry. Recently, I signed a memorandum of understanding with the Ridge Project and PI &I to provide training to offenders in our institutions in order for them to obtain a commercial drivers license (CDL) thus eliminating one of the greatest barriers to successful reentry – employment.

National Institute of Corrections
Advisory Board Public Hearing
"Balancing Fiscal Challenges, Performance-Based Budgeting, and Public Safety"

Written Testimony of Michael Jacobson
President and Director
Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279

August 22, 2012

My thanks to the members of the National Institute of Corrections Advisory Board for the opportunity to discuss the critical matters of crime prevention and public safety during times of rising costs, shrinking budgets, and limited resources. My name is Michael Jacobson, and I serve as President and Director of the Vera Institute of Justice. I have worked in corrections and municipal management for much of my career.

My 20 years of government service began in the New York City Office of Management and Budget where, as Deputy Budget Director, I was responsible for public safety agencies. I also served as the New York City Commissioner of Probation under Mayor David Dinkins, and then as Commissioner of the Department of Correction under Mayor Rudolph Giuliani.

The Vera Institute of Justice is a national research and policy organization with offices in New York City, Washington, DC, Los Angeles, and New Orleans. Since 1961, Vera has combined expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people reply on for justice and safety. This testimony summarizes Vera's work and findings related to incarceration costs, as well as the use of cost-effective, evidence-based strategies to improve criminal justice practices and public safety outcomes.

Vera's current work reflects 50 years of innovation and expertise. In 1961, philanthropist Louis Schweitzer and Herb Sturz, a young magazine editor, quietly launched a program with a new approach to bail. Their revolutionary idea was that many low income and indigent people accused of committing a crime could be relied on to appear in court if released without money bail. Their research had demonstrated that New Yorkers too poor to afford bail but with strong ties to their communities could be released and still show up for trial. This evidence changed how judges make release decisions in criminal courts around the world and has saved hundreds of counties thousands in jail costs while minimizing disruption in the lives of defendants. What started with the Manhattan Bail Project in New York City led, ultimately, to the founding of the Vera Institute of Justice to pursue similar initiatives.

Today, Vera staff is leading more than two dozen separate projects that aim to increase the efficacy of justice systems while also working to make a difference in the lives of individuals. Born from a single innovative idea, Vera is currently active in 43 states and across the globe.

During the past 50 years, Vera's projects have raised awareness about the plight of men and women confined in unsafe and unhealthy correctional facilities, expanded opportunities to people with developmental disabilities, and protected children in foster care. Informed by our government partners' input on their needs, Vera's experts approach each project with a detailed analysis of existing data, policies, and practices. With in-depth knowledge about a jurisdiction, Vera can tailor recommendations and expert assistance to specific conditions. Vera staff foster collaboration and information sharing among all those inside and outside government with a stake in solving the problems identified, and then help our partners to establish their own data-gathering capacity to track their ongoing performance. This approach is not unique to Vera, of course; it is one that the National Institute of Corrections has championed for more than 30 years.

I. Rising Prison Costs

With 2.4 million individuals currently incarcerated and the current fiscal climate, the Advisory Board's consideration of these issues is timely.[1] While the full cost of prisons has long been hidden, Vera's recent work has made significant contributions to the field in understanding the true cost of incarceration and, going forward, in demonstrating how to calculate this cost. Vera is also building the capacity of jurisdictions to use cost-benefit analysis to ensure that limited resources are effective in achieving the intended goals of the justice system.

From my own experience, I know that operating a safe, secure, humane, and well-programmed prison is, and should be, an expensive proposition. Prisons are, as sociologists say, "total institutions" that provide everything necessary for prisoners to live and to be equipped to return to the community. This means ensuring appropriate levels of uniformed security staff, food, programming, recreational, and educational opportunities (all necessary to ensure order and reduce high recidivism rates), infrastructure, maintenance and upkeep, and physical and mental health care for a population with significant physical and mental illness. In this field, cutting facility costs can have dire consequences.

For example, mental health care for the prison population is expensive but it is crucial—not only for the prisoners and staff but for the public's safety when incarcerated people are released. Rather than asking corrections officials to chip away at facility costs, policymakers looking to reduce prison expenditures should take steps that will reserve incarceration for those who most warrant it and develop effective, lower-cost alternatives for others. The problem of prison costs isn't just that they are rising; it is also the declining benefits of locking up ever-larger numbers of low-level offenders. The declining marginal benefits to public safety are equally noteworthy: the price of any public service must be considered in the context of its benefits and its opportunity costs.

Cost-benefit analyses in Washington State and Oregon illustrate this point. An analysis prepared by the Oregon Criminal Justice Commission for the state legislature illustrates the concept of

[1] U.S. Department of Justice, Federal Bureau of Prisons, " Weekly Population Report", (July 31, 2012) http://www.bop.gov/news/weekly_report.jsp; Matthew Cooper, William J. Sabol, Heather C. West, Prisoners in 2008, Bureau of Justice Statistics (July 31, 2012), http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763.*in 2008*, Bureau of Justice Statistics (July 31, 2012), http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763.

diminishing marginal returns in cost-benefit terms.[2] In 1995, incarcerating an additional offender in Oregon had a cost-benefit ratio of $3.31: for every dollar invested in incarceration, $3.31 in benefits was returned through avoided crime. As incarceration in Oregon increased, marginal returns began to decrease and, by 2005, this number went to $1.03: the investment just broke even. The difference is even greater when broken down by type of offender.

An analysis prepared by Washington State demonstrates the benefit when we lock up violent offenders: in 2005, each dollar invested in incarcerating violent offenders in that state yielded $4.35 in public safety benefits. The cost of incarcerating drug offenders, however, far exceeded the benefits: every dollar invested in incarcerating drug offenders yielded $0.35 in public safety benefits—the costs far outweigh the benefits.[3]

A. Vera's Analysis: *The Price of Prisons, What Incarceration Costs Taxpayers*

Decades of escalating incarceration rates and soaring corrections costs have been well documented and are a familiar story to policymakers and the public.[4] Over the past 40 years, state prison populations have grown by more than 700 percent; today, more than 1 in 104 adults nationwide are in prison or jail.[5] Rising incarceration rates have come with great costs to taxpayers. States' correctional spending—on prisons, jails, probation, and parole—has nearly quadrupled over the past two decades. Aside from Medicaid, corrections is now the fastest-growing budget item for states.[6]

Existing figures, however, often underestimate the total cost of state prisons—and in some states, these overlooked costs are substantial. To address this information gap, Vera's staff, with support from the Pew Center on the States, developed a method to measure the comprehensive taxpayer cost of prison in a consistent manner across states. Among the 40 states participating in the survey Vera staff conducted, the cost of prisons was $39 billion in fiscal year 2010, $5.4 billion more than what their correctional budgets reflected. The survey revealed that in six states, including a few with some of the largest prison systems in the country, more than 20 percent of prison costs are outside the corrections budget. Contributions for retiree health care and the underfunding of retiree health care plans are, in the aggregate, the largest taxpayer cost outside the corrections budget.

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[2] Criminal Justice Commission, Report to the Legislature, State of Oregon, Criminal Justice Commission January 2007 www.ocjc.state.or.us/CJC/docs/cjc2007reporttolegislature.pdf (August 7, 2012)
[3] Oregon Criminal Justice Commission report, January 2007.
[4] This section is adapted from Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers*. New York: Vera Institute of Justice, 2012.
[5] Pew Center on the States, Prison Count 2010: State Population Declines for the First Time in 38 Years (Washington, DC: The Pew Charitable Trusts, April 2010); Pew Center on the States, The High Cost of Corrections in America: InfoGraphic (Washington, DC: The Pew Charitable Trusts, April 2010) http://www.pewstates.org/research/data-visualizations/the-high-cost-of-corrections-in-america-infographic-85899397897.
[6] Analysis by Pew Center on the States based on National Association of State Budget Officers, "State Expenditure Report" series, http://nasbo.org/Publications/StateExpenditureReport/tabid/79/Default.aspx (accessed December 1, 2011).

The resulting report, *The Price of Prisons, What Incarceration Costs Taxpayers,* provides both a comprehensive view of the full cost of incarcerating a sentenced adult offender in state prison, and individual state profiles of the participating 40 states.[7]

However, smaller corrections budgets do not necessarily correlate with safer community outcomes. If a state achieves lower per-inmate costs through overcrowding, there may be negative consequences for staff and inmate safety as well as for recidivism rates, increasing long-term costs. On the other hand, enhanced treatment and programming may raise per-inmate cost but improve staff and inmate safety as well as help to lower recidivism rates, thus reducing long-term overall costs.

Some states have both decreased their prison populations and reduced violent crime. In New York and New Jersey, for example, violent crime has declined dramatically at the same time that both states have relied less on the use of incarceration. From 1999 to 2009, the incidence of violent crime declined by 30 percent in New York and 19 percent in New Jersey, while declining by only 5 percent in the rest of the country.[8] At the same time, the prison population decreased by 18 percent in both New York and New Jersey after sentencing reform and changes in policing and parole practices.[9] These examples provide evidence that crime rates may continue to decline in tandem with the implementation of sound policies that reduce reliance on incarceration.

B. Cost-Benefit Analysis: A Tool for Analysis and Planning

Few jurisdictions have a sense of the return they receive on their financial investment in criminal justice. In order to provide expertise and assistance in this area, Vera established a cost-benefit analysis unit in 2009 to examine the efficacy of justice programs.

In 2010, North Carolina's Youth Accountability Planning Task Force contracted with Vera's Cost-Benefit Analysis Unit (CBAU) to examine a proposed justice system policy change. The North Carolina group asked CBAU to assess the implications of raising the age of juvenile jurisdiction in the state—specifically, handling 16- and 17-year-olds charged with misdemeanors and low-level nonviolent felonies in juvenile courts instead of in the adult system. Although many experts believe that the juvenile justice system is more effective than the criminal justice system in responding to delinquent behavior, it can be more expensive to operate.

Vera found that the proposed shift would cost North Carolina $71 million annually but would generate $123 million in recurring benefits to youth, victims, and taxpayers over the long term. The analysis not only factors in savings that accrue from preventing future crimes and incarceration but also projects increased lifetime earnings for young people whose convictions are sealed in juvenile court and cannot become a barrier to employment. Despite the evidence, however, the state has not yet raised the age of juvenile jurisdiction.

[7] The full report and state-by-state analysis are available on Vera's website: http://www.vera.org/priceofprisons.
[8] Vera's calculations, using data from Uniform Crime Reporting Statistics.
[9] Vera's calculations, using National Prisoner Statistics data from Bureau of Justice Statistics.

C. Cost-Benefit Knowledge Bank for Criminal Justice

Vera created the Cost-Benefit Knowledge Bank for Criminal Justice (CBKB) with support from the U.S. Department of Justice's Bureau of Justice Assistance (BJA). CBKB aims to broaden the knowledge of practitioners and policymakers about criminal justice cost-benefit analysis by supporting the capacity of state and local governments to promote, use, and interpret cost-benefit analyses in criminal justice settings.

CBKB's website, CBKB.org, launched in 2011, serves as a clearinghouse for resources and research on cost-benefit analysis in criminal justice and as an active center for a growing community of practitioners. Vera staff has developed educational and training materials available on CBKB.org—including podcasts, videos, and a cost-benefit toolkit—so that a wide variety of national audiences can learn the principles and methods of cost-benefit analysis. Vera has also convened policymakers, practitioners, and experts in roundtable discussions of cost-benefit topics of emerging interest. Currently, Vera is providing targeted technical assistance to four jurisdictions—Allegheny County, Pennsylvania; Denver, Colorado; Kent, Washington; and York County, Pennsylvania—to help local policymakers build their capacity to use cost-benefit analysis.

II. Restricting Budgets at the State and Federal Level

States can reduce their prison costs substantially by changing their sentencing and release policies, reserving the use of prison for offenders who pose the greatest risk and relying on community-based options for people who commit low-level, nonviolent crimes. Some states have rolled back release policies that extended the time that people spent in prison. For example, in 2008, Mississippi reduced the percentage of sentences that nonviolent offenders must serve from 85 percent to 25 percent—a policy shift that has substantially reduced prison terms for thousands of people.[10] Other states have expanded "earned time" credits for inmates who complete programs designed to reduce recidivism.[11] In a 2010 survey of state corrections departments, Vera found that at least 20 states had taken steps to moderate length of stay.[12] With the ground-breaking leadership of the National Institute of Corrections, state and local policymakers are focusing on strategies and services shown to reduce recidivism, including: effective reentry planning; the use of validated risk and needs assessments; treatment and other services targeting criminogenic needs; and certain sanctions for violations of probation or parole.

Vera has been providing assistance to state and local partners seeking to implement these strategies through its work in Los Angeles County and in New Orleans, as well as through its Justice Reinvestment Initiative work and its Segregation Reduction Project.

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[10] JFA Institute, *Reforming Mississippi's Prison System* (Washington, DC: JFA Institute) 2. http://www.percenteronthestates.org/uploadedfiles/wwwpewcenteronthestates.org/Initiatives/PSPP/MDOCPaper.pdf?n=8407(accessed December 13, 2011)

[11] Vera Institute of Justice, *The Continuing Fiscal Crisis in Corrections* (New York: Vera Institute of Justice, 2010), 17.

[12] Ibid.

A. Justice Reinvestment Initiative (JRI)

Justice reinvestment is a data-driven approach to corrections policy that seeks to cut spending by reducing prison and jail populations and to reinvest savings in community-based practices that have been empirically shown to improve safety. This approach was pioneered 30 years ago by NIC in its National Prison and Jail Overcrowding Project and in its Intermediate Sanctions Project, but improved data capture and analysis capacity in virtually every state and many counties has broadened its acceptance. Supported by BJA, Vera staff provides expert assistance throughout the legislative process, followed by technical and policy support to ensure effective implementation of legislative reforms. Vera is currently providing technical assistance in Arkansas, Delaware, Kentucky, Louisiana, and South Carolina and will soon begin work in Georgia and Missouri. This assistance includes data and policy analysis, policy development, support in implementing new programs and policies, translating the new policies into practice, and ensuring through improved data collection that related programs and system investments achieve projected outcomes.

In Delaware, for example, Vera staff worked closely with the Delaware Justice Reinvestment Task Force, established by Governor Jack Markell in July 2011. Vera worked with state agencies to analyze administrative data—from crime and arrest through parole and probation supervision—to determine the factors that contribute to the size of the prison population. With this analysis—in combination with a thorough qualitative analysis of community supervision practices, victims' needs, and the use of system-wide assessment—Vera assisted the task force in developing practical, evidence-based policies to reduce spending while maintaining public safety. The resulting JRI legislation, SB 226, passed both houses of Delaware's General Assembly with large margins of support. Governor Markell signed the bill on August 8, 2012, and Vera plans to continue collaborating with Delaware officials to implement the law.[13]

In Kentucky, Vera staff is providing technical assistance to support the implementation of justice reinvestment strategies after the state enacted the Public Safety and Offender Accountability Act, HB 463, in March 2011. Vera staff has worked closely with officials from the Kentucky Administrative Office of the Courts and the Kentucky Department of Corrections to create a justice reinvestment working group; develop implementation plans with agency officials; provide technical assistance to implement a validated pretrial risk assessment instrument tool; increase the state's capacity to use evidence-based strategies throughout its criminal justice system; develop performance measures to track the impact of justice reinvestment policies; facilitate the process of keeping policymakers apprised through frequent progress reports and testimony to relevant legislative committees; and facilitate Kentucky's receipt of seed funding from BJA to assist the state in jumpstarting justice reinvestment programs.

B. Vera's Segregation Reduction Project

As detailed extensively in the first federal hearing on segregation—also known as solitary confinement—just weeks ago, the Senate Judiciary's Crime Subcommittee began to examine one practice that contributes significantly to prison costs. Since the 1980s, prisons in the United States have increased their reliance on segregation to manage difficult populations in their

[13] See http://news.delaware.gov/2012/08/09/governor-signs-justice-reinvestment-act/

overcrowded systems. According to the U.S. Department of Justice's Bureau of Justice Statistics (BJS), the number of people in restricted prison housing units nationwide increased from 57,591 in 1995 to 81,622 in 2005.[14] Segregation was originally developed as a method for handling highly dangerous people, but it is increasingly used to punish minor violations that are disruptive but not violent, such as talking back (insolence), being out of place, failure to report to work or school, or refusing to change housing units or cells. In some jurisdictions, according to analysis conducted by Vera, these prisoners—who do not pose a threat to staff or other prisoners—constitute a significant proportion of the population in segregated housing.

Keeping people in segregation is expensive. In 2003, Ohio reported that it cost $149 a day per person to house a prisoner in the Ohio State Penitentiary—Ohio's supermax—compared with $101 per day per person in a maximum-security facility and $63 per day for a person incarcerated in the general prison population.[15] The majority of the higher costs come from the need for additional staff to monitor segregation units. For example, the supermax required one corrections officer for every 1.7 prisoners; maximum-security housing required one officer for every 2.5 prisoners.[16]

Mississippi provides a clear example of the fiscal benefits of reducing the use of segregation. Commissioner of Corrections Christopher Epps described the changes as follows: "The Mississippi Department of Corrections administrative segregation reforms resulted in a 75.6% reduction in the administrative segregation population from over 1,300 in 2007 to 316 by June 2012. The administrative segregation population reduction has not resulted in an increase in serious incidents. The administrative segregation reduction along with the implementation of faith-based and other programs has actually led to 50% fewer violent incidents at the penitentiary. The Mississippi Department of Corrections was able to close Unit 32 [administrative segregation unit] in January 2010 due to the reduced administrative segregation population, resulting in an annual savings of approximately $5.6 million."[17]

Given the current fiscal crisis, many more jurisdictions now are looking for new and effective paths forward, away from reliance on this expensive and at times inappropriate form of incarceration.[18]

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[14] James J. Stephan, *Census of State and Federal Correctional Facilities* (Washington, DC: U.S. Bureau of Justice Statistics, National Prisoner Statistics Program, 2008, NCJ 222182). BJS requests information on people being held in "restricted housing units" but does not provide definitions for restricted housing units or for different types of segregation for respondents. As a result, the "restricted housing" category may include prisoners held in protective custody and death row units, as well as special needs and mental health units. BJS statistics may not accurately capture the numbers of prisoners in segregated settings. The BJS census includes both state and federal prisons, but excludes military facilities, local detention facilities, immigration and customs enforcement facilities, and facilities that only house juveniles.

[15] Daniel P. Mears "Evaluating the Effectiveness of Supermax Prisons" (Urban Institute Justice Policy Center, 2005). Available at https://www.ncjrs.gov/pdffiles1/nij/grants/211971.pdf.

[16] Ibid.

[17] *Reassessing Solitary Confinement: TheHuman Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of Christopher B. Epps, Commissioner of Corrections, State of Mississippi).

[18] Angela Browne, Alissa Cambier, and Suzanne Agha, "Prisons Within Prisons: The Use of Segregation in the United States," *Federal Sentencing Reporter* 24, no. 1 (2011): 46-49.

III. Concluding Statement

Every Vera project begins with an examination of how a targeted part of the justice system really works. Often, this inspires the design of a practical experiment or the development of a rational course for reform. Whatever path our work takes, Vera's goal is to help government partners achieve measurable improvements in the quality of justice they deliver and to share what they've learned with people around the world. The time has come to address the rising costs of prisons. The question before us is not "How can we run a cheaper prison?" Instead, we need to ask, "How can we best use scarce resources to keep the public safe?"

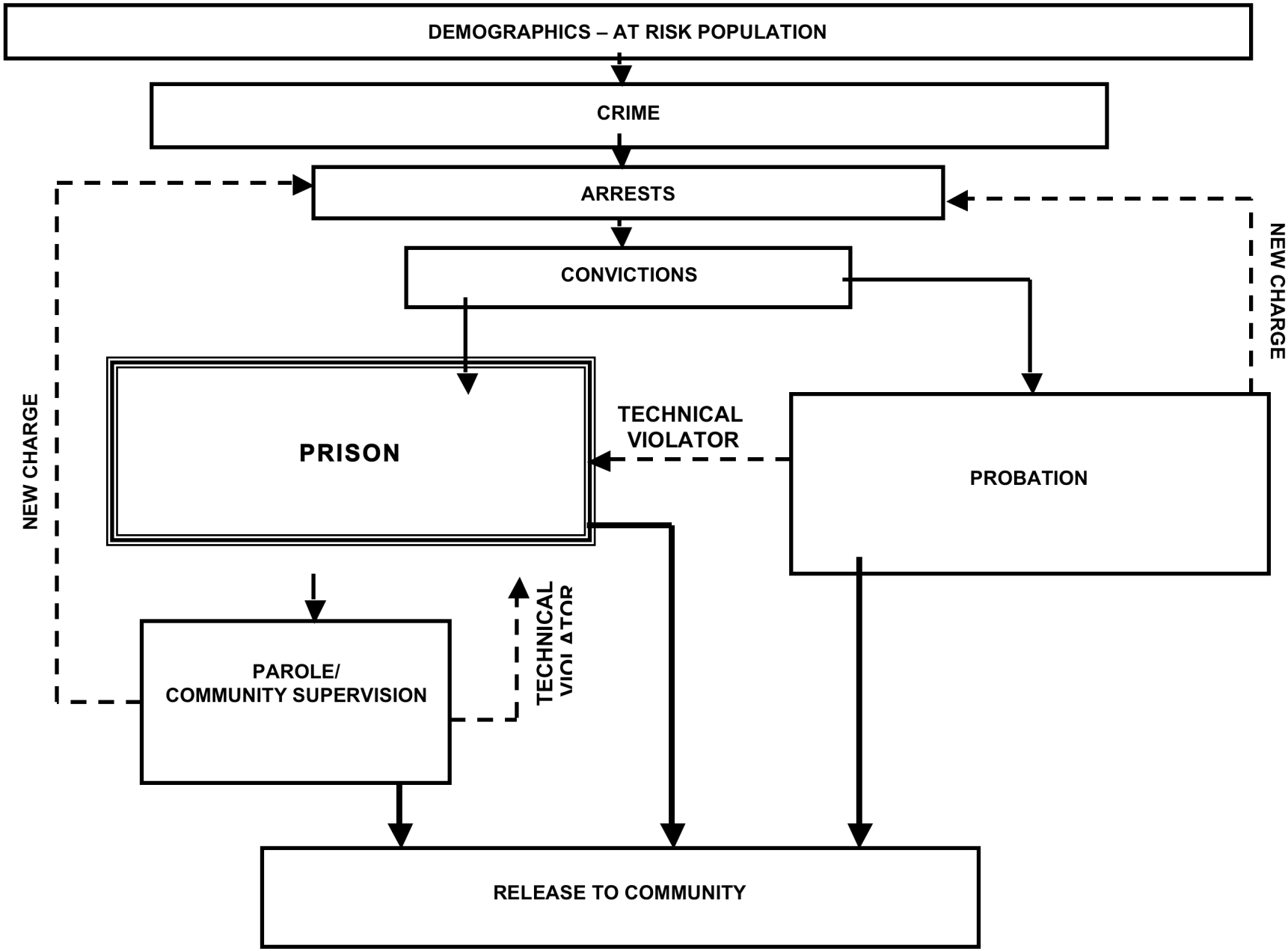
With that in mind, I would like to thank the National Institute of Corrections' Advisory Board for holding this important public hearing on the costs of prisons. I look forward to continuing our dialogue on this serious and far-reaching issue.

Projecting the Future of Corrections

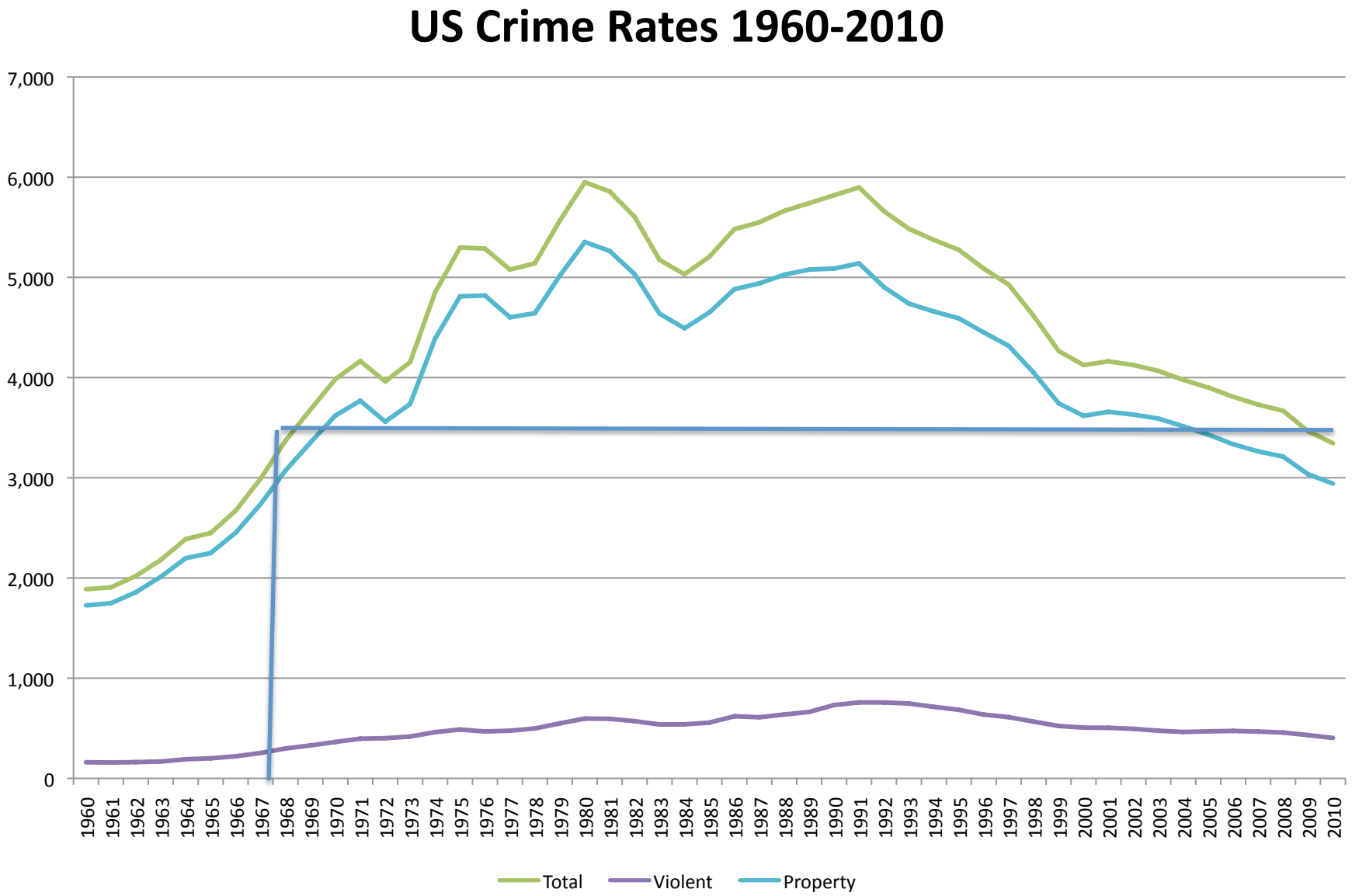
James Austin, Ph.D.

JFA Institue

SCHEMATIC FLOW OF PRISON POPULATION COMPONENTS



Is The War On Crime Over?



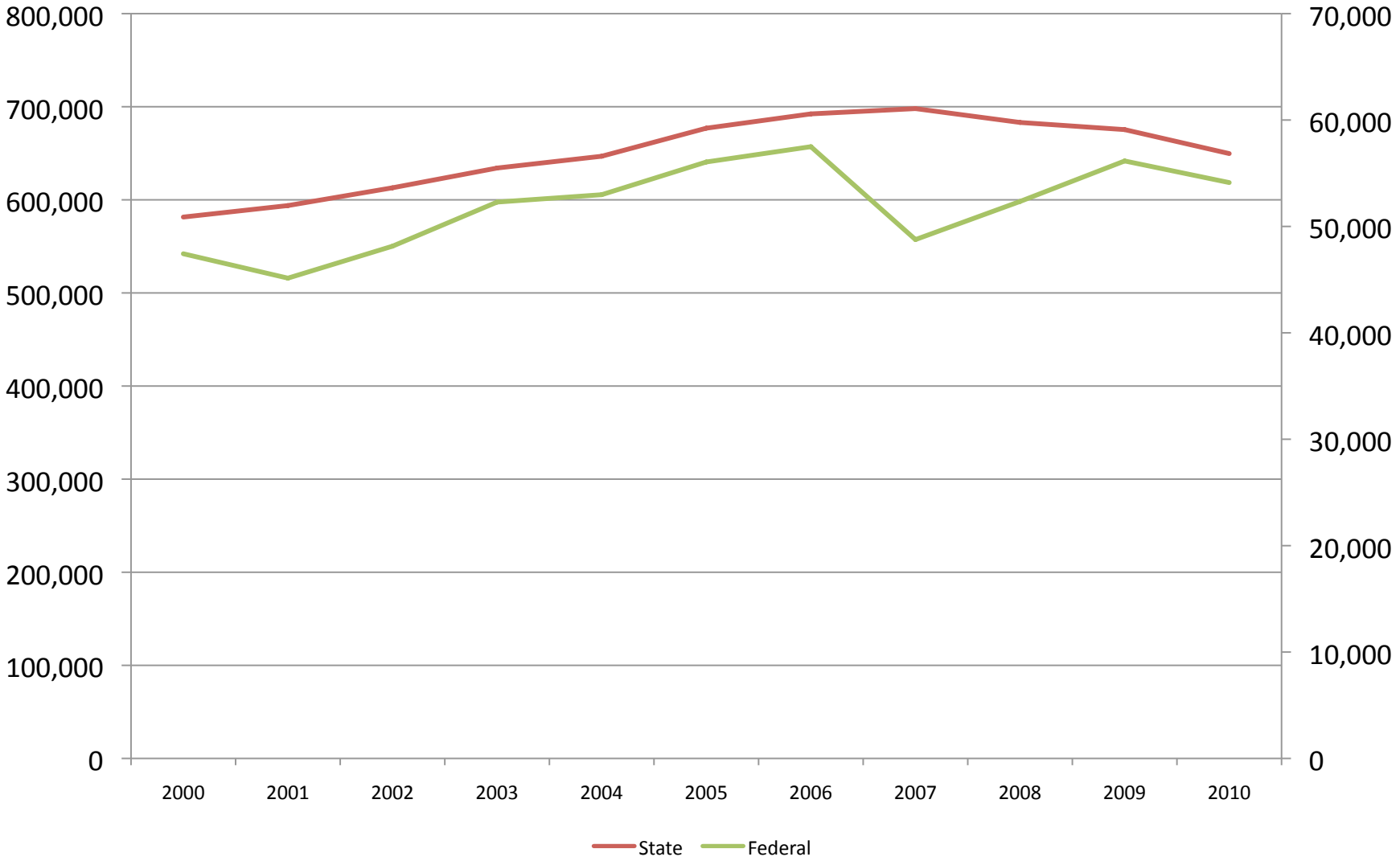
What If We Went Back In Time?

Comparisons on Crime and Punishment 1968 and 2009

	1968	2009	% Change
Crime Rate per 100,000	3,370	3,466	3%
Population	201 million	307 million	53%
State Prisons	168,211	1,405,622	736%
Federal Prisons	19,703	208,118	956%
Total	187,914	1,613,740	759%
Incarceration Rate	94	526	461%
2009 Prison Population Based on 1968 Incarceration and Crime Rates		287,442	

Proportionality of Punishment

Federal and State Prison Admissions 2000-2010



National Changes in Sentence Length, Time Served and Parole Supervision

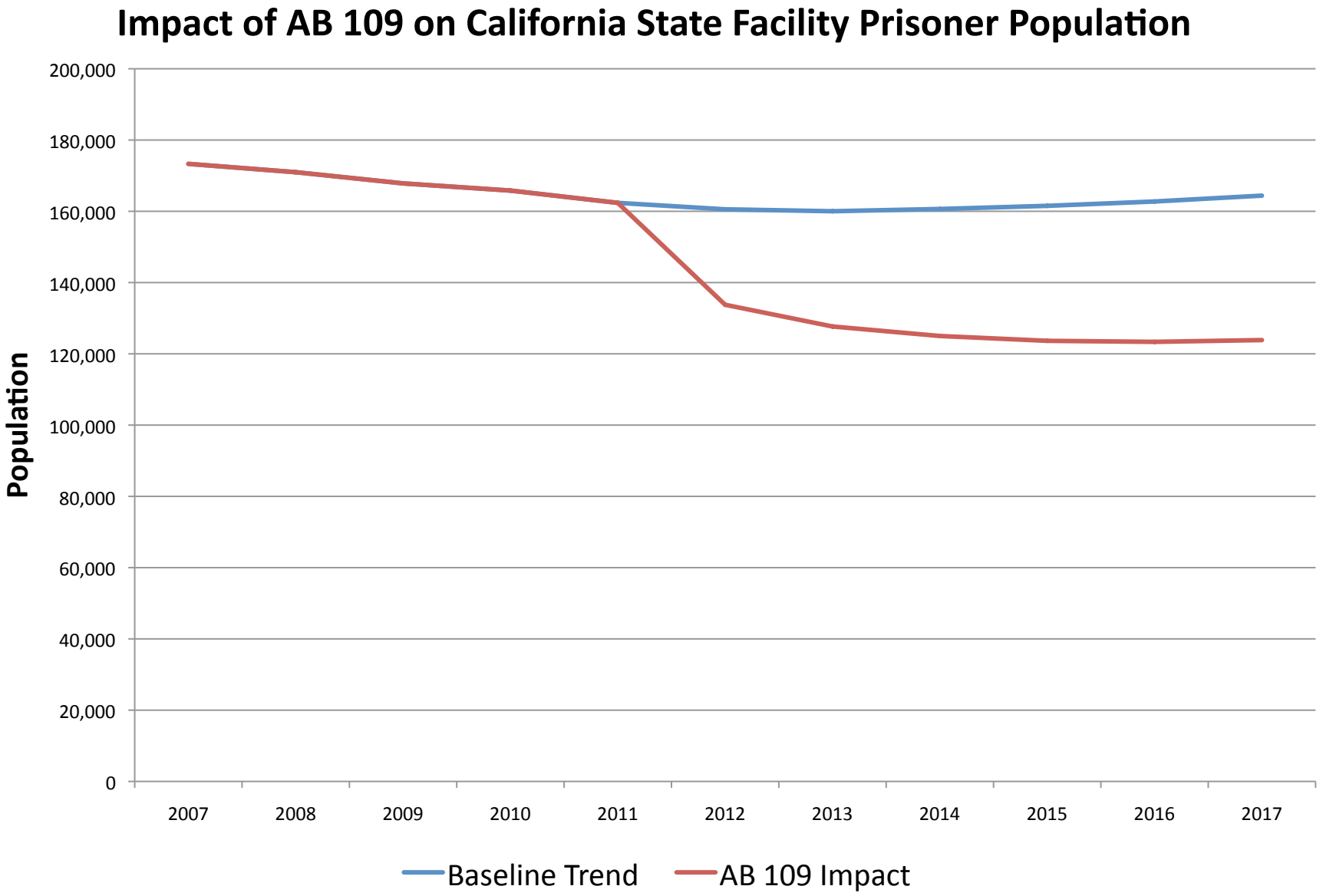
Length of Supervision	1993	2009	Change
Sentence Length			
Median	48 months	36 months	- 12 mos
Mean	66 months	60 months	-6 mos
Average Prison Time Served			
Median	12 months	16 months	+4 mos
Mean	21 months	29 months	+ 8 mos
Average Parole Supervision	19 months	26 months	+9 mos
Average Total State Time	40 months	55 months	+15 mos

Current “Key Time Served” Indicators of “Average” Incarceration/Supervision

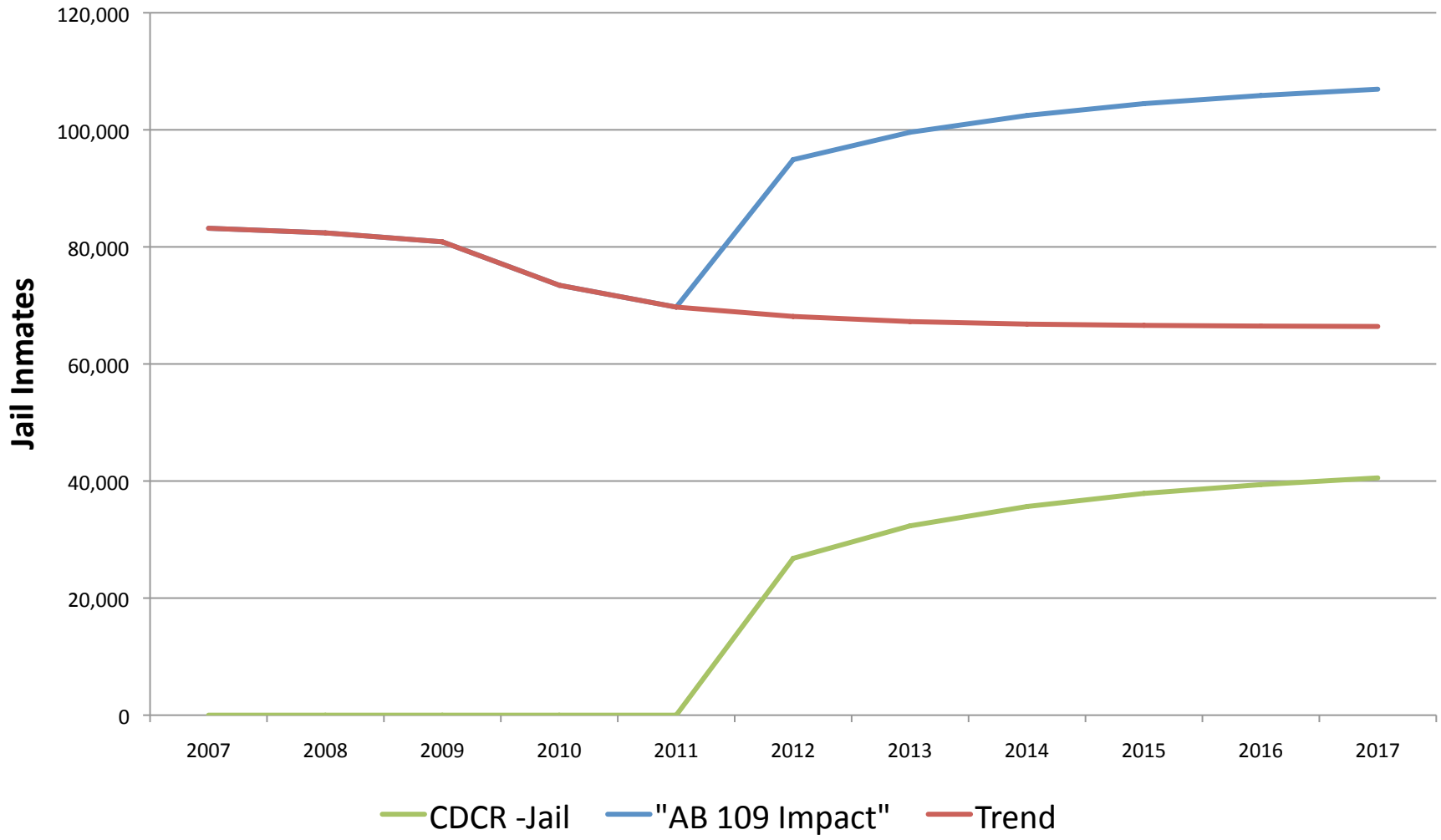
Original Sentence	60 mos
Pretrial Time	5 mos
Prison	29 mos
Parole	26 mos
Total Jail, Prison, Supervision	60 mos

Current Trends

- Crime rates likely remain low
- Arrests likely to remain stable
- Jail and Prison admissions likely to remain stable or at best decline slightly – if parole and probation reforms are implemented
- Length of stay is the key – especially for people convicted of violent crimes and repeat offenders
- Unless the LOS is adjusted for them, prison populations likely to remain where they are.
- LOS most likely to be modified for indeterminate sentencing states. Unlikely for determinate states like CA and FL.


Impact of AB 109 on California State Facility Prisoner Population
Population
200,000
180,000
160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
Baseline Trend
AB 109 Impact

Impact of AB 109 on Local Jail Population 2007-2017



NLADA | American Council of Chief Defenders

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American Council of Chief Defenders' Remarks

For Presentation at a Public Hearing of the National Institute of Corrections Advisory Board:

Balancing Fiscal Challenges, Performance-based Budgeting and Public Safety

U.S. Department of Justice, 950 Pennsylvania Ave, NW, Washington, D.C,
Main Conference Center 7th Floor
August 22, 2012
by
Ed Monahan, Chair American Council of Chief Defenders

I am the public advocate for Kentucky's statewide public defender program and chair of the American Council of Chief Defenders, an organization of chief defenders from across our country. I speak for the American Council of Chief Defenders, using examples from my Kentucky experiences that communicate the views of chief defenders across our nation.

We support an increased focus by defenders on being present at clients' first court appearances, improving pretrial release advocacy[1], proposing public defense-developed alternative sentencing, working for crime and sentence policy reforms that reduce incarceration, promoting collaborative systems that

[1] See American Council of Chief Defenders *Policy Statement on Fair and Effective Pretrial Justice Practices* (June 4, 2011), in which chief defenders call "for a new commitment by all criminal justice stakeholders to ensure fair and appropriate pretrial release decision-making, and outline[…] key action steps for each pretrial actor." In particular, this statement calls upon defenders to advance the following initiatives:

- Examine Pretrial Release Practices Within Their Own Jurisdictions to Identify Key Areas of Improvement.
- Identify and Implement National Standards and Best Practices.
- Develop Collaborative Efforts Among All Criminal Justice Stakeholders to Improve Pretrial Practices. Develop Effective Pretrial Litigation Strategies."

In July 2012 the National Association of Criminal Defense Lawyers adopted its Policy on Pretrial Release and Limited Use of Financial Bond stating "A release decision should begin with consideration of personal recognizance release. An accused should be released on personal recognizance unless an evidentiary-based determination is made that personal recognizance will not reasonably assure the accused's future appearance or that the accused represents a risk of imminent physical harm to others."

reduce incarceration costs using evidenced-based methods and that respect the right of the accused to determine the objectives of the representation.[2] Reduction of incarceration costs without a reduction of safety is a matter of political will and is being achieved with commonsense practices which should be broadly replicated.

Traditionally, a public defender's role was viewed by the public defense and criminal justice communities primarily as one of seeking favorable adjudication as to conviction and sentence with little focus on the accused post-disposition. Increasingly, defenders and others see the public defender role more expansively to include the client's post-disposition interests.[3]

In addition to protecting the freedoms of the accused, public defense is central to our public safety. Because of the traditional view of the role of the defender, public defense has been underutilized in the effort to reduce incarceration costs while maintaining public safety. However, defenders have much to offer if the defense function is recognized and funded.

There are substantial financial benefits to society when public defense systems are properly funded. Public defenders who are competent, who have manageable workloads, and who have professional independence can ensure that the rights guaranteed by our Constitution are protected and can ensure that no one's liberty is taken unless and until they are proven guilty.
Public defenders lower costly incarceration rates for counties and states by

- being present at first appearances and advocating for pretrial release;[4]
- advocating for reduced sentences based on the facts of the case;
- developing alternative sentencing options that avoid incarceration and provide individually based treatment;
- assisting clients upon adjudication with reentry needs including, employment and housing; and
- Preventing expensive wrongful convictions.

There are commonsense, modest additional public policy changes to reduce incarceration costs:

- Reclassify misdemeanor offenses as recommended by the American Bar Association.[5] "This

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[2] ABA Model Rule of Professional Conduct Rule 1.2, Scope Of Representation And Allocation Of Authority Between Client and Lawyer, states "…a lawyer shall abide by a client's decisions concerning the objectives of representation…." The Comment to the rule states that the professional relationship between the attorney and client "confers upon the client the ultimate authority to determine the purposes to be served by legal representation…."

[3] See ABA Resolution 103E (February 12, 2007).

[4] The U.S. Department of Justice National Symposium on Pretrial Justice (2011) recommends the "[p]resence of a defense counsel at the initial appearance who is prepared to make representations on the defendant's behalf for the court's pretrial release decision."

[5] See *Strategies to Save States Money, Reform Criminal Justice & Keep the Public Safe* (2011) at http://www.americanbar.org/content/dam/aba/events/criminal_justice/dialogpacket.authcheckdam.pdf
The ABA further states:

> Explosive growth in the number of misdemeanor cases has placed a significant burden on local and state court systems. Throughout the United States, defense attorneys and prosecutors are overburdened with minor cases, left with little time to focus on cases involving more serious offenses. As states continue to cut budgets, caseloads for prosecutors and defense attorneys become increasingly unmanageable. This extremely inefficient cycle burdens both attorneys and

- decriminalization of minor, nonviolent misdemeanors will allow police, prosecutors, and defense attorneys to focus on more serious cases, while also providing states with a stream of income derived from civil fines."
- Reclassify lower level felonies to misdemeanors to reduce the counterproductive effect felony convictions have on those who seek employment upon completion of their sentences;[6]
- Modestly restrict parole board decisions by requiring parole boards to conduct, consider, and follow evidence based risk assessments;
- Modestly adjust violent offender laws and policies that require that people serve 85% of their sentences before being eligible for parole[7]
- Automatically restore the voting rights of people with felony convictions, at least upon completion of sentence.[8] This is important as preliminary data suggests that voting contributes to reduced recidivism.[9]

> American taxpayers, who are left footing the bill to fund our clogged court system. Taxpayers currently expend on average $80 per inmate per day to lock up individuals accused of misdemeanors with little to no impact on public safety, *i.e.* as fish and game violations, minors in possession of alcohol, dog leash violations, and feeding the homeless. If states decriminalize these offenses and require the payment of civil fines, taxpayers will save money on court costs and incarceration and states will generate revenue through the collection of fines. Understanding that the unnecessary use of the criminal court resources to deal with minor infractions may unwisely drain state and local budgets, the ABA passed a resolution calling for governments to review misdemeanor provisions and, where appropriate, replace criminal penalties with civil fines or nonmonetary civil remedies.

Id.

[The National Association of Criminal Defense Lawyers has called for reclassification of minor crimes to civil penalties. "preceding text is highlighted] As the Supreme Court observed in *Argersinger*, "[o]ne partial solution to the problem of minor offenses may well be to remove them from the court system." *Argersinger v. Hamlin*, 407 U.S. 25, 38 n.9 (1972). Many misdemeanor crimes do not involve significant risks to public safety, yet they result in high numbers of arrests, prosecutions, and people in jail. In fact, many do not involve any risk to public safety. The criminal justice system would operate far more efficiently if these crimes were downgraded to civil offenses. [*Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts*, *(*April 2009) at p. 27. It is found at: http://www.nacdl.org/criminaldefense.aspx?id=20188&libID=20158

[6] Some states, *e.g.,* Washington and Minnesota, divide crimes into three categories: felonies, gross misdemeanors, and misdemeanors. Some of the benefits of a gross misdemeanors classification are that it reduces prison population by lowering the sentence for many non-violent offenses; it helps reentry and reformation efforts by eliminating the Convicted Felon label; it holds offenders accountable with sentences of at least six months and up to two years; and it maintains jurisdiction in the felony court and with the state corrections agencies to avoid increases in county expenditures.

[7] Indiscriminate long sentences have limitations. "[O]ne of the best–established findings of criminology is that crime rates decline as individuals age. Crime is overwhelmingly the province of young males . . . This suggests that blanket policies of lengthy prison terms for serious crimes will generally be ineffective as a means of reducing crimes once offenders reach their thirties." Richard Lippke, *Crime Reduction and the Length of Prison Sentences*, 24 Law & Policy 17, 23 (2002). Modifications to the Persistent Felony Offender and violent offender statutes can insure public safety and save money. An 85% parole eligibility, which is effectively a sentence of no parole, does not account for the fact that older inmates recidivate less. Prisoners are "less dangerous as they age," and "more expensive to maintain." Michael Vitiello, *Reforming Three Strikes' Excesses*, 82 Wash. U.L.Q. 1, 16-17 (2004).

- Provide federal financial incentives to achieve cost-effective reforms by states.[10]
- Rectify the imbalance in grant funding that reduces the capacity of public defense to meet those of its responsibilities that have the effect of saving incarceration costs. The United States Department of Justice should require that its criminal justice grant programs adopt a grant application requirement that applicants complete a "justice impact statement" if the grant project anticipates generating additional arrests and prosecutions. The "justice impact statement" should include an assessment of the impact of the award of the grant on law enforcement, the prosecution function, the indigent defense system, the courts, the probation function, and secure and community correctional facilities.[11]

Some public defender offices are providing community oriented defending[12] or "holistic representation"[13] such as the Bronx Defender, Neighborhood Defender Services of Harlem, and the Knoxville Tennessee public defender.

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8 See Uggen, Shannon, Manza, STATE-LEVEL ESTIMATES OF FELON DISENFRANCHISEMENT IN THE UNITED STATES 2010, [The Sentencing Project (July 12, 2012) which reports that by 2010, a record 5.85 million people were disenfranchised as a result of a felony conviction. The number of disenfranchised persons has increased dramatically along with the rise in criminal justice populations in recent decades, rising from an estimated 1.17 million in 1976 to 5.85 million today. Of the total disenfranchised population, about 45% – 2.6 million people – have completed their sentences, but reside in one of the 11 states that disenfranchise people post-sentence. In addition, 1 of every 13 African Americans of voting age is disenfranchised, and in three states – Florida, Kentucky, and Virginia – the figure is one in five.

[9] The research offers empirical evidence showing a relationship between voting and subsequent crime and arrest. See Uggen C. & Manza, J Voting and Subsequent Crime and Arrest: Evidence from a Community Sample. Columbia Human Rights Law Review, 36(1), 193-215, http://www.soc.umn.edu/~uggen/Uggen_Manza_04_CHRLR2.pdf, (2004).

[10] The federal government's financial incentives to promote state criminal law changes for the most part have urged more crime and more serious sentences, sometimes indiscriminately. While the federal financial incentive to have parole eligibility at 85% or higher no longer exists, its consequences in most states do. The Violent Offender Incarceration and Truth in Sentencing Incentive Grants Program (http://www.ojp.usdoj.gov/BJA/grant/voitis.html) has not been funded since FY 2004, and no further awards are anticipated.

[11] The vast majority of the United States Department of Justice funding is provided to law enforcement, which further exacerbates the resource imbalance in the criminal justice system that favors the judicial and prosecutorial functions over indigent defense. The American Bar Association in 1992 adopted a resolution that urges the establishment of appropriate mechanisms at the federal, state, territorial, and local levels to ensure the preparation of "justice system impact statements" that examine and analyze the funding, workload, and resource impact of proposed legislation and executive branch orders or actions for each and every element of the criminal and civil justice system, including, but not limited to, law enforcement, prosecution, public defense, probation, corrections, courts, civil legal services, and dispute resolution.

[12] See Brennan Center for Justice at http://www.brennancenter.org/content/section/category/community_oriented_defender_network.

[13] See ABA Resolution 103E (February 12, 2007) at 6-7. "Problem solving lawyering provides integrated services to clients; promotes collaboration between civil legal aid and public defense practitioners to help clients and communities; relies on other professionals such as social workers, mental health experts and mitigation specialists to address the accused person's underlying problems." *See, e.g.,* Cait Clarke and James Neuhard, *Making the Case: Therapeutic Jurisprudence and Problem Solving Practices Positively Impact Clients, Justice Systems and Communities They Serve,* by 17 St. Thomas L. Rev. 781, 781 fn 3 (2005):

Other public defender programs, like Kentucky's, are actively developing and presenting alternative sentences as options to incarceration. This is being done primarily through the use of a public defense-employed social worker who, within the attorney-client privilege, assesses a client's underlying needs, uses evidence based motivational interviewing, and develops an individualized plan.

Public defense: first appearance, pretrial release, alternative sentence development

Lawyers make a difference

The right to counsel is not an academic matter. It makes a difference to have a lawyer. Counsel is the gateway through which the other individual liberties are vindicated. Just as a judge, prosecutor, police officer, legislator, doctor, or teacher makes a difference, a defense lawyer makes a difference in the achievement of just outcomes arrived at through a fair process.

Facts demonstrate that providing a lawyer at first appearance reduces jail costs

The empirical evidence demonstrates that having counsel at the initial appearance before a judge improves the likely outcome for a criminal defendant. A defendant with a lawyer at first appearance:

- Is 2 ½ times more likely to be released on recognizance
- Is 4 ½ times more likely to have the amount of bail significantly reduced
- Serves less time in jail (median reduction from 9 days jailed to 2, saving county jail resources while preserving the clients' liberty interests)
- More likely feels treated fairly by the system.[14]

Facts show that a person on pretrial release uses fewer correctional resources

We know that one of the most important outcomes for our clients is pretrial release to the community. Studies show that, holding all other factors constant, individuals who are detained prior to trial suffer from greater conviction rates and more severe sentencing than those who are released prior to trial.[15]

Alternative sentences

Kentucky defenders began a pilot program in 2006 pairing social workers with attorneys to facilitate more efficient use of court time and probation resources, and reduce incarceration costs. The social workers assessed defendants' mental health and substance abuse needs and created an

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The holistic representation model does not change the fundamental and compelling value of getting an acquittal, less jail time, or avoiding prison altogether for a client. It merely adds the goal of making a long-term difference in the life of the client. By providing civil legal services to address offender's civil disabilities, defender offices are encouraged to see beyond the courtroom disposition of their criminal cases and address the underlying social issues hindering their client's successful reintegration into the community.

[14] See Douglas L. Colbert, Ray Paternoster, and Shawn Bushway, "Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail," 23 Cardozo L. Rev. 1719 (2002).

[15] *See* Mary T. Phillips, Ph.D., *Bail, Detention, and Nonfelony Case Outcomes*, Research Brief Series no. 14, New York City Criminal Justice Agency, Inc. (2007) .

individualized viable community treatment option to relieve the courts' burden and the burden of custody for corrections and jails.

A Kentucky public defender social worker assesses clients then proposes an alternative sentence to the prosecutor and court. When approved, the social worker seeks to have the client placed in treatment and other social services to address addictions, mental health issues and social problems. We use case management approaches such as "motivational interviewing" within the attorney-client privilege, which are consistent with the evidence-based practices used in the state's mental health programs. In 2012, Kentucky courts accepted 85% of all the alternative sentencing plans prepared by our social workers.

Defender alternative sentencing program reduces jail and prison costs: Officials from the University of Louisville have evaluated the initial project and found that it demonstrated substantial savings and positive outcomes. DPA is receiving consultation from the University of Kentucky Center on Drug and Alcohol Research to help us better identify the specific effects of our program on the incarceration problems affecting our state.

Kentucky's Three-Pronged Approach to Reducing Costs of Incarceration:

In the last few years, all three branches of Kentucky's government have taken steps to try to reduce the burden being placed upon Kentucky's prison system by creating better outcomes for persons who are charged with a crime and persons ultimately convicted of a crime, without sacrificing the public safety. In fact, early returns show that there is a substantial savings being realized with increased percentages of persons released pretrial and persons being granted probation or other form of post-conviction release, while court appearance rates and re-arrest rates have remained the same.

1. Legislative Enactment: HB 463

Nicknamed the "Public Safety and Offender Accountability Act," HB 463 was overwhelmingly passed by a Democratic House and a Republican Senate, after a bi-partisan task force spearheaded an effort to reduce Kentucky's prison costs and increase the public's return on its corrections investment by reducing recidivism and incarceration rate. The task force found that between 2001 and 2009:

- Adult arrest rates increased 32%;
- Drug arrests increased 70%;
- Kentucky used prison as opposed to probation or alternative sentences at a much higher rate than most other states;
- Technical offenders on parole were sent back to prison without a new felony provision nearly doubled; and
- Prison admissions for drug offenders rose from 30% to 38%.

As a result, Kentucky's annual spending on corrections rose to $440 million in 2009, an increase of over 330% from the amount spent only twenty years earlier.

In an effort to reduce this massive overspending on incarceration, the task force proposed – and the General Assembly enacted – legislation which, if fully embraced by the judiciary and the executive branch, could result in a gross savings of $422 million over 10 years, with a net savings accruing to $218 million.

More reading: Sen. Tom Jensen (R – London), Rep. John Tilley (D – Hopkinsville), "HB 463 – Statement from the Sponsors," *The Advocate*, June, 2011, available at www.dpa.ky.gov, and contained in the appendix of this article.

The following is a summary of the key components of the legislation:

Pretrial Release Provisions

- Makes some minor crimes (*e.g.*, shoplifting) "non-arrestable," and subject to a criminal summons only;
- Requires Administrative Office of the Courts' (AOC) Pretrial Services Division and outside vendors (e.g., home incarceration companies) to use "evidence-based practices" to assess a defendant's risk of flight, risk of failure to appear, or risk of public dangerousness;
- Amendment to HB 463 requires judges to "consider" the pretrial risk assessment, (discussed more fully below), but leaves courts with discretion to consider other evidence bearing on risk of flight, failure to attend court, or public dangerousness;
- Makes mandatory "own recognizance" or unsecured bonds if the defendant is a "low" or "moderate" risk to flee, fail to appear in court, or be a danger to the public;
- Imposes a bail credit provision which allows low or moderate risk arrestees who cannot make a cash or third-party unsecured bond to earn $100 for every day served pretrial which shall be applied toward the bond amount.

More reading: B. Scott West, General Counsel, Kentucky Department of Public Advocacy, "Changes in Pretrial Release from HB 463: "The New Penal Code and Controlled Substances Act," *The Advocate*, August, 2011, available at www.dpa.ky.gov., and contained in the appendix of this article.

Drug Code Reforms

- Distinguishes between the "trafficker" who sells for financial gain and the "peddler," who sells only enough drugs to support a drug habit, by providing for less harsh penalties for the latter;
- Reduces prison time for low risk, non-violent drug offenders who possess drugs; and
- Restricts use of "Persistent Felony Offender" law (Kentucky's "three strikes" law, though it begins with two strikes) by making it unavailable to enhance the penalties of a drug offense;
- Eliminates most penalty enhancements arising from convictions of subsequent offenses; and
- Reinvests related savings in increasing drug treatment for those offenders who need it.

Probation and Parole Provisions

- Creates Deferred Prosecution; Eligible defendants will be able to have prosecution deferred for up to two years while participating in a probation-like program of supervision and treatment; Upon successful completion, the criminal charge will be dismissed and expunged;

- Makes probation "presumptive" for defendants who are convicted of a first or second offense of felony drug possession; probation is "mandatory" unless the sentencing court finds "substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amendable to community-based treatment, or poses a significant risk to public safety;"
- Mandates the use of "evidence-based practices" and calls for the development of a research-based validated Risk and Needs Assessment which will be used to determine supervision/treatment needs and progress on an individualized case plan developed for each supervised person; and
- Creates a system of "graduated sanctions" for persons on probation and parole, whereby revocations of full sentences will not have to occur in the event of a probation or parole violation.

More reading: Damon Preston, Deputy Public Advocate, Kentucky Department of Public Advocacy, "Changes in Criminal Law or Criminal Procedure in HB 463," *The Advocate*, June, 2011, available at www.dpa.ky.gov., and contained in the appendix of this article.

The full text of Kentucky HB 463 can be accessed at http://theadvocate.posterous.com/tag/hb463; scroll down to last page and click on "HB 463" wherever it is highlighted in blue.

2. Judicial Branch Initiative: Development and Testing of an Objective Pretrial Risk Assessments, Now Employed by the Administrative Office of the Courts

While Kentucky's General Assembly was studying the over-incarceration problem and passing new law, Kentucky's Judicial Branch, under the direction of the Pretrial Services Division of the Administrative Office of the Courts, was already pursuing an evidence-based and statistically valid method of predicting whether any given arrestee posed a low, moderate or high risk of failing to attend court or committing a new crime. Over the years, the Pretrial Service Division's Chief Operating Officer, Tara Boh Klute, developed and improved a list of objectively verifiable questions which would determine a person's likelihood to come to court and obey the conditions of bond.

To be "objective," the questions had to be verifiable by an outside source, independent of any input by the arrestee or his family, either by use of an existing and available computer program, or by other readily available public source. Each question was assigned a point value, with the total accumulation of points determining into which category of risk – low, moderate, or high – the arrestee was placed.

The questions were developed and used for a period of time, and data was collected based upon the behavior of those who had been released pretrial. Kentucky believed that it had a valid tool for making risk determinations. However, statistical validation by an outside source was necessary. Thus, the AOC commissioned a study to measure the validity of the tool. The study was done by the Washington D.C. based JFA Institute, through a grant funded by the Bureau of Justice Assistance. The final report, entitled "Kentucky Pretrial Risk Assessment Instrument Validation" was prepared by James Austin, roger Ocker and Avi Bhati of the JFA Institute.

The JFA study was the first independent examination of any Kentucky pretrial risk assessment tool since the inception of the statewide Pretrial Services program established in 1976. The study found that while

Kentucky enjoyed a relatively high release rate when compared to other states, the vast majority of those released remained arrest-free pending trial (93%), and appeared in court when required (92%).

Additionally, there were some suggestions made to improve the questions or change the point value assigned to a question. These changes were implemented. Kentucky's original questionnaire and the changes made subsequent to the JFA study are shown below:

Question	Current	Revised
Does the defendant have a verified local address and has the defendant lived in the area for the past 12 months?	Yes = 0 No = 1	Yes = 0 No = 2
Does the defendant have verified sufficient means of support?	Yes = 0 No = 1	Yes = 0 No = 1
Did a reference verify that he/she would be willing to attend court with the defendant or sign a surety bond?	Yes = 0 No = 1	REMOVED
Is the defendant's current charge a Class A, B or C felony?	Yes = 1 No = 0	Yes = 1 No = 0
Is the defendant charged with a new offense while there is a pending case?	Yes = 5 No = 1	Yes = 7 No = 0
Does the defendant have an active warrant(s) for Failure to Appear prior to disposition? If no, does the defendant have a prior FTA for a felony or misdemeanor?	Yes = 4 No = 0	Yes = 2 No = 0
Does the defendant have a prior FTA on his or her record for a criminal violation or traffic offense?	Yes = 1 No = 0	Yes = 1 No = 0
Does the defendant have prior misdemeanor convictions?	Yes = 1 No = 0	Yes = 2 No = 0
Does the defendant have prior felony convictions?	Yes = 1 No = 0	Yes = 1 No = 0
Does the defendant have prior violent crime convictions crime?	Yes = 2 No = 0	Yes = 1 No = 0
Does the defendant have a history of drug/alcohol abuse?	Yes = 2 No = 0	Yes = 2 No = 0
Does the defendant have a prior conviction for felony escape?	Yes = 1 No = 0	Yes = 3 No = 0
Is the defendant currently on probation/parole from a felony conviction?	Yes = 2 No = 0	Yes = 1 No = 0
Did the defendant receive special education services in school for an emotional or behavioral problem?	Not Scored	Should be used when making recommendations for conditions of release.
Has the defendant ever spoken to a counselor or psychologist about a personal problem?	Not Scored	Should be used when making recommendations for conditions of release.

Kentucky's achievement of a statistically valid survey tool was widely applauded. Tim Murray, Executive Director of the Pretrial Justice Institute (PJI), said that "Kentucky's development of a validated statewide tool for assessing pretrial risk sets an evidence-based standard for other jurisdictions to emulate." Peter Kiers, President of the National Association of Pretrial Services Agency (NAPSA), stated that "[t]he pretrial

movement owes much to Kentucky as it demonstrates that individuals under arrest who are adequately assessed can be safely released into the community…."

More reading: Kentucky Administrative Office of the Courts Press Release, "Federal study validates risk-assessment tool used by Kentucky courts for pretrial release," June 20, 2011, reprinted in *The Advocate*, August, 2011, available at www.dpa.ky.gov, and included in the appendix of this article.

James Austin, Roger Ocker, Avi Bhati, "Kentucky Pretrial Risk Assessment Instrument Validation," The JFA Institute, October 29, 2010, included in the appendix of this article.

Tara Boh Klute, Chief Operating Officer, Pretrial Services Division, Kentucky Administrative Office of the Courts, "Release Rates Vary, Failure Rates Remain Unchanged," The Advocate, August, 2011, available at www.dpa.ky.gov, and included in the appendix of this article.

The result of the use of the pretrial risk assessment, when combined with the changes made to law by HB 463, is that a higher percentage of persons have been released pretrial, while reappearance and safety rates have remained the same. According to AOC data:

- There were 244,494 cases (involving 180,938 individual defendants) handled by Pretrial Services from June 8, 2011 through June 8, 2012 compared to 267,719 cases (involving 198,091 individual defendants) over the same period of time in the previous year. (An individual defendant may have more than one case; in both years, the number of individual defendants equals 74% of the number of cases.);
- Of these cases, the defendants in 70% obtained pretrial release this year compared to 65% the previous year;
- Release rates for all three risk categories (low, moderate, high) increased at rates of 8%, 7%, and 1% respectively, averaging out to the 5% overall increase in release;
- Meanwhile, the overall appearance rate increased 1% from 89% to 90%, and the public safety rate increased 1% from 91% to 92%; and
- The average length of pretrial release was 62 days.

Using the 74% ratio of defendants to cases, as explained in the first bullet above, and applying an average cost of housing an inmate of $36.25 (from Kentucky's Auditor of Public Account's 2006 Report entitled "Kentucky Jails: A Financial Overview"), the 5% increase in release saved Kentucky's counties approximately **$14,232,073** over the last year.

More reading: Tara Boh Klute, Chief Operating Officer, Pretrial Services Division: (1) Table showing June, 2011 through June, 2012 release, reappearance and re-arrest rates, included as an attachment to this article; (2) Table showing same data county-by-county (please note that Lexington and Louisville data are noted in Fayette and Jefferson Counties.)

3. Executive Branch Agency: Kentucky's Department of Public Advocacy's Zealous Litigation

Good ideas do not implement themselves. While HB 463 and the AOC's statistically valid pretrial risk assessment tool have been excellent advancements in pretrial release, probation and parole, there has not been wholesale buy-in to all of the advancements. Some courts continue to deny bail and probation, even where the statutes seemingly require it. Also, with the enactment of HB 463, there arises legal issues which ultimately will require judicial interpretation. What is the appropriate evidentiary standard to be used when bail or probation decisions are made? What is the appropriate standard of review on appeal? The answers to these questions have yet to be fully addressed by a court in a published opinion.

Kentucky's public defenders have stepped up their efforts to get for their clients favorable bond rulings from trial courts. Among the measures put into place during the last couple of years:

- Making enhanced bond motion practice a part of Kentucky DPA's annual strategic plan;
- Dedicating issues of The Advocate to bond practice;
- Developing a Pretrial Release Manual which, once developed, will stand as a treatise for bond practice available to any criminal practitioner in the state and beyond; and
- Engaging in a word of mouth campaign for pretrial release advocacy, including speaking at conventions, bar associations and other opportunities to explain the financial benefits that can accompany pretrial release, without a loss of public safety.

Kentucky's public defenders also have been appealing adverse bond decisions in appropriate cases in an effort to get these questions answered. In the last year, 68 appeals have been filed at the district and circuit levels. While not all have been successful, the results have been generally positive. In some cases, the mere filing of the appeal resulted in a bond reduction, or a plea offer too good to pass up.

More reading: Kentucky Department of Public Advocacy's List of District and Circuit Bond Appeals, included in the appendix of this article.

B. Scott West, General Counsel, Kentucky Department of Public Advocacy, "Top 10 FAQ's when Litigating HB 463 Pretrial Release on Behalf of the Accused," *Criminal Law Reform: The First Year of HB 463*, Kentucky Bar Association 2012 Annual Convention, June, 2012, included in the appendix of this article.

The Advocate

www.dpa.ky.gov June 2011

Changes in Criminal Law or Criminal Procedure in HB 463

Damon Preston, Deputy Public Advocate

Damon Preston
Deputy Public Advocate

Revolutionary in its scope and concept, House Bill 463 will affect every facet of the criminal justice system, reforming counterproductive and expensive practices while protecting public safety and maintaining accountability for lawbreakers. Such grand promise will only materialize, however, if all players in the system are familiar with the new laws and are willing to ensure its full implementation. This article summarizes the various parts of the bill. Future editions of The Advocate will delve more deeply into specific provisions.

Generally, the most significant changes to the law in House Bill 463 can be broken into the following categories:

1. **Expansion of Pretrial Release** - Changes to the law will result in responsible expansion and consistency in the pretrial release of persons accused of crimes. The most significant advancement is the mandatory use of a "research-based, validated assessment tool" to measure a defendant's risk of flight or of posing a risk to the public. In most circumstances, defendants who are low or moderate risk will be released without financial bail being required. For moderate risk defendants, courts will be empowered to impose reasonable non-financial conditions to address any concerns raised by the assessment. Defendants who remain in jail pretrial will be entitled to a daily credit towards their bond, unless they are a flight risk or a risk to others.

   Because of these changes, county jails will not bear the expense of housing pretrial defendants who are not a high risk. Further, low or moderate risk defendants who cannot post a financial bond will not serve additional jail time solely due to their poverty and those who are innocent will not serve time at all upon their release. Upon a conviction, a court can impose an appropriate sentence and the guilty person will be held accountable for their criminal activity.

2. **Reform of Criminal Drug Statutes** - The changes to the drug laws were made in recognition of some basic principles:

   a. Not all trafficking offenses are equal,

   b. Drug possession should be addressed through supervision and treatment, and

   c. Subsequent offender sentencing enhancements are not appropriate in the drug possession context.

(continued on page 2)

HB 463 - Statement from the Sponsors

Sen. Tom Jensen (R - London)
Rep. John Tilley (D - Hopkinsville)

Sen. Tom Jensen
(R - London)

Rep. John Tilley
(D - Hopkinsville)

Over the past decade, Kentucky has had one of the fastest growing prison populations in the country. Since 2000, the inmate population increased 45 percent, compared to 13 percent for the U.S. state prison system as a whole. This growth has driven the state's corrections spending to $440 million a year, an increase of over 330% over the last 20 years, despite the fact that the state's serious crime rate has been well below that of the nation and other southern states since the 1960s. It has been clear for some time that Kentucky cannot continue down the path we have taken during the last decade, when the crime rate remained relatively low, but the growth in our prison population far outpaced the national average.

In 2010, Kentucky lawmakers created the Task Force on the Penal Code and Controlled Substances Act to recommend changes we could make to the state's penal code and drug laws that would control the growth in corrections while maintaining public safety. In addition to our membership as co-chairs, the task force members were: Chief Justice John D. Minton, Jr., the Secretary of the Justice and Public Safety Cabinet J. Michael Brown, County Judge/Executive Tommy Turner, Tom Handy, a former prosecutor, and Guthrie True, a former public defender.

As co-chairs of the task force, we maintained an open, bipartisan, inter-branch, data-driven process involving considerable outreach to and participation from stakeholders representing diverse interests in the criminal justice and public safety areas, including judges, prosecutors, public defenders, victims' advocates, law enforcement officials, local government officials, jailers and others. The task force also received support and technical assistance from the experts at the nationally-respected, nonpartisan Public Safety Performance Project of the Pew Center on the States to develop fiscally sound, data-driven policy recommendations that will give taxpayers a better return on their public safety dollars.

For six months in 2010, we jointly led this bipartisan group of stakeholders from across state and local government on a quest to reduce Kentucky's prison costs and increase the public's return on our

(continued on page 3)

Changes in Criminal Law or Criminal Procedure in HB 463

Damon Preston, Deputy Public Advocate (cont'd)

Trafficking Offenses - Thresholds were established to distinguish between low-level peddlers and higher-level traffickers. Defendants convicted of trafficking in amounts above the new thresholds will face the same range of penalties and enhancements as under the former law. Those convicted of trafficking in lower amounts will face lesser punishments. Separate trafficking incidents within a 90-day period may be aggregated to reach the new thresholds.

Thresholds for selected drugs:

Cocaine - 4 grams

Heroin or Methamphetamine - 2 grams

LSD, PCP, GHB, or Rohypnol - No threshold; any quantity is higher level

Other Schedule I or II Controlled Substances - 10 or more dosage units

Schedule III Controlled Substances - 20 or more dosage units

Drug Possession - Defendants charged with felony drug possession will face a possible penalty of one to three years (reduced from a range of one to five years), but will be subject to Deferred Prosecution or Presumptive Probation for first or second offenses with the legislature deeming Deferred Prosecution as the preferred alternative for first offenses.

Deferred Prosecution - Eligible defendants will be able to have prosecution deferred for up to two years while participating in a probation-like program of supervision and treatment. Upon successful completion, the criminal charge will not only be dismissed, but expunged and sealed as if the charge never existed. If a defendant fails in the deferral program, he/she can then be prosecuted as usual, with all other options remaining available as appropriate. In the event a prosecutor objects to an eligible defendant's participation in the program, the prosecutor must state on the record "substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety."

Presumptive Probation - For defendants who are convicted of a first or second offense of felony drug possession, probation is mandatory unless the sentencing court finds "substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety."

Sentencing Enhancements - Defendants convicted of trafficking drugs will still be subject to all former sentencing enhancements, but many enhancements for other drug offenders have been eliminated.

Persistent Felony Offender (PFO) - Felony drug possession can no longer be enhanced by PFO and a prior felony drug possession conviction cannot be used as a predicate for later PFO enhancements unless the defendant has been convicted of a different felony since the drug possession conviction.

Subsequent Offender Enhancements - Raising the penalty for second or subsequent drug offenses have been eliminated from most non-trafficking statutes.

3. **Community Supervision Changes** - Community supervision encompasses probation, parole, and post-incarceration supervision. Under all three programs, a research-based validated Risk and Needs Assessment will be used to determine supervision/treatment needs and progress on an individualized case plan developed for each supervised person. When a supervised person demonstrates prolonged compliance and meets other conditions, he/she may be removed from active supervision. In the event of violations, a system of graduated sanctions will be developed to hold offenders accountable without court proceedings or Parole Board hearings being required for many technical violations. Revocation and re-incarceration for failure to abide by conditions of supervision is only authorized "when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community."

4. **Re-entry or Post-Incarceration Supervision** - Almost every person who is incarcerated in prison will face a period of supervision upon their release. For sex offenders, the five-year period previously conditionally discharged now is reestablished as a period of supervision under the authority of the Parole Board. For certain "dangerous" offenders (those convicted of an A felony or capital offense, ineligible for parole, or who have a maximum security classification), an additional one-year period of supervision will be added to the end of their sentence. For everyone else, release on parole will be mandatory when a prisoner has 6 months remaining on his/her sentence unless the total sentence is 2 years or less or the person has less than 6 months to serve after final sentencing or recommitment after a violation of supervision.

5. **Arrest Powers** - With limited exceptions, law enforcement officers must issue citations for misdemeanors, even when committed in the officer's presence.

6. **Nonpayment of Fines** - Defendants found guilty of non-payment of fines may be sentenced to jail for nonpayment or nonappearance in court to address nonpayment, but may satisfy the unpaid fine at a rate of $50 per day (or $100 per day if working in community service while incarcerated).

Many other provisions of HB 463 make changes that fall outside these general categories. The full text of the bill and other resources to assist lawyers, judges, and others in understanding and implementing the bill are available at http://theadvocate.posterous.com/tag/hb463.

For pending cases involving offenses committed prior to June 8, 2011, defendants can "opt in" to most provisions of the new law under KRS 446.110, which states, in part: "…If any penalty, forfeiture or punishment is mitigated by any provision of the new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect." For information on the requirements for a defendant to take advantage of a change in law, see *Commonwealth v. Phon*, 17 S.W.3d 106 (Ky. 2000).

HB 463 - Statement from the Sponsors

Sen. Tom Jensen (R - London)
Rep. John Tilley (D - Hopkinsville) (cont'd)

corrections investment by reducing recidivism and incarceration rates. The task force conducted an extensive review of Kentucky's corrections data to identify what was driving increases in the state's prison population and costs, and the task force crafted recommendations for legislative reform based on that data.

The Task Force identified four key drivers of Kentucky's prison growth:

An Increase in Arrests and Court Cases. While reported crime remained basically flat between 2001 and 2009, adult arrest rates increased 32 percent during that time, and drug arrests increased 70 percent.

A High Percentage of Offenders Being Sent to Prison. Kentucky uses prison as opposed to probation or other alternative sentences at a much higher rate than most other states.

Technical Parole Violators. Offenders on parole who are sent back to prison and who do not have a new felony conviction have nearly doubled as a percentage of prison admissions.

Drug Offenders. The Kentucky Department of Corrections reported that between 2000 and 2009, the percentage of all admissions that were drug offenders rose from 30 percent to 38 percent.

During the 2011 Regular Session of the General Assembly, we introduced identical bills in both the Senate and the House of Representatives. These bills incorporated the recommendations of the Task Force, as well as recommendations from other stakeholders. Now, as Kentucky works to implement those changes with the passage of House Bill 463 signed into law on March 3, those six months of work are about to pay off.

The provisions in House Bill 463 focus on:

Strengthening probation and parole by basing key decisions on the risk posed by offenders, linking offenders to appropriate community resources, and improving parole and probation supervision.

Modernizing drug laws by distinguishing serious drug trafficking from peddling to support an addiction by establishing a proportionate scale of penalties based on quantity of drugs sold and by providing deferred prosecution, presumptive probation, and reduced prison time for low-risk, non-violent drug offenders who possess drugs and reinvesting related savings in increasing drug treatment for those offenders who need it.

Supporting and restoring victims by improving restitution and creating web-based tools to provide key information on offenders.

Improving government performance with better ways to measure and encourage a reduction in recidivism and criminal behavior.

The reforms in House Bill 463 are expected to bring a gross savings of $422 million over 10 years by reducing the state's burgeoning prison population. Net savings of $218 million will likely accrue over 10 years, with $204 million to be reinvested in stronger probation and parole programs, expanded drug treatments and the addition of more pretrial services. Twenty-five percent of savings unrelated to changes in the drug laws will be put into a new local corrections assistance fund to help local jails, garnering full support from our counties.

Without the work of the Task Force on the Penal Code and Controlled Substances Act, the 2011 General Assembly would not have been able to pass the major criminal justice reforms found in House Bill 463 as quickly as we did. Changes to the penal code would likely have continued to be made in a piecemeal fashion. By including reauthorization of the task force as a provision of House Bill 463, lawmakers have ensured future deliberations without delay and with the best possible outcome for Kentucky.

Changes similar to those made in House Bill 463 have been implemented in other states, including Texas, Kansas and South Carolina, with much success. These states have seen a drop in both their crime rate and corrections costs. There is no reason to believe, based on the evidence, that Kentucky will not enjoy similar success under the most far-reaching criminal justice reforms Kentucky has seen in generations.

House Bill 463 is the result of nearly every major group affected by the changes in the law coming together to create something better. Kentucky will be better off because of its passage.

Governor Steve Beshear signs HB 463 into law.

Pictured from left to right: Robert Stivers, Senate Majority Leader; Chief Justice John D. Minton, Jr., KY Supreme Court; Sec. J. Michael Brown, Justice and Public Safety Cabinet; Tommy Turner, LaRue County Judge/Executive; Greg Stumbo, Speaker of the House; J. Guthrie True, defense attorney; Governor Steve Beshear; Representative John Tilley, Co-Chair; and Senator Tom Jensen, Co-Chair.

Chief Justice John D. Minton Jr. at the HB 463 signing ceremony.

Pictured from left to right: Sec. J. Michael Brown, Justice and Public Safety Cabinet; Greg Stumbo, Speaker of the House; Chief Justice John D. Minton, Jr., KY Supreme Court; Senator Tom Jensen, Co-Chair; and Senator David L. Williams, Senate President.

Kentucky UNBRIDLED SPIRIT

Department of Public Advocacy

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The Advocate

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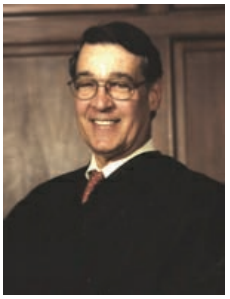
August 2011

KY Supreme Court Bail Pilot Project Extended and Amended: *A program coming to your county*

DPA Staff Report



Justice Will T. Scott
Kentucky Supreme Court Justice
7th Supreme Court District
Chair, Criminal Rules Committee

In 2009, the Kentucky Supreme Court Criminal Rules Committee recommended a 9-county piloting of a bail schedule to the Court. The goals were to increase release rates, to have release occur sooner for persons presumed innocent, and to save counties jail money.

The Kentucky Supreme Court in Administrative Order 2009-14 authorized a Bail Pilot Project in Bell, Boyd, Boone, Butler, Campbell, Edmonson, Kenton, Ohio and Pike Counties from January 1, 2010 to December 31, 2010 and extended this program in Administrative Order 2010-12 through June 30, 2011. In Administrative Order 2011-05 it was again extended through June 30, 2012 for further study and the impact of HB 463 on it with some changes. These Administrative Orders effectively amend the bail rules, RCr 4.00 et. seq.

The 2011 changes include:

> Amended Uniform Schedule of Bail to be used in 9 counties except in Campbell "the class D felony Schedule shall not be used."
>
> DUI 1st, AI, PI, Drinking in a Public Place and all violations have been deleted from the Schedule.
>
> A new "one bail for all" calculation of bail is made as follows: except where there is at least one Class D felony and the number of crimes charged exceeds five, the bail for all will be the one bail for the highest crime charged.

The Schedule can be found at the **http://theadvocate.posterous.com** website.

AOC continues monitoring the Schedule for performance. A new AOC Report will be out in October 2011. Crimes covered by the Schedule are non-violent, non-sexual and generally 1st offense only. A Judge has the discretion to go below the Schedule. However, if a Judge goes above it, the reasons have to be recorded, creating a record for immediate appeal, if necessary.

The year-end analysis of the 9-county pilot reports pretrial incarceration time, failure rates, and cost savings to the counties. Justice Will T. Scott said that the Report "indicates that the Jailer operated Schedule practically ties Pretrial on reported Failure to Appear Rates (12% vs. 13%) and beats them by 2% on recidivism, while doing it on an average release time of 4 hours versus 35 hours for pretrial - even on Schedule qualified defendants. The statewide average is around 95-100 hours. So generally, on the types of crimes the Court has limited the Schedule to, it is outperforming the science-based release practices. That's the success of the Schedule as I see it."

The Report also discusses the differing viewpoints on bail schedules:

> "When discussing the concept of bail schedules in general, pretrial practitioners, judges and the public are split philosophically. Advocates for bail schedules cite the positive aspects such as monetary and time savings for pretrial staff, a faster release from jail and a higher percentage of releases overall. Those opposed to bail schedules cite the negative aspects such as risk to public safety due to the lack of a risk assessment being conducted, limited judicial discretion in bail decisions, a step away from the use of evidence based practices and unfairness to the poor."

The full Report can be found at the **http://theadvocate.posterous.com** website.

Kentucky's Method of Assessing Pretrial Risk of Flight, Reoffending Validated by Independent Study Group

AOC Press Release

Laurie K. Dudgeon
Director
Administrative Office of the Courts

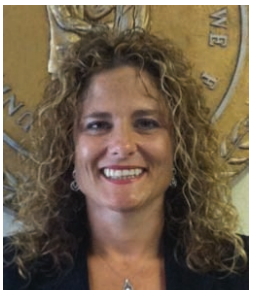
FRANKFORT, Ky. -- As Kentucky reforms its corrections system in favor of evidence-based practices, a federal study shows that the court system's method for helping judges determine whether to grant pretrial release is a proven success.

The study by the JFA Institute in Washington, D.C. found that Kentucky has a high pretrial release rate of 74 percent, with low rates of rearrest and failure to appear in court among individuals who were granted pretrial release. The study showed that 93 percent of individuals released remained arrest-free while awaiting trial and 92 percent of those released pending trial appeared in court when required.

(continued on page 2)

Release Rates Vary, Failure Rates Remain Unchanged

Tara Boh Klute
Chief Operating Officer, Division of Pretrial Services
Administrative Office of the Courts



Tara Boh Klute
Chief Operating Officer
Division of Pretrial Services
Administrative Office of the Courts

When looking at pretrial failure rates such as failure to appear and committing a new crime while on pretrial release, the one factor that remains predictive both locally and nationally is risk level. Although release rates vary across jurisdictions, failure rates remain consistent. Regardless of the alleged crime committed or the jurisdiction in which a defendant is charged, failure rates are consistent with risk levels. Low risk defendants return to court and do not commit new crimes while on pretrial release 94% of the time. Moderate risk defendants have an 89% success rate and even high risk defendants only fail 17% of the time[1].

One of the anecdotal arguments often made by those who oppose pretrial release is that jurisdictions who release more defendants have higher pretrial failure rates than those jurisdictions who favor detention over release. The logic behind this argument is that by keeping defendants in jail, public safety is enhanced. However, the evidence shows that this is not the case.[2] Regardless of the release rate, the failure rates are consistent. The underlying predictor of failure has been shown to be the risk level. When an objective, validated risk instrument is utilized competently, the evidence shows that low and moderate risk defendants can be safely released into the community without jeopardizing public safety.

As shown in the chart on the next page, an analysis of 135,151 cases from July 1, 2009 to April 30, 2011 in four unique Kentucky jurisdictions including rural and urban areas, has shown that failure rates remain consistent regardless of release rates.

[1] Unpublished data from Administrative Office of the Courts, Division of Pretrial Services PRIM database; 527,183 cases analyzed from July 1, 2009 to June 30, 2011.
[2] Administrative Office of the Courts, Division of Pretrial Services PRIM database.

(continued on page 2)

Kentucky's Method of Assessing Pretrial Risk of Flight, Reoffending Validated by Independent Study Group (cont'd)

The state's pretrial release, rearrest and failure-to-appear rates are among the best reported by any criminal justice program in the nation, according to the non-profit Pretrial Justice Institute (PJI).

The Administrative Office of the Courts, which operates the statewide pretrial services program, commissioned the study to measure the validity of the tool it uses to assess risk among pretrial defendants.

"The results are overwhelmingly positive," AOC Director Laurie K. Dudgeon said. "The study confirms that Kentucky judges are predicting who should be granted pretrial release with a high rate of accuracy. It also indicates that our risk-assessment tool is key to judges making reliable, informed decisions. I'm pleased that our pretrial process is saving Kentucky money but not at the expense of public safety."

The JFA study was the first independent examination of any Kentucky pretrial risk-assessment tool since the inception of the statewide Pretrial Services program in 1976. The study was funded by a Bureau of Justice Assistance grant and completed in late 2010.

Kentucky requires its pretrial officers to interview individuals within 12 hours of arrest. Pretrial officers perform an investigation and collect background information. Once they verify the information and conduct a background check, they complete an objective 13-question risk assessment and make a recommendation to the presiding judge on whether to grant pretrial release.

"Kentucky's pretrial release program is an invaluable tool for judges," said Pike County Family Court Judge Larry E. Thompson, president of the Kentucky Circuit Judges Association. "We depend on the information pretrial officers provide through the risk assessment to help us make decisions that will ensure the safety of citizens and protect the constitutional rights of those in the criminal justice system."

A defendant's release is based on an assessment of his or her flight risk, anticipated criminal behavior and danger to the community. These factors are measured by the defendant's family ties, employment, education, length of residence, criminal history and other related matters. The current risk-assessment tool was adopted in 2006 and is based on a point system used for two decades.

"Kentucky has excelled in the area of pretrial release," said Campbell County District Court Judge Karen A. Thomas, president of the Kentucky District Judges Association. "Its risk-assessment tool is one of the best in the country. The work done by Pretrial Services allows the criminal justice system to operate in a safe and efficient manner."

The PJI and the National Association of Pretrial Services Agencies also praised Kentucky for its achievements in the area of pretrial release.

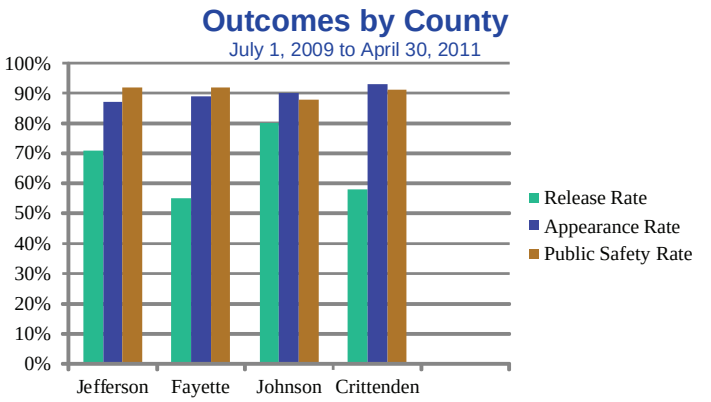
"Kentucky's development of a validated statewide tool for assessing pretrial risk sets an evidence-based standard for other jurisdictions to emulate," PJI Executive Director Tim Murray said. "Basing a pretrial release decision on individualized, valid pretrial risk factors is a profoundly important step toward a fair, safe and effective pretrial justice system. Kentucky is to be congratulated for this important work and for the contribution it represents to the field."

"The pretrial movement owes much to Kentucky as it demonstrates that individuals under arrest who are adequately assessed can be safely released into the community during the pretrial process," NAPSA President Peter C. Kiers said. "In 1976, the state made the bold and courageous move to eliminate commercial bail bonding and replace it with a statewide pretrial program. That decision has ultimately improved its criminal justice system and Pretrial Services continues working to improve the system today. The now-validated risk-assessment tool ensures that recommendations to the courts on pretrial release are consistent, objective and effective."

"In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."

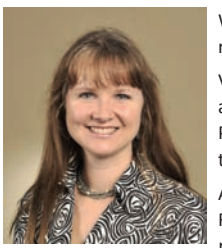
Chief Justice Rehnquist,
United States v. Salerno, 481 U.S. 739 (1986)

Release Rates Vary, Failure Rates Remain Unchanged (cont'd)



Initial Appearance of Counsel Vital to Client Pretrial Release: Saving County Jail Costs, Increasing Efficiency

Valetta Browne
Directing Attorney, Trial Services, DPA



Valetta Browne
Directing Attorney
Trial Services, DPA

We know that lawyers make a difference and good lawyering really makes a difference.

Video Arraignments or Arraignment Dockets are the first time a person charged with a crime sees a Judge. Prosecutors and Pretrial Officers are present, and we public defenders need to be present for the indigent criminal defendant, too.

Arraignment is the first opportunity to see the AOC Pretrial Risk and Assessment Tool's results and advocate for bond reduction. This is especially vital in light of House Bill 463 and the changes that come with it. We Defenders must be present to advocate the correct application of the new statutes and represent indigent clients who are presumed innocent.

There are other practical benefits to a defender's appearance: we can speak to clients' family members, friends or employers present in the Courtroom, obtain client contact information, and answer questions such as where/how to post bond, and how to contact our office. We can inquire as to whether enhanceable offenses have been charged appropriately. We can facilitate obtaining verification of risk assessment criteria and supplement or correct the data.

The empirical evidence is clear. A criminal defendant with a lawyer at first appearance:

- Is 2 ½ times more likely to be released on recognizance;
- Is 4 ½ times more likely to have the amount of bail significantly reduced;
- Serves less time in jail (median reduction from 9 days jailed to 2, saving county jail resources while preserving the clients' liberty interests); and
- More likely feels that they had been treated fairly by the system.

Douglas L. Colbert, Ray Paternoster, and Shawn Bushway, in their article "Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail," 23 Cardozo L. Rev. 1719 (2002). Full article can be found at http://theadvocate.posterous.com.

The judiciary agrees: according to Clark and Madison District Judge Earl-Ray Neal, "the Public Defender needs to be involved in the process at the earliest possible stage." Judge Neal also believes that "jail dockets run much better when an advocate is there," and that clients and their families are better informed. Judge Neal also asserts that the client's rights are better protected, as the possibility of a client confessing or making incriminating statements is far less likely when a lawyer is appointed to speak on his behalf.

Another District Judge in the 25th Judicial District, Hon. Charles W. Hardin, agrees: "By having an attorney present, they are able to determine what is in the best interest of the client and secure better outcomes." In Judge Hardin's opinion, "It would be hard to conduct a jail docket without a public defender."

The importance of the presence of a lawyer at first appearance cannot be overvalued. If the Courthouse doors are open and the Judge takes the bench for a criminal docket, a public defender should be there for indigent criminal defendants.

For if not us, then who?

Changes in Pretrial Release from HB 463: "The New Penal Code and Controlled Substances Act"

Brian Scott West, General Counsel, DPA

Brian Scott West
General Counsel, DPA

Many changes to the drug and penal codes were made by HB 463 involving reclassification of offenses, reformation of sentencing provisions, and other general changes which incorporate efficient and realistic methods for punishing and rehabilitating convicted lawbreakers, while at the same time promoting concerns of public safety. However, the new act also made changes in the law of pretrial release, reaffirming in a substantial way Kentucky's commitment to the age-old venerable constitutional principle of "innocent until proven guilty."

I. Unsecured or "Own Recognizance" bonds for Low or Medium Risk Arrested Defendants Presumed. HB 463 created a new section KRS Chapter 431 which applies to any defendant arrested for any crime and which makes mandatory an unsecured or "own recognizance" bond for certain individuals. KRS 431.066(1) provides that "[w]hen a court considers pretrial release and bail for an arrested defendant, the court shall consider whether the defendant constitutes a flight risk, is unlikely to appear for trial, or is likely to be a danger to the public if released." Subsections (2) and (3) provide generally that if the defendant poses a low or moderate risk of flight, is likely to appear for trial, and is not likely to be a danger to others, the court SHALL order the defendant released on unsecured bond or his own recognizance, and in the case of a moderate risk, the court shall consider ordering the defendant to participate in GPS monitoring, controlled substance testing, increased supervision, or other conditions.

II. Pretrial Release for "Presumptive Probation" Drug Offenses. HB 463 created a new section in the drug code, KRS 218A.135, which provides mandatory unsecured or "own recognizance" bond for persons who are charged with offenses that could result in "presumptive probation." KRS 218A.135(1). These offenses are described elsewhere in KRS Chapter 218A, but basically are trafficking in a controlled substance 3rd (under 20 units) and possession of a controlled substance in the 1st . These provisions shall not apply to a defendant who is found by the court to present a flight risk, or a danger to himself, herself, or others. KRS 218A.135(2). If a court determines that the defendant is such a risk, the court shall document the reasons for denying the release in a written order. KRS 218A.135(3). Impliedly, a finding of danger to himself, herself or others requires a finding that the defendant has done more than merely possess, transfer or sell drugs, since the provision applies ONLY to possession and trafficking offenses, and such limited findings would effectively write the word "shall" out of the statute.

III. Credit Toward Bail for Time in Jail Presumed. KRS 431.066(4)(a) provides that - regardless of the amount of bail set - the court shall permit a defendant a credit of one hundred dollars for each day, or any portion of a day, as payment toward the amount of bail set. Upon service of sufficient days to satisfy the bail, the Court SHALL order the release of the defendant from jail on conditions specified in Chapter 431.

Subsection (b), however, specifies that bail credit shall not apply to anyone who is convicted of, or is pleading guilty (or entering an Alford plea) to any felony sex offense under KRS Chapter 510, human trafficking involving commercial sexual activity, incest, unlawful transaction with a minor involving sexual activity, promoting or using a minor in a sexual performance, or any "violent offender" as defined in KRS 439.3401. Bail credit shall also be denied for anyone found by the court to be a flight risk or a danger to others. If bail credit is denied for any reason, the Court SHALL document the reasons in a written order. KRS 431.066(5).

IV. Maximum Bail Rule for Multiple Misdemeanors. KRS 431.525 has been amended to require - when a person has been charged with one or more misdemeanors - that the amount of bail for all charges shall be set in a single amount that shall not exceed the amount of the fine and court costs for the highest misdemeanor charged. KRS 431.525(4). When a person has been convicted of a misdemeanor and a sentence of jail, conditional discharge, probation, or any sentence other than a "fine only," the amount of bail for release on appeal shall not exceed double the amount of the maximum fine that could have been imposed for the highest misdemeanor of which the defendant stands convicted. KRS 431.525(5). Neither provision applies to misdemeanors involving physical injury or sexual conduct, or to any person found by the court to present a flight risk or to be a danger to others. KRS 431.525(4)-(6). If a person is found to present a flight risk or a danger to others, the court SHALL document the reasons in a written order. KRS 431.525(7).

V. Judicial Guidelines for Pretrial Release of Moderate-Risk or High-Risk Defendants. Most of the HB 463 pretrial release provisions refer to persons who are found to be at a "low risk" or "moderate risk" to flee, not come to court, or pose a danger to others. However, the General Assembly also put language into the bill for those persons who are found to be high or moderate risk, and who otherwise would be ordered to a local correctional facility while awaiting trial. For those persons, the Supreme Court is required to establish recommended guidelines for judges to use when determining whether pretrial release or monitored conditional release should be ordered, and setting the terms of such release and/or monitoring. KRS 27A.096. Likewise, KRS 431.067 provides that, when considering the pretrial release of a person whose pretrial risk assessment indicates he or she is a moderate or high risk defendant, the court considering the release may order as a condition of pretrial release that the person participate in a GPS monitoring program.

VI. Evidence-Based Practices. Section 49 of HB 463 (not yet codified), effective July 1, 2013, specifies that the Supreme Court SHALL require that vendors or contractors who are funded by the state and who are providing supervision and intervention programs for adult criminal defendants use "evidence-based practices" to measure the effectiveness of their supervision and monitoring services. As used in this section, "evidence-based practices" means intervention programs and supervision policies, procedures, programs, and practices that scientific research demonstrates reduce instances of a defendant's failure to appear in court and criminal activity among pretrial defendants when implemented competently." Evidence-based practices are already being used by pretrial officers of the Administrative Office of the Courts. These assessments categorize a defendant as a low, moderate or high risk to flee, to not appear in court, or to pose a danger to the public. In KRS 446.010(33), "pretrial risk assessment" is defined as "an objective, research-based, validated assessment tool that measures a defendant's risk of flight and risk of anticipated criminal conduct while on pretrial release pending adjudication." AOC's assessment bases its results upon answers to objective, not subjective, questions and has already been validated by an independent, federally funded organization (the JFA Institute).

Nearly every decision made about pretrial release begins with a court finding as to whether the defendant is a low, moderate or high risk to flee, not appear, or pose a danger to the public (and in the case of "presumptive probation" offenses, danger to self), thereby incorporating into the judicial decision the risks found by the assessment. Bond decisions have never been more "based on evidence" than they will be now.

VII. Appeal Standards. HB 463 has effectively changed both the standards by which a bond will be reviewed by appellate courts, and the nature of relief in the event of a successful appeal. In the past, trial judges set the amount of bond and the manner of security based on a review of such factors as the seriousness of the charge, the criminal record of the accused, and the ability of the person to pay. On appeal, the reviewing court would decide whether the judge has abused his or her discretion. Thus, in *Long v. Hamilton*, 467 S.W.2d 139 (Ky. 1971), where a $150,000 bond had been set on a possession of heroin case, the court stated that while they would not "interfere in the fixing of bail unless the trial court has clearly abused its discretionary power," the amount in that case was unreasonable. The Court reversed with instructions to the trial court to "fix bail… in an amount less than $150,000."

After HB 463, while the trial court still has discretion as to the amount of bond to be set (and may consider such factors as the nature of the offense charged, and the criminal record of the accused under KRS 431.525), the decision whether that bail should be unsecured or subject to own recognizance, or whether the bail credit shall apply (both under KRS 431.066), require findings based on evidence. Moreover, to the extent that there is no evidence sufficient to support a finding that someone is a flight risk or a danger to the public, for example, HB 463 creates a presumption of an unsecured or "own recognizance" bond as written "findings" are required to depart from the mandatory "shall" language requiring release. On appeal, a court will review the court's decision, and the evidence upon which it was based, and should apply decide whether the trial court's decision was against the great weight of the evidence. Stated another way, the trial court's findings must be supported by sufficient evidence to overcome the presumption of release.

If the judge's decision is found not to be grounded in evidence or is against the weight of the evidence, then the appellate court will still remand, but this time with instructions to unsecure the bond or place the defendant on "own recognizance."

The standard for bond appeals from district court to circuit court via habeas corpus was set in *Smith v. Henson*, 182 S.W.2d 666 (Ky. 1944), and appears never to have been an "abuse of discretion" standard: "[T]he primary, if not the only, object of habeas corpus is to determine the legality of the restraint under which a person is held… We must, therefore, view the proceeding to obtain bail by the method of habeas corpus as a test of the legality of the judgment or action of the court on the motion for bail…" The Circuit Court thus reviews the actions of the District Court with a view toward whether the action was legal or illegal.

VIII. Conclusion. HB 463 has done much to reform the way that Kentucky's citizens charged with crimes are treated both prior to and after conviction. The General Assembly has breathed new life into the presumption of innocence without sacrificing concerns of public safety.

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In this issue:

Kentucky Pretrial

Risk Assessment Instrument Validation

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October 29, 2010

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Introduction

In 2009, the Kentucky Pretrial Services Agency (KPSA)) made a request to the Pretrial Justice Institute (PJI) to receive technical assistance on its risk assessment instrument. The PJI has an award from the Bureau of Justice Assistance, U.S. Department of Justice, to provide technical assistance for a wide variety of correctional agencies. The primary partner with PJI is the JFA Institute, which responds to all referrals made by PJI. One of JFA's organizational capabilities is to conduct validation studies of risk assessment instruments. For this reason the KPSA request was forwarded to JFA to complete.

The KPSA has been using a risk assessment instrument for a number of years. The instrument itself was designed based on other pretrial risk assessment instruments that have been validated in other jurisdictions. But the KPSA instrument had never been tested by an external agency on people who had been arrested, detained and subsequently released on pretrial status. Thus the task of this study was to determine the extent to which the current instrument was valid.

Research Methods

Kentucky created pretrial services in 1976 to replace for-profit commercial bail bonding services and is one, of only a few states, that has outlawed commercial bail bonding. Unlike many other jurisdictions, KPSA is part of the state's court system. Furthermore, because it is a statewide agency, all of the its functions and data are standardized. Such a statewide structure greatly enhances the ability to conduct a meaningful validation effort.

Data on the Kentucky pretrial release population were obtained and analyzed to assess the extent to which the instrument needed to be modified and, if so, what items needed to be dropped and what additional items needed to be introduced into a modified instrument.

The data used to complete this analysis were based on all cases where a pretrial interview was conducted by the various pretrial services agencies that are located throughout Kentucky. Specifically, there were 52,344 interviews conducted between July 1, 2009 and September 30, 2009. For these interviews, 38, 478 or 74% were released pre-trial. For each case, it was recorded where the person was re-arrested or failed to appear (FTA).

Table 1 shows the basic demographic attributes of the persons who were interviewed and released pretrial. Also included are the FTA, pretrial re-arrest rates, and a composite FTA/re-arrest rate. As in most jurisdictions, the FTA, re-arrest and combined rates are relatively low. Specifically, the FTA rate is 8%, the re-arrest rate 7%, and the combined rate 14%. The table also shows relative associations of each item and the three measures of success/failure on pretrial release.

Tables 2, 3, 4 and 5 repeat this type of analysis for measures that reflect the current charge (Table 2), substance abuse measures (Table 3), and mental health (Tables 4 and 5). In all of these tables there are some items that have no meaningful statistical relationships and others that do have a statistically significant relationship. However, it should be emphasized that because the base rates are so low, there will be few items that have very strong relationships with pretrial release outcomes.

Tables 6, 7, and 8 summarize this same analysis for the 13-item risk instrument. Here, one can see that the current instrument items and scale are associated with pretrial arrest and FTA rates. There are some items that either have a very modest association or have little variance in the scoring results. For example, item 3. ("Reference verified willingness to attend court or

sign surety bond") has little if any statistical association with the failure rates. The table also shows two additional items (14 and 15), which were test items to see if that would add to the overall risk assessment instrument's predictive capabilities. As indicated, they show that less than 2% of the assessed cases are being scored into one of the two categories. With such a lack of variance they are unlikely to have much predictive abilities.

In summary, the current 13-item instrument is producing a strong association between the risk levels of low, moderate and high and FTA and pretrial arrest rates. It is also noteworthy that the vast majority of the released defendants are either low (45%) or moderate risk (22%) to either Fail To Appear (FTA) or be re-arrested for a new crime while under pretrial release status.

Use of Special Conditions

The data files also contained information on the use of special conditions. Table 9 shows the extent to which they are being used with most of the conditions being drug testing and special monitoring requirements. We also looked at those persons who received the special conditions of drug testing, special monitoring and notification requirements but are low risk cases. These three conditions have the most low risk cases to do such an analysis. As shown in Table 10, about half of the special condition populations are scored as low risk. More significantly, these low risk cases have higher failure rates than the "average" low risk pretrial releasee. While one cannot say that the special conditions caused the higher rates, the statistical association suggests that imposing such conditions is not beneficial.

Can The Current Instrument Be Improved?

There are two areas to be explored here. First is whether the current instrument can be made more efficient by reducing the number of items being used by the staff? Making the instrument more parsimonious would reduce the burden to staff without jeopardizing the validity of the instrument. Second, are there any items that are not being used that might enhance the validity of the instrument?

To answer these two questions required more sophisticated multivariate analysis. The first task was to re-weight the items included in the current instrument. In doing so, a few considerations should be pointed out:

1. When there was a conflict among the risk models, e.g., a variable has a negative effect on FTA but a positive effect on re-arrest, the re-arrest risk measure model was used to trump the FTA risk model. Examples include items #1 and #4.
2. In some cases, a slight change in the statistical significance cut-off value of 95% would have brought an item into the model (e.g., Risk Item 15). In such cases, the variable was included in the item in accordance with consideration 1 noted above.

Once a modified instrument was constructed, additional variables were included in the analysis—one variable group at a time—to assess their contribution to the discriminating power of the instrument. These additional variables included the following:

1. *Substance abuse related questions*: These variables did not add sufficiently to the model's predictive power and were therefore ignored.
2. *Mental health related questions*: These variables did not add sufficiently to the model's predictive power and were therefore ignored.
3. *Mental health history related questions*: As a group, mental health history related questions improved the explanatory power of the model. However, individually only two of them were found to be statistically significant. These include "Received special

education services in school for emotional/behavioral problems?" and "Spoken to counselor or psychologist about personal problem?".

4. *Domestic violence related questions*: As a group, domestic violence related questions did improve the models. However, only two of them were statistically significant individually. These included "Any record of prior DV restraining order") and "Was a weapon used?". However, only a handful (1.2%) of suspects in the sample had affirmative responses to these questions.
5. *Removal of current risk instrument items*: The current risk instrument included items 1 through 13. Items 14 and 15 "Violated conditions of release in past 12 months—and if so, was bond revoked?" were deleted from the revised current instrument. These items were either statistically insignificant or had incorrect effect directions. Similarly, item 3 added little to the predictive attributes of the instrument. So all three can be removed from further consideration.

Based on the above considerations, one new version of the instrument was developed which simply removed item 3 and re-weighted the remaining 12 items. In addition to new weights for the revised risk assessment instruments, the cut-points needed to classify suspects as low, moderate, or high risk were modified as well. Tables 10 and 11 show these changes and provide the cut-points for the 12-item instrument.

Finally, Figures 1, 2, and 3 provide a side-by-side comparison of the current and the revised instruments on risk measures. In general, the modified version performs basically the same as the current version of the risk assessment instrument but without using item 3. It should also be emphasized that although some of the other items that have a significant bi-variate relationship but were excluded form the final instrument can be used as a basis for over-riding the risk level or making a final risk recommendation.

TABLE 1
FAILURE RATE BY DEMOGRAPHICS

Item	N	%	FTA rate	Rearrest Rate	Either FTA or Rearrest
Base	**38,478**		**8.0%**	**7.0%**	**14.1%**
Sex					
Female	10,678	27.8%	7.7%	6.5%	13.3%
Male	27,695	72.0%	8.2%	7.3%	14.4%
Unknown	105	0.3%	3.8%	2.9%	5.7%
Race					
American Indian	117	0.3%	6.0%	3.4%	9.4%
Asian	64	0.2%	4.7%	3.1%	7.8%
Black	6,854	17.8%	9.8%	7.2%	16.0%
Other	738	1.9%	11.5%	2.0%	13.3%
Unknown	448	1.2%	5.8%	1.8%	7.4%
White	30,257	78.6%	7.6%	7.2%	13.8%
Marital Status					
Divorced	5,810	15.1%	7.6%	7.4%	13.9%
Married	7,889	20.5%	6.8%	6.2%	12.1%
Separated	2,501	6.5%	8.9%	8.3%	15.9%
Single	20,714	53.8%	8.5%	7.3%	14.9%
Unknown	1,112	2.9%	6.6%	3.1%	9.4%
Widowed	452	1.2%	8.8%	8.2%	15.7%
Education					
AA	607	1.6%	8.7%	6.1%	13.5%
BA/BS	906	2.4%	5.5%	4.0%	8.5%
Vocational	328	0.9%	7.6%	5.2%	11.9%
GED	3,760	9.8%	8.9%	8.9%	16.2%
HS	9,939	25.8%	7.4%	6.7%	13.3%
Less than HS	10,369	26.9%	9.1%	8.9%	16.8%
Null	6,782	17.6%	7.8%	4.8%	11.9%
Post graduate	334	0.9%	3.6%	3.6%	7.2%
Some college	5,453	14.2%	7.4%	6.6%	13.2%
On Supervised Probation					
No	36,379	94.5%	8.0%	6.8%	13.9%
Yes	2,099	5.5%	8.6%	10.5%	17.8%
Supplied an email address					
No	30,215	78.5%	7.9%	6.6%	13.5%
Yes	8,263	21.5%	8.7%	8.6%	16.0%
Verified Address					
No	11,492	29.9%	8.9%	5.7%	13.3%
Yes	26,986	70.1%	7.7%	7.9%	14.4%
Verified Occupation					
No	12,504	32.5%	9.1%	5.5%	13.8%
Yes	25,974	67.5%	7.5%	7.8%	14.2%

TABLE 2
FAILURE RATE BY CHARGE

Item	N	%	FTA rate	Rearrest Rate	Either FTA or Rearrest
Base	**38,478**		**8.0%**	**7.0%**	**14.1%**
Charge Level					
Felony	9,122	23.7%	6.0%	10.1%	15.2%
Misdemeanor	26,346	68.5%	8.8%	6.4%	14.1%
O	1,512	3.9%	5.6%	2.8%	8.1%
V	1,356	3.5%	9.5%	5.0%	13.6%
Unknown	152	0.4%	9.9%	3.3%	12.5%
Charge Class					
A	14,388	37.4%	7.5%	6.9%	13.3%
B	12,650	32.9%	9.9%	6.0%	14.9%
C	2,091	5.4%	4.7%	11.0%	14.5%
D	6,317	16.4%	6.7%	9.7%	15.5%
X	2,880	7.5%	7.5%	3.9%	10.7%
Unknown	152	0.4%	9.9%	3.3%	12.5%

TABLE 3
FAILURE RATE BY SUBSTANCE ABUSE ITEMS

Item	N	%	FTA rate	Rearrest Rate	Either FTA or Rearrest
Base	**38,478**		**8.0%**	**7.0%**	**14.1%**
Have you ever felt you should cut down on your drinking?					
No	25,182	65.4%	8.1%	7.2%	14.3%
Yes	8,007	20.8%	7.8%	8.8%	15.4%
Null	5,289	13.7%	7.8%	3.7%	10.9%
Have people annoyed you criticizing your drinking/drug use?					
No	29,230	76.0%	8.0%	7.2%	14.1%
Yes	3,959	10.3%	8.2%	10.3%	17.0%
Null	5,289	13.7%	7.8%	3.7%	10.9%
Have you felt guilty about your drinking/drug use?					
No	26,649	69.3%	8.0%	7.1%	14.1%
Yes	6,540	17.0%	8.2%	9.5%	16.4%
Null	5,289	13.7%	7.8%	3.7%	10.9%
Drink in the morning to get rid of hangover/use drugs to change effects of other drugs					
No	30,997	80.6%	7.9%	7.4%	14.3%
Yes	2,165	5.6%	9.6%	10.4%	18.3%
Null	5,316	13.8%	7.8%	3.7%	10.9%
Willing to participate in residential treatment					
No	27,179	70.6%	8.1%	7.1%	14.2%
Yes	6,008	15.6%	7.9%	9.8%	16.4%
Null	5,291	13.8%	7.8%	3.7%	10.9%

TABLE 4
FAILURE RATE BY MENTAL HEALTH ITEMS

Item	N	%	FTA rate	Rearrest Rate	Either FTA or Rearrest
Base	**38,478**		**8.0%**	**7.0%**	**14.1%**
Past 30 days how often do you feel nervous					
None of the time	21,046	54.7%	8.1%	6.9%	14.1%
A little of the time	3,856	10.0%	7.7%	8.1%	14.6%
Some of the time	3,831	10.0%	7.9%	8.5%	15.2%
Most of the time	1,716	4.5%	7.4%	9.1%	15.2%
All of the time	2,737	7.1%	8.6%	10.0%	17.2%
Null	5,292	13.8%	7.8%	3.7%	10.9%
Past 30 days how often do you feel hopeless					
None of the time	27,050	70.3%	8.0%	7.3%	14.3%
A little of the time	2,195	5.7%	7.5%	8.0%	14.5%
Some of the time	1,972	5.1%	8.6%	9.4%	16.7%
Most of the time	870	2.3%	7.8%	8.6%	15.2%
All of the time	1,099	2.9%	9.3%	10.3%	18.5%
Null	5,292	13.8%	7.8%	3.7%	10.9%
Past 30 days how often do you feel restless or fidgety					
None of the time	23,839	62.0%	8.2%	7.2%	14.3%
A little of the time	2,839	7.4%	6.8%	7.7%	13.5%
Some of the time	3,180	8.3%	8.1%	8.7%	15.6%
Most of the time	1,364	3.5%	7.6%	9.0%	15.5%
All of the time	1,964	5.1%	8.9%	9.4%	16.8%
Null	5,292	13.8%	7.8%	3.7%	10.9%
Past 30 days how often do you feel so depressed nothing cheers you up					
None of the time	26,819	69.7%	8.1%	7.2%	14.3%
A little of the time	2,088	5.4%	8.0%	9.2%	16.2%
Some of the time	2,065	5.4%	7.5%	8.7%	15.5%
Most of the time	939	2.4%	6.8%	9.4%	15.1%
All of the time	1,275	3.3%	9.3%	8.5%	16.6%
Null	5,292	13.8%	7.8%	3.7%	10.9%
Past 30 days how often do you feel everything was an effort					
None of the time	27,194	70.7%	8.0%	7.3%	14.3%
A little of the time	1,742	4.5%	7.0%	9.8%	15.8%
Some of the time	2,016	5.2%	9.1%	8.7%	16.4%
Most of the time	908	2.4%	8.4%	8.1%	15.4%
All of the time	1,326	3.4%	8.1%	8.7%	15.7%
Null	5,292	13.8%	7.8%	3.7%	10.9%
Past 30 days how often do you feel worthless					
None of the time	28,903	75.1%	8.1%	7.3%	14.4%
A little of the time	1,344	3.5%	6.8%	10.5%	16.3%
Some of the time	1,445	3.8%	8.7%	8.0%	15.6%
Most of the time	598	1.6%	6.9%	8.9%	14.2%
All of the time	896	2.3%	9.4%	9.6%	17.6%
Null	5,292	13.8%	7.8%	3.7%	10.9%

TABLE 5
FAILURE RATE BY MENTAL HEALTH HISTORY

Item	N	%	FTA rate	Rearrest Rate	Either FTA or Rearrest
Base	**38,478**		**8.0%**	**7.0%**	**14.1%**
Has doctor prescribed meds for emotional problem					
No	24,337	63.2%	8.0%	7.0%	14.1%
Yes	8,547	22.2%	8.0%	9.3%	15.9%
Have you been hospitalized for emotional problem					
No	29,448	76.5%	8.0%	7.3%	14.2%
Yes	3,443	8.9%	8.7%	10.0%	17.3%
Did you have special schooling for emotional problems					
No	30,953	80.4%	8.0%	7.3%	14.3%
Yes	1,937	5.0%	9.6%	11.6%	20.0%
Ever spoken to a counselor or psychologist					
No	24,335	63.2%	8.0%	6.9%	14.0%
Yes	8,551	22.2%	8.2%	9.4%	16.3%
Ever received treatment for drug/alcohol abuse					
No	26,476	68.8%	8.0%	7.1%	14.1%
Yes	6,417	16.7%	8.3%	9.8%	16.7%

TABLE 6
FAILURE RATE BY RISK ASSESSMENT SCORE ITEMS

Item	N	%	FTA rate	Rearrest Rate	Either FTA or Rearrest
1. Verified local address & lived in area for past 12 months					
No	2,856	7.4%	11.1%	6.3%	16.5%
Yes	24,227	63.0%	7.2%	8.1%	14.2%
2. Verified sufficient means of support					
No	13,798	35.9%	8.4%	9.1%	16.2%
Yes	13,287	34.5%	6.9%	6.7%	12.7%
3. Reference verified willingness to attend court or sign surety bond					
No	2,195	5.7%	8.7%	9.2%	16.5%
Yes	24,889	64.7%	7.6%	7.8%	14.3%
4. Current charge class A, B or C felony					
No	24,404	63.4%	8.0%	7.5%	14.4%
Yes	2,677	7.0%	4.6%	11.3%	14.8%
5. Charged w/ new offense while case pending					
No	21,258	55.2%	6.9%	5.6%	11.7%
Yes	5,822	15.1%	10.5%	16.4%	24.5%
6. Active warrant or prior FTA					
No	22,325	58.0%	6.6%	7.5%	13.2%
Yes	4,753	12.4%	12.5%	9.7%	20.3%
7. Prior FTA for traffic violation					
No	22,465	58.4%	6.9%	7.4%	13.4%
Yes	4,614	12.0%	11.5%	10.1%	19.7%
8. Prior misdemeanor conviction					
No	8,769	22.8%	6.3%	4.7%	10.4%
Yes	18,311	47.6%	8.3%	9.4%	16.4%
9. Prior felony conviction					
No	20,416	53.1%	7.1%	6.9%	13.1%
Yes	6,664	17.3%	9.3%	10.9%	18.6%
10. Prior violent crime conviction					
No	21,770	56.6%	7.4%	7.0%	13.4%
Yes	5,309	13.8%	8.7%	11.6%	18.8%
11. History of drug/alcohol abuse					
No	23,865	62.0%	7.5%	7.2%	13.7%
Yes	3,214	8.4%	9.1%	13.0%	20.4%
12. Prior conviction of felony escape					
No	26,536	69.0%	7.6%	7.8%	14.2%
Yes	541	1.4%	12.6%	14.4%	25.0%
13. On probation/parole for felony conviction					
No	24,933	64.8%	7.5%	7.6%	14.0%
Yes	2,142	5.6%	9.6%	11.0%	19.4%

Item	N	%	FTA rate	Rearrest Rate	Either FTA or Rearrest
14. Test Item: Violated conditions of pretrial release in last 12 mos.					
No	32,516	84.5%	8.1%	7.4%	14.5%
Yes	671	1.7%	7.6%	14.0%	20.3%
15. Test Item: If yes, was bond revoked?					
No	32,383	84.2%	8.0%	7.6%	14.6%
Yes	153	0.4%	5.2%	11.1%	15.7%

TABLE 7
FAILURE RATE BY RISK ASSESSMENT SCORE

Risk Score	N	%	FTA rate	Rearrest Rate	Either FTA or Rearrest
Base	**38,478**		**8.0%**	**7.0%**	**14.1%**
0	2,898	7.5%	4.0%	2.9%	6.8%
1	4,909	12.8%	4.9%	3.9%	8.4%
2	3,863	10.0%	6.5%	5.0%	10.8%
3	2,143	5.6%	7.0%	6.8%	12.7%
4	1,780	4.6%	7.1%	6.1%	12.1%
5	1,838	4.8%	8.9%	8.3%	16.4%
6	2,066	5.4%	8.9%	9.8%	17.4%
7	1,887	4.9%	9.9%	11.3%	19.3%
8	1,292	3.4%	10.8%	13.1%	22.0%
9	1,074	2.8%	11.6%	14.5%	23.9%
10	878	2.3%	10.6%	13.8%	22.0%
11	798	2.1%	12.4%	15.2%	24.6%
12	620	1.6%	12.1%	14.5%	25.0%
13	360	0.9%	11.7%	17.5%	26.9%
14	261	0.7%	13.0%	16.9%	26.8%
15	166	0.4%	10.2%	12.1%	28.3%
16	123	0.3%	15.4%	18.7%	30.9%
17	79	0.2%	11.4%	20.3%	29.1%
18	36	0.1%	11.1%	13.9%	25.0%
19+	18	0.0%	7.1%	35.7%	39.9%
Null	11,389	29.6%	8.9%	5.0%	13.2%

TABLE 8
FAILURE RATE BY SCORED RISK LEVEL

Risk Level	N	%	FTA rate	Rearrest Rate	Either FTA or Rearrest
Base	**38,478**		**8.0%**	**7.0%**	**14.1%**
Low	17,311	45.0%	6.0%	5.0%	10.4%
Moderate	8,519	22.1%	10.4%	12.5%	20.9%
High	1,031	2.7%	12.1%	18.3%	57.8%
Ineligible	5,722	14.9%	8.4%	4.0%	11.8%
Not Verified	5,895	15.3%	9.4%	6.2%	14.8%

TABLE 9
FAILURE RATE BY RELEASE CONDITIONS

Item	N	%	FTA rate	Rearrest Rate	Either FTA or Rearrest
Base	**38,478**		**8.0%**	**7.0%**	**14.1%**
Condition - Drug test					
No	37,621	97.8%	8.0%	6.9%	13.9%
Yes	857	2.2%	7.4%	14.6%	20.3%
Condition – Reporting					
No	37,253	96.8%	8.0%	6.8%	13.9%
Yes	1,225	3.2%	8.5%	13.1%	20.4%
Condition - Court Notify					
No	38,304	99.5%	8.0%	7.0%	14.1%
Yes	174	0.5%	10.3%	10.3%	17.8%
Condition – Curfew					
No	38,339	99.6%	8.0%	7.0%	14.1%
Yes	139	0.4%	6.5%	13.7%	17.3%
Condition - Home incarceration					
No	38,455	99.9%	8.0%	7.0%	14.1%
Yes	23	0.1%	8.7%	8.7%	17.4%
Condition - Mental health treatment					
No	38,471	100.0%	8.0%	7.0%	14.1%
Yes	7	0.0%	14.3%	28.6%	28.6%
Condition - drug/alcohol treatment					
No	38,455	99.9%	8.0%	7.0%	14.1%
Yes	23	0.1%	4.3%	17.4%	21.7%
Condition – Other					
No	38,251	99.4%	8.0%	7.0%	14.0%
Yes	227	0.6%	17.2%	12.3%	25.6%

Table 10
SUPERVISION CONDITIONS VS. RISK LEVEL

Yes Condition	N	% of Special Conditions	FTA rate	Rearrest Rate	Either FTA or Rearrest
All Low Risk	**17,311**		**6.0**	**5.0**	**10.4**
Low Risk Condition - Drug test	419	49%	7.2%	8.1%	14.3%
Low Risk Condition - Reporting	565	46%	3.4%	8.1%	13.6%
Low Risk Condition - Notification	82	47%	7.3%	6.1%	11.0%

Table 11
The Current And New Weighting Rules For The Revised Pretrial Risk Assessment Instrument.

	Scoring Items	Current		Modified	
		Yes	No	Yes	No
1	Does the defendant have a verified local address and has the defendant lived in the area for the past twelve months?		1		2
2	Does the defendant have verified sufficient means of support?		1		1
3	Did a reference verify that he or she would be willing to attend court with the defendant or sign a surety bond?		1	Removed	
4	Is the defendant's current charge a Class A, B, or C Felony?	1		1	
5	Is the defendant charged with a new offense while there is a pending case?	5		7	
6	Does the defendant have an active warrant(s) for Failure to Appear prior to disposition? If no, does the defendant have a prior FTA for felony or misdemeanor?	4		2	
7	Does the defendant have prior FTA on his or her record for a criminal traffic violation?	1		1	
8	Does the defendant have prior misdemeanor convictions?	1		2	
9	Does the defendant have prior felony convictions?	1		1	
10	Does the defendant have prior violent crime convictions?	2		1	
11	Does the defendant have a history of drug/alcohol abuse?	2		2	
12	Does the defendant have a prior conviction for felony escape?	1		3	
13	Is the defendant currently on probation/ parole from a felony conviction?	2		1	
	Did you receive special education services in school for an emotional or behavioral problem?	Not Used			
	Have you ever spoken to a counselor or psychologist about a personal problem?	Not Used			
	Violated conditions of pretrial release in last 12 mos	Not Used			
	If yes, was bond revoked?	Not Used			

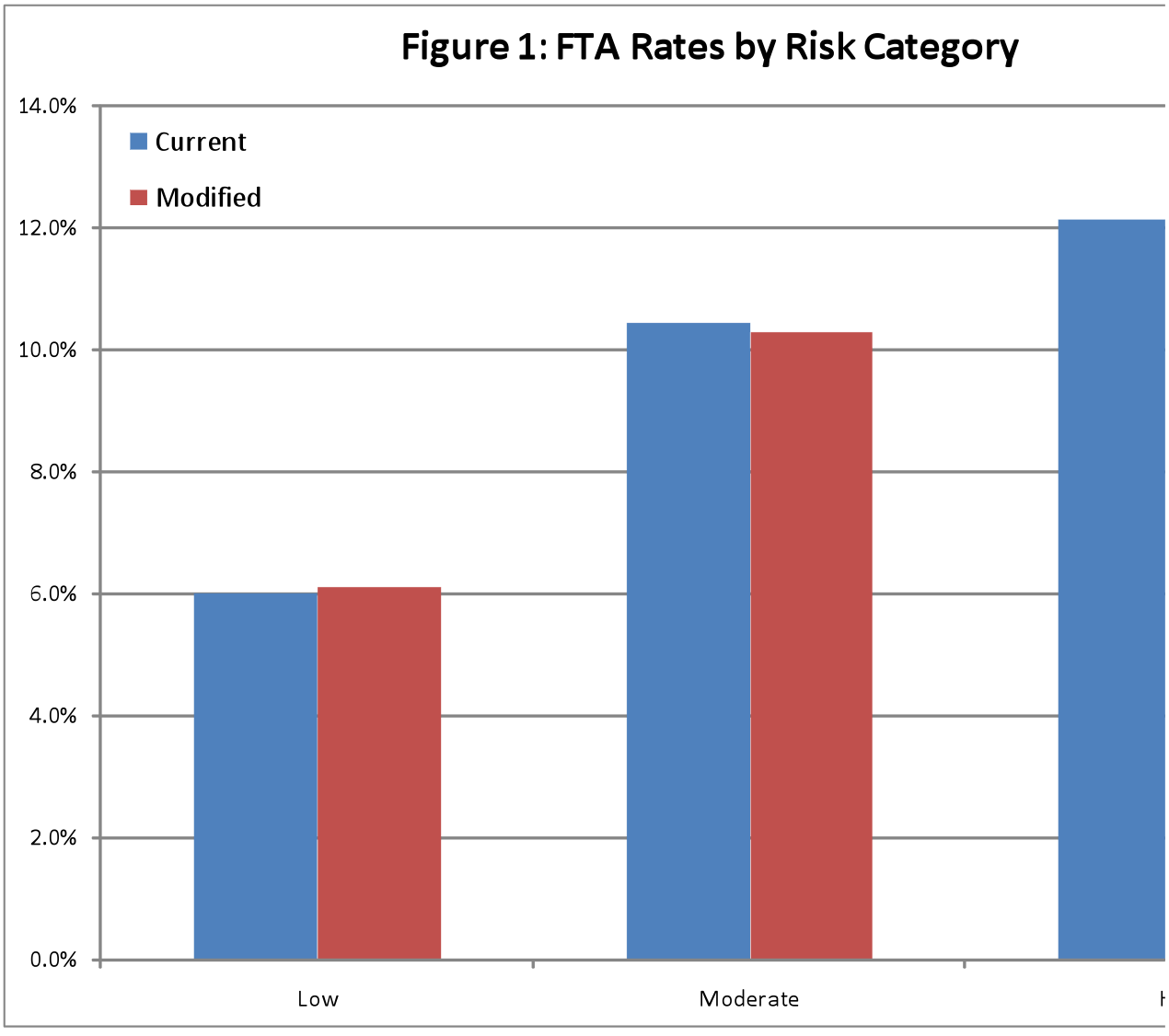
Figure 1: FTA Rates by Risk Category
14.0%
12.0%
10.0%
8.0%
6.0%
4.0%
2.0%
0.0%
Current
Modified
Low
Moderate

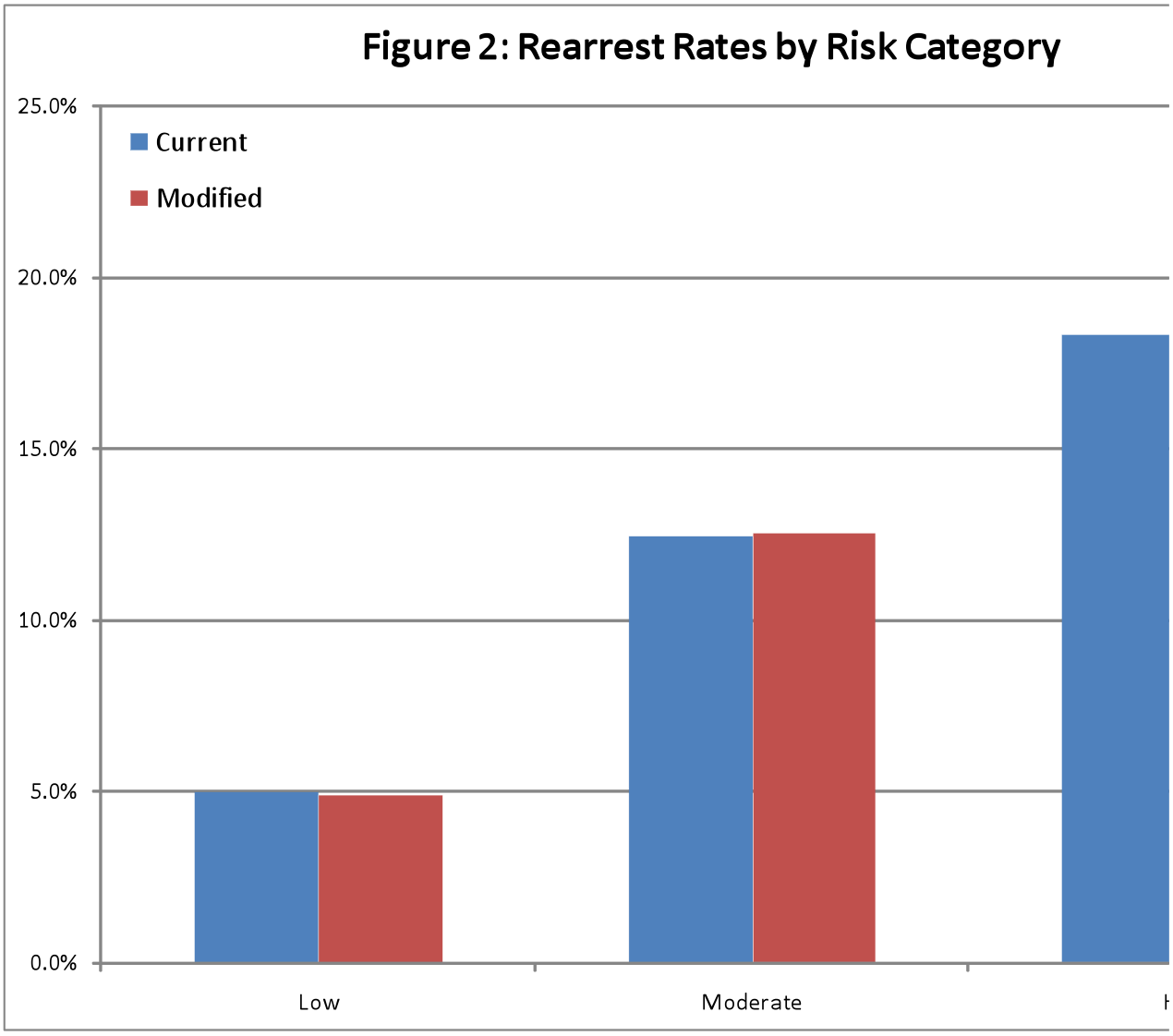
Figure 2: Rearrest Rates by Risk Category
25.0%
20.0%
15.0%
10.0%
5.0%
0.0%
Current
Modified
Low
Moderate

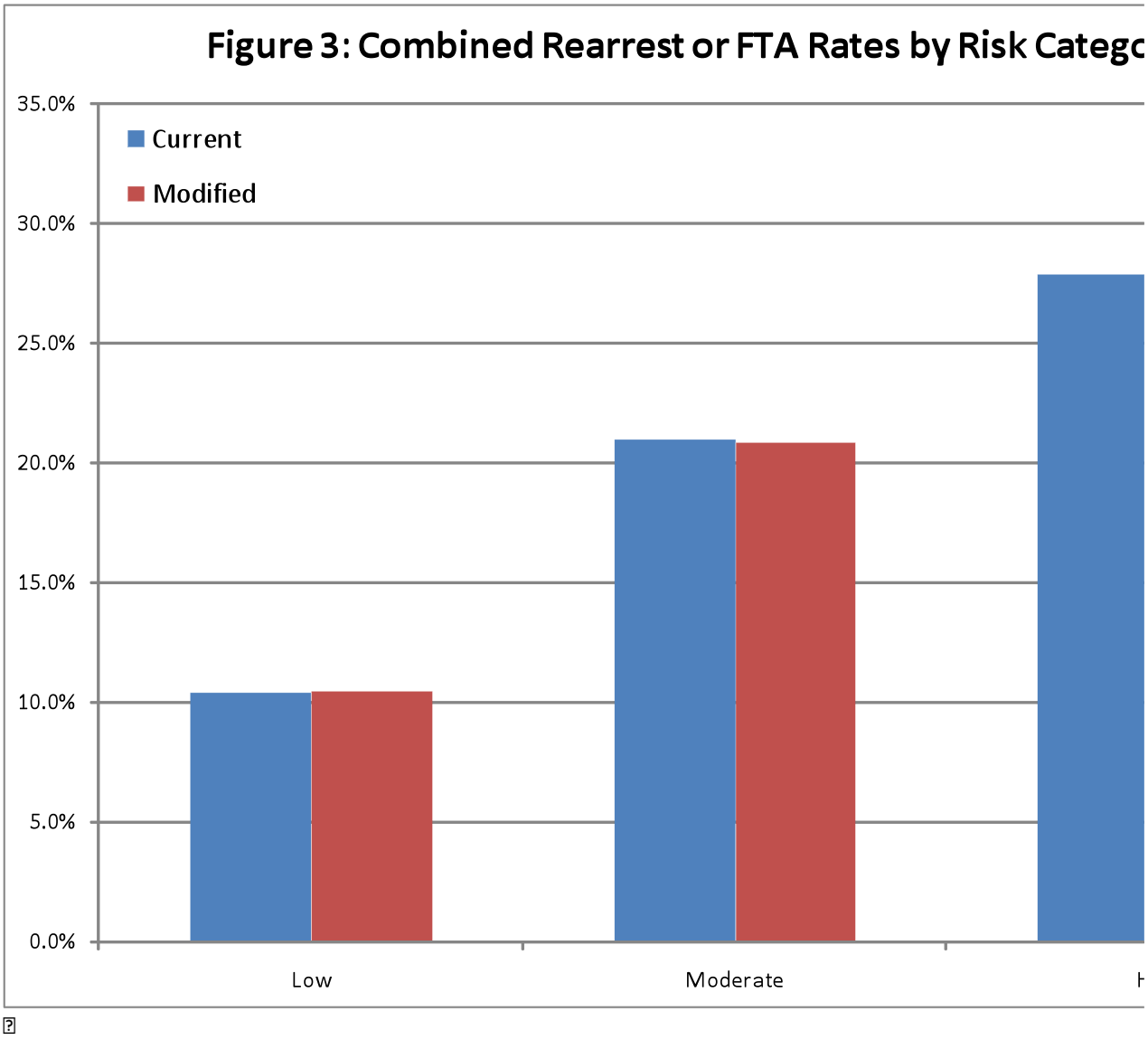
Figure 3: Combined Rearrest or FTA Rates by Risk Categc
35.0%
30.0%
25.0%
20.0%
15.0%
10.0%
5.0%
0.0%
Current
Modified
Low
Moderate

Post-HB 463

June 8, 2011 to April 8, 2012	
Cases	201,122
Defendants	149,408
Investigation Rate	87%
% Obtaining Pretrial Release (140,155)	70%
% of Non-Financial Rels (ROR, USB, SUR)	66%
% who are still in cust awaiting trial as of 4-16-12	5%
% unable to make bail/held in jail until disp of case	25%
Case disposed within 48 hours of arrest	74%
Apperance Rate	90%
Public Safety Rate*	93%
Low Risk Release Rate	84%
Moderate Risk Release Rate	67%
High Risk Release Rate	50%
Low Risk Appearance Rate	93%
Moderate Risk Appearance Rate	89%
High Risk Appearance Rate	87%
Low Risk Public Safety Rate	95%
Moderate RiskPublic Safety Rate	91%
High Risk Public Safety Rate	88%
% of Cases that are a misd. Or less	71%
% of Def screened as having MH or SA issues	62%
Average Length on PT release	34 days
Average Length on MCR	72 days
MCR Referrals	8,617
Active MCR Caseload on 4-8-12	3,411
MCR Compliance Rate	86%
% of MCR that are Low Risk	42%
MCR Office Visits, Call-In, Curfew, Drug Tests	135,782

Pre-HB 463

June 8, 2010 to April 8, 2011	
Cases	223,119
Defendants	164,912
Investigation Rate	83%
% Obtaining Pretrial Release (145,401)	65%
% of Non-Financial Rels (ROR, USB, SUR)	50%
% who were still in cust awaiting trial as of 4-16-12	Less than 1%
% unable to make bail/held in jail until disp of case	35%
Case disposed within 48 hours of arrest	71%
Appearance Rate	89%
Public Safety Rate	91%
Low Risk Release Rate	76%
Moderate Risk Release Rate	60%
High Risk Release Rate	50%
Low Risk Appearance Rate	93%
Moderate Risk Appearance Rate	87%
High Risk Appearance Rate	81%
Low Risk Public Safety Rate	93%
Moderate RiskPublic Safety Rate	88%
High Risk Public Safety Rate	81%
% of Cases that are a misd. Or less	73%
% of Def screened as having MH or SA issues	58%
Average Length on PT release	112 days
Average Length on MCR	110 days
MCR Referrals	6,220
Active MCR Caseload on 4-8-11	2,319
MCR Compliance Rate	87%
% of MCR that are Low Risk	49%
MCR Office Visits, Call-In, Curfew, Drug Tests	106,319

Data from Administrative Office of the Courts, Division of Pretrial Servives PRIM case management system

**Public Safety Rate is the percentage of defendants who have not been charged with a new crime while on pretrial release*

2,397
1092

29,463

Pretrial Release and FTA Rate Measurement
*Interviews from **06/08/2011** to **06/08/2012***

Release Rates

	Charge County	Total Cases	Total Cases Released	
1	OHIO	949	827	87.14%
2	CLINTON	438	369	84.25%
3	MARTIN	587	488	83.13%
4	JOHNSON	1345	1112	82.68%
5	RUSSELL	902	741	82.15%
6	LAWRENCE	510	417	81.76%
7	WASHINGTON	306	247	80.72%
8	BARREN	1804	1442	79.93%
9	BUTLER	425	338	79.53%
10	FLEMING	685	542	79.12%
11	OLDHAM	1404	1108	78.92%
12	CUMBERLAND	218	172	78.90%
13	METCALFE	269	212	78.81%
14	ADAIR	782	614	78.52%
15	MARION	1213	945	77.91%
16	EDMONSON	319	247	77.43%
17	BELL	2690	2081	77.36%
18	NICHOLAS	494	376	76.11%
19	WEBSTER	511	387	75.73%
20	GRAVES	2810	2119	75.41%
21	PENDLETON	538	404	75.09%
22	MAGOFFIN	646	485	75.08%
23	ROCKCASTLE	1362	1022	75.04%
24	MONROE	401	299	74.56%
25	HENRY	895	665	74.30%
26	TAYLOR	1148	852	74.22%
27	GREEN	358	265	74.02%
28	HARRISON	831	615	74.01%
29	TRIMBLE	380	280	73.68%
30	UNION	768	562	73.18%
31	MCCREARY	847	619	73.08%
32	BULLITT	3220	2352	73.04%
33	CASEY	613	445	72.59%
34	MARSHALL	998	722	72.34%
35	WHITLEY	2323	1678	72.23%

36	MEADE	1118	807	72.18%
37	HARLAN	2348	1690	71.98%
38	SPENCER	619	444	71.73%
39	JACKSON	805	570	70.81%
40	BOONE	6832	4808	70.37%
41	LETCHER	1508	1057	70.09%
42	JEFFERSON	47283	33042	69.88%
43	PULASKI	3840	2682	69.84%
44	HANCOCK	234	163	69.66%
45	BRACKEN	242	168	69.42%
46	MASON	1562	1084	69.40%
47	HARDIN	4302	2963	68.87%
48	GRAYSON	1032	710	68.80%
49	ALLEN	1223	839	68.60%
50	GALLATIN	692	474	68.50%
51	HART	1149	787	68.49%
52	CARTER	1569	1074	68.45%
53	HOPKINS	2997	2050	68.40%
54	TRIGG	645	439	68.06%
55	LARUE	587	397	67.63%
56	SCOTT	1869	1264	67.63%
57	MORGAN	664	449	67.62%
58	MCLEAN	262	177	67.56%
59	MUHLENBERG	1055	712	67.49%
60	PERRY	3017	2035	67.45%
61	FRANKLIN	2622	1764	67.28%
62	BRECKINRIDGE	623	417	66.93%
63	CLAY	2057	1376	66.89%
64	NELSON	1883	1259	66.86%
65	KNOX	2457	1629	66.30%
66	LYON	326	216	66.26%
67	ELLIOTT	300	198	66.00%
68	WOODFORD	751	495	65.91%
69	ROWAN	1821	1199	65.84%
70	SIMPSON	1483	970	65.41%
71	OWEN	482	314	65.15%
72	LESLIE	626	407	65.02%
73	OWSLEY	539	347	64.38%
74	HENDERSON	4163	2674	64.23%
75	MADISON	4410	2822	63.99%

76	BATH	591	378	63.96%
77	ANDERSON	1134	721	63.58%
78	WAYNE	829	527	63.57%
79	MENIFEE	258	164	63.57%
80	LIVINGSTON	351	222	63.25%
81	BALLARD	436	275	63.07%
82	CALLOWAY	1208	759	62.83%
83	CARROLL	1202	754	62.73%
84	ROBERTSON	75	47	62.67%
85	MERCER	935	579	61.93%
86	WARREN	5254	3244	61.74%
87	KENTON	9253	5708	61.69%
88	PIKE	5005	3075	61.44%
89	DAVIESS	6229	3826	61.42%
90	BREATHITT	1022	627	61.35%
91	SHELBY	2277	1391	61.09%
92	CALDWELL	583	356	61.06%
93	LAUREL	3575	2180	60.98%
94	BOURBON	1021	622	60.92%
95	KNOTT	649	393	60.55%
96	LEWIS	442	267	60.41%
97	LOGAN	1204	718	59.63%
98	CLARK	2215	1318	59.50%
99	LEE	830	493	59.40%
100	ESTILL	1209	715	59.14%
101	MONTGOMERY	1964	1160	59.06%
102	GRANT	1332	774	58.11%
103	BOYLE	2051	1189	57.97%
104	CRITTENDEN	261	151	57.85%
105	CHRISTIAN	4605	2627	57.05%
106	FLOYD	2564	1448	56.47%
107	HICKMAN	136	76	55.88%
108	WOLFE	612	342	55.88%
109	GARRARD	621	343	55.23%
110	LINCOLN	1442	791	54.85%
111	FULTON	634	344	54.26%
112	GREENUP	1267	687	54.22%
113	POWELL	1522	822	54.01%
114	BOYD	3090	1629	52.72%
115	JESSAMINE	3196	1666	52.13%

116	TODD	409	210	51.34%
117	CAMPBELL	5731	2926	51.06%
118	FAYETTE	15324	7427	48.47%
119	MCCRACKEN	4660	2208	47.38%
120	CARLISLE	141	60	42.55%

FTA Rates

	Charge County	Total Cases	Total Cases Released	FTA	
1	MCLEAN	262	177	2	1.13%
2	CARLISLE	141	60	1	1.67%
3	CALLOWAY	1208	759	19	2.50%
4	OWEN	482	314	11	3.50%
5	BRACKEN	242	168	6	3.57%
6	SPENCER	619	444	17	3.83%
7	TODD	409	210	9	4.29%
8	HANCOCK	234	163	7	4.29%
9	MUHLENBERG	1055	712	31	4.35%
10	WASHINGTON	306	247	11	4.45%
11	MARSHALL	998	722	34	4.71%
12	UNION	768	562	28	4.98%
13	FLEMING	685	542	28	5.17%
14	TAYLOR	1148	852	47	5.52%
15	ANDERSON	1134	721	40	5.55%
16	MONROE	401	299	17	5.69%
17	PENDLETON	538	404	23	5.69%
18	TRIGG	645	439	25	5.69%
19	GREENUP	1267	687	41	5.97%
20	WOODFORD	751	495	30	6.06%
21	FULTON	634	344	21	6.10%
22	MCCREARY	847	619	38	6.14%
23	BALLARD	436	275	17	6.18%
24	GRANT	1332	774	48	6.20%
25	LIVINGSTON	351	222	14	6.31%
26	HARRISON	831	615	39	6.34%
27	LEWIS	442	267	17	6.37%
28	GRAVES	2810	2119	135	6.37%
29	CARROLL	1202	754	49	6.50%
30	BOYLE	2051	1189	78	6.56%
31	MENIFEE	258	164	11	6.71%
32	GALLATIN	692	474	32	6.75%
33	NELSON	1883	1259	87	6.91%
34	LYON	326	216	16	7.41%
35	METCALFE	269	212	16	7.55%
36	MERCER	935	579	45	7.77%
37	CLINTON	438	369	29	7.86%
38	BOURBON	1021	622	50	8.04%

39	MCCRACKEN	4660	2208	178	8.06%
40	GRAYSON	1032	710	58	8.17%
41	MORGAN	664	449	37	8.24%
42	WEBSTER	511	387	32	8.27%
43	JACKSON	805	570	48	8.42%
44	LOGAN	1204	718	62	8.64%
45	SHELBY	2277	1391	122	8.77%
46	NICHOLAS	494	376	33	8.78%
47	WHITLEY	2323	1678	148	8.82%
48	JESSAMINE	3196	1666	147	8.82%
49	MEADE	1118	807	73	9.05%
50	OHIO	949	827	75	9.07%
51	LETCHER	1508	1057	96	9.08%
52	LINCOLN	1442	791	72	9.10%
53	CALDWELL	583	356	33	9.27%
54	TRIMBLE	380	280	26	9.29%
55	HOPKINS	2997	2050	191	9.32%
56	CLARK	2215	1318	124	9.41%
57	MADISON	4410	2822	266	9.43%
58	DAVIESS	6229	3826	374	9.78%
59	BARREN	1804	1442	141	9.78%
60	LAUREL	3575	2180	218	10.00%
61	HENDERSON	4163	2674	270	10.10%
62	LEE	830	493	50	10.14%
63	BATH	591	378	39	10.32%
64	HARDIN	4302	2963	307	10.36%
65	MARION	1213	945	98	10.37%
66	GARRARD	621	343	36	10.50%
67	HICKMAN	136	76	8	10.53%
68	ROCKCASTLE	1362	1022	110	10.76%
69	ADAIR	782	614	67	10.91%
70	MASON	1562	1084	119	10.98%
71	HART	1149	787	87	11.05%
72	PERRY	3017	2035	226	11.11%
73	ESTILL	1209	715	80	11.19%
74	CRITTENDEN	261	151	17	11.26%
75	EDMONSON	319	247	28	11.34%
76	FLOYD	2564	1448	167	11.53%
77	OLDHAM	1404	1108	128	11.55%
78	CHRISTIAN	4605	2627	306	11.65%

79	BULLITT	3220	2352	275	11.69%
80	CLAY	2057	1376	162	11.77%
81	WAYNE	829	527	63	11.95%
82	BRECKINRIDGE	623	417	50	11.99%
83	ALLEN	1223	839	101	12.04%
84	GREEN	358	265	32	12.08%
85	BUTLER	425	338	41	12.13%
86	FRANKLIN	2622	1764	214	12.13%
87	MAGOFFIN	646	485	59	12.16%
88	CUMBERLAND	218	172	21	12.21%
89	HARLAN	2348	1690	207	12.25%
90	WARREN	5254	3244	398	12.27%
91	SIMPSON	1483	970	121	12.47%
92	BREATHITT	1022	627	79	12.60%
93	ROWAN	1821	1199	154	12.84%
94	MARTIN	587	488	63	12.91%
95	KNOTT	649	393	51	12.98%
96	BOYD	3090	1629	212	13.01%
97	ELLIOTT	300	198	26	13.13%
98	SCOTT	1869	1264	166	13.13%
99	MONTGOMERY	1964	1160	157	13.53%
100	CASEY	613	445	61	13.71%
101	LARUE	587	397	55	13.85%
102	KNOX	2457	1629	228	14.00%
103	POWELL	1522	822	118	14.36%
104	RUSSELL	902	741	109	14.71%
105	KENTON	9253	5708	854	14.96%
106	LAWRENCE	510	417	64	15.35%
107	CAMPBELL	5731	2926	450	15.38%
108	CARTER	1569	1074	166	15.46%
109	BELL	2690	2081	322	15.47%
110	HENRY	895	665	105	15.79%
111	WOLFE	612	342	54	15.79%
112	OWSLEY	539	347	57	16.43%
113	BOONE	6832	4808	792	16.47%
114	FAYETTE	15324	7427	1249	16.82%
115	JOHNSON	1345	1112	193	17.36%
116	PULASKI	3840	2682	475	17.71%
117	PIKE	5005	3075	567	18.44%
118	ROBERTSON	75	47	9	19.15%

119	JEFFERSON	47283	33042	6899	20.88%
120	LESLIE	626	407	85	20.88%

Re-arrest Rates

	Charge County	Total Cases	Total Cases Released	Re-arrest	
1	HANCOCK	234	163	2	1.23%
2	HICKMAN	136	76	1	1.32%
3	OWEN	482	314	7	2.23%
4	BRECKINRIDGE	623	417	11	2.64%
5	HENDERSON	4163	2674	72	2.69%
6	MEADE	1118	807	22	2.73%
7	GREENUP	1267	687	21	3.06%
8	CARLISLE	141	60	2	3.33%
9	TODD	409	210	7	3.33%
10	GRAYSON	1032	710	24	3.38%
11	LYON	326	216	8	3.70%
12	HARDIN	4302	2963	116	3.91%
13	CALLOWAY	1208	759	30	3.95%
14	LAWRENCE	510	417	17	4.08%
15	CHRISTIAN	4605	2627	109	4.15%
16	BALLARD	436	275	12	4.36%
17	BOYD	3090	1629	74	4.54%
18	FULTON	634	344	16	4.65%
19	FLEMING	685	542	26	4.80%
20	MENIFEE	258	164	8	4.88%
21	CARROLL	1202	754	37	4.91%
22	GRANT	1332	774	38	4.91%
23	LOGAN	1204	718	36	5.01%
24	KNOTT	649	393	20	5.09%
25	BOONE	6832	4808	251	5.22%
26	HENRY	895	665	35	5.26%
27	GALLATIN	692	474	25	5.27%
28	LIVINGSTON	351	222	12	5.41%
29	ALLEN	1223	839	46	5.48%
30	LARUE	587	397	22	5.54%
31	ELLIOTT	300	198	11	5.56%
32	HART	1149	787	44	5.59%
33	SHELBY	2277	1391	78	5.61%
34	MCCRACKEN	4660	2208	125	5.66%
35	FRANKLIN	2622	1764	102	5.78%
36	MUHLENBERG	1055	712	43	6.04%
37	KENTON	9253	5708	351	6.15%
38	CAMPBELL	5731	2926	182	6.22%

39	WOODFORD	751	495	31	6.26%
40	TRIGG	645	439	28	6.38%
41	SIMPSON	1483	970	62	6.39%
42	NELSON	1883	1259	81	6.43%
43	BRACKEN	242	168	11	6.55%
44	MERCER	935	579	38	6.56%
45	DAVIESS	6229	3826	255	6.66%
46	BREATHITT	1022	627	42	6.70%
47	WARREN	5254	3244	218	6.72%
48	LEWIS	442	267	18	6.74%
49	LAUREL	3575	2180	147	6.74%
50	FLOYD	2564	1448	98	6.77%
51	ROWAN	1821	1199	82	6.84%
52	ESTILL	1209	715	49	6.85%
53	LESLIE	626	407	28	6.88%
54	ANDERSON	1134	721	50	6.93%
55	CASEY	613	445	31	6.97%
56	MARTIN	587	488	34	6.97%
57	MAGOFFIN	646	485	34	7.01%
58	GRAVES	2810	2119	150	7.08%
59	MASON	1562	1084	78	7.20%
60	PERRY	3017	2035	147	7.22%
61	WASHINGTON	306	247	18	7.29%
62	CALDWELL	583	356	26	7.30%
63	LETCHER	1508	1057	78	7.38%
64	MARION	1213	945	70	7.41%
65	PIKE	5005	3075	231	7.51%
66	SCOTT	1869	1264	95	7.52%
67	BOYLE	2051	1189	90	7.57%
68	GARRARD	621	343	26	7.58%
69	OLDHAM	1404	1108	84	7.58%
70	UNION	768	562	43	7.65%
71	MCCREARY	847	619	48	7.75%
72	FAYETTE	15324	7427	576	7.76%
73	HOPKINS	2997	2050	159	7.76%
74	MADISON	4410	2822	222	7.87%
75	POWELL	1522	822	65	7.91%
76	BATH	591	378	30	7.94%
77	CRITTENDEN	261	151	12	7.95%
78	MARSHALL	998	722	58	8.03%

79	EDMONSON	319	247	20	8.10%
80	PULASKI	3840	2682	222	8.28%
81	SPENCER	619	444	37	8.33%
82	TAYLOR	1148	852	71	8.33%
83	KNOX	2457	1629	136	8.35%
84	PENDLETON	538	404	34	8.42%
85	MORGAN	664	449	38	8.46%
86	WEBSTER	511	387	33	8.53%
87	BUTLER	425	338	29	8.58%
88	ADAIR	782	614	53	8.63%
89	JOHNSON	1345	1112	96	8.63%
90	OWSLEY	539	347	30	8.65%
91	OHIO	949	827	72	8.71%
92	WHITLEY	2323	1678	147	8.76%
93	JESSAMINE	3196	1666	146	8.76%
94	BOURBON	1021	622	55	8.84%
95	TRIMBLE	380	280	25	8.93%
96	LINCOLN	1442	791	71	8.98%
97	HARLAN	2348	1690	152	8.99%
98	MCLEAN	262	177	16	9.04%
99	LEE	830	493	45	9.13%
100	JEFFERSON	47283	33042	3019	9.14%
101	HARRISON	831	615	57	9.27%
102	CUMBERLAND	218	172	16	9.30%
103	CARTER	1569	1074	101	9.40%
104	MONTGOMERY	1964	1160	110	9.48%
105	BELL	2690	2081	198	9.51%
106	BULLITT	3220	2352	225	9.57%
107	RUSSELL	902	741	74	9.99%
108	WAYNE	829	527	53	10.06%
109	CLARK	2215	1318	134	10.17%
110	WOLFE	612	342	35	10.23%
111	BARREN	1804	1442	153	10.61%
112	JACKSON	805	570	64	11.23%
113	CLINTON	438	369	43	11.65%
114	ROCKCASTLE	1362	1022	122	11.94%
115	GREEN	358	265	37	13.96%
116	METCALFE	269	212	30	14.15%
117	CLAY	2057	1376	195	14.17%
118	MONROE	401	299	46	15.38%

119	NICHOLAS	494	376	59	15.69%
120	ROBERTSON	75	47	8	17.02%

CRIMINAL LAW REFORM: THE FIRST YEAR OF HB 463

CLE Credit: 1.0
Wednesday, June 6, 2012
10:45 a.m. - 11:45 a.m.
Grand Ballroom
Galt House Hotel
Louisville, Kentucky

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Kentucky Bar Association

TABLE OF CONTENTS

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TIMOTHY R. COLEMAN has served as the Commonwealth's Attorney for the 38th Judicial Circuit since 2001. He is the current President of the Commonwealth's Attorney Association. In addition, Mr. Coleman recently completed a term as Chair of the Kentucky Authority for Education Television. Prior to becoming a Commonwealth's Attorney, he was elected County Attorney for Butler County and was a Partner at Jackson Kelly, PLLC in their Lexington Office. Mr. Coleman received his B.S. from Western Kentucky University and his J.D. from the University of Kentucky College of Law. In 2009 he was named Outstanding Commonwealth's Attorney by Attorney General Jack Conway.

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JOHN F. ESTILL has served as the Mason County Attorney since 1994 and serves as the President of the Kentucky County Attorneys Association. Prior to his election, he served as an Assistant Commonwealth Attorney for the 19th Judicial District. Mr. Estill received his B.S. and J.D. from the University of Kentucky. He was appointed to the Prosecutors Advisory Council by Governors Beshear and Patton, and was named Kentucky's Outstanding County Attorney in 1998 and 2011.Mr. Estill received the Kentucky County Attorneys' Association's Special Prosecutions Award in 2010 and has been a regular faculty member at the Kentucky Prosecutors Institute. He is a member of the Mason County, Bracken County, Kentucky and West Virginia Bar Associations.

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DAMON PRESTON is the Deputy Public Advocate of the Commonwealth of Kentucky. After graduating from Transylvania University and Harvard Law School, Mr. Preston worked as an appellate defender in the Criminal Appeals Bureau of the Legal Aid Society in New York City. Since 1997, he has been with Kentucky's Department of Public Advocacy. Starting as a trial staff attorney in Richmond, he moved to become supervisor of the Paducah office. Mr. Preston later opened a new full-time office in Cynthiana in 2004. Since then, he has managed the Appeals Branch and the Trial Division before becoming Deputy in 2011. Mr. Preston is a member of the Kentucky Association of Criminal Defense Lawyers.

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REPRESENTATIVE JOHN C. TILLEY has represented District 8 in the House of Representatives since 2007. He received his B.A. from the University of Kentucky and his J.D. from Salmon P. Chase College of Law at Northern Kentucky University. Representative Tilley serves on the Banking and Insurance, Justice and Judiciary, Judiciary, State Government and Veterans, Military Affairs and Public Protection Committees. He is the recipient of numerous awards including Kentucky Public Defense's 2011 Public Advocate Award.

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B. SCOTT WEST is the General Counsel for the Department of Public Advocacy. Prior to his appointment as General Counsel, he served as Regional Manager overseeing five offices that provide public defender services for twenty-four counties in the Bluegrass Region of the state. Prior to that, he was the Directing Attorney for the Department's Murray Office and a Staff Attorney in the Hazard Trial Office. He received his B.A. from Vanderbilt University and his J.D. from the University of Kentucky College of Law.

HB 463 -- STATEMENT FROM THE SPONSORS
Sen. Tom Jensen (R - London) and Rep. John Tilley (D - Hopkinsville)

Over the past decade, Kentucky has had one of the fastest growing prison populations in the country. Since 2000, the inmate population increased 45 percent, compared to 13 percent for the U.S. state prison system as a whole. This growth has driven the state's corrections spending to $440 million a year, an increase of more than 330 percent over the last twenty years, despite the fact that the state's serious crime rate has been well below that of the nation and other southern states since the 1960s. It has been clear for some time that Kentucky cannot continue down the path we have taken during the last decade, when the crime rate remained relatively low, but the growth in our prison population far outpaced the national average.

In 2010, Kentucky lawmakers created the Task Force on the Penal Code and Controlled Substances Act to recommend changes we could make to the state's penal code and drug laws that would control the growth in corrections while maintaining public safety. In addition to our membership as co-chairs, the task force members were: Chief Justice John D. Minton Jr.; J. Michael Brown, the Secretary of the Justice and Public Safety Cabinet; LaRue County Judge/Executive Tommy Turner; Tom Handy, a former prosecutor; and Guthrie True, a former public defender.

As co-chairs of the task force, we maintained an open, bipartisan, inter-branch, data-driven process involving considerable outreach to and participation from stakeholders representing diverse interests in the criminal justice and public safety areas, including judges, prosecutors, public defenders, victims' advocates, law enforcement officials, local government officials, jailers and others. The task force also received support and technical assistance from the experts at the nationally-respected, nonpartisan Public Safety Performance Project of the Pew Center on the States to develop fiscally sound, data-driven policy recommendations that will give taxpayers a better return on their public safety dollars.

For six months in 2010, we jointly led this bipartisan group of stakeholders from across state and local government on a quest to reduce Kentucky's prison costs and increase the public's return on our corrections investment by reducing recidivism and incarceration rates. The task force conducted an extensive review of Kentucky's corrections data to identify what was driving increases in the state's prison population and costs, and the task force crafted recommendations for legislative reform based on that data.

I. THE TASK FORCE IDENTIFIED FOUR KEY DRIVERS OF KENTUCKY'S PRISON GROWTH

A. An Increase in Arrests and Court Cases

While reported crime remained basically flat between 2001 and 2009, adult arrest rates increased 32 percent during that time, and drug arrests increased 70 percent.

B. A High Percentage of Offenders Being Sent to Prison

Kentucky uses prison as opposed to probation or other alternative sentences at a much higher rate than most other states.

C. Technical Parole Violators

Offenders on parole who are sent back to prison and who do not have a new felony conviction have nearly doubled as a percentage of prison admissions.

D. Drug Offenders

The Kentucky Department of Corrections reported that between 2000 and 2009, the percentage of all admissions that were drug offenders rose from 30 percent to 38 percent.

During the 2011 Regular Session of the General Assembly, we introduced identical bills in both the Senate and the House of Representatives. These bills incorporated the recommendations of the Task Force, as well as recommendations from other stakeholders. Now, as Kentucky works to implement those changes with the passage of House Bill 463 signed into law on March 3, those six months of work are about to pay off.

II. THE PROVISIONS IN HOUSE BILL 463 FOCUS ON:

A. Strengthening probation and parole by basing key decisions on the risk posed by offenders, linking offenders to appropriate community resources, and improving parole and probation supervision.

B. Modernizing drug laws by distinguishing serious drug trafficking from peddling to support an addiction by establishing a proportionate scale of penalties based on quantity of drugs sold and by providing deferred prosecution, presumptive probation and reduced prison time for low-risk, non-violent drug offenders who possess drugs and reinvesting related savings in increasing drug treatment for those offenders who need it.

C. Supporting and restoring victims by improving restitution and creating web-based tools to provide key information on offenders.

D. Improving government performance with better ways to measure and encourage a reduction in recidivism and criminal behavior.

The reforms in House Bill 463 are expected to bring a gross savings of $422 million over ten years by reducing the state's burgeoning prison population. Net savings of $218 million will likely accrue over ten years, with $204 million to be reinvested in stronger probation and parole programs, expanded drug treatments and the addition of more pretrial services. Twenty-five percent of savings unrelated to changes in the drug laws will be put into a new local corrections assistance fund to help local jails, garnering full support from our counties.

Without the work of the Task Force on the Penal Code and Controlled Substances Act, the 2011 General Assembly would not have been able to pass the major criminal justice reforms found in House Bill 463 as quickly as we did. Changes to the penal code would likely have continued to be made in a piecemeal fashion. By including reauthorization of the task force as a provision of House Bill 463, lawmakers have ensured future deliberations without delay and with the best possible outcome for Kentucky.

Changes similar to those made in House Bill 463 have been implemented in other states, including Texas, Kansas and South Carolina, with much success. These states have seen a drop in both their crime rate and corrections costs. There is no reason to believe, based on the evidence, that Kentucky will not enjoy similar success under the most far-reaching criminal justice reforms Kentucky has seen in generations.

House Bill 463 is the result of nearly every major group affected by the changes in the law coming together to create something better. Kentucky will be better off because of its passage.

CHANGES IN
CRIMINAL LAW OR CRIMINAL PROCEDURE IN HB 463
Damon Preston

Revolutionary in its scope and concept, House Bill 463 will affect every facet of the criminal justice system, reforming counterproductive and expensive practices while protecting public safety and maintaining accountability for lawbreakers. Such grand promise will only materialize, however, if all players in the system are familiar with the new laws and are willing to ensure their full implementation. This article summarizes the various parts of the bill. Future editions of The Advocate will delve more deeply into specific provisions.

Generally, the most significant changes to the law in House Bill 463 can be broken into the following categories:

I. EXPANSION OF PRETRIAL RELEASE

Changes to the law will result in responsible expansion and consistency in the pretrial release of persons accused of crimes. The most significant advancement is the mandatory use of a "research-based, validated assessment tool" to measure a defendant's risk of flight or of posing a risk to the public. In most circumstances, defendants who are low or moderate risk will be released without financial bail being required. For moderate risk defendants, courts will be empowered to impose reasonable non-financial conditions to address any concerns raised by the assessment. Defendants who remain in jail pretrial will be entitled to a daily credit towards their bond, unless they are a flight risk or a risk to others.

Because of these changes, county jails will not bear the expense of housing pretrial defendants who are not a high risk. Further, low or moderate risk defendants who cannot post a financial bond will not serve additional jail time solely due to their poverty and those who are innocent will not serve time at all upon their release. Upon a conviction, a court can impose an appropriate sentence and the guilty person will be held accountable for their criminal activity.

II. REFORM OF CRIMINAL DRUG STATUTES

The changes to the drug laws were made in recognition of some basic principles:

A. Not All Trafficking Offenses Are Equal,

B. Drug Possession Should Be Addressed through Supervision and Treatment, and

C. Subsequent Offender Sentencing Enhancements Are Not Appropriate in the Drug Possession Context.

III. TRAFFICKING OFFENSES

Thresholds were established to distinguish between low-level peddlers and higher-level traffickers. Defendants convicted of trafficking in amounts above the new thresholds will face the same range of penalties and enhancements as under the former law. Those convicted of trafficking in lower amounts will face lesser punishments. Separate trafficking incidents within a ninety-day period may be aggregated to reach the new thresholds.

Thresholds for selected drugs:

A. Cocaine -- four grams

B. Heroin or Methamphetamine -- two grams

C. LSD, PCP, GHB or Rohypnol -- No threshold; any quantity is higher level

D. Other Schedule I or II Controlled Substances -- ten or more dosage units

E. Schedule III Controlled Substances -- twenty or more dosage units

IV. DRUG POSSESSION

Defendants charged with felony drug possession will face a possible penalty of one to three years (reduced from a range of one to five years), but will be subject to Deferred Prosecution or Presumptive Probation for first or second offenses with the legislature deeming Deferred Prosecution as the preferred alternative for first offenses.

A. Deferred Prosecution – Eligible defendants will be able to have prosecution deferred for up to two years while participating in a probation-like program of supervision and treatment. Upon successful completion, the criminal charge will not only be dismissed, but expunged and sealed as if the charge never existed. If a defendant fails in the deferral program, he/she can then be prosecuted as usual, with all other options remaining available as appropriate. In the event a prosecutor objects to an eligible defendant's participation in the program, the prosecutor must state on the record "substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety."

B. Presumptive Probation – For defendants who are convicted of a first or second offense of felony drug possession, probation is mandatory unless the sentencing court finds "substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety."

C. Sentencing Enhancements – Defendants convicted of trafficking drugs will still be subject to all former sentencing enhancements, but many enhancements for other drug offenders have been eliminated.

D. Persistent Felony Offender (PFO) – Felony drug possession can no longer be enhanced by PFO and a prior felony drug possession conviction cannot be used as a predicate for later PFO enhancements unless the defendant has been convicted of a different felony since the drug possession conviction.

E. Subsequent Offender Enhancements – Raising the penalty for second or subsequent drug offenses have been eliminated from most non-trafficking statutes.

V. COMMUNITY SUPERVISION CHANGES

Community supervision encompasses probation, parole and post-incarceration supervision. Under all three programs, a research-based validated Risk and Needs Assessment will be used to determine supervision/treatment needs and progress on an individualized case plan developed for each supervised person. When a supervised person demonstrates prolonged compliance and meets other conditions, he/she may be removed from active supervision. In the event of violations, a system of graduated sanctions will be developed to hold offenders accountable without court proceedings or Parole Board hearings being required for many technical violations. Revocation and re-incarceration for failure to abide by conditions of supervision is only authorized "when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community."

VI. RE-ENTRY OR POST-INCARCERATION SUPERVISION

Almost every person who is incarcerated in prison will face a period of supervision upon their release. For sex offenders, the five-year period previously conditionally discharged now is reestablished as a period of supervision under the authority of the Parole Board. For certain "dangerous" offenders (those convicted of an A felony or capital offense, ineligible for parole, or who have a maximum security classification), an additional one-year period of supervision will be added to the end of their sentence. For everyone else, release on parole will be mandatory when a prisoner has six months remaining on his/her sentence unless the total sentence is two years or less or the person has less than six months to serve after final sentencing or recommitment after a violation of supervision.

VII. ARREST POWERS

With limited exceptions, law enforcement officers must issue citations for misdemeanors, even when committed in the officer's presence.

IX. NONPAYMENT OF FINES

Defendants found guilty of non-payment of fines may be sentenced to jail for nonpayment or nonappearance in court to address nonpayment, but may satisfy the unpaid fine at a rate of $50 per day (or $100 per day if working in community service while incarcerated).

Many other provisions of HB 463 make changes that fall outside these general cate-gories. The full text of the bill and other resources to assist lawyers, judges, and others in understanding and implementing the bill are available at: http://theadvocate.posterous.com/tag/hb463.

CHANGES IN PRETRIAL RELEASE FROM HB 463: "THE NEW PENAL CODE AND CONTROLLED SUBSTANCES ACT"

Brian Scott West

Many changes to the drug and penal codes were made by HB 463 involving reclassification of offenses, reformation of sentencing provisions, and other general changes which incorporate efficient and realistic methods for punishing and rehabilitating convicted lawbreakers, while at the same time promoting concerns of public safety. However, the new act also made changes in the law of pretrial release, reaffirming in a substantial way Kentucky's commitment to the age-old venerable constitutional principle of "innocent until proven guilty."

I. UNSECURED OR "OWN RECOGNIZANCE" BONDS FOR LOW OR MEDIUM RISK ARRESTED DEFENDANTS PRESUMED

HB 463 created a new section KRS Chapter 431 which applies to any defendant arrested for any crime and which makes mandatory an unsecured or "own recognizance" bond for certain individuals. KRS 431.066(1) provides that "[w]hen a court considers pretrial release and bail for an arrested defendant, the court shall consider whether the defendant constitutes a flight risk, is unlikely to appear for trial, or is likely to be a danger to the public if released." Subsections (2) and (3) provide generally that if the defendant poses a low or moderate risk of flight, is likely to appear for trial, and is not likely to be a danger to others, the court SHALL order the defendant released on unsecured bond or his own recognizance, and in the case of a moderate risk, the court shall consider ordering the defendant to participate in GPS monitoring, controlled substance testing, increased supervision, or other conditions.

II. PRETRIAL RELEASE FOR "PRESUMPTIVE PROBATION" DRUG OFFENSES

HB 463 created a new section in the drug code, KRS 218A.135, which provides mandatory unsecured or "own recognizance" bond for persons who are charged with offenses that could result in "presumptive probation." KRS 218A.135(1). These offenses are described elsewhere in KRS Chapter 218A, but basically are trafficking in a controlled substance 3rd (under 20 units) and possession of a controlled substance in the 1st. These provisions shall not apply to a defendant who is found by the court to present a flight risk, or a danger to himself, herself or others. KRS 218A.135(2). If a court determines that the defendant is such a risk, the court shall document the reasons for denying the release in a written order. KRS 218A.135(3). Impliedly, a finding of danger to himself, herself or others requires a finding that the defendant has done more than merely possess, transfer or sell drugs, since the provision applies ONLY to possession and trafficking offenses, and such limited findings would effectively write the word "shall" out of the statute.

III. CREDIT TOWARD BAIL FOR TIME IN JAIL PRESUMED

KRS 431.066(4)(a) provides that -- regardless of the amount of bail set -- the court shall permit a defendant a credit of one hundred dollars for each day, or any portion of a day, as payment toward the amount of bail set. Upon service of sufficient days to satisfy the bail, the Court SHALL order the release of the defendant from jail on conditions specified in Chapter 431.

Subsection (b), however, specifies that bail credit shall not apply to anyone who is convicted of, or is pleading guilty (or entering an Alford plea) to any felony sex offense under KRS Chapter 510, human trafficking involving commercial sexual activity, incest, unlawful transaction with a minor involving sexual activity, promoting or using a minor in a sexual performance, or any "violent offender" as defined in KRS 439.3401. Bail credit shall also be denied for anyone found by the court to be a flight risk or a danger to others. If bail credit is denied for any reason, the Court SHALL document the reasons in a written order. KRS 431.066(5).

IV. MAXIMUM BAIL RULE FOR MULTIPLE MISDEMEANORS

KRS 431.525 has been amended to require -- when a person has been charged with one or more misdemeanors -- that the amount of bail for all charges shall be set in a single amount that shall not exceed the amount of the fine and court costs for the highest misdemeanor charged. KRS 431.525(4). When a person has been convicted of a misdemeanor and a sentence of jail, conditional discharge, probation, or any sentence other than a "fine only," the amount of bail for release on appeal shall not exceed double the amount of the maximum fine that could have been imposed for the highest misdemeanor of which the defendant stands convicted. KRS 431.525(5). Neither provision applies to misdemeanors involving physical injury or sexual conduct, or to any person found by the court to present a flight risk or to be a danger to others. KRS 431.525(4)-(6). If a person is found to present a flight risk or a danger to others, the court SHALL document the reasons in a written order. KRS 431.525(7).

V. JUDICIAL GUIDELINES FOR PRETRIAL RELEASE OF MODERATE-RISK OR HIGH-RISK DEFENDANTS

Most of the HB 463 pretrial release provisions refer to persons who are found to be at a "low risk" or "moderate risk" to flee, not come to court, or pose a danger to others. However, the General Assembly also put language into the bill for those persons who are found to be high or moderate risk, and who otherwise would be ordered to a local correctional facility while awaiting trial. For those persons, the Supreme Court is required to establish recommended guidelines for judges to use when determining whether pretrial release or monitored conditional release should be ordered, and setting the terms of such release and/or monitoring. KRS 27A.096. Likewise, KRS 431.067 provides that, when considering the pretrial release of a person whose pretrial risk assessment indicates he or she is a moderate or high risk defendant, the court considering the release may order as a condition of pretrial release that the person participate in a GPS monitoring program.

VI. EVIDENCE-BASED PRACTICES

Section 49 of HB 463 (not yet codified), effective July 1, 2013, specifies that the Supreme Court SHALL require that vendors or contractors who are funded by the state and who are providing supervision and intervention programs for adult criminal defendants use "evidence-based practices" to measure the effectiveness of their supervision and monitoring services. As used in this section, "evidence-based practices" means intervention programs and supervision policies, procedures, programs, and practices that scientific research demonstrates reduce instances of a defendant's failure to appear in court and criminal activity among pretrial defendants when implemented competently." Evidence-based practices are already being used by pretrial officers of the Administrative Office of the Courts. These assessments categorize a defendant as a low, moderate or high risk to flee, to not appear in court, or to pose a danger to the public. In KRS 446.010(33), "pretrial risk assessment" is defined as "an objective, research-based, validated assessment tool that measures a defendant's risk of flight and risk of anticipated criminal conduct while on pretrial release pending adjudication." AOC's assessment bases its results upon answers to objective, not subjective, questions and has already been validated by an independent, federally funded organization (the JFA Institute).

Nearly every decision made about pretrial release begins with a court finding as to whether the defendant is a low, moderate or high risk to flee, not appear, or pose a danger to the public (and in the case of "presumptive probation" offenses, danger to self), thereby incorporating into the judicial decision the risks found by the assessment. Bond decisions have never been more "based on evidence" than they will be now.

VII. APPEAL STANDARDS

HB 463 has effectively changed both the standards by which a bond will be reviewed by appellate courts and the nature of relief in the event of a successful appeal. In the past, trial judges set the amount of bond and the manner of security based on a review of such factors as the seriousness of the charge, the criminal record of the accused, and the ability of the person to pay. On appeal, the reviewing court would decide whether the judge has abused his or her discretion. Thus, in Long v. Hamilton, 467 S.W.2d 139 (Ky. 1971), where a $150,000 bond had been set for a charge of possession of heroin, the court stated that while they would not "interfere in the fixing of bail unless the trial court has clearly abused its discretionary power," the amount in that case was unreasonable. The Court reversed with instructions to the trial court to "fix bail … in an amount less than $150,000."

After HB 463, while the trial court still has discretion as to the amount of bond to be set (and may consider such factors as the nature of the offense charged, and the criminal record of the accused under KRS 431.525), the decision whether that bail should be unsecured or subject to own recognizance, or whether the bail credit shall apply (both under KRS 431.066), require findings based on evidence. Moreover, to the extent that there is no evidence sufficient to support a finding that someone is a flight risk or a danger to the public, for example, HB 463 creates a presumption of an unsecured or "own recognizance" bond as written

"findings" are required to depart from the mandatory "shall" language requiring release. On appeal, a court will review the court's decision, and the evidence upon which it was based, and should decide whether the trial court's decision was against the great weight of the evidence. Stated another way, the trial court's findings must be supported by sufficient evidence to overcome the presumption of release.

If the judge's decision is found not to be grounded in evidence or is against the weight of the evidence, then the appellate court will still remand, but this time with instructions to unsecure the bond or place the defendant on "own recognizance."

The standard for bond appeals from district court to circuit court via habeas corpus was set in Smith v. Henson, 182 S.W.2d 666 (Ky. 1944), and appears never to have been an "abuse of discretion" standard: "[T]he primary, if not the only, object of habeas corpus is to determine the legality of the restraint under which a person is held. … We must, therefore, view the proceeding to obtain bail by the method of habeas corpus as a test of the legality of the judgment or action of the court on the motion for bail." *Id.* at 668-669. The Circuit Court thus reviews the actions of the District Court with a view toward whether the action was legal or illegal.

VIII. CONCLUSION

HB 463 has done much to reform the way that Kentucky's citizens charged with crimes are treated both prior to and after conviction. The General Assembly has breathed new life into the presumption of innocence without sacrificing concerns of public safety.

TOP 10 FAQ'S WHEN LITIGATING HB 463 PRETRIAL RELEASE ON BEHALF OF THE ACCUSED

B. Scott West

As the changes to pretrial practice that HB 463 brought about turn one year old, there are lots questions which are often asked, but remain unanswered. Or stated another way: these questions might be answered, but depending upon who you ask – a defense attorney, a prosecutor or a judge – you get *different* answers. In the hopefully near future, all of our questions will be answered in the form a published court opinion suitable for citing, or new legislation. Meanwhile, here are the top ten questions, in this defense attorney's opinion, that need to be answered, along with what I believe are the answers.

And by the way, I think these answers are correct, and have the force of law behind them.

1. HOW MUCH DOES HB 463 LIMIT JUDICIAL DISCRETION?

One way to interpret HB 463 is that the legislature intended only to "tighten up" the present practice without effecting any real change in pretrial release. Another is that the legislature did intend real and sweeping changes in the areas of pretrial release and sentencing, in an effort to reduce the ever-increasing costs of incarcerating Kentucky's citizens charged with a crime. The latter interpretation seems to be the correct one, as evidenced by the statements of bill sponsors Sen. Tom Jensen and Rep. John Tilley that full implementation of HB 463 is "expected to bring a gross savings of $422 million over ten years by reducing the state's burgeoning prison population." Such anticipated savings could only be realized if HB 463 is enforced to the full extent of the mandatory "shall" language contained therein.

HB 463 has limited judicial discretion in a number of ways:

- Bonds must be decided upon evidentiary factors that tend to prove whether a defendant is low, moderate or high risk to flee, not attend court, or be a danger to the public;

- Where there is a presumption of release on own recognizance ("O.R."), unsecured bond, or bail credit, there must be some finding of flight risk, risk of non-appearance at trial, or public dangerousness for this presumption to be overcome; hence, if there is no evidence one way or the other, the mandatory "shall" provision for release must prevail;

- Judges cannot merely rely upon the KRS 431.525 factors that they were required to consider prior to passage of HB 463 (*e.g.*, "nature of the offense" or the "criminal record") to overcome evidence of low risk or moderate risk absent evidence in the particular case that the defendant is high risk. Stated another way, if a judge says "everyone charged with assault 1st degree is a flight risk," or "anyone with three felonies on their record is automatically a danger to the public," this is not evidence-based,

and the presumption of O.R., unsecured bond and bail credit should prevail. Actually, this was never the case anyway since Abraham v. Commonwealth, 565 S.W.2d 152 (Ky. App. 1977), held that consideration of any *one* of the Five Factors without considering the others was an abuse of discretion. Judges were never free to "use discretion" to ignore the other legislative-set factors.

2. AREN'T THE PRETRIAL RELEASE PROVISIONS OF HB 463 AN UNCONSTITUTIONAL VIOLATION OF SEPARATION OF POWERS, BECAUSE THE LEGISLATURE IS LIMITING INHERENT JUDICIAL DISCRETION?

I have heard, anecdotally, that many people oppose some of the mandatory provisions of HB 463 as they relate to bail because it treads too far into inherent judicial power and discretion, perhaps even to the point of being a violation of the separation of powers between the judicial branch and the legislative branch. I strongly disagree. *The source of judicial discretion in this area derives not from inherent constitutional authority, but from powers granted to the judiciary by the legislature.*

Kentucky's Constitution Sections 109, 110, 111, 112 and 113 – which create the judicial branch of government – do not specify that judges have inherent or particular authority over bail decisions. Sections 16 and 17 grant a right to bail and prohibit excessive bail, respectively, but do not otherwise specify how bail decisions are to be made.

Instead, judicial discretion over how to decide bail has come from legislative enactment. In 1976, the General Assembly passed the "1976 Bail Bond Reform Act." Portions of this act relating to the setting of bail were codified in KRS 431.520 and .525.

> KRS 431.520 provided, in part:
>
> Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by the Supreme court as provided by KRS 431.540, **unless the court determines, in the exercise of its discretion**, that such a release will not reasonably assure the appearance of the person as required.

KRS 431.525 set forth the factors (which I will refer to as the "Five Factors") which the courts were required to take into account when establishing the amount of bail:

> (1) The amount of bail shall be:
>
> (a) Sufficient to insure compliance with the conditions of release set by the court;
>
> (b) Not oppressive;

(c) Commensurate with the nature of the offense charged;

(d) Considerate of the past criminal acts and the reasonably anticipated conduct of the defendant if released; and

(e) Considerate of the financial ability of the defendant.

Almost immediately after the 1976 Bail Bond Reform Act became effective, a challenge against "excessive bail" arose in a case where a judge had refused to determine bond using all of the Five Factors mandated by the legislature in KRS 431.525. In Abraham, *supra*, the trial court considered only the nature of the offenses which the defendant was facing, and refused to make findings, as required by KRS 431.520 and RCr 4.10 that releasing Abraham on his own recognizance or upon an unsecured bail bond would not reasonably assure his appearance at trial.

Finding error, the Court of Appeals first relied upon Stack v. Boyle, 342 U.S. 1 (1951) to hold that a bail decision was a "final judgment" appealable to a court of competent jurisdiction, upholding that portion of the Bail Bond Reform Act which allowed appeals, and quoted from that opinion as follows:

> The proper procedure for challenging bail as unlawfully fixed is by motion for reduction of bail and appeal to the Court of Appeals from an order denying such motion. **Petitioner's motion to reduce bail did not merely invoke the discretion of the District Court setting bail within a zone of reasonableness, but challenged the bail as violating statutory and constitutional standards … As there is no discretion to refuse to reduce excessive bail, the order denying the motion to reduce bail is appealable as a "final decision" of the District Court.** [Abraham at 154, emphasis added].

Later in the opinion, the Court of Appeals made it clear that the discretion given the courts were from a legislative grant:

> Great discretion is vested in the circuit judge respecting bail… However the record should demonstrate that the circuit judge did in fact exercise the **discretion vested in him under the statutes and rules.** [Abraham at 158, emphasis added].

If the discretion is vested in the trial judge via statutes, then the discretion is vested via an enactment of the legislature, as the legislature alone creates statutes; and while the opinion also stated that discretion was vested in court rules as well, it is well known that court rules which are at variance with a statute must yield to the authority of the statute. *See* Hodge v. Ford Motor Co., 124 S.W.3d 460, 464 (Ky. App. 2003) (*citing* Dawson v. Hensley, 423 S.W.2d 911, 912 (Ky. 1968)); American Tax Funding, LLC v. Gene, 2008 WL 612360 (Ky. App. 2008).

Thus, in Abraham, the Court of Appeals did not support the trial judge's decision to consider *only one* of the Five Factors, but rather found that the trial judge had abused his discretion by not considering *all* of the Five Factors, and found that he had failed to utilize the discretion granted to him by the legislature when the trial court was found to "always set the bond at $25,000 on every theft charge." *Id*. at p. 158. Abraham is interesting also because the Court of Appeals did *not* rule that the 1976 Bail Bond Reform Act was an overreach by the legislature or a violation of the separation of powers. Instead, the court fully set out in footnotes the entirety of the statutes, and decided the case by how the trial judge followed the statutes.

Abraham is still the law of the Commonwealth, and holds that judicial discretion in bail determinations is precisely that discretion which is created by legislative enactment, and not inherent in the judicial powers afforded by the Kentucky Constitution.

3. ISN'T KRS 431.525 INCONSISTENT WITH KRS 431.066 IN THAT THE FORMER PROVISION HAS FIVE FACTORS AND THE LATTER HAS TWO TO THREE FACTORS?

No. KRS 431.525 is the statute which refers to setting the "amount" of the bond. KRS 431.066 is the statute which determines, based on certain risk factors, whether a bond will be unsecured, or subject to own recognizance. If a judge, in his/her discretion thinks that the nature of the offense and the criminal history warrants a dollar amount, the judge will set that amount, and then refer to KRS 431.066 and make the bond "unsecured" if the statutory considerations require it. Likewise, if the nature of the offense is "not so bad" relative to other crimes, and there is no criminal history, the judge may choose to set a zero amount bond under KRS 431.525, in which case the "O.R." provision of KRS 431.066 would apply.

4. IF A CLIENT GETS AN UNSECURED BOND, DOES HE ALSO GET BAIL CREDIT?

Why not? The statute does not provide the court with an "either/or" election with regard to persons who would qualify under both provisions. A particular defendant who has been found to be low or moderate risk may qualify for BOTH provisions. Thus, if the court unsecures the bond with a third-party surety bond, but the defendant does not have anyone who is willing to sign to let the defendant out, the defendant should still be benefitting from the bail credit portion of the statute, and earning time toward release. If your client has been given a third-party unsecured surety bond, but cannot get a release, you should be arguing that KRS 431.066 does not give the court an "election" between the two, and that both provisions should be applied to the client.

5. SHOW ME WHERE BAIL DECISIONS ARE SUPPOSED TO BE BASED ON "EVIDENCE-BASED PRACTICES."

A frequent question our attorneys get from prosecutors, judges, or others is "where in HB 463 does it say that pretrial practice is 'evidentiary-based?'" After all, HB 463 amended KRS 446.010 to include a definition of "evidence-based

practices" to mean "policies, procedures, programs and practices proven by scientific research to reliably produce reductions in recidivism when implemented competently." It does not specifically refer to pretrial release. Moreover, Section 1 of the bill provides that "all supervision and treatment programs provided for defendants shall utilize evidence-based practices to reduce the likelihood of future criminal behavior," but does not use the term "evidence-based" in a similar way to discuss the pretrial release provisions of the bill. Finally, the term "evidence-based" is used almost exclusively in sections of the bill that deal with treatment, recovery and supervision programs.

HB 463 perhaps could have more clearly stated that pretrial release practices must now be based on evidence. However, what was passed still seems to make clear that evidence-based practices are to be applied in pretrial release practices based upon the following:

- HB 463 also amends KRS 446.010 to add a definition of "pretrial risk assessment" which means "an objective, research based, validated assessment tool that measures a defendant's risk of flight and risk of anticipated criminal conduct while on pretrial release pending adjudication." Thus, the concept of practices proven by scientific research seems to be incorporated in both definitions. The expectation is that pretrial risk assessment reports have evidentiary value if they are objective and validated, and that they thus are an "evidence-based" practice;

- KRS 431.525 and 431.066 are amended/created using the terms "low," "moderate," and "high" with respect to the risk of flight, not appearing in court, or being a danger to the public. These terms are the classifications found in the pretrial risk assessment, and we believe that these terms are intended to reference the findings of the pretrial risk assessment. That does not mean that other evidence cannot be considered; but we believe it does mean that the General Assembly intended to incorporate into the judge's consideration and findings the results of the pretrial risk assessment; and

- The one section of HB 463 which *does* deal with pretrial release is the creation of a new section of KRS Chapter 27A (not codified as of yet) which defines "evidence-based practices" to mean "intervention programs and supervision policies, procedures, programs, and practices that scientific research demonstrates reduce instances of a defendant's failure to appear in court and criminal activity among pretrial defendants when implemented competently." This provision applies to future vendors or contractors who will provide supervision and intervention programs in the area of pretrial release. The Supreme Court must establish a process for reviewing the objective criteria for vendor or contractor evidence based practices, audit for effectiveness, provide an opportunity to improve performance, and mechanism to "defund" any contractor whose criteria for supervision does not meet the definition of "evidence-based practice." The effective date for implementing the first part of this newly created statute is July 1, 2012. DPA believes it makes no sense that the General Assembly would require such evidence-based practices for purposes of pretrial release for future vendors and contractors, but would not institute

the same requirement for the presently existing AOC Division of Pretrial Release. Thus, we believe that "evidence-based practices" have been incorporated into the present pretrial release statutes, when all above are construed together.

6. DO JUDGES HAVE TO ACCEPT THE FINDINGS OF THE PRETRIAL RISK ASSESSMENT REPORT?

No. According to Timothy Murray, Executive Director of the Pretrial Justice Institute, a pretrial risk assessment tool is an evidentiary tool, but it is not the end all, be all evidence of a person's risk of flight, not coming to court or being a public danger. No court is absolutely bound by the finding, and no jurisdiction in the United States considers it to be. But the pretrial risk assessment report is of SOME evidentiary value; and where there is an absence of evidence on the other side of the issue, it ought to carry the day. When a judge weighs the evidence, and there is only evidence supportive on one side, that side should carry the burden, especially if there is a presumption of release that can only be overcome by evidence to the contrary.

7. AREN'T THE LOW RATES OF NONAPPEARANCE AND REOFFENDING THE RESULT OF GOOD JUDICIAL DECISIONS RATHER THAN A STATISTICALLY VALIDATED PRETRIAL RELEASE RISK ASSESSMENT?

One might think so. Since not all low- or moderate-risk people are released, and since the flight and reoffending rates of those who ARE released are so low, it might cause one to believe that the low rates are the result of judges recognizing, correctly, that the low- and moderate-risk people who are NOT bonded have correctly been identified by the judge in his/her discretion as persons who if released would fail to appear or reoffend, and that those rates would be higher had they been released.

However, statistically, that has not been the case. According to an article by Tara Boh Klute, Chief Operating Officer of the Administrative Office of the Courts' Division of Pretrial Services, published in DPA's The Advocate under the title of "Release Rates Vary, Failure Rates Remain Unchanged," the evidence shows that "[r]egardless of the release rate, the failure rates are consistent. … When an objective, validated risk instrument is utilized competently, the evidence shows that low and moderate risk defendants can be safely released into the community without jeopardizing public safety.

Ms. Klute includes a chart which analyzed 135,151 cases from July 1, 2009, through April 30, 2011, in four unique Kentucky jurisdictions including both rural and urban areas (Jefferson, Fayette, Johnson and Crittenden Counties). Ranging from a low rate of release in Fayette County of under 55 percent to a high rate of release in Johnson County of 80 percent, the appearance rates for all four counties ranged from 87 percent to 92 percent, while the public safety rate ranged from 88 percent to 91 percent.

8. WHAT IS THE STANDARD FOR DECIDING WHETHER SOMEONE IS A DANGER TO THE PUBLIC?

If the legislature has mandated an "evidence-based practice" for determination of bail, the next question becomes "what is the evidentiary standard that should be employed at the hearing to determine risk?"

DPA believes that the standard is "clear and convincing evidence," based upon United States Supreme Court authority which interprets the Eighth Amendment's "excessive bail" clause to require a finding of "clear and convincing evidence" if the defendant is being detained, or not granted bail, due to risk of being a danger to the community.

It has long been recognized that "[u]nless the right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." Stack v. Boyle, 342 U.S. 1 (1951). Yet, prior to last year, had you asked a knowledgeable Constitutional scholar whether the Eighth Amendment's "excessive bail" clause had been applied to the states through the Fourteenth Amendment, as the "cruel and unusual punishment" clause has been, you likely would have gotten an answer ranging from "no," to "maybe," or "yes," depending upon how one interpreted Schilb v. Kuebel, 404 U.S. 357 (1971). In that opinion, the Supreme Court stated that "the Eighth Amendment's proscription against excessive bail has been assumed to have application to the states through the Fourteenth Amendment." *Id*. at 484. The Court cited to Pilkinton v. Circuit Ct., 324 F.2d 45 (8th Cir. 1963) and Robinson v. California, 370 U.S. 660 (1965) as the bases for this "assumption." However, the Court then stated that "we are not at all concerned here with any fundamental question of bail excessiveness," and did not reach the issue of whether the "assumption" of state application was well-founded, leaving the question of whether the clause had been incorporated into the states largely unanswered.

That all changed two years ago in McDonald v. City of Chicago, 130 S.Ct. 3020 (2010), in which the Supreme Court held that the Second Amendment applies to the states through the Fourteenth Amendment. As a precursor to its holding, the Court in two footnotes listed respectively those amendments and clauses which had been applied to the states, and those which had not. (*See id*. at nn. 12-13). The "excessive bail" clause appeared in the first list, with Schilb cited as the authority. Thus, the Supreme Court has now squarely put the "excessive bail" prohibition into the list of Amendments incorporated against the states.

If the Eighth Amendment now applies to the states, federal law interpreting its implementation must also apply to the states. Thus, when the Bail Reform Act of 1984 was interpreted by the Supreme Court in U.S. v. Salerno, 481 U.S. 739 (1987), its holding must be also applicable to the states.

The Bail Reform Act of 1984, as then written, added a new consideration in making bond decisions on federal cases. Going further than HB 463 in Kentucky does, the act provided that if a person was a "danger to community," he could be detained by a high bond that was more than reasonably calculated to secure his attendance in court without violating the Eighth Amendment. The provision of this act was being employed to hold Salerno, who was the alleged "boss" of the

Genovese crime family. The government persuaded the district court that no condition or combination of conditions would ensure the safety of the community or any person, given his reputation as the head of a criminal syndicate. His detention was upheld:

> In a full-blown adversary hearing, the Government must convince a neutral decision maker **by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community** or any person. 18 U.S.C. §3142(f)….
>
> On the other side of the scale, of course, is the individual's strong interest in liberty. We do not minimize the importance and fundamental nature of this right. But, as our cases hold, this right may, in circumstances where the government's interest is sufficiently weighty, be subordinated to the greater needs of society. We think that Congress' careful delineation of the circumstances under which detention will be permitted satisfies this standard. **When the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community, we believe that, consistent with the Due Process Clause, a court may disable the arrestee from executing that threat**. *Id*. at 750-51 [emphasis added].

Subsequent decisions have shown this to be a very high standard for a violation of Eighth Amendment not to occur. If you read the cases that follow Salerno, you will see that it takes a great deal of evidence before you can be found to be a danger to the community. *See* Foucha v. Louisiana, 504 U.S. 71 (1992), where Louisiana was found not to have met the "clear and convincing evidence" burden to detain a non-convicted person charged with a crime. In that case the future dangerousness was based upon an alleged diagnosis of an anti-social personality.

Thus, HB 463's "danger to the public" exception to mandatory O.R., unsecured bond, or bail credit, to be constitutional, must follow same standard the federal courts have to follow and be subject to a "clear and convincing evidence" standard, or fail under the Eighth Amendment.

A detailed article on this point is planned for publication in an upcoming issue of The Advocate.

9. WHAT IS THE STANDARD OF REVIEW ON APPEAL?

Good question. The answer is not so simple because previous court decisions have got it wrong. The opinions appear to impose an "abuse of discretion" standard; but the standard is of dubious origin, because it was borrowed from a case which decided the issue of bond post-conviction. Tim Arnold, Post-Trial Services Division Director of DPA, in his article "HB 463 and Its Impact on Kentucky Appellate Standards," published in the October issue of The Advocate, explains:

> In Braden v. Lady, 276 S.W.2d 664, 667 (Ky. 1955) Kentucky's Highest Court discussed the discretionary nature of bonds pending appeal, finding that "[o]ne ironbound rule is the reviewing court will not substitute its judgment for that of the trial judge who is in a better position than we to size up the facts and circumstances which should control judicial discretion in fixing the amount of the appeal bond." The sole issue in the case involved bond on appeal, and in fact, the Court went out of its way to observe that authorities "deal[ing] with appearance bonds before trial….have little bearing on the question" of appeal bonds. Braden, *supra* at 666.
>
> Nevertheless, in the subsequent case of Long v. Hamilton, 467 S.W.2d 139, 141 (Ky. 1971), the High Court relied on Braden and the resources cited therein in resolving a pretrial bond matter, concluding that "[a]ppellate courts will not attempt to substitute their judgment for that of the trial court and will not interfere in the fixing of bail unless the trial court has clearly abused its discretionary power." Long, *supra* at 141. This language has governed subsequent decisions concerning the appellate review of bond.
>
> Obviously, the reliance on Braden for appeals of pretrial bonds is both unfortunate and misplaced, and has resulted in a standard of review which overstates the level of deference to be given to the trial court's decision. Unlike pretrial release issues, where the Court is required to take action, bond pending appeal is not a right at all, is afforded no constitutional protection, and has always been completely at the discretion of the Court. By contrast, when interpreting the federal equivalent to §17, the Supreme Court has noted that "there is no discretion to refuse to reduce excessive bail . . .." Stack v. Boyle, *supra* at 6.

Fortunately, as Mr. Arnold points out, the choice of language in Long and the apparent adoptions of a deferential standard "has not signaled an abandonment of the appellate court's duty to review bond decisions," resulting in a majority of bond cases published since 1950 reversing trial court decisions on bond release.

Although Long is still on the books as good law, it is questionable whether it survives the case law interpreting the Eighth Amendment, which, as explained in no. 8 above, we now know to be incorporated to the states. With the right to bail being a constitutional right involving mixed questions of law and fact, the standard going forward should be one not of blind deference to the trial court, but one of *de novo* review. Glenn McClister of DPA's Education Branch explains in his article "An Important Matter of Policy: Why Kentucky Appellate Courts Should Adopt *De Novo* Review of Pretrial Release Decisions," published in the October issue of The Advocate.

> Undoubtedly the most important types of mixed questions of law and fact to society are those questions which affect the enjoyment of a constitutional right. These rights are the legal embodiment of many if not all of our most cherished societal values. When the

> answer to a mixed question of law and fact effects the enjoyment of a constitutional right, the mixed question of law and fact is often referred to as a "constitutional fact."

The idea that decisions regarding constitutional facts require heightened judicial scrutiny can be traced back to Crowell v. Benson, 285 U.S. 22 (1932). "Stripped of its jurisdictional features, the case embodies the view that some judicial tribunal must independently review facts implicating constitutional rights."

In Crowell, the court took it for granted that heightened independent review of constitutional questions was constitutionally mandated, including mixed questions of law and fact:

> "In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of the supreme function."

The Court said that to deny appellate courts this ability, "…would be to sap the judicial power as it exists…wherever fundamental rights depend, as not infer-quently they do depend, as to facts, and finality as to facts becomes in effect finality in law."

A more recent Supreme Court case strongly suggested that *de novo* review is appropriate when the resolution of a mixed question of fact and law affects constitutional rights. In Bose Corporation v. Consumers Union of the United States, Inc., 466 U.S. 485, 501 (1984), the Court of Appeals reviewing the proceedings in District Court had failed to follow the clearly erroneous standard of review laid out in federal rule 52(a), which says that: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." The Supreme Court held:

> "But Rule 52(a) does not inhibit an appellate court's power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on a misunderstanding of the governing rule of law…. "At some point, the reasoning by which a fact is 'found' crosses the line between the application of those ordinary principles of logic and common experience which are ordinarily entrusted to the finder of fact into the realm of a legal rule upon which the reviewing court must exercise its own independent judgment."

The language in Bose is especially clear in grounding the necessity of *de novo* review in the constitutional issue at stake. [For other decisions discussing *de novo* review in the context of constitutional rights, see the longer version of this article in the online issue of The Advocate.] If *de novo* review is a "constitutional responsibility," and not just a necessity under some power held by only the Supreme Court or by only federal courts, then the requirement of *de novo* review applies to the states. An abuse of discretion, or other more deferential standard,

is not appropriate when constitutional rights are at stake, even if the question of whether a right has been infringed is fact-dependent.

10. DO APPEALS BECOME MOOT IF THE PERSON IS RELEASED OR PLEADS WHILE THE APPEAL IS PENDING?

The defense attorney representing a client should not automatically assume so, and should do everything in his or her power to keep the issue alive, especially where the client has not yet pled and could be subjected to the same bail provisions again at any time in the event of a change in bond conditions. While there are few cases on point involving bond decisions, there is some case law in the area of criminal detention and other criminal matters of short duration (*voir dire*, contempt proceedings) which provides some standards for determining whether an issue that has become moot may nevertheless be decided by the court sitting in appellate jurisdiction, so long as (1) there are legal interests of the accused which are continuing, or (2) the issue is capable of reoccurring yet evading review. The following is from an upcoming article by Heather Crabbe (DPA Boone County Trial Office) and Shannon Smith (DPA Appellate Branch) that will be published in The Advocate, both the printed and online editions. It is substantially the same argument made by them in the bond appeal that was rejected last year in the Court of Appeals, Commonwealth v. Medina-Santiago, 11-CR-001420 (Boone Circuit), which dismissed the case on the same day that the Appellant disclosed that his entire case had been dismissed.

> **Continuing Legal Interests of the Accused.** In a case where a defendant is unable to make bond, but then released, his bond can be changed by the trial court at any time for almost any reason. When this happens, the defendant may be placed back on the original bond that he was unable to make and is thus threatened with an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision. Therefore, the defendant's bond appeal is not moot.
>
> In Rosales-Garcia v. Holland, 322 F.3d 386 (6th Cir. 2003), the Sixth Circuit held that a Cuban citizen's appeal of the denial of his *habeas* petition, in which he challenged his indefinite detention following revocation of his immigration parole and pending Cuba's acceptance of his return, was not rendered moot when he was released from detention and paroled into United States, inasmuch as he was still "in custody" for purposes of *habeas* statute, and relief sought, if granted, would make a difference to his legal interests, in that he would no longer be subject to possibility of revocation of parole "in the public interest." *Id.*
>
> In Jones v. Cunningham, 371 U.S. 236 (1963), the United States Supreme Court held that a paroled prisoner was in the custody of his state parole board for the purposes of 28 U.S.C. §2241: "While petitioner's parole releases him from immediate physical imprisonment, it imposes conditions which significantly confine and restrain his freedom; this is enough to keep him in the 'custody' of the members of the Virginia Parole Board within the

meaning of the *habeas corpus* statute." *Id*. at 243,; *see also* DePompei v. Ohio Adult Parole Auth., 999 F.2d 138, 140 (6th Cir. 1993). …

Capable of Repetition Yet Evading Review. Another reason that bond appeals should not be held to be moot following the release of a client is that often rulings resulting in "excessive bonds" are often capable of repetition yet evading review. An action is capable of repetition yet evading review if the challenged action cannot be fully litigated prior to its expiration and there is a reasonable expectation that the complaining party will be subject to the same action. Commonwealth v. Hughes, 873 S.W.2d 828, 830-31 (Ky. 1994). "The decision whether to apply the exception to the mootness doctrine basically involves two questions: whether (1) the 'challenged action is too short in duration to be fully litigated prior to its cessation or expiration and [2] there is a reasonable expectation that same complaining party would be subject to the same action again.'" Philpot v. Patton, 837 S.W.2d 491, 493 (Ky. 1992).

As to the first question, the issue is whether the nature of the action renders the time frame too short to permit full litigation of the issues through the appellate process. Disputes involving pretrial bond decisions are too short in duration to litigate prior to their expiration. In Lexington Herald-Leader Co. v. Meigs, 660 S.W.2d 658, 660 (Ky. 1983), the Kentucky Supreme Court found the problem of media exclusion from *voir dire* capable of repetition, yet evading review. The Court quoted the United States Supreme Court's determination that "because criminal trials are typically of 'short duration,' such an order will likely 'evade review.' *Id*. (*quoting* Globe Newspaper Co. v. Superior Court, 457 U.S. 596, (1982)).

Likewise, in Riley v. Gibson, 338 S.W.3d 230 (Ky. 2011), the media was denied access to a juror contempt hearing. The case was unquestionably moot by the time the writ had been filed with the appellate court as the hearing the media sought access to was over. However, the appellants believed the writ would serve to bar the exclusion of the media in future contempt proceedings. The Court agreed with the appellants.

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SOCIAL WORKERS

Award-winning defender program promotes reduced jail and prison costs; more can be saved

Left to Right: Becky Gary (Hopkinsville), Joanne Sizemore (London), Jessica Dial (Columbia), Heather Stapleton (Prestonsburg), Rena Richardson (Madisonville), Abena Amoah (Covington), Rachel Pate (Owensboro), Kita Clement (Bowling Green).

Addiction rages: The scope of the drug problem in Kentucky is enormous. Kentucky over incarcerates substance abusers at great expense. The abuse of drugs reflects the presence of an addictive disease that is more cost effectively managed through the use of treatment and other social services - not simply incarceration. Defenders play an important role in responding to this crisis.

Defenders provide sentencing options: DPA began a pilot program in 2006 paring social workers with attorneys to facilitate more efficient use of court time and probation resources, and reduce incarceration costs. We began this pilot to assess defendants' mental health and substance abuse needs and to plan viable community treatment options to relieve the courts' burden and potentially the burden of custody for corrections and jails. Our social workers assess clients then propose an alternative sentence to the prosecutor and court. When approved, the social worker seeks to have the client placed in treatment and other social services to address their addictions, mental health issues and social problems. We use case management approaches like Motivational Interviewing within the attorney client privilege, which are consistent with the evidence-based practices used in the state's mental health programs. In 2012, Kentucky courts accepted 85% of all the alternative sentencing plans prepared by our social workers.

Defender alternative sentencing program reduces jail and prison costs: Findings from evaluators from the University of Louisville have evaluated the initial project and demonstrated substantial savings and positive outcomes. DPA is receiving consultation from the University of Kentucky Center on Drug and Alcohol Research to help us better identify the specific effects of our program on the incarceration problems affecting our state.

In other studies in the state, an active substance user of alcohol and other drugs costs the nation about $40,000 per year according to estimates from the Substance Abuse and Mental Health Administration (SAMHSA). Once an individual achieves abstinence, he becomes less of a burden on society and, if employed contributes to society. The return on the investment is a savings of $3.25 for every dollar invested or a net of $100,000 per DPA social worker. More critically for this project, is the potential reduction in costs of incarceration that will result from diverting individuals from jail or prison to community-based services.

More savings are possible: Many clients benefit from treatment provided by the Department of Corrections. However, many clients who are not yet incarcerated might be good candidates for diversion so they never wind up in prison for drug related and similar offenses. This is where the defense attorneys can work within a therapeutic justice model to offer the courts a way to divert potential inmates into community service users instead. By achieving sound referrals and follow-up for our clients we can not only get them out of jail, but hopefully prevent them from going to jail. Thus we are picking up a greater level of responsibility for our clients. DPA is doing its share toward responsibly managing the demand on prison resources in Kentucky. More funding is necessary if DPA is to realize the full potential of its alternative sentencing program. Each fulltime social worker hired in this program needs only to prevent 2.5 person years of prison to cover the salary and fringe benefit cost for an entire year. Savings greatly in excess of that have been achieved.

Kentucky Justice and Public Safety Cabinet Social Worker Grant: DPA received a federal stimulus grant in 2009 to hire five alternative sentencing social workers placed in the following offices: Columbia, Lexington, London, Madisonville and Pikeville. When the grant expired in March 2012, DPA hired four of these social workers into positions vacated by DPA social workers who retired or took employment elsewhere. DPA now has eight social workers. The data from their work in FY12 is below.

DPA's Program received National Criminal Justice Association's 2011 Outstanding Criminal Justice Program Award for the Southern Region.

DPA Alternative Sentencing Social Worker Cases, July 1, 2011 - June 30, 2012

Social Worker	Location	# Clients Referred	# Plans Presented	# Plans Accepted	Veterans Served	Involuntary w/Denovos
Rachel Pate	Owensboro	242	117	88	6	4
Joanne Sizemore	London	111	105	105	3	0
Heather Bartley	Pikeville	111	51	37	6	0
Abena Amoah	Covington	141	80	68	4	0
Cherl Richardson	Madisonville	96	96	85	2	0
Jessica Dial	Columbia	79	41	35	0	0
Becky Gary	Hopkinsville	73	62	56	4	56
Lillie Adams(Intern)	Morehead	32	17	12	0	0
Kita Clement	Bowling Green	168	51	40	2	0
TOTAL		1053	620	526	27	60
Adults Served		931	555	471		
Juveniles Served		122	65	55		

KY criminal justice leaders support the alternative sentencing program: One way to evaluate the quality of a Kentucky criminal justice program is to hear what people throughout the system think of it from the Justice Cabinet, Judges, Prosecutors, Jailers, Legislators and statewide organizations looking at the state's budget decisions. Some of their thoughts follow:


J. Michael Brown

"The Kentucky Alternative Sentencing Social Worker Program received a national award from the National Criminal Justice Association as an innovative means to help promote criminal justice initiatives in the country, including a reduction in incarceration costs. There is no doubt that the DPA Alternative Sentencing Social Worker Program is one that actually does work and does produce."

J. Michael Brown, Secretary,
Justice and Public Safety Cabinet, Frankfort


Rep. Jesse Crenshaw

"The public defender Alternative Sentencing Social Worker Program is an excellent program."

Representative Jesse Crenshaw,
Lexington


Rep. John Tilley

"Good ideas don't implement themselves. The first time I heard the idea of the defender alternative sentencing pilot program, and saw it in action myself, I knew it was a winner and I think the numbers bear that out. So count me in on support for it."

Representative John Tilley, Hopkinsville


Rep. Brent Yonts

"I fully support the DPA Alternative Sentencing Social Worker Program and its ability to save money and lives. We need to fund it across the state."

Representative Brent Yonts, Greenville


Rep. Johnny Bell

"I would like to see the DPA Alternative Sentencing Social Worker Program go into effect across the state. The return on it is $3.52 for every $1.00 invested. To think about anything we can invest a dollar in and get three and a quarter return goes right along with the spirit of what we are doing with 2011's HB 463. If we don't try to find the ability to implement a program with such great return, and move forward to a system of fairness and equality, I think we are not completing the cycle. I think [the DPA Alternative Sentencing Social Work Program] is one of the best ideas and best things that I've heard, aside from HB 463 and I think it flows right along with it. I really hope that we can get that implemented and I think the return on that would be tremendous. In the end I believe that actually spending that money would cause us to save a great deal. I'm strongly in support. I really think it's a wonderful idea and I support it wholeheartedly. I hope we can get this implemented."

Representative Johnny Bell, Glasgow


Andrew C. Self

"It is my privilege to work with an outstanding DPA staff here in Christian County. In my experience, the excellent work performed by the local DPA social worker is extremely beneficial to the court and certainly to the attorneys in that office as well. On a regular basis, I communicate with and often rely on the information obtained by the social worker in making important decisions regarding probation, treatment and incarceration. It would be a tremendous loss to my court and our community if the local DPA office did not have a social worker to provide so many essential services."

Andrew C. Self, Judge, Christian Circuit Court, Hopkinsville


Mary Hammons

"If inmates have someone like the DPA alternative sentencing social worker, they can get out of jail and go on to rehab or other treatment. DPA social worker interventions with inmates who have mental illness and who are charged with misdemeanors, often because of their (untreated) illness, help reduce the chance that they will end up with more serious charges without treatment. Adults, who are mentally challenged often go in the general population and are often taken advantage of by others- their family or other inmates. If they have a social worker to plead their case" often more appropriate placements or treatment for them is arranged."

Mary Hammons, Knox County Jailer


John Paul Chappell

"I love the DPA Alternative Sentencing Social Worker, Joanne Sizemore. If we had more Joanne Sizemores we could do so much more about drugs and other problems that plague those on court dockets. Having a social worker involved is making a difference, leading to genuine reform in people's lives, which is what we want."
Judge Chappell and Knox County Assistant Attorney Gilbert Hollin estimated that "80 to 95%" of Knox County District Court cases are a result of addiction issues.

John Paul Chappell, Chief Judge,
Knox and Laurel District Courts


Jay Wethington

"DPA alternative sentencing social worker Rachel Pate continues to provide invaluable service to the court in Owensboro. Her work is consistently exemplary."

Jay Wethington,Chief Circuit Judge, Owensboro


James C. Brantley

"Our DPA social work program has been instrumental in locating and accessing treatment programs. Rena Richardson, MSW, is an integral part of our drug court staff, whose input is always appreciated and valued. In short it appears that this is a program that works, and should be maintained."

James C. Brantley, Circuit Judge,
4th Judicial Circuit, Madisonville


Chris Cohron

"Mrs. Clement has built an excellent track record on finding treatment options for defendants that had exhausted all traditional avenues. Her work has provided all parties and the Court another viable option to appropriately address the issues of defendants."

Chris Cohron, Commonwealth Attorney, Bowling Green


John R. Grise

"The DPA social work program gives Warren Circuit Court options other than jail to deal with drug addiction and the crimes from it. Kita Clement's keen ability to find scarce in-patient and long term treatment options allows us to tailor a more effective response to drug crimes than incarceration alone, ultimately making communities safer and saving taxpayers the high cost of prison."

John R. Grise, Circuit Judge,
8th Judicial Circuit, Division 2, Bowling Green


Van Ingram

"The DPA alternative sentencing social workers provide much needed individualized sentencing options to prosecutors and judges. The DPA program is a proven way to help defendants change behavior and not re-offend, saving the state significant incarceration costs. If the program is expanded, more defendants would be helped and more savings would result."

Van Ingram, Executive Director,
Kentucky Office of Drug Control Policy, Frankfort


Brian Wiggins

"The social work program has provided invaluable assistance to the judicial system. Ms. Richardson has routinely furnished this Court with evaluations and assessments of criminal defendants suffering from drug dependency. These assessments have assisted the Court in determining appropriate alternatives to incarceration. In addition, Ms. Richardson serves as a member of our drug court team and her insight during staff meetings is highly valued. For these reasons alone, the social worker program should continue."

Brian Wiggins, Circuit Judge,
45th Judicial Circuit, Greenville


Bryan Sunderland

"Our members are interested in it from a budgetary standpoint, as you all well know from our Leaky Bucket Report and our work on HB463, in support of that. We want to look at it as making sure our spending priorities in the state are in order. When the public advocate came to the Kentucky Chamber of Commerce, I think my initial reaction when Dave Adkisson and I met with him was, we don't come asking for line item appropriations, we look at the big picture, how the state operates and how that impacts the businesses across the state, but one thing that we've shared with you is our spending principles and the idea that state government ought to be investing and we ought to be looking at a fact based, results first, type approach, like we worked with the PEW Foundation. We reviewed the materials from the U of L study and this is completely consistent with HB 463, the idea that we can invest a small amount for a larger return. This is a way to honestly help implement HB 463, so I don't stand here as a member of the business community asking for a specific dollar amount, but I do encourage you as you all look at the budget to seriously consider this program because it certainly looks like a way to help continue implement HB 463."

Bryan Sunderland, Vice President of Public Affairs,
Kentucky Chamber of Commerce

Sheriff Stan Hilkey's Remarks
An Evidence Based Decision Making Experience
Mesa County, Colorado

For Presentation at a Public Hearing of the National Institute of Corrections Advisory Board:
Balancing Fiscal Challenges, Performance-based
Budgeting and Public Safety
U.S. Department of Justice, 950 Pennsylvania Ave, NW, Washington, D.C, Main Conference Center 7th Floor
August 22, 2012

I am the Sheriff of Mesa County, Colorado, a location of a selected research site for the National Institute of Corrections Evidence Based Decision Making project. I am speaking for and using information from our local policy team made up of criminal justice stakeholders in Mesa County about our EBDM experience.

Mesa County is in Western Colorado bordering the state of Utah and is intersected by Interstate 70. The county is over 3,300 square miles with a population of approximately 150,000 people. The Mesa County Jail has an average daily population of 305. Grand Junction is the county seat. It is generally accepted that Mesa County's selection for the EBDM project was based on the strength of the local policy team that had been in existence, known as the Criminal Justice Leadership Group, to work on matters of significant concern within our criminal justice system such as a local/regional methamphetamine epidemic and jail overcrowding. The existing relationships of this team and demonstrated ability to collaborate in problem solving aligned with critical requirements of the EBDM project.

Mesa County's first interest, in participating in EBDM, was to review current practices in Mesa County and identify the best opportunities for improving or more closely aligning with evidence based practices ***to achieve increased public safety through risk management and risk reduction of pretrial defendants and sentenced offenders.*** Our goal was not -- at the outset -- cost containment or cost savings, but as the vision developed it became clear that reducing pretrial populations, spending resources wisely, smart sentencing, and finding efficiencies within the system could have much needed ramifications in cost containment and budget considerations for a financially lean county.

In the time during the EBDM selection process Mesa County underwent significant budget reductions throughout county government. In those cutbacks the sheriff's office and the local prosecutor's office both experienced significant reductions in

spending allocations and loss of staff positions. Another county department responsible for our community corrections program, county run treatment center, and pretrial supervision did not experience the cuts, but also but continues to remain flat with resources in an intensely growing demand for its services.

The first heavy lifting upon being selected by NIC was to examine all the decision points within our system, ranging from point of arrest to discharge from sentence or supervision. This entailed mapping those decision points, led by a facilitator with representation from all CJ stakeholders, even if they aren't part of that decision point. ***This was the first place and time that the EBDM project for Mesa County started to inform knowledge and decision making.*** Participants reported learning things about these decision points not previously known to them. Of particular interest was anecdotal testimony by both defense attorney's and prosecutors about the different types of programming and supervision within all local sentencing options. The impact of this effort to these decision makers, particularly at the point of plea agreements, is self-evident.

Change Targets.

After the system mapping effort Mesa County chose five change targets:

Point of Arrest: Use of Proxy Triage Tool
Pretrial Release: Implementation of Risk Assessment Tool
Community Interventions: Sentencing Alternatives Guide
Presentence Investigations: Risks and Needs focused
Pilot Courtroom: Chief Judge, Everything EBDM

Each of these efforts, supported by a dedicated committee of internal stakeholders, are built into a System Wide Logic Model (Attached) for work flow that includes initial inputs of effort, work activities, outputs, short-term outcomes, and finally all five efforts point towards three system wide impacts:

1. By 2014, increase public safety by limiting pretrial misconduct of medium and high-risk defendants to no more than a 5% failure to appear rate and a 20% new offense rate.

2. Within 36 months, improve the utilization of financial and program resources by reducing the amount spent on low risk defendants and offenders in Mesa County criminal justice supervision options by 33%.

3. By 2015, 75% of offenders will not recidivate within 12 months of successful completion of one of the primary sentencing options.

In alignment with the title of these hearings today, Mesa County is engaged in this ambitious, multi-level effort to apply EB principles of accurately assessing risk, identifying low-risk defendants and offenders, and responding appropriately with less costly supervision and intervention measures. We know that we can increase slightly the risk of reoffending of low-risk individuals if they are over-sanctioned using precious correctional intervention resources on them and intervening in their already pro-social habits (employment, family support, etc.). This is a huge commitment by Mesa County in creating a learning environment, backed by a scorecard and careful measurement. It is likely to pay off with reduced use of jail beds for low-risk defendants and sentencing options for low-risk offenders -- better targeting and use of our Criminal Justice Services Department and probation resources for medium to high-risk individuals.

Proxy Triage Tool

The arrest decision point was chosen as a change target as a result of the system mapping process. It became clear, that while patrol officers had broad based decision making authority and used discretion regularly, there was not a standardized method to evaluate risk of an individual to be re-arrested in the near future. The Proxy Triage Tool was decided upon because of the quick "triage" nature of the tool itself. The tool had also been validated in other communities. For patrol deputies the use of other, more comprehensive risk assessment instruments was quickly recognized as impractical for use in the field. The Proxy Triage Tool asks only three questions:

- Age
- Age at first arrest
- And, Number of arrests

Each answer is scored on a value of 0 to 3 with a total score placed on a risk value scale. In order to norm the tool to our population our effort included using the tool on two sample populations, every new booking in the Mesa County Jail and every new appearance in the First Appearance Center at the Mesa County Justice Center. The norming process continues to make sure the tool is aged matched to our population and validation activities of tracking the recidivism rate for one year, our system-wide agreed upon time period for study of recidivism.

The collection of the data from those sample sets is now completed. The next step is to pilot the project by equipping and training the patrol deputies from the Mesa County Sheriff's Office in the deployment of the tool in the field. The initial intent of the use of the tool will be to better inform the deputies in their decision making process about the risk of the person to reoffend again in the future. A more structured guideline on decisions based on the risk score is in development. Deviations from the guideline will be permissible with written justification and explanation.

In 2005 offense based jail arrest standards were implemented due to overcrowding. This effort to limit lower level crime incarceration was effective at reducing the jail population but did not take into account risk of the offender. As a result the flaw of the offense-based system is pre-trial detention of some low risk felony offenders and the release of some high risk misdemeanor offenders. The intent will be to change the arrest standard system from offense based to risk based, requiring the use of the Proxy Triage Tool. Currently all agencies booking individuals into the jail are subject to the offense-based system. Switching to a risk based system will require the use of an instrument to determine a risk score. Subsequently the tool can move from a pilot project into being used by all agencies booking into the jail.

As is the case will all risk information developed on a person, this information is intended to move through the system with the defendant. Currently, there are efforts to develop guidance for the lawyers and bench to use this risk information built upon by the Pretrial is assessment tools to inform pretrial detention decisions.

We believe that the use of the Proxy Triage Tool is one effort to avoid pre-loading the Pretrial change target that Mesa County has chosen and it points towards the second impact on the logic model…by using precious financial resources on the offenders with more risk and reduce unnecessary time on low risk offenders.

Pretrial Release

In 2012, after several years of research on Colorado pretrial defendants (about 2,000) was concluded, a 12 factor validated risk assessment was developed for Colorado defendants. These factors are predictive of two things: the likelihood of defendants failing to appear in court and the likelihood of defendants committing a new offense while on pretrial release status. This enabled Mesa County to participate in and implement the first evidence-based pretrial assessment tool specifically designed for Colorado defendants. On July 1st, 2012, Mesa County

implemented the Colorado Pretrial Assessment Tool (CPAT) (see attached a copy of the CPAT). The CPAT was developed along with a bond recommendation and supervision matrix for use with the tool. This tool, through development by the Pretrial Justice Institute, is in various stages of implementation in a dozen other counties in Colorado as well.

The Supervision Matrix Assessment and Recommendation Tool (SMART Praxis) (see attachment), was developed by Mesa County Pretrial Services in collaboration with our local stakeholders and in cooperation with the Pretrial Justice Institute, as a way to consistently recommend supervision based on risk levels and crime categories, which results in more supervision on high risk defendants and less on low risk defendants (who will likely appear in court and not commit a new crime while on pretrial status regardless of the level of supervision).

Mesa County's criminal justice system is now using evidenced-based information to enhance bond decisions that in the past would have been made based on "gut feelings" only. The CPAT doesn't replace or do away with the Judges discretion, but gives Judges validated information that they can use in making bond decisions. Anecdotally, we now hear the Judges, District Attorneys, Public Defenders and others referencing validated risk levels when discussing bond decisions in the court room rather than unsubstantiated information.

We only have very preliminary data from one month's of use, but we have seen an increase in PR bonds from average of 26% in 2011 to 37% for July of 2012 with SMART Praxis implementation, even though the bond schedule has not yet been changed.

In the first month of implementation, the Judges followed the SMART Praxis in their decisions regarding Pretrial Supervision 73% of the time. Our system believes that an 80% concurrence rate with the tool is an acceptable goal.

This work was only possible through collaborative effort of a Pretrial Services Committee which included all the key local criminal justice stakeholders: the Judges, the District Attorney's office, the public defender's office, private defense attorneys, Pretrial Services staff and the Mesa County Detention facility. The committee has worked for over two years now developing a pretrial system vision statement and agreeing on the design of the CPAT and SMART matrix.

This same collaborative stakeholder group is currently in the process of developing a new bond schedule that aligns with the new tool and the Praxis. This will help to

ensure that the incarcerated Pretrial defendants held in our jail are consistently in the higher risk categories, and that we are not spending resources on or needlessly detaining lower risk people, merely due to their financial circumstances.

In the future this group will develop a pretrial defendant violation response matrix that includes a continuum of interventions for defendants who are committing technical violations while on bond to include treatment options and increase supervision, which will avoid costly pretrial incarcerations.

Presentence Investigations

Probation has historically been responsible for the preparation of presentence investigations reports (PSIR) for the court's consideration at sentencing, including a comprehensive criminal history. As part of our EBDM initiative, we have been revising the current PSIR to include comprehensive information regarding an individual's risk to recidivate and criminogenic needs that if addressed at sentencing, would improve public safety and provide opportunities for positive behavior change by defendants. As part of our initiative, we are analyzing if our resources are being spent wisely. As it relates to PSIR writing, it has become apparent that approximately 3 ½ hours of a probation officer's time on each report is spent on researching and writing the criminal history for the presentence report. This either takes critical time away from the officer on supervising defendants sentenced to probation or results in higher caseloads so specific officers can complete reports. One solution proposed is for pre-trial services to complete the criminal history early on in the process and the information either be presented by the DA/defense counsel, or incorporated into the body of the report; thus freeing up probation resources to focus on evidenced-based supervision.

Community Interventions

The primary purpose of the committee in this area is apply research to the best practices of local sentencing options and create a guide for the bench and attorneys to follow in plea agreement negotiations and for the bench to use at sentencing. The Sentencing Alternative Guide (SAG) aims to define the primary purpose of, population, and length of stay within each option according to researched evidence based practices. Each sentencing option will have published program description and a training element for fidelity to EB practices.

After publishing, training, and use of the SAG, feedback from decision makers will be sought for improvements as well as continued monitoring of data from each program on our scorecard. On-going evaluation of each option and the changes that may occur within each with an eye towards actual use vs. designed use will take place.

Like all the target areas in Mesa County's effort, this effort includes specific measurements to attempt to achieve. These measurements can be found for each change target area on the System Wide Logic Model. As an example, the short term outcomes of the Sentencing Alternative Guide, that would help achieve the three system impacts stated above, are (not all inclusive):

- Within 18 months post program redesign the Work Release average length of stay will decrease by 60%.
- Within 12 months of program chapter implementation, less than 20% of sentences will deviate from the SAG recommendations.
- Within 12 months of implementation of the EBDM recommendations, the community alternative sentencing programs described in the SAG will have a minimum target of 70% successful completion annually for each of their individual programs.
- 70% of survey respondents report the SAG to be useful or has informed their sentencing recommendations and decisions.

The effort of the Sentencing Alternative Guide aims towards Impacts #2 and #3 with both financial efficiencies and recidivism implications.

Pilot Courtroom

The Chief Judge in our Judicial District, Dave Bottger, is a key member of our leadership committee. He has affirmed his commitment to the EBDM effort with a declaration of all things EBDM in his courtroom. He has committed to examine all points of contact and decisions and for them to be supported evidence based research as much as is possible. These efforts include researching best practices in post sentence reviews and implement a policy for it, implement Motivational Interviewing in the courtroom with a trained MI "coach" observing and providing feedback for continuous improvement, implementing bonding decisions using the Colorado Pretrial Risk Assessment Tool (CPAT), and incorporating the revised Presentence Investigation Report and the Sentencing Alternatives Guide into sentencing decisions.

This area also expects short term outcomes that point to the long term impacts as found on the Logic Model, they are:

- Within 12 months of implementation of the SAG at least 30% of offenders sentenced to Probation and Community Corrections will show a 10 point reduction in LSI score at sentence end as compared to the beginning.
- Within 6 months of implementation of CPAT in the pilot courtroom, there will be a 50% reduction in defendants spending more than 7 days in pretrial custody.
- Within 36 months of pilot implementation of the redesigned PSIR, 95% of all medium and high risk targeted defendants have a PSIR completed.

With only an initial seven months of data, the FTA rate in the Pilot courtroom has only been 2.63% or 46 FTAs out of 1751 appearances.

Communication Strategy

In addition to the five change target areas, a fifth committee was established to consider goals, objectives and key messages regarding both internal and external communication of the EBDM effort in Mesa County. A draft of that strategy is attached. Considering the changes, particularly in pretrial release, it was anticipated that communication would be difficult. Anecdotally, those of us that have communicated both internally and externally have been met with both satisfaction that this work is being done and surprise that it wasn't already been being done. The primary goals of improving public safety and reducing recidivism seem to be equal to potential financial implications of an efficiently functioning system.

Summary

The EBDM experience in Mesa County has been extremely work intensive. The meetings, committee work, and implementation process is exhaustive but the internal stakeholders are not denying that it is making a difference in Mesa County. The change of culture to a "risk assessment" ethic has already started along with a noticeable effort of fidelity to use evidence based practices and informed decisions regarding the lives of defendants. Truthfully, the process is not without angst among naturally adversarial parties, and the discomfort of release decisions by our

pilot courtroom, minimizing cash bond, has put tension into the system, but we generally hold that it is that tension that is continuing to drive positive change.

In the last decade of my career I've attended the FBI National Academy, Northwestern's School of Police Staff and Command, and Police Executive Research Forum's Senior Management Institute for Police. Additionally I am listening member of the International Association of Chiefs of Police and the National Sheriff's Association. These organizations spend much time seeking the "next big thing" in public safety along the lines of Community Policing and Intelligence Led Policing. In my view, the idea of being able to reduce recidivism through doing what is right according to research and to quite doing what is wrong according to this research is the "new big thing" that everyone is seeking. I have not seen something come along that has so much potential to stop, perhaps even shrink, the growth of the criminal justice system in our country as this project does.

As advisory board members, your continued support of the EBDM initiative is a worthwhile endeavor in Mesa County's opinion.

END.

NIC Advisory Board Public Hearing

Thursday, August 23, 2012

Dr. Newton E. Kendig, Assistant Director, Health Services Division

Federal Bureau of Prisons

The Bureau of Prisons (BOP) health care costs for fiscal year 2011 were 959 million dollars with a medical daily per capita of $14.77. Medical costs continue to be the third highest BOP operating cost behind Correctional Services and Contract Confinement Costs. BOP health care costs have mirrored inflationary rises in U.S. health care expenditures, increasing by 48% since FY 2005. However, BOP health care costs have annually been significantly less than the health care per capita costs spent per U.S. citizen for the years 2005 through 2011.

Multiple drivers affect BOP health care costs, including, but not limited to the following: an aging inmate population base with a high prevalence of mental illness and chronic medication conditions; lack of control of the patient population requiring care; the remote location of many prisons with limited access to specialty services; and advances in medicine that require the use of expensive technologies and pharmaceuticals.

The BOP has adopted a wide range of strategies to contain health care expenditures during the past two decades. Notable initiatives include: (1) clearly defining the health care scope of services provided to the inmate population through policies, clinical practice guidelines and a comprehensive drug formulary with specific prescribing criteria; (2) adopting a medical classification system that designates healthy inmates to remote prisons thus mitigating expensive transfers or community hospitalizations; (3) consolidating specialty services, such as oncology, to Joint Commission-accredited BOP Medical Referral Centers; (4) standardizing staffing guidelines across BOP facilities to maximize efficiencies through a team medicine approach; (5) implementing an electronic medical record to reduce duplication of services; (6) mandating a robust web-based utilization review process for elective care; (7) strategically using telehealth to improve access and consistency of care; and (8) utilizing expertise for bill adjudication of community health care expenditures to validate claims.

The BOP anticipates that containing correctional health care costs will be challenging for the foreseeable future. Advances in biotechnology are accelerating the potential scope of new treatments options as never before in the history of medicine. Personalized genomics, tissue engineering, and robotics are poised to transform patient care as we know it. New drugs will be developed to tackle chronic diseases, such as, the myriad new medications currently under study for the treatment of hepatitis C. Now more than ever, correctional systems must be attuned to the rapidly evolving innovations of evidenced-based medicine so they can effectively budget and strategically adopt these advances in the most cost effective way possible.

National Institute of Corrections Advisory Board Hearing

Department of Justice, Washington DC

August 22 – 23, 2012

Balancing Fiscal Challenges, Performance-Based Budgeting, and Public Safety

Budgetary Approaches to Providing Services for Offender Health Care

Testimony of:

James F. DeGroot, Ph.D.

Georgia Department of Corrections

Director of Mental Health

Budgetary Approaches to Providing Offender Health Care

It's an honor to be here today, sharing with you budgetary approaches used in Georgia to ensure provision of a constitutional level of offender health care.

I'd like to start my testimony by reminding everyone that when we talk about health care, we're talking about an emotionally charged issue that affects all of us. In fact, I shared my testimony with my wife a few weeks ago who went off on a rant. She said:

- "As far back as I can remember, our family health care premium has risen while our benefits have either stayed the same or fallen." After a brief silence, she continued,
- "Now, not only do I know of people but I actually know people who because of a stroke, a heart attack, or an accident accrued exorbitant medical bills that contributed to foreclosure and at times bankruptcy."
- Needless to say, my wife along with most everyone is angry, looking for a target at which they can direct their anger.
- An easy target is "publically funded health care"; namely, Correctional Health Care, Medicaid, and Medicare. In fact, being the Mental Health Director of Georgia's Department of Corrections, I've felt their anger via Rotary Clubs and Legislators challenging our health care practices and accusing us of cost shifting.
- Before I discuss our correctional health care challenges and cost containment strategies, I'd like to reference Chris Inmes' discussion yesterday of the "Big Squeeze" and being "caught between a rock and a hard spot". In correctional health care, the rock is Universal Health Care and the hard spot is Fiscal Constraints. Unlike you and me, inmates have a constitutional right to health care which is overseen by the Department of Justice and the Federal Courts. Also, unlike our insurance carriers, Corrections cannot raise premiums to offset rising costs. In prisons and jails, we struggle to provide a constitutional level of universal health care, on a shoe string budget, to a very sick population, in less than optimal working conditions.
- I'd also like to reference Brian Sigritz's discussion of "collateral damage". In correctional health care, when we cut corners to stay within reduced budgets, we run the risk of having these "cut corners" result in catastrophic outcomes and of having these "budget cuts", cost

us more than they save us because of civil rights litigation for deliberate indifference.

- Now I am going to switch gears and address GDC's health care challenges and cost containment strategies by addressing five questions. The first two questions address medical issues; namely, the overall Cost of Correctional Health Care and the Medical Cost Avoidance Strategies. Questions 3 and 4 address mental health issues: namely, Drivers of Mental Health Cost and Characteristics of the Mental Health Population. Question 5 addresses Characteristics of our Geriatric Population. Since I am GDC's Mental Health Director, my answers to the two mental health questions are going to be in a little more detail than my answers to the other three questions.

I am going to start off with the two medical questions. The first question is: How much of GDC's overall budget is accounted for by the Office of Health Services?

Question #1. How much of GDC's overall budget is accounted for by the Office of Health Services?

In FY'11, Deloitte Consulting performed a cost-benefit analysis of GDC's current inmate health care model, comparing it to models found in neighboring states; namely, Alabama, Florida, and Tennessee. GDC's health care model is primarily a university model with the Medical College of Georgia managing medical and pharmacy services and a private vendor, namely Mental Health Management Inc., managing mental health and dental. In contrast to Georgia, Florida uses a DOC and private vendor model, while Alabama and Tennessee both use private vendor models.

The total GDC healthcare budget in FY'11 was $208 million, with $172 million being spent on physical health, $30 million on mental health, and $6 million on dental. The results of the study revealed that George's healthcare expenditures, as a percentage of GDC's total budget was 17.0% while Florida was 17.3%, Tennessee 20.0% and Alabama 20.8%.

The second medical question is: What medical cost avoidance strategies are we using?

Question #2. What medical cost avoidance strategies are we using?

I am going to briefly discuss 9 strategies.

1.) **A Summary of Health Benefits**: The first strategy is GDC's Healthcare Benefit Plan which outlines and clarifies healthcare services available to GDC inmates and probationers. (The Benefit Plan outlines which services are covered and which are excluded. It also promotes the provision of a constitutionally acceptable level of healthcare.)

2.) **Utilization Management**: The second strategy is utilization management which includes pre-certification of specialty care and concurrent review to determine the need for ongoing

hospitalization.

3.) **Increasing Medical Services Inside Facilities**: The third strategy is increasing medical services inside facilities by bringing the following services to the inmates: OB care for pregnant inmates; chemo and radiation treatment for cancer; PET scans; ambulatory surgery; cardiology evaluations to include ECHO stress tests; ophthalmology surgery to include cataract and retinal surgery; and both oral and ortho-surgery.

4.) **340b Infectious Disease Clinic**: The fourth strategy is our 340b infectious disease clinic which allows GDC to take advantage of 340b pricing to purchase HIV medication at a much reduced cost (25% to 35% or $2.5 to $3.5 million).

5.) **Telemedicine and Tele-Mental Health**: The fifth strategy is telemedicine and tele-mental health which accounts for an average cost avoidance of a $100,000.00 a month. Additionally, it enhances security by keeping the inmates within the "wire".

6.) **Medical Reprieve Processes**: The sixth strategy is expanding the eligibility criteria for compassionate release with a secondary benefit of cost avoidance.

7.) **Legislation**: The seventh strategy is legislation. For example HB 350 required that GDC not be charged more than the Medicaid rate for emergent care.

8.) **Co-pay**: The eighth strategy is the co-pay program for non-critical care. Chronic care clinics, infectious disease clinics, and mental health services are exempt from co-pay along with psychotropic medication and medication prescribed in those two medical clinics.

9.) **Restricted Formulary**: The ninth strategy is a restricted formulary with a non-formulary medication request procedure.

Now we're going to turn from medical to mental health. The next question is: What forces are driving mental health costs? I am going to answer this question in two parts. The first part will look at 4 obvious direct cost drivers and the second part will look at 5 less obvious indirect cost drivers.

Question #2. **What forces are driving mental health costs?**

<u>Direct Cost Drivers</u>

1.) **Staff**: <u>The first direct cost driver is staffing.</u> The majority of our mental health budget is spent on staff, consisting of frontline clinicians (namely counselors, psychiatrists, psychologists, nurses, and activity therapists) and support staff (primarily administrators and clerical support). Staffing patterns and their costs tend to be dictated by the offender's clinical needs and the supply of mental healthcare providers in the community. At this time, there's a critical shortage of mid and upper level mental health

care providers in Georgia. Consequently, staff salaries are relatively high since state government is competing with private industry for limited resources.

2.) **Pharmaceuticals**: The second direct cost driver is pharmaceuticals. Over the past 10 years, the amount of money we spent on psychotropic medication has dropped from approximately $7 million to $4.3 million, which now comprises 15% of the total pharmacy budget. This drop in spending is due to a number of factors such as medications becoming generic, a restricted formulary, and utilization management. Despite this reduction in cost, the average annual cost for psychotropic medication per inmate in FY'11 was $745, which was higher than psychotropic costs in Alabama, Florida, and Tennessee. Further analyses revealed that Georgia has one of the leanest staffing patterns with 5.9 mental health staff per thousand inmates in comparison to Florida's 7.2 and Tennessee's 10.6. This data suggests that as staffing patterns are reduced the use of psychotropic medication is increased. Therein lies the crux of the debate; namely, how do you reduce cost and optimize services and outcomes? In other words, how much will it cost to increase our staffing pattern in order to reduce the cost of our psychotropic medication?

3.) **Hospital Care**: The third direct cost driver is hospital care. Georgia Department of Corrections does not operate an accredited hospital; however, it does provide urgent and emergent care, crisis stabilization, surgical procedures, recovery units, infirmary care, and accommodative living. GDC offenders who cannot be stabilized in prison are sent to a secure forensic hospital for crisis stabilization services and/or for long-term care. To avoid some of these stabilization costs, we've expanded our crisis stabilization units and we've been requesting compassionate medical reprieves for offenders with severe dementia.

4.) **Mental Health Expansion**: The fourth direct cost driver is mental health expansion. Within the past couple years, GDC has redefined the role of its mental health program by expanding its responsibility from assessing and treating mental illness in facilities to assessing and treating mental illness in community corrections at Day Reporting Centers, Community Impact Programs, and Probation Offices. Within facilities its role has also increased to include working with substance abuse programs in integrated dual diagnosis treatment centers, working with security in special management units, and working with medical in chronic care clinics. Consequently, staffing patterns are increasing along with costs; however, these short term costs are expected to yield long term Agency cost avoidance by reducing revocations and recidivism rates, medical care, and disruptive behavior.

Indirect Cost Drivers

1.) **Criminalization of Mentally Ill Offenders**: The first indirect cost driver is the criminalization of mentally ill offenders. Both GDC's incarceration and revocation rates of mentally ill offenders are significantly higher than the rates for non-mentally ill offenders. Between 1995 and 2011, the general inmate population increased 168% from 33,718 to 56,590 while the mental health population increased by 446% from 2,022 to 9,023. One explanation for this trend is illustrated by a conversation I had with two superior court judges from rural Georgia. They told me "if two defendants, one who was mentally ill and the other who was not mentally ill, were standing in front of me with the same criminal history and convicted of the same offense, we'd be more inclined to sentence the mentally ill defendant to prison than the non-mentally ill defendant because we'd know that he'll receive mental health services in prison."

2.) **Gangs**: The second indirect cost driver is gangs. The types of gangs and the number of offenders in gangs have increased tremendously in the last 10 years. Unfortunately, mentally ill offenders are easy prey, being manipulated by gangs to assault others and being victimized for store goods and sex. The pressure placed on these inmates by gangs appears to be resulting in increased self injurious behavior and mental status deterioration. On the other hand, gang members often feign mental illness to be moved to mental health facilities where they consolidate their numbers.

3.) **PREA**: The third indirect driver is PREA. An analysis of FY'07 PREA data on investigated sexual assault victims and perpetrators revealed that 70% of the alleged victims and 62% of the alleged perpetrators were receiving mental health services. These findings are significant in that the mental health population, which is 16% of the total prison population, is disproportionately represented among the alleged victims and perpetrators.

4.) **Stigma**: The fourth indirect cost driver is stigma. An inmate at Georgia's maximum security prison years ago told me that stigma is a much larger barrier for males accessing mental health services in prison than it is in the community because "if there's one place you don't want to appear weak, it's in prison". GDC's data reveals that overall 14% of all male inmates are receiving mental health services in comparison to 46% of all females. When we break it out by race, we don't see any differences between Caucasian, African-American, and Hispanic females; however, we see significant differences among males with 17% of all Caucasian males, 11% of all African-American males, and 5% of all Hispanic males receiving mental health services. Further analysis

revealed that most Caucasian males are being treated as outpatients living in the general inmate population while most African-American and Hispanic males are being treated in supportive living units because by the time they come to our attention they're too unstable to remain in general population.

5.) **Staff Turnover/Burnout**: The fifth indirect cost driver is staff turnover and burnout. Staff turnover in corrections has traditionally been problematic, especially among clinicians who have had a 40% annual turnover rate. Since the fiscal crisis of 2008, this rate has dropped to 12% for psychologists, 22% for counselors, and 32% for psychiatrists. The problem of staff turnover has now been replaced with the problem of staff burnout. Consequently, staff who would usually have left, continue to work despite increased gang violence, self-injurious behavior, and being subjected to inmate's use of primitive coping strategies such as splitting and projective identification. These clinicians many of whom are inexperienced, fragile and/or needy tend to become overwhelmed. Their boundaries become blurred, judgment impaired, and behavioral controls weak. Eventually, many of them get into trouble or become distant / detached in order to protect themselves, compromising their abilities to clinically work with inmates.

Now we're going to move from mental health cost avoidance to the characteristics of the mental health population. The next question is: What characteristics of the mental health population need to be addressed?

Question #4. What characteristics of the mental health population need to be addressed?

In an attempt to answer this question, I am going to discuss three broad characteristics that need to be addressed.

The first characteristic is the psychological complexity of the mental health population. Traditionally, mental health care providers were educated and trained to provide services to Axis I mentally ill consumers who were diagnosed with depression, anxiety, or schizophrenia. Many training programs continue this tradition. Unfortunately, many of the young graduates are ill-prepared to work with this complex population, who are not only mentally ill but also have severe personality disorders, substance abuse problems, learning disabilities, traumatic brain injuries, and chronic medical problems that both exacerbate and are exacerbated by their mental illness. Along with these young graduates, facilities also tend to be ill-equipped to provide integrated services to these offenders.

The second characteristic is that mental health clinicians focus on mentally ill offenders who comprise approximately 10 to 15% of the total inmate population, a relatively small slice of the pie in comparison to over 75% of the general population who meet the criteria for either a personality disorder or personality disorder traits. Mental health clinicians tend to shy away from

working with offenders who have severe personality disorders saying, “it's just behavior, not mental illness." This explanation "dumps" the management of these inmates into custody’s lap who is not trained in behavioral analysis and behavioral management techniques. Inmates who only have an Axis I diagnosis are not usually management problems for security staff; however, inmates diagnosed with an Axis II personality disorder are often severe management problems because they tend to be impulsive, violent, manipulative, self indulgent, deceptive, and self injurious. Traditional management techniques such as punishment and redirection tend to exacerbate these maladaptive behaviors in contrast to interventions based on a behavioral and structural analyses, behavioral management plans (BMP), cognitive behavioral therapy (CBT), and dialectical behavioral therapy (DBT).

The third characteristic is that over 97% of the inmates on the correctional mental health caseload will be released from prison and returned to the community. This fact begs the questions: What are we doing while these offenders are with us to help their chances of success when they reenter the community? Does the provision of mental health services in prison and/or in the community reduce rates of incarceration and revocation? Research performed by Jennifer Skeems and Fred Osher revealed that a lack of community mental health services accounts for about one in 10 mentally ill offenders being incarcerated or revoked. Most of the variance is accounted for by criminogenic risk factors instead of mental illness. Consequently mental health programs need to be integrated with reentry programs and case plans. Along with mental health services, mentally ill offenders need to participate in programs that address their criminogenic risk factors such as illiteracy, a paucity of work skills, and substance abuse. Corrections also needs to be collaborating with other State Agencies such as the Department of Community Health for Medicaid benefits, the Department of Family and Children Services for SSI benefits, the Department of Behavioral Health for mental health services, the Department of Community Affairs for supportive housing, and the Department of Labor for supportive employment. Additionally, probation officers need to be trained in problem-solving strategies and motivational interviewing.

In the remaining few minutes I’ll focus on the characteristics of the geriatric population that need to be addressed?

Question #5. **What characteristics of the geriatric population need to be addressed?**

Longer sentences and mandatory minimum sentences dictated by the “two strikes legislation” and the “seven deadly sins legislation” contributed to the increased number of offenders who are elderly, blind, hearing-impaired and disabled. In FY’11, inmates between 30-49 years of age comprised 53% of the population (up from 49% in FY’08) and incurred 39% of medical claims. In contrast, inmates over 50 years of age comprised 16% of the population (up from 13% in FY’08) but accounted for 40% of medical claims. In FY’11, the average annual medical costs for inmates over 65 years of age was $7,839 while the average annual medical cost for inmates under 65 years of age was only $981. Challenges in working with the geriatric population include physical incapacity and immobility, progressive degenerative illnesses, protection from predators, dependence on helpers who often charge for assistance, mental illness, and residential restrictions for discharge. Healthcare

delivery requires preventive care and routine screening exams; chronic care clinics; accommodative living units that meet ADA specifications; on-site sick call, meals, and programs; hearing evaluations and hearing aids; training for the blind; physical, occupational and recreational therapy; mobility training; and mental health consultation.

Closing Comments: In closing, I'd like to reiterate that it's an honor to be part of NICs effort to get a handle on the rising cost of correctional healthcare. I've been in this business for a long time and I've participated in the evolution of Georgia's correctional health care by testifying in Guthrie v Evans in the '80s, Cason v Seckinger in the '90s, and Fluellen v Wetherington on '02-'04. We're far from where we want to be but we've come a long way from where we have been. Because of these hearings, along with the commitment of all the participants, the momentum of justice reform, the efficiencies of telemedicine, and the possibilities created by electronic health records, I am confident that correctional health care will continue to improve, providing humane care to our most disenfranchised population. Thank you very much…….

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
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04333-0111

PAUL R. LEPAGE
GOVERNOR

JOSEPH PONTE
COMMISSIONER

Testimony Maine Department of Corrections

Joseph Ponte Commissioner Maine Department of Correction July 23, 2012

Reducing Medical Cost in a Correction System

I was appointed Commissioner of the Maine Department of Corrections in February of 2011. Shortly before my appointment, the legislative Oversight Committee, Office of Program Evaluation and Government Oversight (OPEGA), had completed a review of the medical care of inmates in the Maine Department of Corrections. While cost was not the purpose of this review; the quality of care was the major theme. This put inmate medical care neat the top of my agenda soon after my appointment. Most medical services were delivered by a private vendor and the pharmacy was a separate contract. Some mental health services were delivered by private contracts, and some were state positions.

While there were many issues raised in the Office of Program Evaluation and Government Oversight (OPEGA) report, they did not compare to what we found as we started our own independent audits of the performance of the vendor providing medical care for inmates in this state. It was clear, for many years, we had accepted the vendor's word as to how well things were going.

At the end of FY-10 our department carried over $.7M in approved invoices into FY-11 which started that fiscal year almost one million dollars in the hole. It did not get better in FY-12 we carried $1.5M of overspending from FY-11. At the end of FY-11, the medical contract had exceeded its budget of $1.7M.

The same was true for our pharmacy contract which was over spent by $.5M in Fy-11.

Starting FY-12 with a medical budget of $18.3M, less the $1.7M carried over from FY-11, we were left us with slightly more than $16.0M to cover our medical costs. We ended FY-12 with a positive balance of $.7M and did not carry any debt into FY-13.

In order to make this change, we had to figure out what was driving the cost of medical care in the State of Maine and where we fit when we looked at similar size systems across the country. Working with our vendor that had national data on medical cost in correctional systems across the country, it did not take long to identify some real data discrepancies that showed Maine was out of step with other similar size correctional systems.

The Maine Department of Corrections operates 7 adult facilities and 2 juvenile facilities totaling approximately 2,200 offenders. Maine contracts with a third party vendor to provide the delivery of medical and mental health services. Monthly meetings between the vendor and the executive staff has provided open communication about deliverables and costs associated with services to ensure the greatest level of cost savings without compromising health care. The Maine Department of Corrections never made medical decisions but does ask the vendor for ways to control costs.

We all were in agreement that the basic guideline for the level of services provided in correctional health care is that it be aligned with the "community standard of care." We applied a rule of treatment around what is medically necessary, for an inmate to do the normal functions required for him or her to live within the correctional facility. Before we made any changes we presented this new approach to the Maine Board of Medicine, Board of Nursing, political leaders and inmate advocates.

Items we asked the *Medical* vendor to report out on included:

1. Liability CAP claim report
2. Number of inpatient days
3. Number of Emergency Room runs
4. Number of outpatient referrals by specialty report

Items we asked the *Pharmacy* vendor to report out on included:

1. Cost per prisoner per month
2. Medication cost analysis report
3. Billing trend analysis report
4. Average cost per fill and number of Rx per inmate.

We formulated a Quality Assurance team and conduct quarterly reviews of medical records at each facility as well as quarterly Medication Administration Record reviews (10% of Average Daily Population).

Grievances' are an indicator of how well a system is working and we implemented a grievance tracking system that shows the number and type of grievance from each facility each week.

I believe our efforts in Maine controlled cost and improve medical services to our population. Our new health services contract includes all medical services, pharmacy and mental health which will allow us to manage all cost and services under one vendor.

Thank you for the opportunity to present this information on how we attempted to control medical cost in the Maine Department of Corrections.

Superintendent Jay Ashe remarks for

NIC Advisory Board Hearing panel - August 23, 2012

REMARKS

Thank you for inviting me here today to discuss this very important issue.

First of all, I would like to give you some background about the Hampden County Sheriff's Department. Our Sheriff, my brother, Michael J. Ashe, Jr. has been Sheriff of Hampden County for 38 years. He hired me in 1975 and together we have developed, refined, and implemented our many programs over this uninterrupted period. During this time, our aggressive reentry philosophy has brought repeated national recognition for innovative inmate reentry initiatives ranging from connecting inmates to the public health system, to near perfect scores on national accreditation audits. The HCSD is widely regarded as a leader and innovator in the corrections industry. HCSD is one of the few local correctional centers with a professional PH.D. –level researcher on staff analyzing operations. As a result, statistics and results inform our program development.

HCSD has a budget of $66 million dollars annually, employs some 800 plus staff and handles 5,000 inmates a year in 5 facilities in Hampden County, Massachusetts. HCSD is a regional provider of inmate services for Western Massachusetts.

We work closely with BJA, NIC, DOC, Mass Sheriff's Association, state and local law enforcement agencies. We developed in partnership with federal, state and local police an information sharing network called the Western Massachusetts Sheriff's Information Network (WMSIN), internet based, which allows law enforcement personnel to search and access our vast database on current and past inmates by pictures, identifying marks (tattoos), names, nick names, DOB, etc. We maintain this database currently on our servers. This first in the nation system is currently being rolled out statewide and will include secured data access available to outside services providers.

Additionally we;

- Received six 'Grade A' scores over a 24-year period receiving an unpresented 98.7% score across our 5 facilities, from the auditors of the American Correctional Association.

- During an independent review by the American Correctional Association in October 2003, the auditor called HCSD the "model facility for the industry."

- Facility of the Year, National Commission on Correctional Health Care, 1998. As one of 450 prisons, jails and juvenile confinement facilities that participate in the National Commission's accreditation program.

- First jurisdiction in the United States to institute a Day Reporting Program. (Offenders living at home under electronic monitoring.) 1986.

- National Points of Light Family Volunteer award Recipient for educational program that encourages inmate mothers to read with their children. 2002

- Mentioned as a model program for reentry, 2003 Report of the Reentry Policy Council, www.reentrypolicy.org

- The HCSD's Public Health Model for Corrections (which can be found on our web site) [Hold up bound 100 pg. edition for audience] received the following national recognition:

- Winner, 2000 Innovations in American Government Awards Program from the John F. Kennedy School of Government and the Ford Foundation.

- Premier hospital Group Monroe E. Trout Award Winner, 1999. In February 2000, out of a field of 1700 applicants the HCSD was honored as the most exemplary and innovative program bringing services to the under-served.

- American Hospital association NOVA Award winner, 1999. In April 2000 for an innovative, collaborative project focused on improving community health.

- BJA Second Chance Act Grant in 2010 to pilot our Hampden County Regional Reentry Model including step-down of DOC inmates. I'll talk more about this later.

I have much more, but I think you all get the point. We have been in this business for a long time and brought in talented people to assist us in addressing the many challenges effecting reentry and thus community health.

With the significant growth in prison and jail populations over the past two decades, corrections and health care professionals have come to realize that chronic and infectious diseases and mental illness are concentrated in correctional populations. We are also recognizing the extent to which this circumstance presents a public health opportunity.

The link between correctional health, community health, and public health is particularly important and challenging for jails, where the number of individuals passing through and returning to the community is much higher than in prisons. Offenders are often called "Public Health Offenders" because of inmates' limited access to regular health care and their high incidence of risky behaviors, it is important to engage them in ongoing care. Even though the jail population is predominantly young, over 20% of the population has chronic diseases. Developing continuity of care will diminish the spread of disease in the community and will shift some aspects of health care away from hospitals and emergency rooms.

The Hampden County Correctional Center (HCCC) is a medium security correctional center located in western Massachusetts. HCCC serves Hampden County and metropolitan Springfield-Holyoke, with a population of about 500,000.

Our facility houses 1,600 inmates, both detainees waiting court appearances and sentenced prisoners, 40% are pre-trial and 60% sentenced, with an average stay of 8 months. It's important to note that in Massachusetts, Sheriff's house sentenced offenders up to 2 ½ years. In all other states it's up to one year. As a result, we house many offenders who would otherwise be

sent to the state DOC. For example, 200 offenders were sentenced to DOC in FY 2012. Massachusetts releases 20,000 sentenced inmates annually 17,000 of these are from the 14 county facilities! Thus the majority of releases come through our local county jails in this state.

We focus on release planning and developed our After Incarceration Support Systems Program in the community to provide needed supports to released offenders. We offer complete wrap-a-round services including, mental health, employment, housing and other support services. We served over 2,000 ex-offenders in FY'12.

This is how our Public Health Model works. And by the way, we feel the medical aspect is one important component in our comprehensive reentry continuum.

About 75% of our jail population comes from four neighborhoods/catchments areas within the county, each of which has a community health center.

HIV rates are high in these neighborhoods and even higher within the facility. For many years we had federal grant funding to address these high HIV rates. The good news is we were successful in significantly reducing this threat due to effective programs and education. The bad news is the fed no longer saw the need to award HIV grant funding to us so we are now on our own. On any given day at HCCC, there are between 25-50 cases of HIV and approximately 10-20 persons being treated for latent TB; annually, more than 160 cases of sexually transmitted diseases are treated.

In order to address the needs of our seriously at-risk population; the HCCC, four community health centers, and the Massachusetts Department of Public Health developed a cooperative public health model for corrections. The public health model arose out of a philosophy that recognizes that the jail is an integral part of the community that those incarcerated are only temporarily displaced members of the community, and that incarceration

presents an opportunity to benefit the health of these individuals, their parents and families, and the communities to which they return.

The public health model features five major elements:

- Early detection and a comprehensive assessment of health problems.
- Prompt and effective treatment at a community standard of care.
- Disease prevention programs;
- Comprehensive health education; and
- Continuity of care in the community via collaboration between the HCCC Health Services Department, community health centers, and other local health care providers.

The model includes five key features:

1. **Assignment to health team based on zip code**. At admission, inmates with serious chronic medical conditions are assigned to one of four health care teams based on their residential zip code. The HCCC health care teams include one or two physicians, a primary nurse, a nurse practitioner, and two case managers as well as an RN case manager for complicated medical cases and a mental health discharge counselor available for consultations. The physicians and case managers are dually based at the community health center and the correctional facility, and the primary nurse and nurse practioner are based only at the correctional center.

2. **Contracts with community providers.** HCCC has entered into contracts with local community health centers, mental health care, dental health care, and optometry non-profit vendors to deliver services on-site and in the community.

3. **Daily triage system.** Registered nurses and masters level mental health clinicians go directly to inmates' living quarters to assess their health status, deliver care via protocols, and respond to non-emergency complaints.

4. **Health education.** Comprehensive health education is provided to inmates, especially on the prevention of infectious diseases including HIV and hepatitis, substance abuse, and disease management and self-care for patients with chronic disease.

5. **Extensive discharge planning and follow-up.** Discharge planning and follow-up are promoted, with the dually based health care providers delivering continued care at their health centers after inmates are released from jail. Our long-standing reentry release plan for inmates is a big component of the step-down and release/reentry process.

It is important to note that the full model (dually based provider teams, case management, discharge planning, and arrangement of post-release appointments) is generally available only to inmates with serious chronic medical conditions, although other inmates in need of short-term attention to medical issues may be eligible on a case-by-case basis. In general, inmates with mental health problems receive services from the dually based provider teams, which include Behavioral Health Network. Along with in-reach inside the jail, upon release, the offender will have these services available in the community-based mental health center with the same provider.

As a result of our reentry and public health work with the CDC, the Robert Wood Johnson Foundation took notice and saw the importance of the role the jail plays in disease control and prevention for the four inner city communities where our health centers are located.
The Robert Wood Johnson Foundation then initiated funding to replicate our model in other cities across the nation.
The Community Oriented Correctional Health Services (COCHS) model was then developed. Community Oriented Correctional Health Services is the non-profit organization RWJ created to connect health care in the city jails with health care in the community.
Many elements of this public health model are being implemented in other jails, with Washington, DC as the first replication of the model in 2006.

Benefits of the Public Health Model

A comprehensive public health program consisting of early detection and assessment, health education, prevention, treatment, and continuity of care can reduce the incidence and prevalence of disease in correctional facilities and communities. The public health model values wellness, treatment of disease, prevention of illness, and access to care during and after incarceration.

This model delivers high-quality health care based on community standards and establishes close links with providers in the communities to which inmates return. As a result substantial collaboration occurs between corrections and health care professionals.

Gradually, inmate's value health care delivered by providers who are interested in their welfare, and they become more active partners in their own care and treatment. Medical empowerment is a major goal of the program.

Significant downstream cost savings in community health care costs result from the early and effective detection and treatment of disease.

In 2006 Massachusetts passed a unique collaborative effort of then Governor Romney and Senator Kennedy, and created "Mass Health" which replaced Medicaid. This initiative is now available to all jails and DOC, and the state government has supported its use in corrections. We now have access to health information through a virtual gateway via the internet.

Community cost-savings are achieved by enrolling eligible reentry inmates into Mass Health (Medicaid), which helps to ensure that, upon release, patients will use community health care services instead of more costly emergency rooms for primary treatment. Mass Health continues to cover outside services for up to 90 days for pre-trial and newly sentenced detainees. Prior to 2006 the jail paid for all outside medical costs (i.e. hospitalizations, appointments, etc.)

Since 2006 the cost of health care at HCCC was reduced annually by $500,000 by billing to Mass Health (Medicaid).

Substantial savings are realized by using community-based, non-profit providers for health care, pharmacy, dental care, optometry, health education, and mental health services. These services are provided at lower cost than if HCCC used its own staff under state payroll of negotiated salary requirements.

Grants and state contracts have provided substantial funds for HIV/AIDS education, STD and TB screening and treatment.

We utilize our day reporting program, an intensive level of custody developed in 1986 under the Sheriff's Department. This is a comprehensive, hour-by-hour, intensive monitoring program, which further reduces health costs by placing appropriately classified inmates out in the community. This results in cutting by ½ the cost of otherwise providing the housing and treatment inside the jail.

In the last 2 years we have implemented a formal process of stepping down all state inmates through our jail and reentry program. Since no western Massachusetts reentry facility exists for DOC they are utilizing HCCC for reentry services. Our goal is to reenter all 200-250 DOC sentenced inmates who come from Hampden County annually back through our reentry process.

We want to be sure that releasing inmates are not simply placed on a bus and sent back to the community to fend for themselves. At the end of the day, a good reentry model is not only good for public health, but vital for public safety as well!

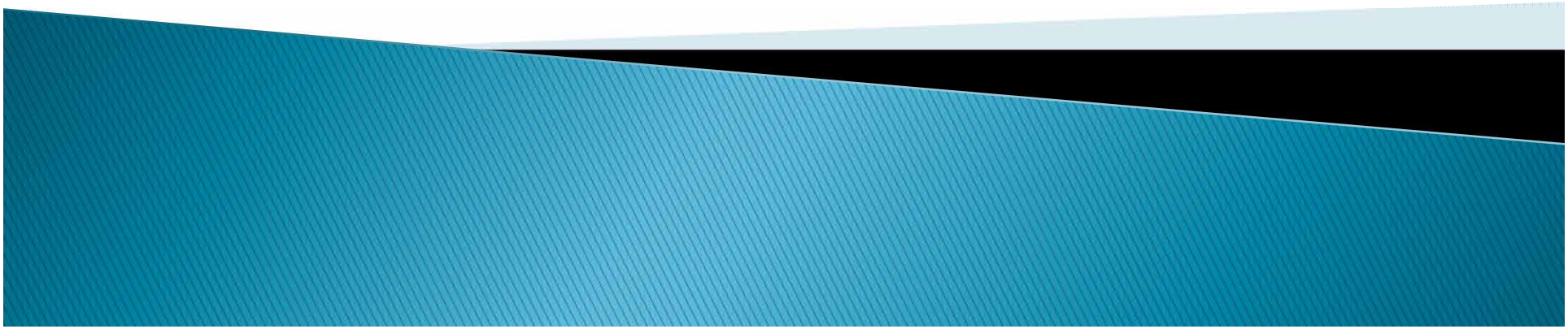
Collaboration, collaboration, collaboration. Parole, Probation, DOC, community organizations all working together. This is how we all learn from each other and get the job done. Our public health component blends with our overall Integrated Reentry plan, resulting in better outcomes for all.

Thank you for your attention today. I'm available for anyone who would like to meet with me or if you need further information or details regarding any of our programs.

sro.8.20.12

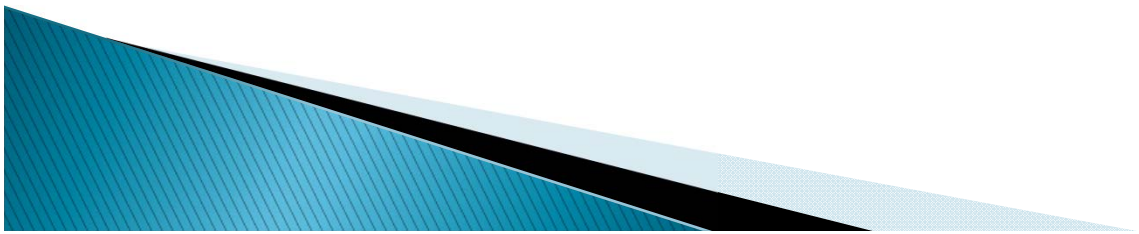
NIC Advisory Board Hearing Innovative Cost-Saving Strategies in Pharmaceutical Expenditures

A. Martin Johnston R.Ph.
CAPT, U. S. Public Health Service
Chief, Pharmacy Logistics Support
Federal Bureau of Prisons



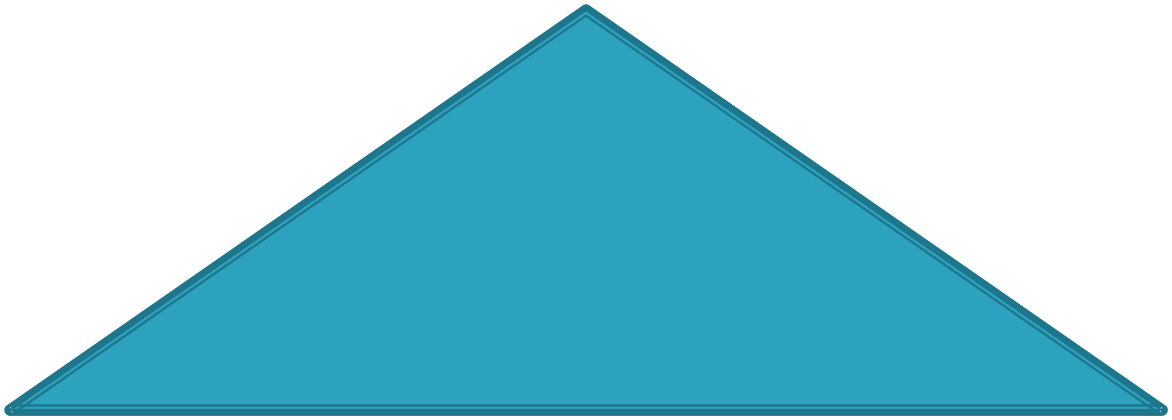
Pharmaceutical Expenditure Overview

- United States total pharmaceutical expenditures: **$320 Billion**
  - U.S. population = 313 Million
  - $2.80 pharmaceutical per capita cost per day
- Nationwide reported daily per capita medication cost for inmates for publically operated state corrections:
  - $0.74 to $3.76 pharmaceutical per capita cost per day
- BOP FY 2011 pharmaceutical expenditures: **$67 Million**
  - Number of BOP inmates: Approximately 170,000
  - $1.09 pharmaceutical per capita cost per day



Controlling Pharmaceutical Expenditures Triad

Advanced Pharmacy Practice

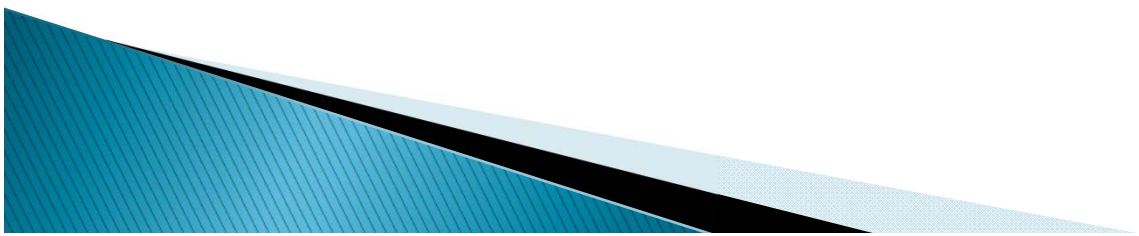


Formulary Management

Drug Pricing

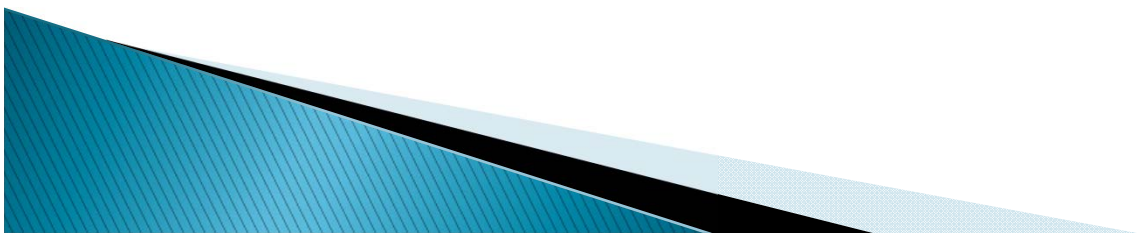
Drug Pricing

- Pharmaceutical Cost Complexities
  - Example Pricing Schedules
    - AWP – Average Wholesale Price
    - AMP – Average Manufacturer's Price
    - WAC – Wholesale Acquisition Price
    - DP – Direct Price
    - SWP – Suggested Wholesale Price
    - AAC – Average Acquisition Cost



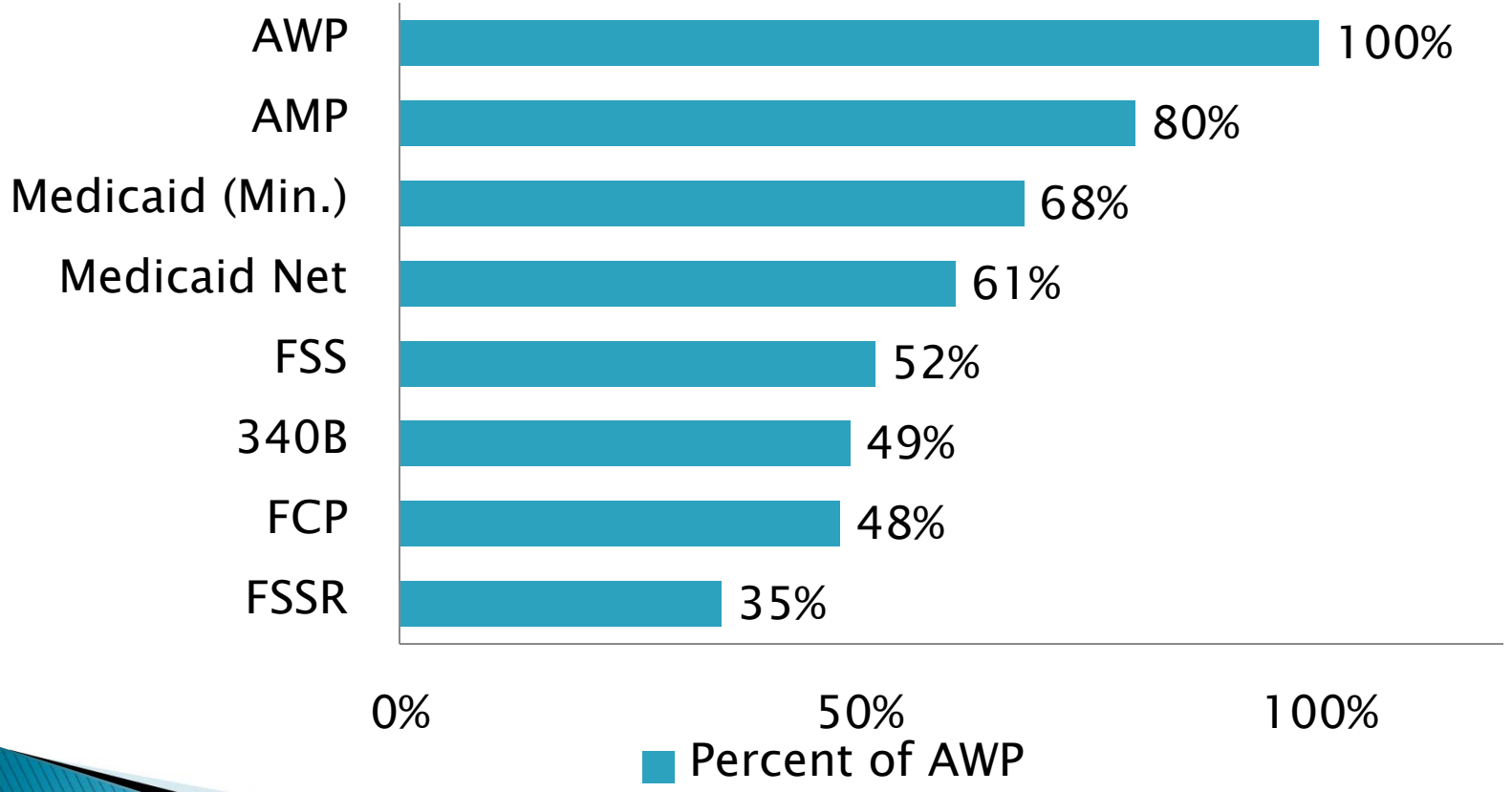
Drug Pricing

- Pharmaceutical Cost Complexities (continued)
  - Federal Drug Discount Programs
    - Medicaid Rebate Program
    - 340B Program
    - FSS – Federal Supply Schedule
    - FCP – Federal Ceiling Price or “Big 4”
    - FSSR – Federal Supply Schedule Restricted or VA contracts and BPAs



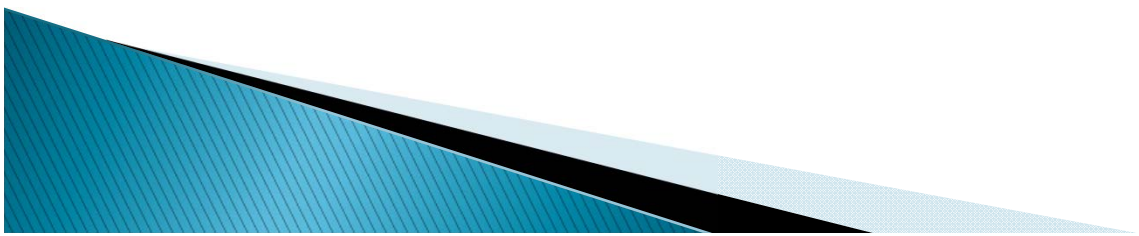
Drug Pricing

- Cost as a comparison of Average Wholesale Price (AWP)



Drug Pricing

- Challenges
  - Not all federal agencies pay the same
  - Not all correctional jurisdictions pay the same
  - Difficult to collaborate across jurisdictions due to different contracting and purchasing regulations
  - State DOCs often linked to other state agencies
  - Slowness of normal procurement practices is not conducive to the demands of a health care system
  - Difficult to solicit competition with sole source brand name medications without generic equivalents



Drug Pricing

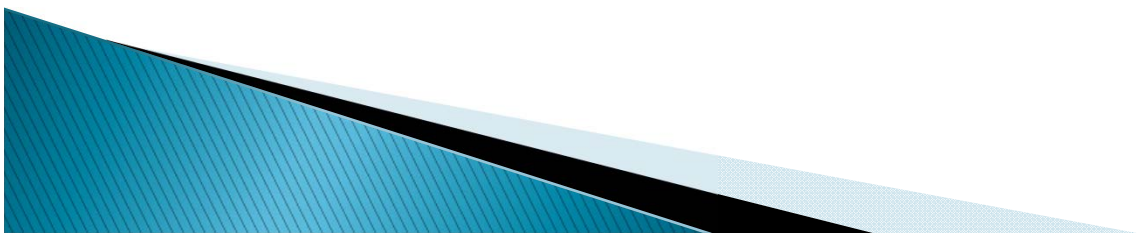
- Price reduction strategies
  - Contracting
    - Solicit/compete for least expensive multisource items
    - Solicit/compete for least expensive categorical items
  - Buying Groups
    - Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP)
  - Joint or Collaborative buying
  - Class of Trade
  - Federal and State programs
    - 340B Program
    - Vaccines

Formulary Management

- Systematic and methodical process of evaluating and selecting suitable drug products for use within an organized health system.
- Manages a list of medications to be considered by organization's professional staff to ensure high quality, cost effective drug therapy for a defined population.
- Requires a high level of integration of formulary, pharmaceutical contracts, clinical practice guidelines, electronic health record databases and computerized prescriber order entry.

Formulary Management

- Tenets of sound formulary management
  - Decisions supported by unbiased evidenced based literature
  - Pharmacoeconomic analysis for cost effectiveness
  - Primary goal of optimizing therapeutic outcomes
  - Evaluates for medical necessity
  - Evaluates security concerns
  - Maximize consistency across institutions
  - Requires a comprehensive process for centralized approval of non-formulary medication use

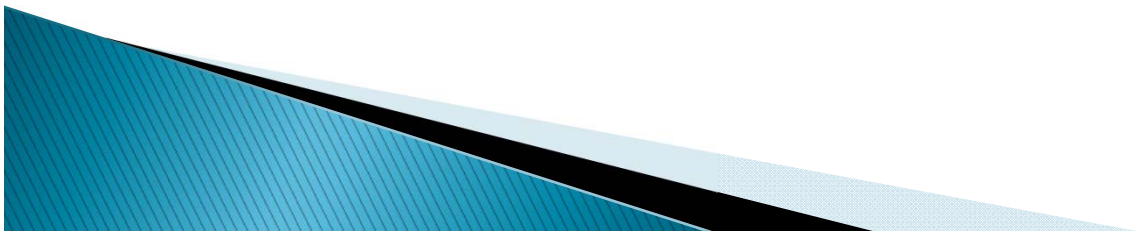


Formulary Management

- Ensures appropriate utilization to improve outcomes and quality of life
  - Formulary restrictions
  - Diagnostic inclusionary criteria
  - Diagnostic exclusionary criteria
  - Use of algorithms
  - Provides non-formulary use criteria
- Addresses non-compliance and inappropriate use
  - Drug Usage Evaluations
  - Drug database advisories
  - Refill histories
  - Incident report monitoring

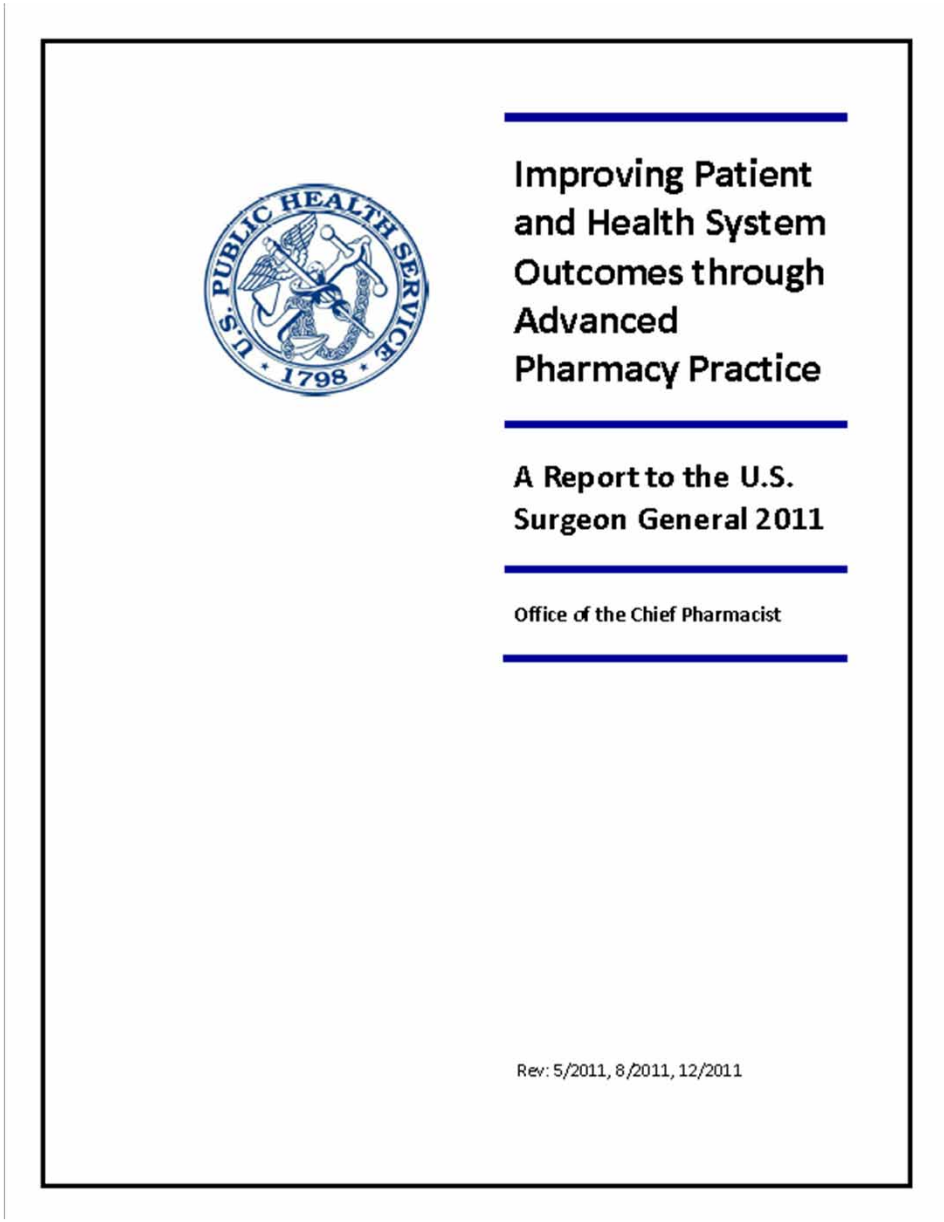
Formulary Management

- Ensure cost-effectiveness
  - Standardize product selection
  - Use of generic medications
  - Centralized control and approval of high risk or high cost medications or disease states
  - Appropriate referral to commissary/canteen for OTC medication treatments
  - Effective non-formulary process with consistent centralized approval process.



Advanced Pharmacy Practice

- Use of pharmacists to provide Disease State Management through Pharmacist-Physician Collaborative Practice Agreements and Protocols
- Supported by Report to the Surgeon General, *Improving Patient and Health System Outcomes through Advanced Pharmacy Practice*.
  - Endorsed by the Surgeon General
  - Supported by many high level health care executives and leaders of major health care organizations
  - Collates extensive literature showing improved outcomes and a $1 to $4 return on investment with clinical pharmacy services
  - BOP contributed to this report



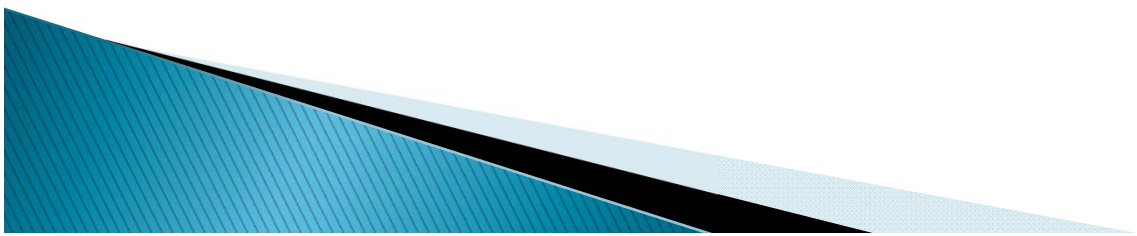
http://www.usphs.gov/corpslinks/pharmacy/sc_comms_sg_report.aspx

Advanced Pharmacy Practice

- Currently the BOP supports 66 pharmacy managed clinics by 46 BOP pharmacists for conditions such as:
  - Anticoagulation
  - Hypertension
  - Diabetes
  - Lipid Disorders
  - Pain Management
  - Mental Health
  - Asthma
  - HIV
  - Hepatitis

Advanced Pharmacy Practice

- Practical suggestions to allow pharmacists to provide direct patient care in the way of disease state management
  - Robotic Automation
  - Centralized fill of prescriptions
  - Expanded use of Pharmacy and Medication Technicians
  - Reduction of miscellaneous non-pharmacist duties
  - Appropriate use of support staff

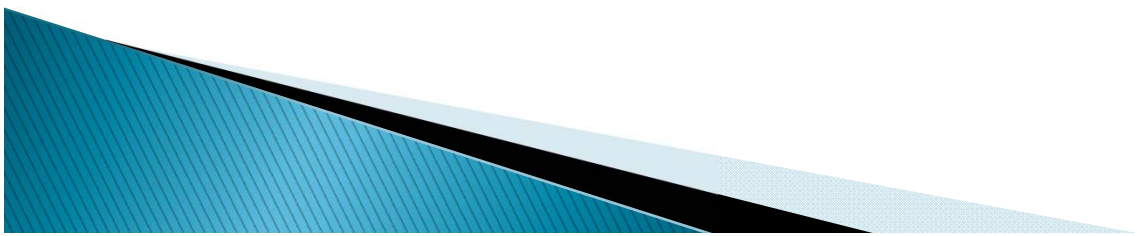


Advanced Pharmacy Practice

- Integration of Advanced Pharmacy Practices is a key component of a successful Team Medicine program
- Corrections is an ideal setting to practice Team Medicine

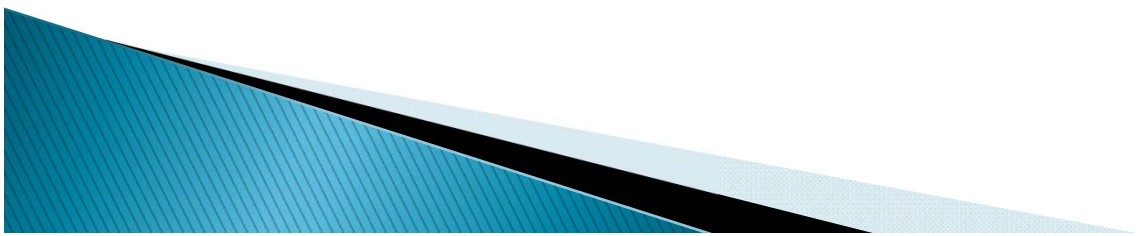
"It Takes a Team to Raise an Outcome"

CAPT Chris Bina
BOP Chief Pharmacist



Summary

Successful control and cost avoidance of pharmaceutical expenditures while maximizing improved patient outcomes requires a comprehensive integration of the triad of price reductions, formulary management and advanced pharmacist practice. Omission of any leg of this three legged stool will result in an unbalanced approach to pharmaceutical cost containment that may lead to increased health care costs and reduced or adverse patient outcomes.



Department of Corrections
WASHINGTON STATE

Cost Containment:
Opportunities for Continued Reform

Bernard Warner, Secretary
NIC Advisory Board Meeting
August 23, 2012

Washington State Overview

- Cost containment opportunities vary among states
- Ability to save is dependent on sentencing policies, population profile, and leadership
- 30 years of determinate sentencing/data collection
- Reliable population forecasting, fiscal note determination
- No term limits – informed, consistent policy-makers
- Sentencing Guidelines Commission since 1981

Department of Corrections
WASHINGTON STATE

Washington Institute for Public Policy (WSIPP)

- Meta-analysis of existing research to guide Evidence-Based decision making
- Cost benefit model applying Washington data

Department of Corrections
WASHINGTON STATE

(WSIPP) A Cheat Sheet on:
What Public Policies Work to Reduce Crime/Costs?

—Evidence-Based Principles—

- Treatment (Delivered with Fidelity)
  Focus on research-proven prevention and intervention.
- Risk
  Focus on higher risk, not lower risk, populations.
- Punishment (Sanctions)
  Strong evidence (for crime deterrence) for certainty, but not for severity of punishment.

Department of Corrections
WASHINGTON STATE

Treatment Effectiveness Drives Alternative Sentencing

In FY 2011, 3,360 of all 22,842 felony sentences were alternatives (15%)

- Special Sex Offender Sentencing Alternative
- First Time Offender Waiver
- Family & Offender Sentencing Alternative
- Drug Offender Sentencing Alternative

According to WSIPP, use of alternatives saves the state $7,800 to $10,000 per offender

- Reduced need for prison beds
- Reduced future costs due to recidivism reduction

Department of Corrections
WASHINGTON STATE

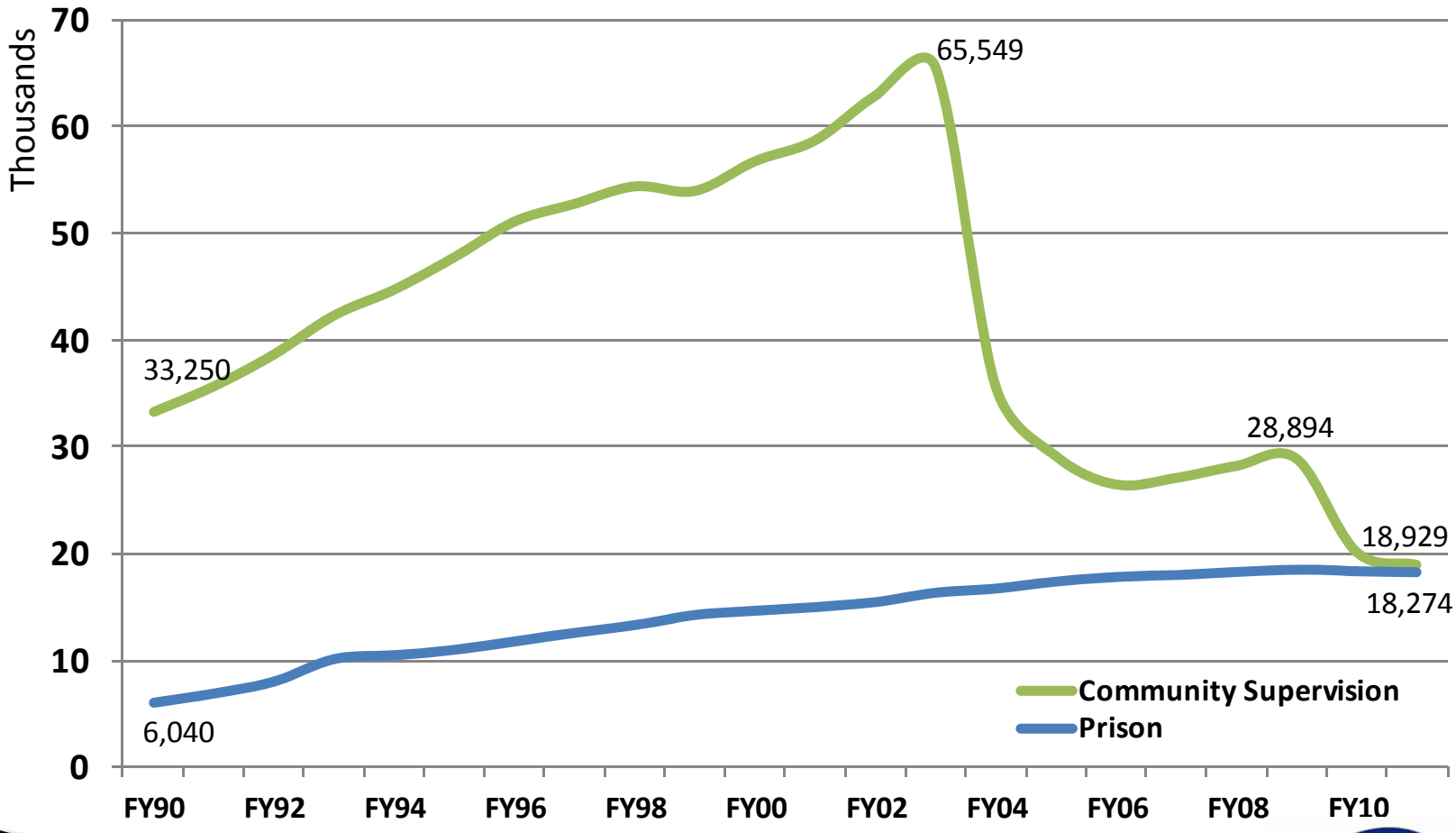
Trends in Recidivism in WA

1990 – 2006

Risk Classification Level of Offenders In Prison
by year of release from prison

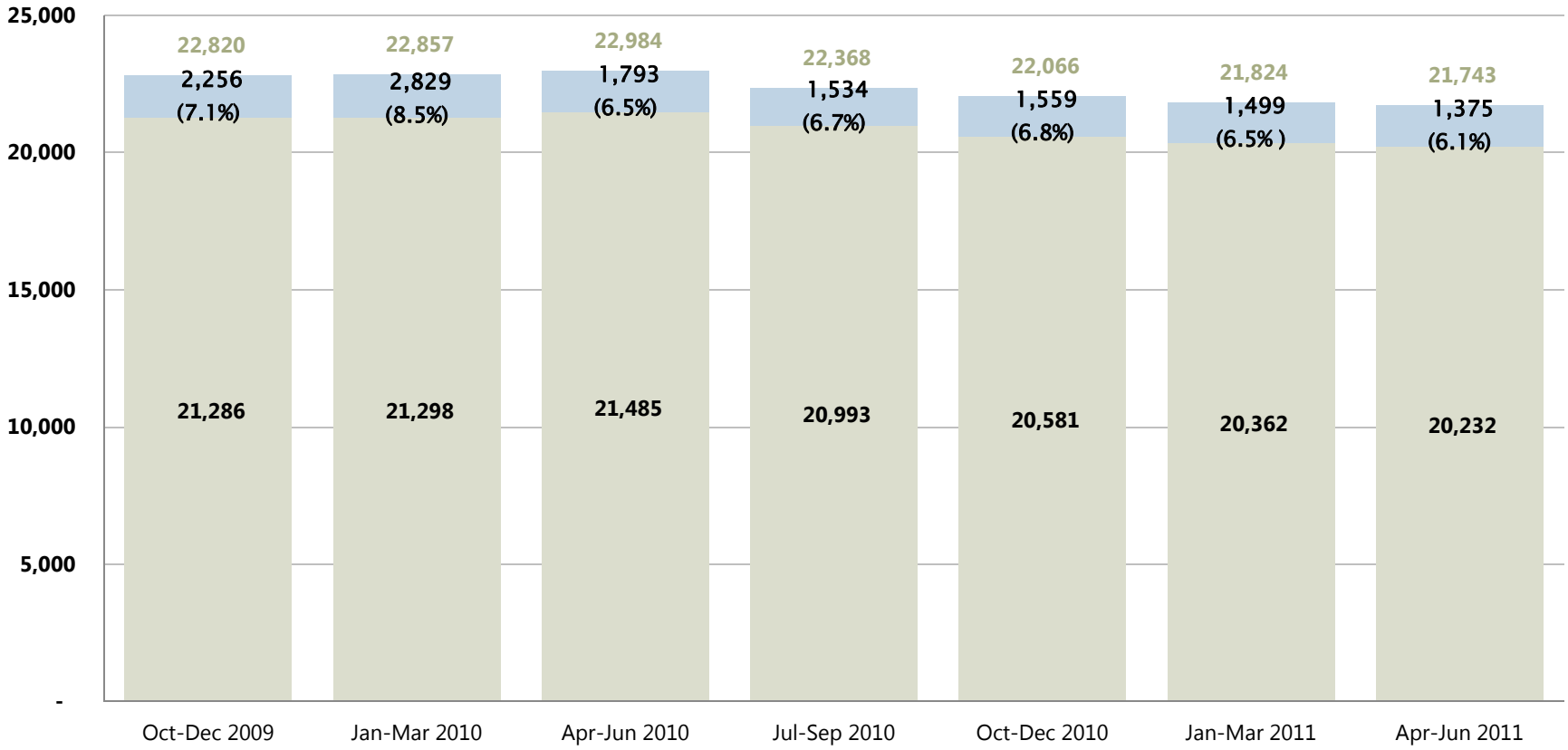
Department of Corrections
WASHINGTON STATE

Focus on Risk to Reoffend



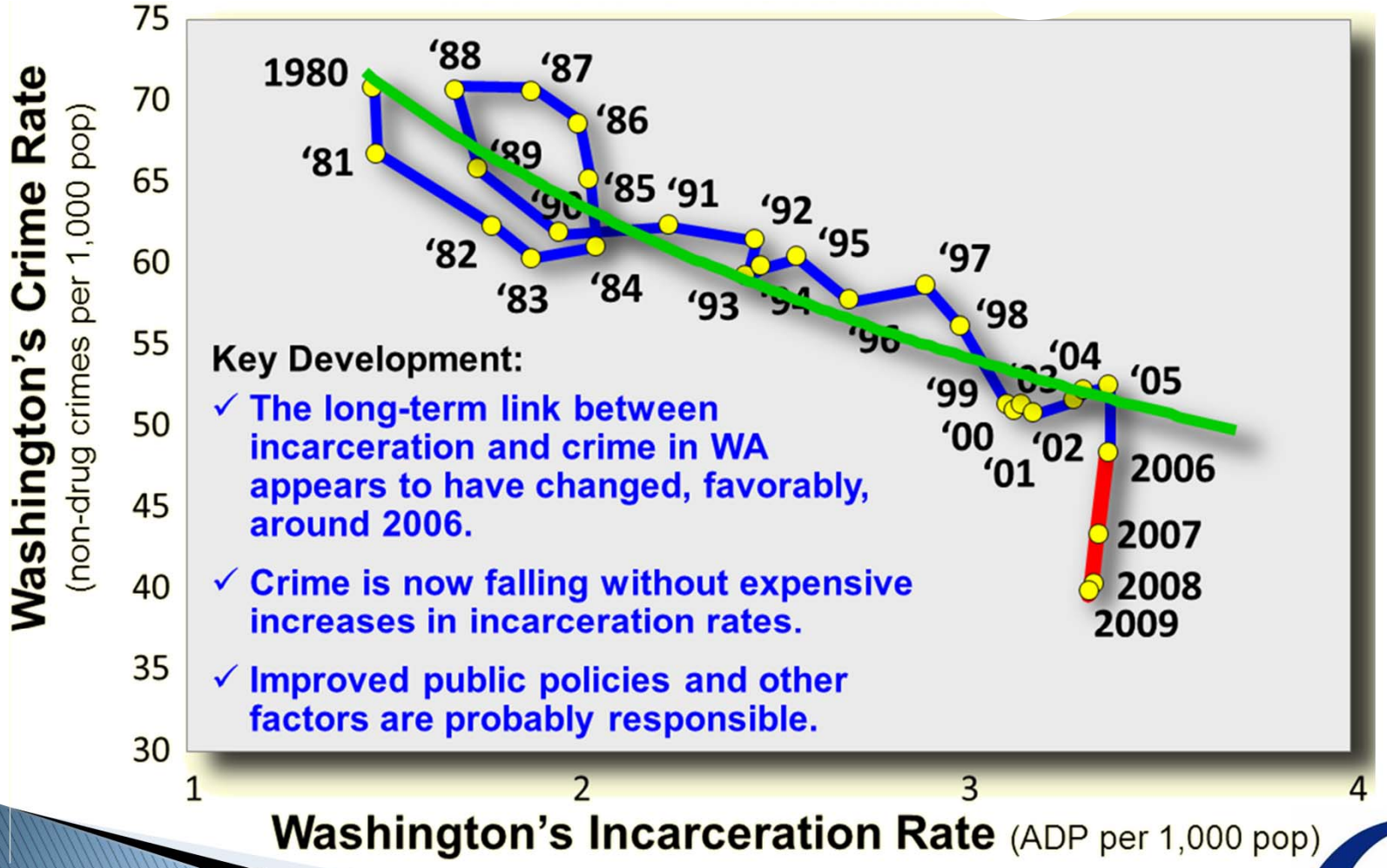
Department of Corrections
WASHINGTON STATE

Trends of Re-Offense while on Community Supervision



Department of Corrections
WASHINGTON STATE

Keeping Track of Results: The Prison-Crime Relationship



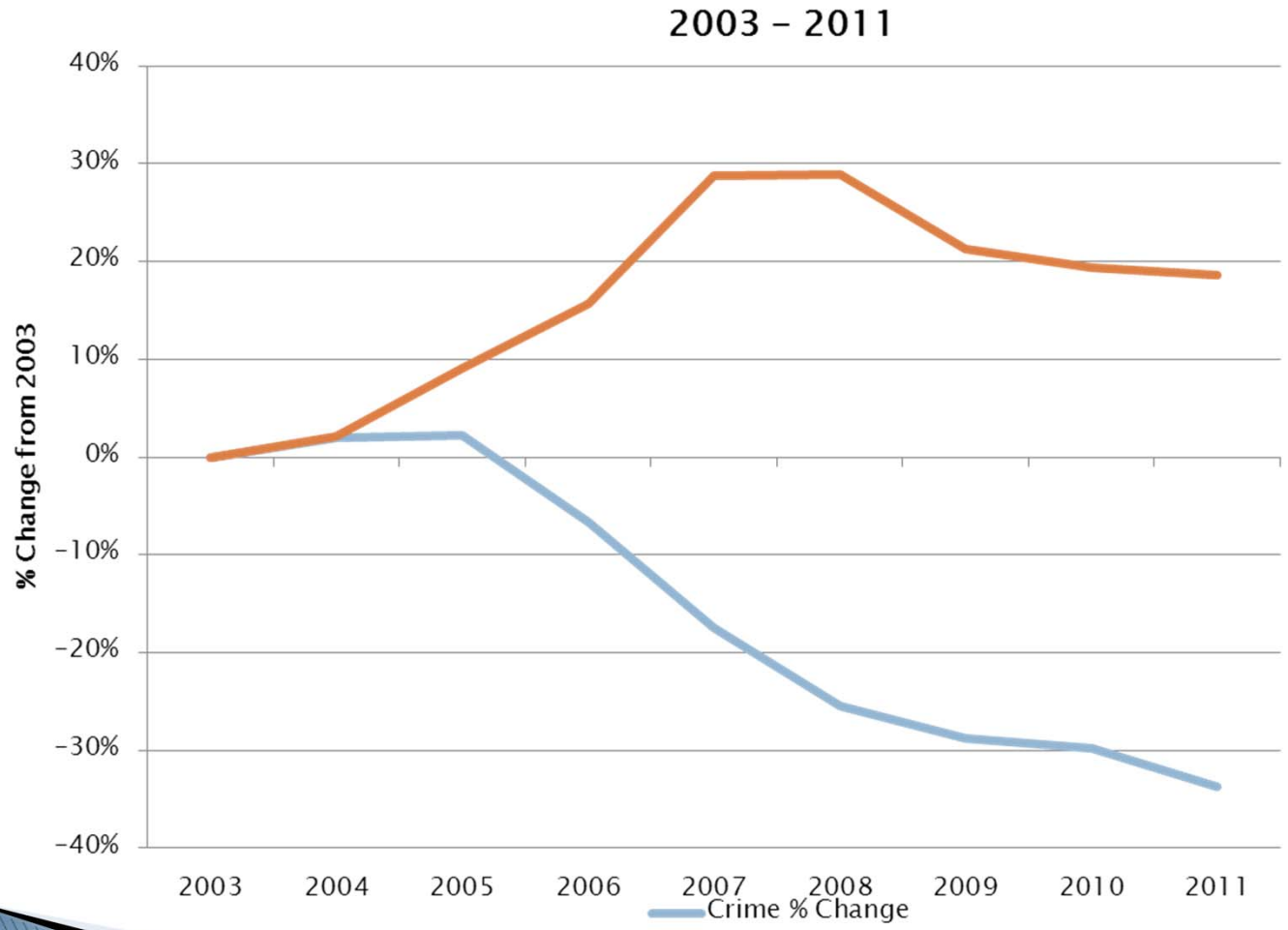
Department of Corrections
WASHINGTON STATE

Budget Reductions FY 2008-10

- Focused on efficiencies—disruptive across the board cuts
- Closed three prisons
- Reduced Community Corrections staff with dropped caseload
- Cut agency budget by $250 million and 1500 staff (20%)
- Implemented health care reforms, saving millions

Department of Corrections
WASHINGTON STATE

Keeping Track of Crime Rates & Average Daily Costs Per Offender



Washington DOC had an average daily offender cost of $73.23, which peaked at $101.45 in 2008. Currently the average daily

In 2011 Washington's crime rates were 34% lower than they were in 2003.

Source – Average Daily Cost, WADOC Budget office. Crime Rate, WASPC.org.

Department of Corrections
WASHINGTON STATE

FY 2011-12 Special Sessions

- 5-10% budget reductions, $80-160 million, for DOC
- Few options for efficiencies—beginning to see adverse affects
- Wanted to be data driven and strategic
- Identified three initiatives:

1. Reengineering Community Corrections
2. Repurposing prison beds
3. Expanding Sustainability Programs

Department of Corrections
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Re-Engineering Community Corrections

- Offender Accountability Act focused on high risk offenders; allowed for sanction discretion—liability concerns by staff
- Average daily population 1400 in jail beds, costing $60 million
- Driven by WSIPP principle of certainty, not severity of punishment (sanction) -*parsimonious…..*
- 2012 WSIPP report confirms confinement for technical violations does not reduce recidivism

Department of Corrections
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HOPE Model

- One year pilot in Seattle with parolees; included control group
- Rigorously evaluated by Dr. Angela Hawkins
- Tenets are swift, certain, and consistent
- Reduced sanction time from 60 days per violation to three days
- Positive urinalysis for drugs reduced by 60%
- Compliance with conditions of supervision increased

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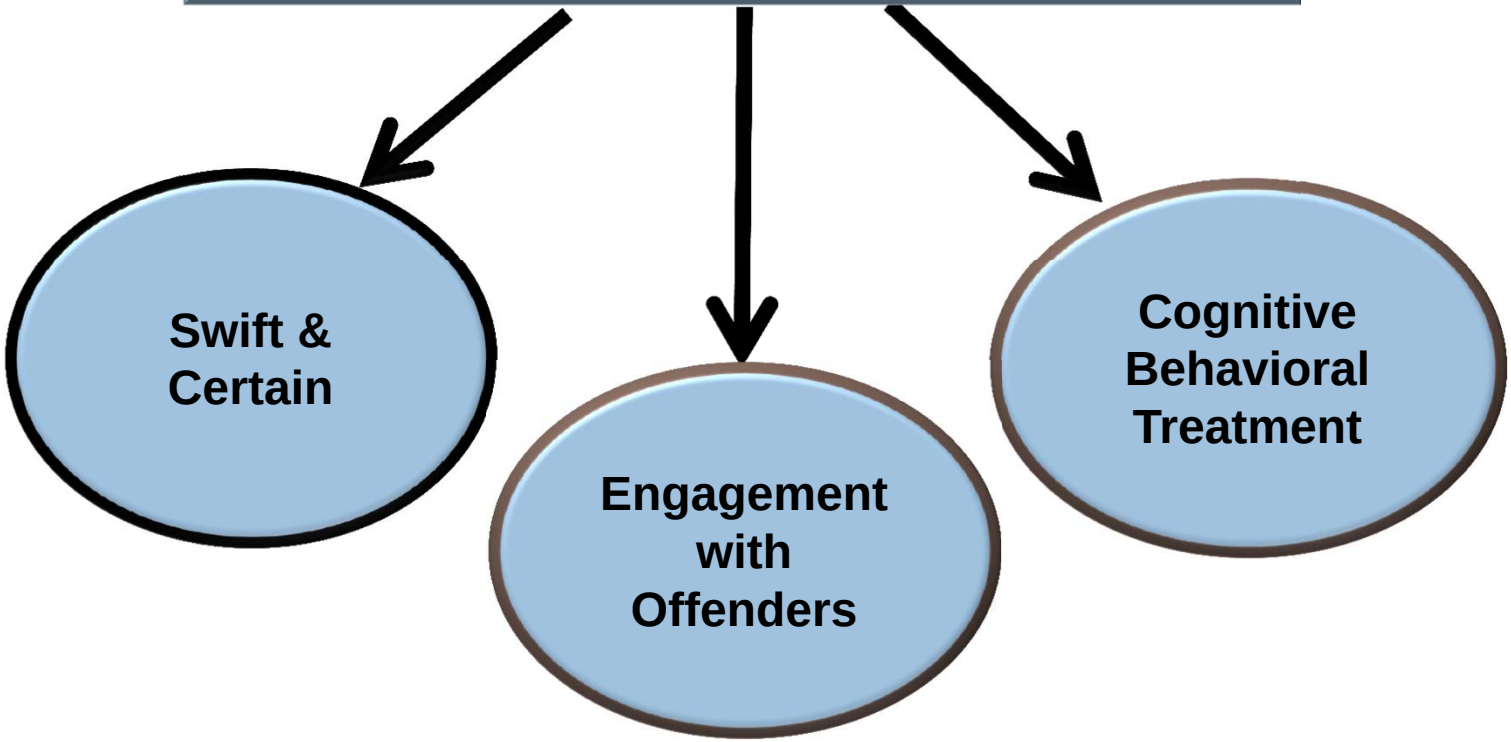
Re-engineering Community Corrections



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May 2012: Legislature passed SB 6204

- Directs statewide implementation
- Savings of almost $40 million in jail costs
- Legislature provided $6 million to be reinvested in treatment services (balanced approach)
- Will provide 10,000 treatment slots in the community saving significant future prison commitments
- Programs developed with quality assurance to monitor fidelity and on program evaluation.
- Outcomes tracked, measured and analyzed
- Current violator population has been cut in half, 90 days after signature.

Department of Corrections
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Prison Repurposing

- System at 99% of capacity after closures—violence uptick
- Committed to not cut programs that reduce recidivism
- Looked at existing population data to align beds with custody requirements
- 1000 minimum custody inmates in more costly, higher custody levels
- Program barriers such as mental health or medical holds restricted movement
- Created step down infrastructure at the costly State Penitentiary, moving in minimums and reducing staffing to save $12 million

Department of Corrections
WASHINGTON STATE

Sustainability

- Initiated as a state call to action to introduce sustainability to state agencies.
- Advanced to a cultural shift in our institutions along the lines of a restorative justice framework.
- A clear strategy to contribute to science, restoration, sustainability, and community needs.

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Sustainability

Goals	Evidence
▸ Cost Containment/Avoidance ▸ Therapeutic Value in Low Cost Programming ▸ Provide Service to the Community	▸ Engage Community ▸ Create partnerships ▸ Improve Offender Outcomes • Reduce infractions • Reduce recidivism • Increase employment opportunities • Provide opportunities to contribute/change

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Progress from 2005 to 2011

- Reduced solid waste to landfills by 43%
- Increased diversion to recycling by 89%
- Increased food waste diversion to compost 90%
- Percentage of total waste recycled 68%

Department of Corrections
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Working with Living Things

- Opportunity to contribute
- Transferable skills
- Low cost, high quality programing
- Reduce rates of violent infractions
- Increase in prison safety

Department of Corrections
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Major Partners and Collaborators

- Department of Defense
- National Science Foundation
- U.S. Fish & Wildlife Service
- Washington Department of Fish and Wildlife
- Washington Department of Agriculture
- Center for Natural Lands Management
- Oregon Zoo
- The Nature Conservancy

Department of Corrections
WASHINGTON STATE

THE PEW CENTER ON THE STATES

MacArthur Foundation

Results First

Targeting Criminal Justice Resources at Programs that Work

Gary VanLandingham, Director, Results First

August 23, 2012

We need better accountability information…now

- **Our governments face incredible fiscal pressures**
  - **Trillion-dollar federal deficits**
  - **States have faced over $500 billion in shortfalls since Great Recession**
  - **Local governments face ongoing property value reductions**
- **There is a critical need for better ways to triage spending**

Results First

- **Uses cost-benefit analysis to identify and compare the return on investment programs generate for citizens**
- **Enables states to identify policy choices that can maximize outcomes AND reduce costs**
- **Can assess individual programs as well as portfolios of related policies**

Approach in a nutshell

1. **Aggregate best national research to identify evidence-based programs that are effective**
2. **Estimate these programs' impact if implemented in a state, based on the state's population characteristics**
3. **Use the state's fiscal data to predict total costs and benefits for each program**

<u>Result</u>: Predicted state-specific return on investment for each program

Example: Functional Family Therapy
(Washington State 2010 dollars)

Benefits Per Family		Main Source of Benefits
Reduced crime	$31,745	Lower state & victim costs
Increased high school graduation	$5,686	Increased earnings
Reduced health care costs	$307	Lower public costs
Total Benefits Per Family	$37,739	
Cost Per Family	$3,190	
Net Present Value	$34,549	
Benefits Per Dollar of Cost	$11.86	

Addendum (distribution of benefits)

$3,599	**=**	**Benefits to participant**
$8,336	**=**	**Benefits to taxpayers**
$21,636	**=**	**Benefits to others (crime victims)**
$4,167	**=**	**Other benefits**

Source: Washington State Institute for Public Policy

Model can rank programs in "Consumer Reports" lists

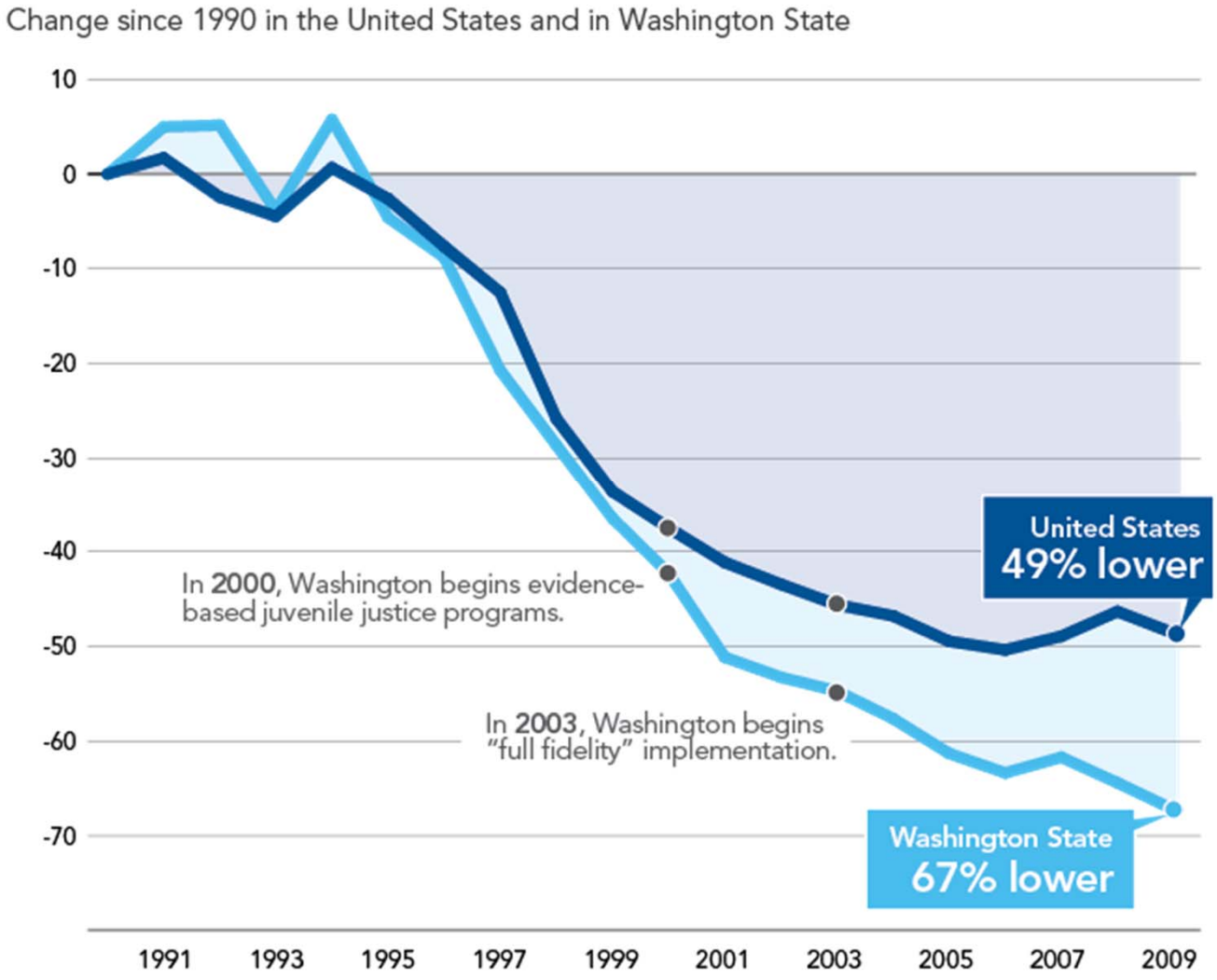
Policy/Program	Cost	Net Long-term Benefits	Cost/Benefit Ratio
Alternative drug sentencing	$1,511	$26,502	$18.57
Correctional education in prison	$1,102	$18,821	$18.11
Vocational education in prison	$1,537	$17,547	$12.43
Community drug treatment	$2,102	$13,317	$7.35
Mental health court	$2,878	$11,352	$4.95
Cognitive behavioral therapy	$217	$10,524	$49.55
Work release	$649	$5,817	$9.97
JUVENILE PROGRAMS			
Aggression replacement training	$1,473	$66,481	$45.50
Drug court	$3,024	$9,713	$4.22
Coordination of services	$386	$4,884	$13.63
Scared Straight	$63	-$6,095	0

Source: Washington State Institute for Public Policy

Long-term success in Washington State

- **Developed by Washington State Institute for Public Policy**
- **Washington has used model for many years to help achieve better outcomes at lower costs in many policy areas**
  - **Example – criminal justice: Washington State has avoided $1.3 billion per biennium AND achieved a lower crime rate**

Keeping track of results: juvenile arrest rates



Source: Washington State Institute for Public Policy

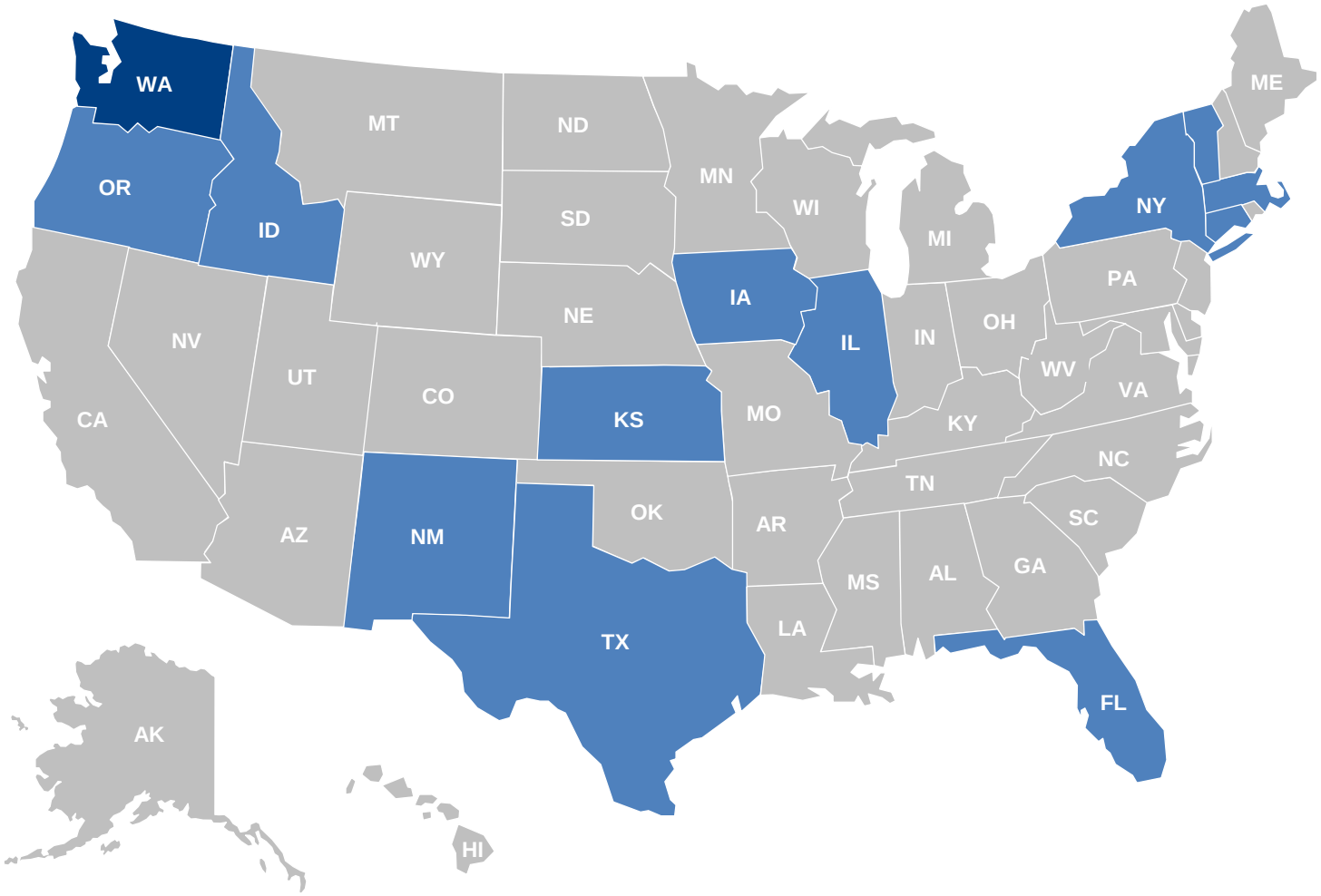
Policy areas in current model

- Child Welfare
- Criminal Justice (adult and juvenile)
- Housing
- Mental Health
- Pre-K-12 Education
- Prevention
- Public Health
- Substance Abuse

Results First services to states

- **Provide model**
- **Train staff in the approach and provide ongoing technical assistance**
- **Help interpret results for policy makers**
- **Compile and share lessons learned among participating states**
- **Continue to expand and update model**
- **Provide all services free to participating states**

Current Results First states

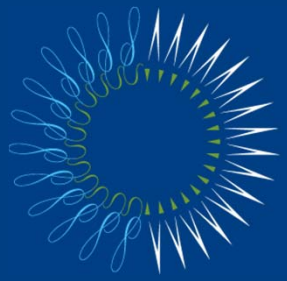


State plans for use

- **New Mexico**
  - **Identifying gaps in reporting for community-based programs**
  - **Identifying programs that should receive priority funding**
- **Iowa**
  - **Helping craft DOC budget request**
  - **Modeling mandatory minimum sentencing changes for drug offenses**

For more information

Gary VanLandingham
Director, Results First
gvanlandingham@pewtrusts.org



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www.pewstates.org/ResultsFirst

Evidence Based Decision Making Initiative

National Institute of Corrections

Advisory Board Meeting

Madeline (Mimi) Carter

Thursday, August 23, 2012

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Background

- 32 years in corrections
  - 10 years Montgomery County (MD) Department of Corrections & Rehabilitation
  - 22 years Center for Effective Public Policy
    - 22 years working with NIC on a variety of systemwide change initiatives as well as issue-specific projects
- Have served as the Project Director for the Evidence-Based Decision Making Initiative since inception
  - The Center also serves as one of the TA providers under JRI

My Objectives

- Provide an overview of NIC's EBDM initiative
- Describe the interface between EBDM and JRI and the importance of these federal partnerships
- Emphasize the most critical aspect of these initiatives: collaboration at the local and state level
- Review the range of innovative policy change efforts underway in these sites, and the
- Highlight some of the impacts realized from this work

EBDM Timeline Overview

Phase I

Framework Development

May 2008-March 2010

Phase II

Planning Process

June 2010-August 2011

Phase III

Implementation

August 2011-Present

- NIC began its sponsorship of the *Evidence-Based Decision Making in Local Criminal Justice Systems* (EBDM) initiative in May 2008
- In Phase I, we built the EBDM "Framework"
- In August of 2010, NIC selected, on a completive basis, seven counties from across the country to participate in Phase II
- The same seven sites continued onto the Implementation Phase (Phase III)

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Phase I

Phase I

Framework Development

May 2008-March 2010

Phase II

Planning Process

June 2010-August 2011

Phase III

Implementation

August 2011-Present

- Worked with NIC and a multidisciplinary advisory committee
- Defined risk and harm reduction as fundamental goals of the justice system
- Reviewed and summarized the research on risk and harm reduction
- Conducted a national public opinion survey
- Outlined a conceptual framework and set of principles for achieving EBDM
- Developed *A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems*
- Convened discipline-specific focus groups to "field test" the Framework

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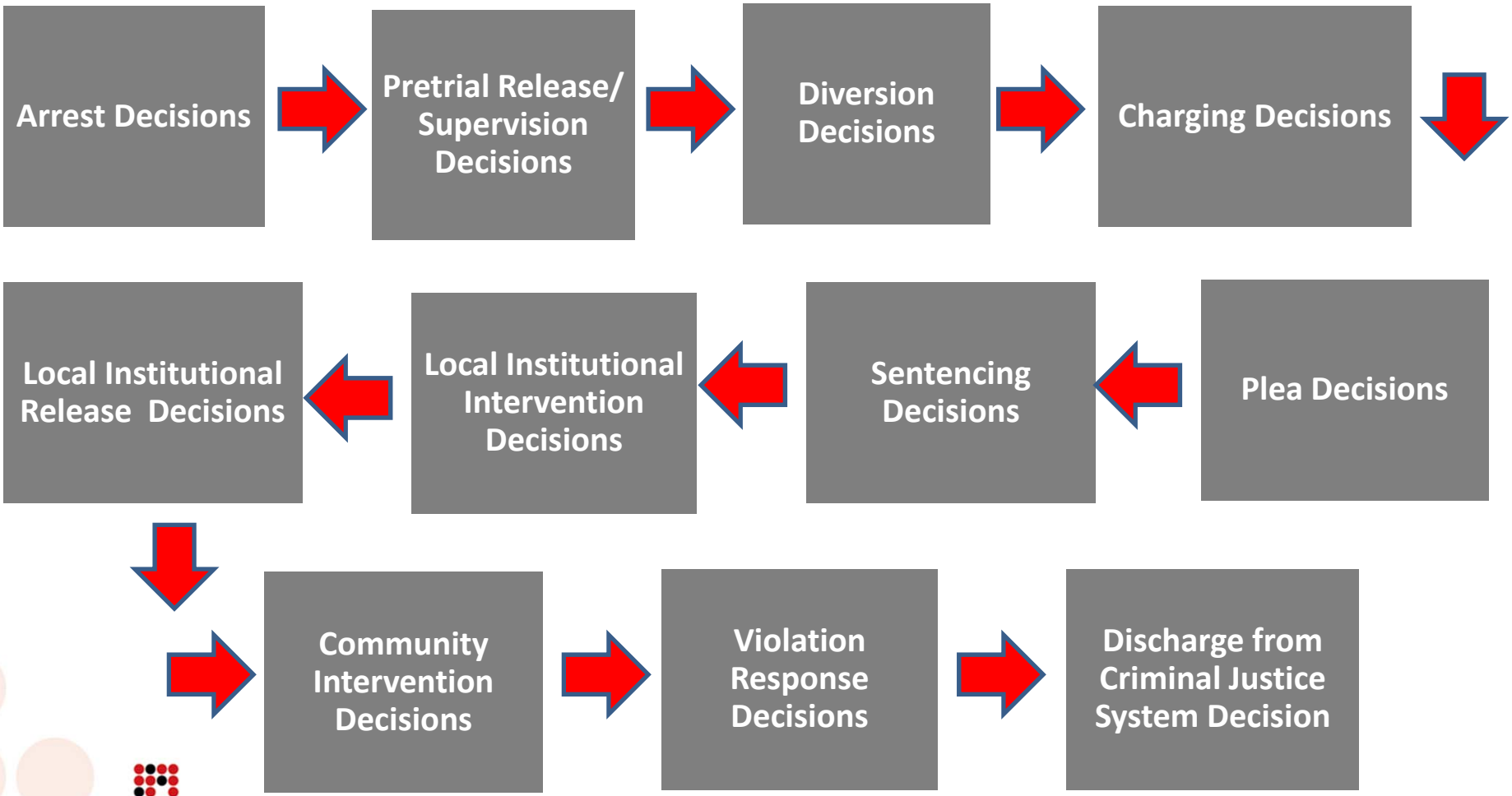
Key Decision Points



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Phase II

Phase I

Framework Development

May 2008-March 2010

Phase II

Planning Process

June 2010-August 2011

Phase III

Implementation

August 2011-Present

- Selected seven EBDM sites
- Assisted sites to:
  - Develop the processes /infrastructure to implement Framework
  - Assess current policy and practice and determine methods to more effectively integrate research at key decision points
  - Develop Phase III work plans for implementation of EBDM
- Conducted independent evaluation of the effectiveness of the technical assistance
- Developed tools and resources for EBDM sites and other interested jurisdictions

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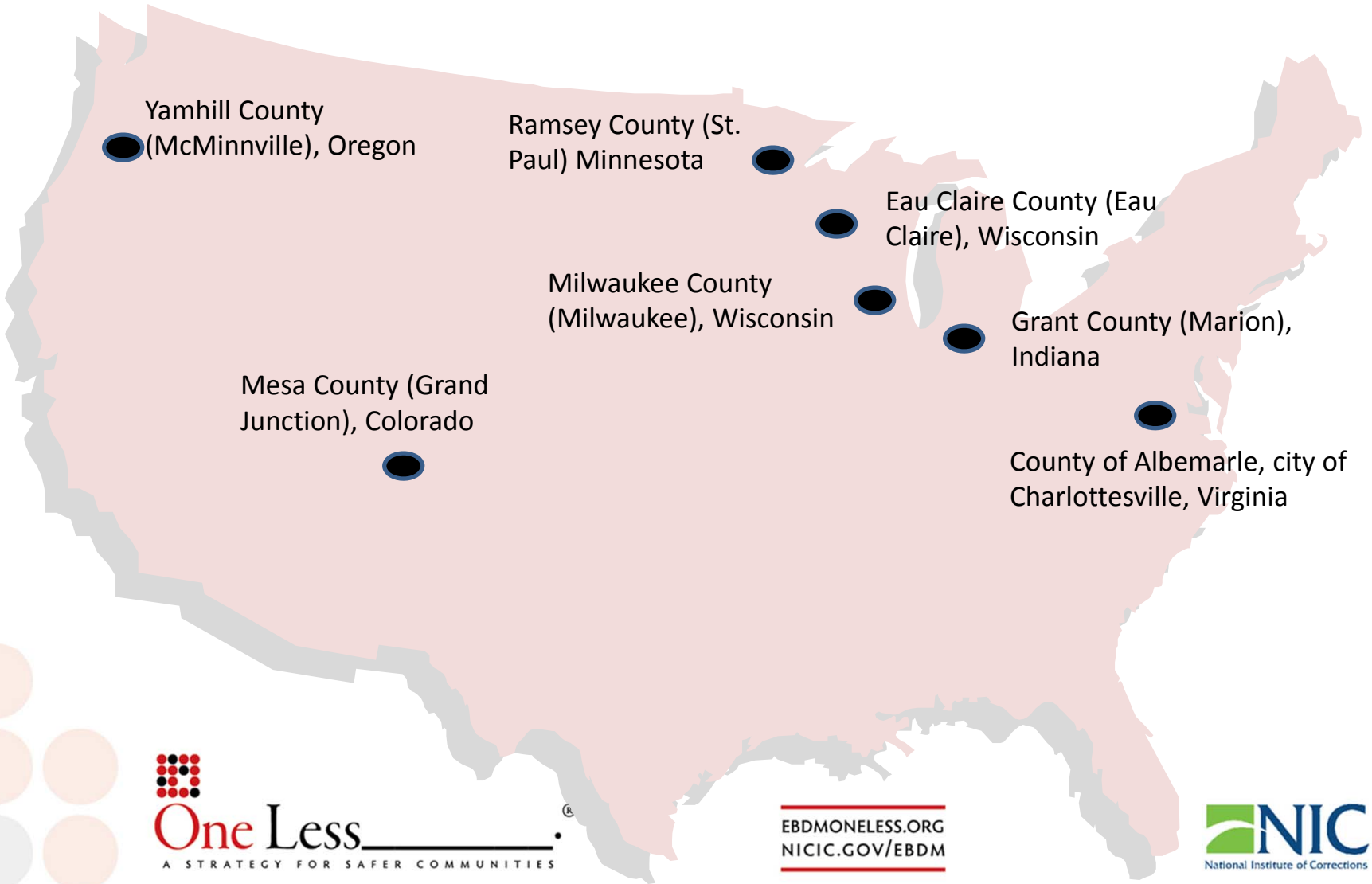
EBDM Sites



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Policy Team

Elected Sheriff

Court Administrator

Chief of Police

Chief Judge

Pretrial Director

Chief Probation Officer

District Attorney

City/County Manager

Public Defender

Commissioner/Board of Supervisors

Jail Administrator

Victim Advocate

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Principle #1

The professional judgment of criminal justice system decision makers is enhanced when informed by evidence-based knowledge.

Examples: use of risk tools; effectiveness of interventions under certain conditions

Evidence-based knowledge does not replace discretion but instead, informs decisions.

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Principle #2

Every interaction within the criminal justice system offers an opportunity to contribute to harm reduction.

Examples: law enforcement officer at the point of arrest, pretrial officer at assessment, judicial officer on the bench

To be effective, justice system players must understand how their interactions influence others and have the knowledge and skills to enhance this influence.

Principle #3

Systems achieve better outcomes when they operate collaboratively at the individual, agency, and system levels

Example: Establishment of policy teams and operational protocols that define how others will be consulted and decisions made

Decision making responsibilities remain at the individual and agency level, however under the collaborative approach, input is received and other's interests are taken into account.

Principle #4

The criminal justice system will continually learn and improve when professionals make decisions based on the collection, analysis, and use of data and information

Examples: Establishment of agency and system wide performance measures; feedback loops to examine efficacy of current practice

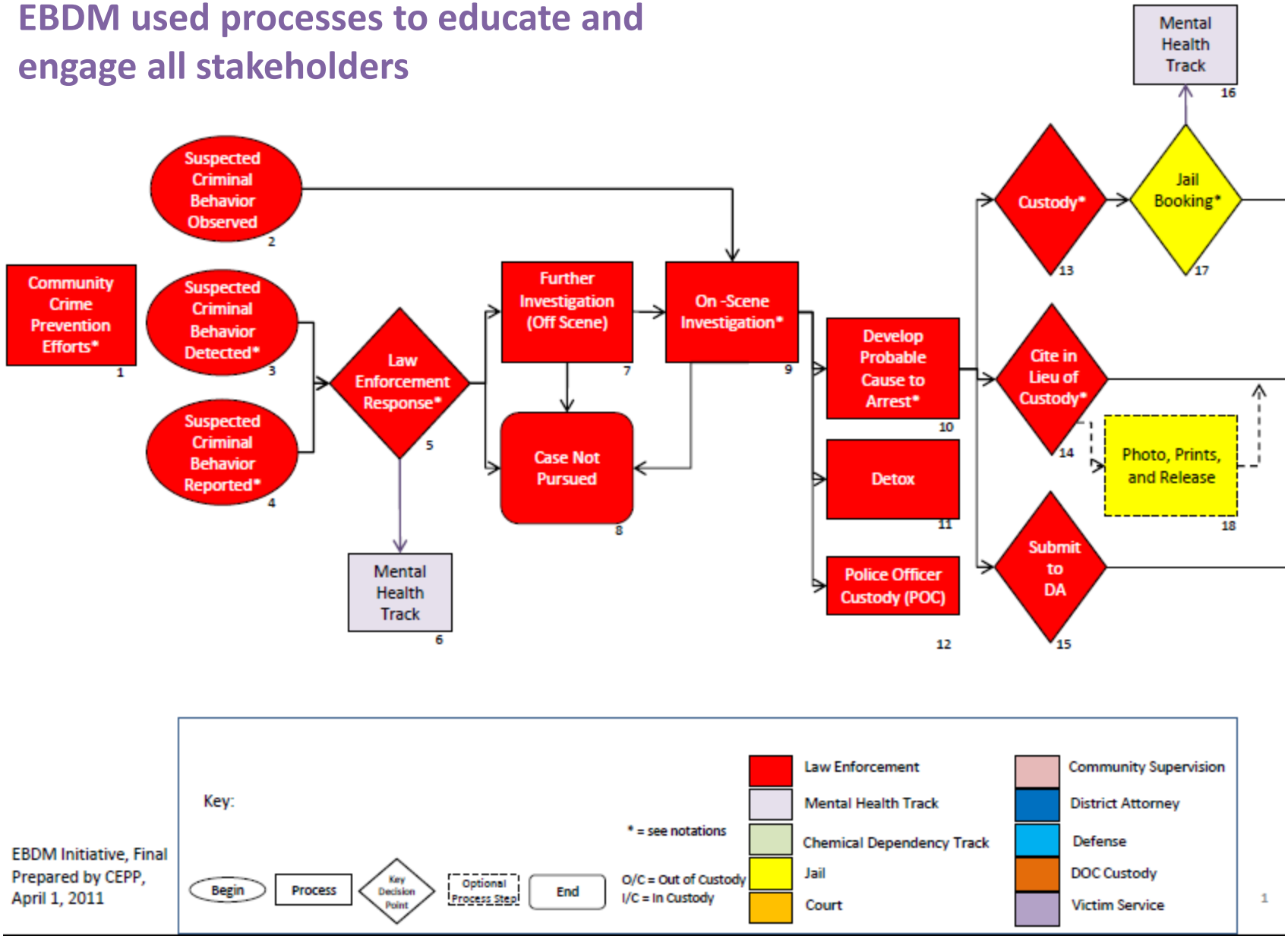
Where evidence is not immediately available, the justice system may need to use its own data to determine what is or is not working.

Phase II (Planning) Objectives

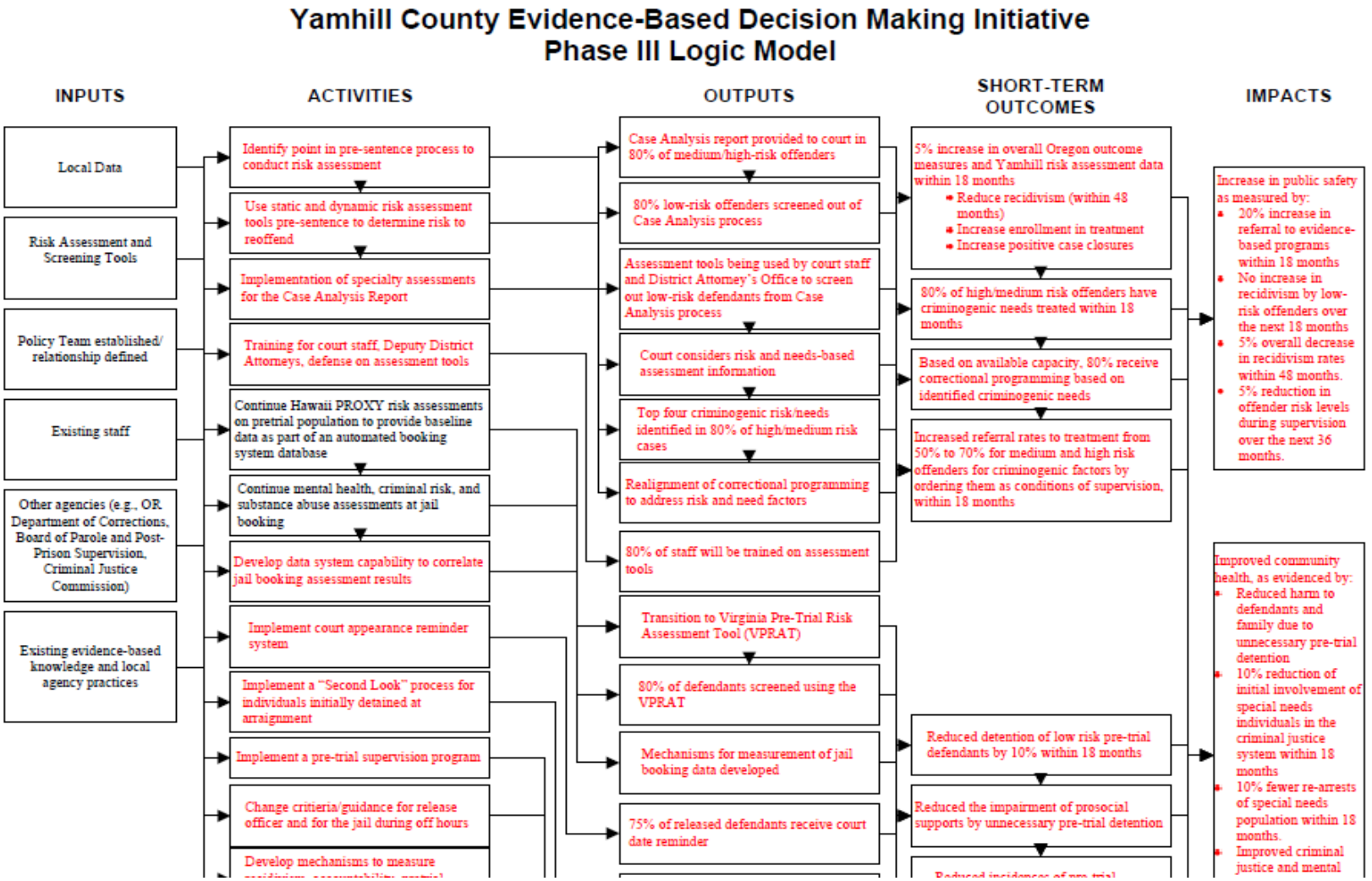
Build a genuine, collaborative policy team
Build individual agencies that are collaborative and in a state of readiness for change
Understand current practice within each agency and across the system
Understand and have the capacity to implement evidence-based practices
Develop logic models
Establish performance measures, determine outcomes, and develop a system scorecard
Engage and gain the support of a broader set of stakeholders and the community
Develop a strategic action plan for implementation

Excerpt from System Map, Yamhill County

EBDM used processes to educate and engage all stakeholders



EBDM used tools to describe and make explicit how impacts are to be realized



Excerpt from Scorecard, Milwaukee County

EBDM required stakeholders to quantify their outcomes, and how they expected to reach them

Milwaukee County

Community Justice Council

Evidence-Based Decision Making Initiative

System Scorecard

Four Commitments We Make to Criminal Justice in Milwaukee

The Milwaukee County Criminal Justice Council, a collaboration of all stakeholders in Milwaukee's justice system, is firmly committed to greater accountability in criminal justice and better stewardship of criminal justice resources.

To make this vision a reality, we are implementing **Four Systemic Changes** with the assistance of the National Institute of Corrections and the Bureau of Justice Assistance.

By applying what research and data tell us about what works in protecting the community, holding offenders accountable and making the smartest possible use of our limited resources, by the end of 2013 we will:

1. Reduce by 25% the number of people with mental health needs who lose their benefits due to being jailed or losing housing, and increase by 25% the number of individuals with mental health needs who are reconnected to the services they need within 20 days after arrest.

2. Safely release and/or supervise 15% more pretrial detainees in the community rather than in jail, generating at least $1,000,000 in savings that can be reinvested in the community, and at the same time reduce by at least 40% the already low rates at which defendants waiting for trial fail to follow pretrial rules.

3. Divert or defer prosecution in 10% more cases than we do currently, holding offenders accountable, compensating victims and reducing recidivism, while generating at least $350,000 in savings that can be reinvested in the community.

4. Demonstrate in a pilot project that by terminating probation as soon as an offender in need of treatment has received sufficient treatment, we can cut the cost of probation by at least 50% and at the same time reduce probation recidivism by 50%.

Excerpt from Scorecard, Charlottesville/Albemarle County

Charlottesville/Albemarle Virginia

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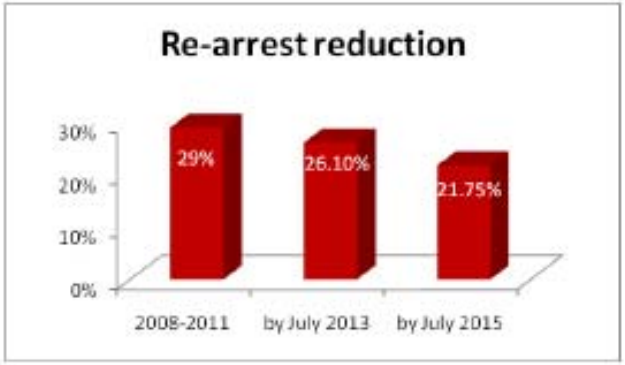
One less offender. One less crime. One less victim.

Criminal Justice System Scorecard

"Working together for a safer community, one person at a time"

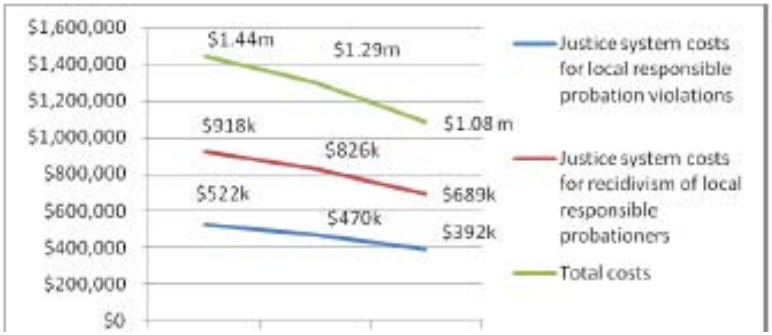
Reduce re-arrests: **Percentage of local responsible/misdemeanor offenders re-arrested of a jailable criminal offense within three years following discharge from probation supervision.**



Our locality seeks to reduce the re-arrest rate of justice system involved individuals by 10% the year following implementation and by a total of 25% three years post implementation. Re-arrest is defined as an arrest for a jailable criminal offense post-release from community supervision. Currently, the three year recidivism rate for this population is 24%.

Reduce and Reinvest future criminal justice costs: **Costs savings realized through the implementation of evidence based decision making to be utilized and reinvested in future crime reducing activities.**

By reducing recidivism and reducing probation violations of local responsible offenders by 25%, our locality will realize a cost savings of over $360,000 which we intend to reinvest in further crime reducing activities as determined by the evidence based decision making process.



Example of Communication Tool, Charlottesville/Albemarle County

EBDM encouraged an explicit public outreach effort, to guard against the "bad case" that reshapes policy

One Less seat-of-the-pants judgment,

One More judgment informed by data

Dave Chapman

Charlottesville Commonwealth Attorney

We are moving our community criminal justice system forward toward a model in which the discretionary judgments made by criminal justice professionals are better informed by data and more likely to contribute measurably to improved outcomes. We will improve public health and safety by utilizing evidence-based decision making at each critical stage at which we make choices about policies, practices, and, in individual cases, about people. These objectives can be accomplished without compromising our values or undermining the important principle of holding people accountable for their behavior.

As well-trained, motivated, as we believe they do. A traditional or typical approach to a type of offense, even one that derives from an important principle such as holding people equally accountable for the same behavior, may not be the most effective one. There may be other approaches that not only uphold the principle of equal justice to the same degree, but also improve outcomes measurably in terms of the contributions they actually make to public health and safety.

There is reason to believe that we can improve outcomes in criminal cases by utilizing evidence-based decision making at each stage of the process where discretion is exercised by officials who work in the justice system. This is true at the system level when choosing among alternative policies, practices, and programs. It is also true at the individual level in the context of sentencing decisions or the consideration of appropriate alternatives to traditional prosecution. We can improve the

Our transition to increased reliance on evidence-based practices is a collaborative process in which the experiences and good judgment of veteran criminal justice professionals are utilized to identify and implement an improved set of policies, practices, and programs that meet the needs of the community. This process is not taking place in a vacuum. Participants in this effort include a diverse cross section of professionals from every corner of the criminal justice system who are highly motivated to improve our local justice system while preserving overall confidence that the system is fair at its core and achieves outcomes that enhance public

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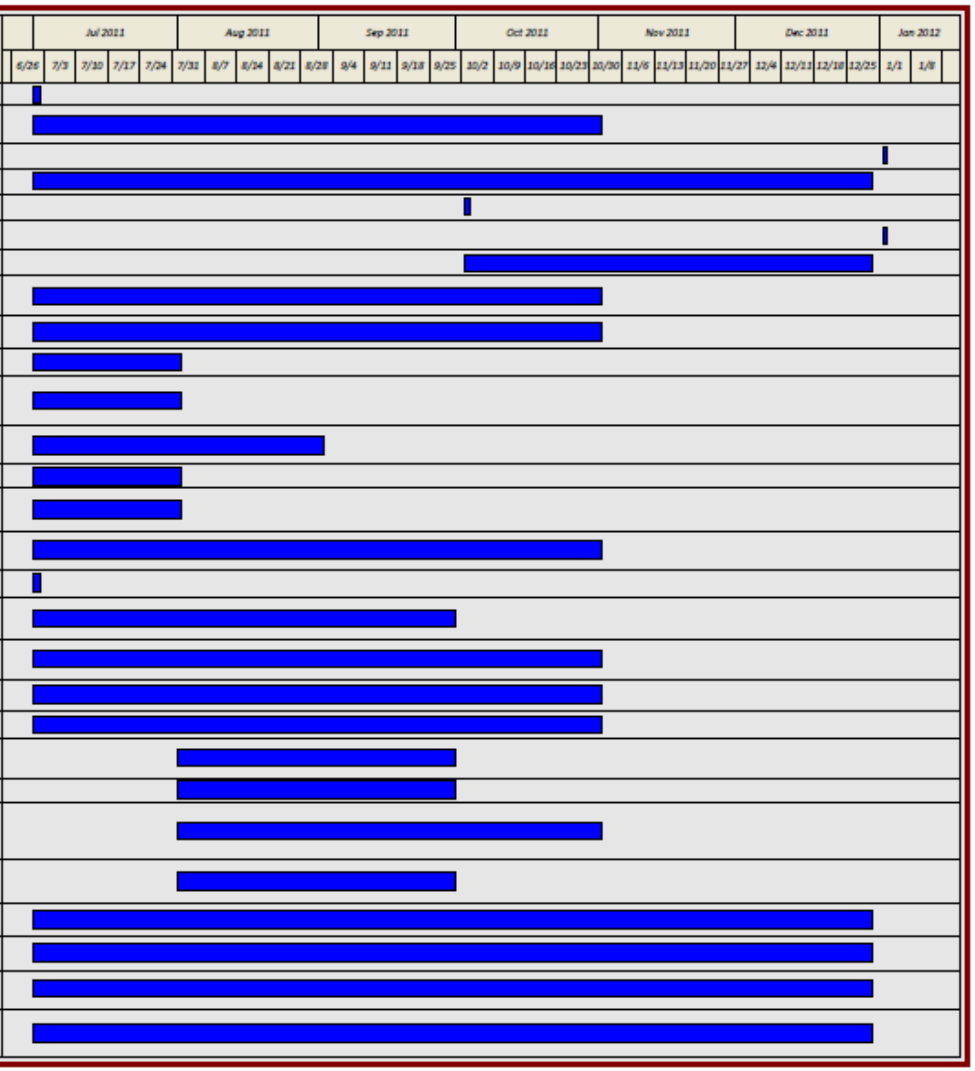
EBDM created accountability methods, to keep this work on the front burner

Excerpt from Implementation Plan, Eau Claire County

EAU CLAIRE COUNTY - TIME LINE FOR EBDM IMPLEMENTATION

ID	Task Name	Start	Finish	Duration
1	Inform County Board	7/1/2011	7/1/2011	.2w
2	Finalize EBDM Framework for all processes	7/1/2011	11/1/2011	17.6w
3	Implement EBDM plan	1/2/2012	1/2/2012	.2w
4	Finalize department training	7/1/2011	12/30/2011	26.2w
5	1 day training on EBP/EBDM	10/3/2011	10/3/2011	.2w
6	Annual training on ebp	1/2/2012	1/2/2012	.2w
7	Solidify community engagement plan	10/3/2011	12/30/2011	13w
8	Agency level and case logic models for all processes	7/1/2011	11/1/2011	17.6w
9	Establish required record keeping system	7/1/2011	11/1/2011	17.6w
10	Establish implementation teams	7/1/2011	8/1/2011	4.4w
11	Define target population for each decision point for completion of proxy/ compas	7/1/2011	8/1/2011	4.4w
12	Develop policy/procedures for use of tools at each decision point	7/1/2011	9/1/2011	9w
13	Hire diversion coordinator	7/1/2011	8/1/2011	4.4w
14	Inform justice system partners of diversion program	7/1/2011	8/1/2011	4.4w
15	Develop policy/protocol for pre-charging decisions	7/1/2011	11/1/2011	17.6w
16	Judicial buy-in for EBDM process	7/1/2011	7/1/2011	.2w
17	Define target population for pretrial population	7/1/2011	9/30/2011	13.2w
18	Establish conditions for referral to pretrial programming	7/1/2011	11/1/2011	17.6w
19	Expand use of transition center	7/1/2011	11/1/2011	17.6w
20	Develop expedited track for pretrail	7/1/2011	11/1/2011	17.6w
21	Develop protocol for Huber to access jail programming	8/1/2011	9/30/2011	9w
22	Develop manuals for each process	8/1/2011	9/30/2011	9w
23	Develop policy/procedure for sentencing guidelines with use of assessment tools	8/1/2011	11/1/2011	13.4w
24	Identify target population for CTC/Jail/ Huber	8/1/2011	9/30/2011	9w
25	Establish the process for evaluation of EBP	7/1/2011	12/30/2011	26.2w
26	Finalize Performance mng system	7/1/2011	12/30/2011	26.2w
27	Establish out of custody holds for ATR process	7/1/2011	12/30/2011	26.2w
28	Develop matrix for sanctions, violations, revocations	7/1/2011	12/30/2011	26.2w



http://ebdmoneless.org/starterkit/

EBDM

The Starter Kit

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EBDM Starter Kit Introduction

The Evidence-Based Decision Making (EBDM) in Local Criminal Justice Systems Starter Kit provides guidance to jurisdictions interested in implementing the EBDM Framework. The Starter Kit outlines a planning process that is informed by the experiences of the seven EBDM sites that participated in Phase II of the EBDM initiative.

Purpose of the Starter Kit

The Starter Kit is intended to help collaborative criminal justice policy teams build their capacity to engage in EBDM. It follows the EBDM "Roadmap," a step-by-step process designed to assist local jurisdictions in preparing to implement the EBDM Framework.

Who Should Use the Starter Kit

The Starter Kit is designed for use by multidisciplinary criminal justice teams that have read and agreed to the basic premises of the Framework for Evidence-Based Decision Making in Local Criminal Justice Systems and that are committed to working together toward a justice system based on local data and empirical research. The team's ultimate goal would be to achieve a reduction in

What Do We Mean By "Reducing Harm"?

"Harm reduction," as used here, refers to decreases in the ill effects of crime experienced broadly by communities, by victims, by citizens, by families of offenders, and by offenders themselves.

Phase III

Phase I

Framework Development

May 2008-March 2010

Phase II

Planning Process

June 2010-August 2011

Phase III

Implementation

August 2011-Present

- Assisting sites to:
  - Implement change strategies
  - Expand activities to become systems characterized by evidence-based decision making
  - Implement communication strategies

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Phase III (Implementation) Objectives

Collect baseline data on implementation strategies
Implement change strategies
Sustain a multi-disciplinary collaborative policy team
Fully engage agency staff in EBDM, focusing specifically on agency managers and supervisors
Embed EBDM knowledge systemwide
Carry out the external stakeholder communication strategy
Guard against implementation failure
Measure performance against systemwide scorecard
Celebrate success
Institutionalize policy changes
Expand the number of EBDM change strategies
Educate and engage in-state colleagues on EBDM
Share experiences with national colleagues

EBDM and JRI Sites

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EBDM & JRI: Similarities

- Multi-disciplinary policy team approach
- Vision and mission statement driven
- Development of plans to implement the policy and practice changes identified through analytic processes
- Implementation of change strategies

EBDM & JRI: Complimentary Differences

- EBDM invests extensively in
  - building a highly collaborative policy team
  - building a shared vision among those team members
  - Identifying systemwide outcomes and performance measures
  - assessing policy and practice against those outcomes
  - building a deliberate public education/engagement strategy
- JRI invests extensively in
  - quantitative analysis/simulation modeling of cost drivers
  - providing seed funding for reinvestment strategies
  - emphasizing local crime prevention and justice reinvestment efforts

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Eau Claire, Wisconsin

- **Implementing the use of the Hawai'i Proxy tool at arrest**
- Increase diversion of low risk offenders
- Developing speedier review of cash bonds and conditions of signature bonds
- Implementing gender-neutral and gender-specific risk/need assessment tools at key decision points
- Developing evidence-based jail programming
- Ensuring community-based programs are evidence-based
- Implementing the use of incentives/earned credits for inmates participating in evidence-based programming
- Enhancing transition and reentry from jail to community
- Conducting realignment of specialty courts with EBP

Excerpt of Law Enforcement Proxy Tool, Eau Claire County

DRAFT Eau Claire County Law Enforcement Proxy

This is to be completed on all criminal arrests (in custody arrests, criminal referrals to the D.A., and for ordinance violations which would otherwise involve criminal behavior such as retail theft)

Case #: _____

Name: _____

DOB: ____/____/____ Age: _____

Gender: Male Female

Officer: _____

Agency: _____

Offense: _____

Offense: _____

PROXY DATA

Current Age: ____	(16-25) = 2 (26-35) = 1 (36+) = 0	Score ☐
Age of First Arrest: In your **LIFETIME** -Include arrests, summons, and warrant for any criminal offense include criminal traffic ____	(0-17) = 2 (18-21) = 1 (22+) = 0	Score ☐
Number of Prior Arrests: As an **ADULT** only - Arrests, summons, warrant for any criminal offense, this includes ordinance violations that would otherwise be a criminal offense ____	(0-1) = 0 (2-4) = 1 (5+) = 2	Score ☐
	TOTAL	☐

Risk Level Classification

Low Risk			Medium Risk		High Risk	
0	1	2	3	4	5	6

National Proxy Norms (not calibrated)

Percentage of Population	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
Total PROXY sample (n=3085)	0 8%	1 12.2%	2 16.9%	3 21.4%	4 20.1%	5 13.4%	6 7.7%			

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Instructions for Use of Proxy Tool, Eau Claire County

LAW ENFORCEMENT OFFICERS

INSTRUCTIONS FOR USING THE PROXY IN ARREST AND DETAIN DECISIONS:

1. Ask three questions of arrested person (see attached proxy worksheet).
2. Officers verify data by using a criminal history check, CCAP, jail records.
3. Officers complete proxy and derive a score that equates to low, medium or high risk.
4. Officers respond to arrested person in consideration of derived risk level (see below).

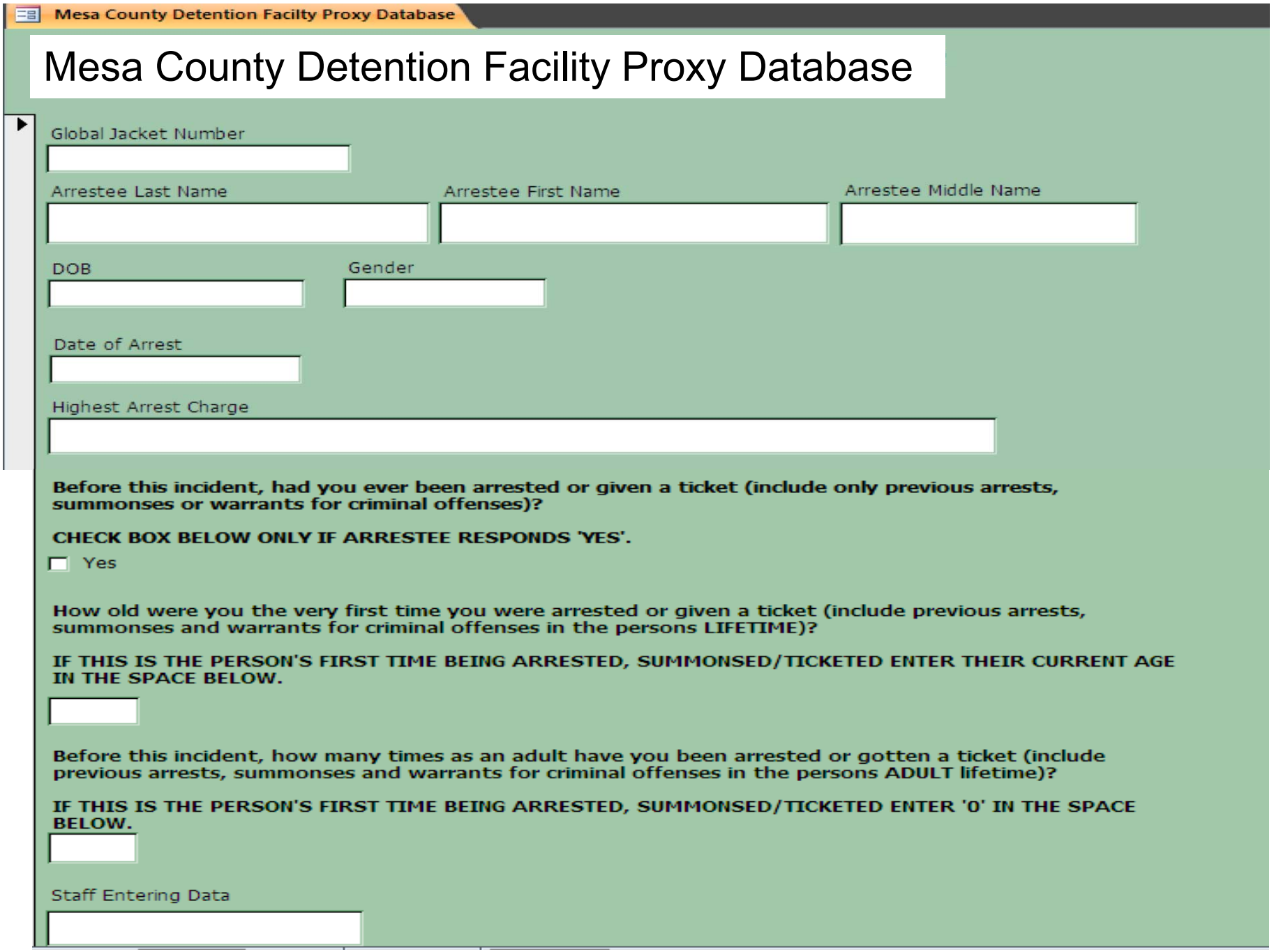
SUGGESTED OFFICER RESPONSE FOR ARRESTEES WITH LOW, MEDIUM AND HIGH RISK PROXY SCORES:

RISK LEVEL	VIOLATIONS/CRIMINAL BEHAVIOR/CRITERIA TO CONSIDER	SUGGESTED RESPONSE
LOW RISK	Ordinance violations that would otherwise be criminal (disorderly conduct; retail theft) All criminal arrests	✓ Cite and release ✓ No arrest required based on facts of case ✓ Referral to District Attorney, if appropriate ✓ Referral to Probation and Parole Agent if appropriate ✓ Issue a criminal ordinance citation ✓ Arrest and order in to court ✓ Arrest and print & release from jail
MEDIUM RISK	✓ They have a valid Wisconsin driver's license or can show sufficient evidence of ties to the community. ✓ The arresting officer is otherwise satisfied that the accused will make future court appearances.	✓ No arrest required based on facts of case ✓ Issue a criminal ordinance citation ✓ Arrest and order into court ✓ Arrest and print & release ✓ Arrest and hold for bond
HIGH RISK	✓ Most Felony violations ✓ Domestic Abuse related violations ✓ The accused does not have proper identification ✓ The accused appears to represent a danger of harm to himself or herself, another person or property ✓ The accused cannot show sufficient evidence of ties to the community. ✓ The accused has previously failed to appear in court or failed to respond to a citation. ✓ Arrest or further detention is necessary to carry out legitimate investigative action in accordance with law enforcement agency	✓ Arrest and hold in jail until next available court date ✓ Arrest and print & release ✓ Refer to the District Attorney's Office for charging consideration.

Mesa County, Colorado

- **Incorporating the Hawai'i Proxy information into charging and plea negotiation decisions; and norming the tool**
- Implementing of a locally-validated pretrial risk assessment tool
- Implementing of a differential supervision tool to determine appropriate pretrial release conditions
- Implementing policy to guide responses to violations of pretrial release conditions
- Developing a judicial sentencing alternatives guide
- Redesigning the pre-sentence report to provide decision makers with offender risk and needs assessment data
- Implementing an EBP pilot courtroom that employs the new pretrial risk instrument and redesigned pre-sentence, as well as judicial Motivational Interviewing practices

Automation of Proxy Tool, Mesa County



Ramsey County, Minnesota

- Establishing a Criminal Justice Coordinating Council
- Conducting a study on diversion and establishing and/or expanding diversion programs at county and city levels
- **Developing pretrial violations response and incentives matrices**
- **Implementing strategies to reduce outstanding warrants**
- Redesigning the community court to align with evidence-based practices
- Integrate court notification pilot program

Excerpt of Pretrial Response Worksheet, Ramsey County

PROJECT REMAND PRETRIAL VIOLATION AND POSITIVE BEHAVIOR RESPONSE WORKSHEET

Case Manager's Initials: _____ Date: _____ Defendant: _____ Bail Evaluation Score: _____

I. VIOLATION BEHAVIOR

Specify the violation behavior(s) being addressed at this time; indicate whether it is a low, medium or high violation:

Violation Behavior(s): _____ ☐ Low ☐ Medium ☐ High

BEHAVIOR / BAIL EVAL SCORE	Low Violation Behavior	Medium Violation Behavior	High Violation Behavior
OR +6 to 0	Low response	Low response	Medium Response
CR -1 to -10	Low response	Medium Response	High Response
BAIL -11 or lower	Medium response	Medium Response	High Response

Identify the response level based on the bail evaluation score and level of violation behavior and indicate whether it is a low, medium or high violation response:

Violation Response: _____ ☐ Low ☐ Medium ☐ High

If an override from the suggested response range is recommended, indicate the response: _____
Provide your reason for overriding the suggested response: _____

II. POSITIVE BEHAVIOR

Specify the positive behavior(s) being addressed at this time; indicate whether it is low, medium or high behavior:

Positive Behavior: _____ ☐ Low ☐ Medium ☐ High

BEHAVIOR / BAIL EVAL SCORE	Low Positive Behavior	Medium Positive Behavior	High Positive Behavior
OR +6 to 0	Low response	Low response	Low Response
CR -1 to -10	Low response	Medium Response	High Response
BAIL -11 or lower	Low response	Medium Response	High Response

Identify the response level based on the bail evaluation score and level of positive behavior; indicate whether it is a low, medium or high response:

Positive Behavior Response: _____ ☐ Low ☐ Medium ☐ High

If an override from the suggested response range is recommended, indicate the response: _____
Provide your reason for overriding the suggested response: _____

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Excerpt from Report on Warrants Study Conducted, Ramsey County

WARRANTS IN RAMSEY COUNTY
Ramsey County's Evidence Based Decision Making Initiative (EBDMI)

ACTIVE WARRANT SUMMARY

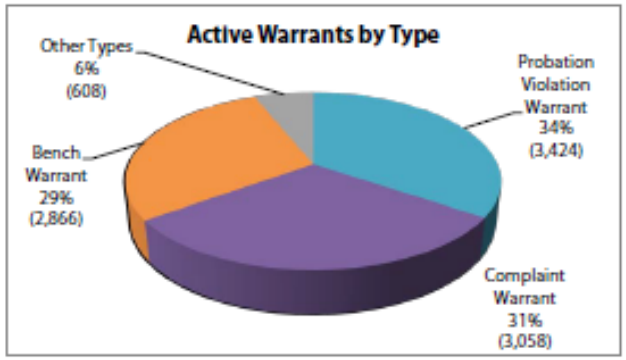
Number of Active Warrants

As of April 8, 2011, Ramsey County had approximately 9,956 active warrants representing 8,795 people.
Of those 1,161 people (approximately 12%) had one or more active warrants.

Type of Active Warrants

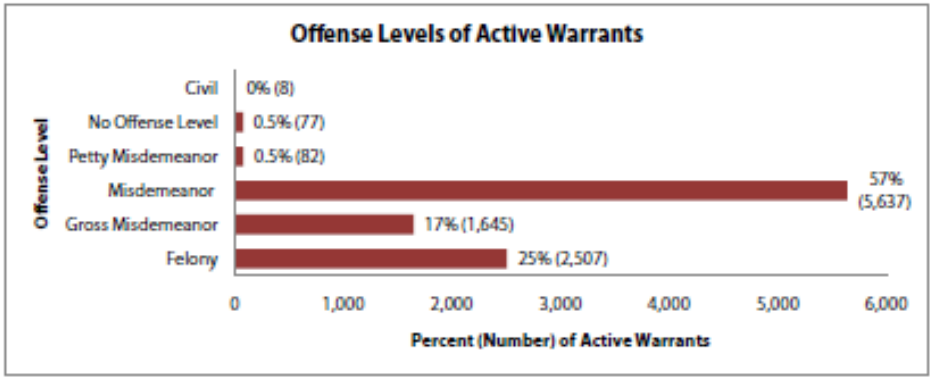
Probation Violation Warrants (3,423 or 34%), Complaint Warrants (3,058 or 31%), and Bench Warrants (2,865 or 29%) represented the top three types of active warrants.

Probation Violation Warrants, Complaint Warrants, and Bench Warrants account for 94% (or 9,348) of all active warrants.



Other types of warrants included Warrant [no type specified] (396 or 4%), Housing Court Warrants (71 or 0.7%), and Civil Writs (59 or 0.6%).

Offense Level of Active Warrants



Misdemeanor warrants represented 57% (or 5,637) of active warrants.
Felony warrants (25% or 2,507) and Gross Misdemeanor warrants (17% or 1,645) represented approximately 42% of the remaining offense levels of active warrants.

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Yamhill County, Oregon

- Implementing an evidence-based pretrial risk assessment tool
- Implementing universal screening of pretrial defendants
- Developing a “Praxis” to guide pretrial release condition decisions
- Redesigning the pretrial process to include granting Sheriff’s deputies in the jail releasing authority under some circumstance
- **Implementing a “Case Analysis” Process to assure judges, prosecutors and defense attorneys have full offender assessments (risk/needs, responsivity factors, motivation level and substance abuse assessments) prior to sentencing**
- Aligning jail and community programming with populations' criminogenic needs

Excerpt from Risk/Needs Assessment Case Analysis, Yamhill County

YAMHILL COUNTY COMMUNITY CORRECTIONS
R/N ASSESSMENT CASE ANALYSIS
Summary Page (Front of Page)

DATE:	April 26, 2011
SID NO.:	12345678
DOB:	01/15/1983
NAME:	Robert Smith
TRUE NAME:	Robert Benjamin Smith
AKA:	N/A

CURRENT CONVICTIONS						
Case #	**County**	**Judge**	**Dist Attny**	**Defn Attny**	**A/R**	
5164-10	Yamhill	Collins	Berry	Frederick	App	

CURRENT CONVICTIONS						
Case #	**ORS**	**CLS**	**CSS**	**CHS**	**Court #**	**DA Case #**
5164-10	163.427	CF	6	D	CR10-039	10-222

Risk Level	☐ **Low**	■ **Moderate**	☐ **High**	
Approx. Dosage	***N/A***	***200 hours***	***300 hours***	

RISK REDUCTION TARGETS	
Primary Risk/Need Factors	**Program/Condition Recommendation**
1. Anti-social attitudes	**X**
2. Anti-social peers	**Y**
3. Substance abuse	**Z**

RISK MANAGEMENT CONCERNS		
Management Concern	**Program/Condition Recommendation**	**Rationale**
1. Hx of violence (2007 conviction for assault)	Elec monitoring	Short term control until pos behavior pattern is demonstrated

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R/N ASSESSMENT CASE ANALYSIS

Detail Page (Back of Page)

Risk Assessment Results		
Instrument	**Score**	**Level (L, M, H)**
OCMS		
LSCMI		
Proxy		
ODARA		
STATIC-99		

Motivation Level Assessments		
URICA		
TCU Criminal Thinking Scale		
Stage of Change		

LSCMI Domain Scores	
Primary	
Criminal history	
Anti-social attitudes	
Anti-social associates/peers	
Anti-social behavior	
Family/marital	
Secondary	
Substance abuse	
Lack of employment stability, achievement	
Lack of educational achievement	
Lack of pro-social leisure activities	

Responsivity Factors *Check all that apply that are relevant to service needs*	
Functional ability: attention span	
Functional ability: cognitive deficits	
Functional ability: emotional age	
Language	
Learning style	
Level of motivation	
Mental health condition	
Cultural background	
Gender (women)	

STRENGTHS (Top 3)
1.
2.
3.

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Milwaukee County, Wisconsin

- Implementing locally validated pretrial risk assessment tool
- Implementing universal screening of all pretrial defendants
- Implementing a "Praxis" tool to guide pretrial release decisions
- Establishing Early Intervention and diversion processes for the mentally ill
- Redesigning Early Intervention programs to divert low risk offenders from the justice system and expedite interventions for moderate risk offenders
- Aligning community work service programs to offenders' risk and needs
- **Designing and implementing a "dosage probation" intervention program to match interventions to offenders' risk and needs and incentivize program participation and encourage system alignment around successful completion of supervision**
- Conducting a community resource gaps analysis around evidence-based programming
- Establishing a Preferred Provider Network of evidence-based treatment providers

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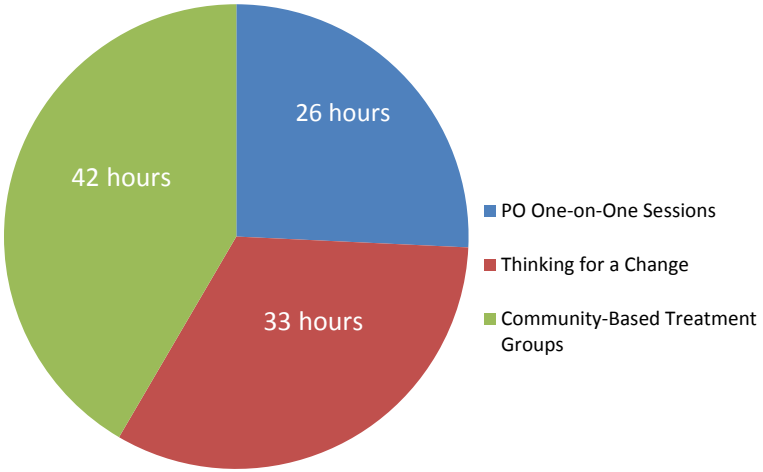
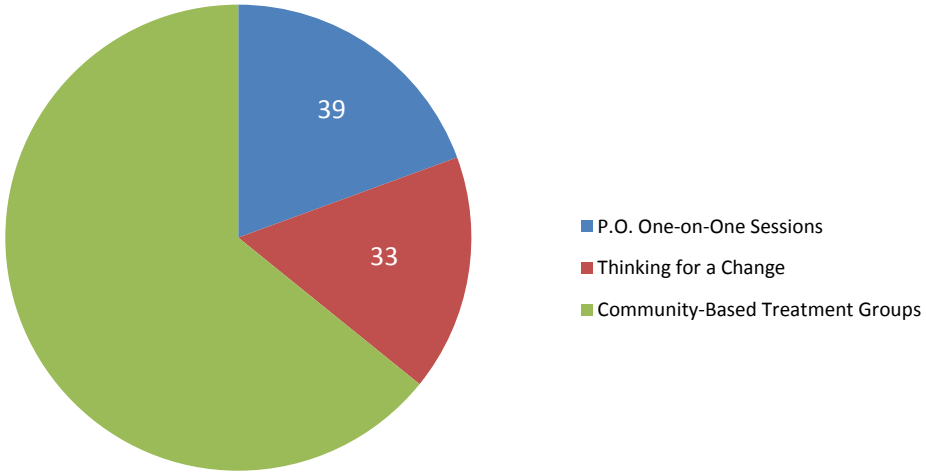
Excerpt from Developmental Materials on Dosage Probation, Milwaukee Claire County

Milwaukee County, Wisconsin
Dosage Probation

Moderate Risk Offenders
(100 hours of dosage, optimally over one year)



High Risk/Moderate Need Offenders
(200 hours of dosage, optimally over 18 months)



- Probation Officer one-on-one sessions that target top criminogenic needs (30 minutes/week x 52 weeks for one year (26 hours) or 30 minutes/week x 78 weeks for 18 months (39 hours)
- Thinking for a Change Group (90 minutes/session x 11 sessions = 33 hours)
- Community-Based Treatment (90 minutes/session x 28 weeks = 42 hours or 90 minutes/session x 86 weeks = 129 hours)
- Completion of assignments targeting top criminogenic needs outside of sessions reduces dosage required through P.O. one-on-one sessions and/or treatment group sessions
- Motivational Readiness may be provided but does not count towards dosage

Grant County, Indiana

- Implementing a pretrial risk assessment for selected uses (bond reduction hearings, research on risk levels of pretrial defendants, and eligibility for diversion)
- Expanding diversion; developing clear eligibility criteria
- Revising restitution collection policy and practice
- Developing strategies to accelerate case processing
- Reallocating probation caseloads to ensure increased supervision of moderate and high risk offenders, minimal supervision of low risk offenders
- **Implementing an evidence-based decision making guideline to respond to offender violation and prosocial behaviors**
- Improving the use of evidence-based curricula and intervention practices in contracted substance abuse and mental health services
- Creating a victims' council

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Excerpt of Probation Incentive Response Matrix, Grant County

INCENTIVE RESPONSE MATRIX:

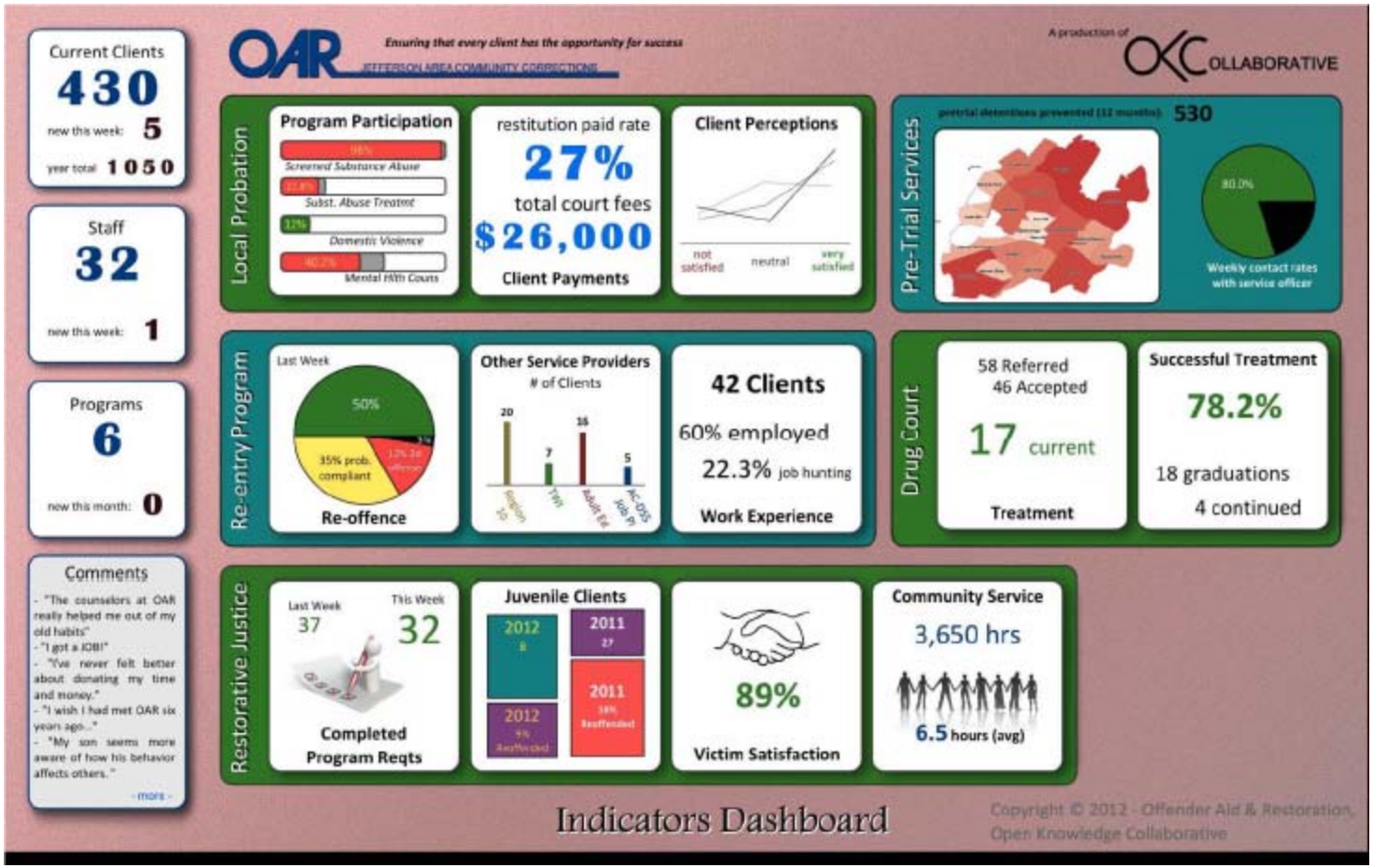
Low Behavior Severity:	Moderate Behavior Severity:	High Behavior Severity:
Arriving on time for Probation appointment.	Associating with prosocial peer.	Successfully completing term of Probation.
Attending Probation appointment.	Obtaining gain full employment	Successful completion of Court Program.
Arriving on time for treatment appointment.	Positive monthly report from treatment provider.	Successful completion from treatment program.
Positive Curfew Check	Obtaining a mentor.	
Paying probation fees.	Attending prosocial activity on regular basis.	
Reporting info to Probation Officer.	Obtaining an AA or NA sponsor.	
Clean drug and alcohol screens.	Paying Child Support.	
Paying restitution.	Following Protective Order.	
Paying Court Costs.	Complete Community Service hours.	
Following through with education or employment referral.	Informing doctor or emergency room staff that they cannot have any narcotic medications.	
Honesty		
Registering as a sex offender.		

Initial Response Option:	Initial Response Option:	Initial Response Option:
Verbal praise	Saturday Work Crew	Gift cards or certificates.
Later Curfew	Serve weekend in jail	YMCA or movie passes
Less reporting requirements.	Move probationer out of supervised living environment.	Early release of Probation time.
Certificate of achievement	Serve week in jail	Reduce Probation time.
Calling family member or significant other to brag about Probationer.	Advance a Phase in the Court Program.	Graduation from Court Program.
Letter of praise.	Approve out of state	Move to unsupervised

Charlottesville/Albemarle County, Virginia

- Increasing the use of evidence-based pretrial risk assessment tools
- Applying a mental health assessment screening tool for pretrial and sentencing decisions
- Developing a restorative justice program to serve general district court and circuit court
- Aligning domestic violence policies and practices with research
- Implementing an evidence-based decision making guideline to respond to offender violation and prosocial behaviors
- Identifying/implementing evidence-based interventions that address criminogenic needs
- Increasing community based alternatives (e.g., electronic monitoring; community service and/or restitution in lieu of jail)
- **Creating a criminal justice system performance outcome "dashboard"**

Mock-Up of Potential Criminal Justice System Dashboard, Charlottesville/Albemarle County



Milwaukee County

Clockwise from left:
Holly Szablewski, Judicial Review Coordinator, Milwaukee County
Jeff Altenburg, Deputy District Attorney, Milwaukee County District Attorney's Office
Jeffrey Kremers, Chief Judge, 1st Judicial District
Thomas Reed, First Assistant, Office of the State Public Defender
Paige Styler, Assistant State Public Defender, Wisconsin State Public Defender
Roberta Gaither, Regional Chief, Wisconsin Department of Corrections

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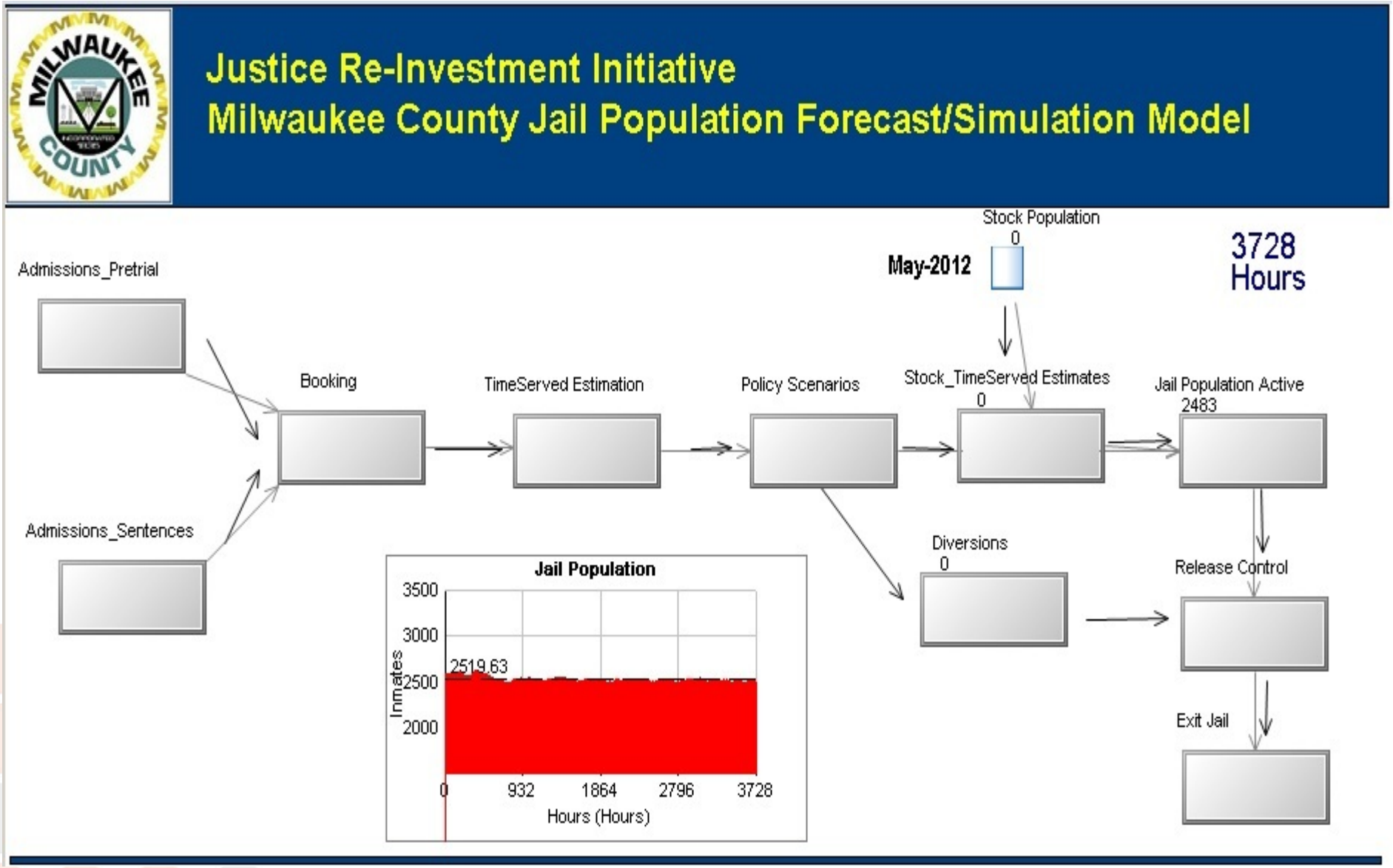
Illustration of the Impact of EBDM on Systemwide Change: Milwaukee County

- Large urban jurisdiction; population approx 1 million
- 6,000 felony filings/year
- 21 adult criminal court judges; 125 prosecutors; 60 public defenders
- Operates 2 local jails
- Largest “feeder” to the state prison system

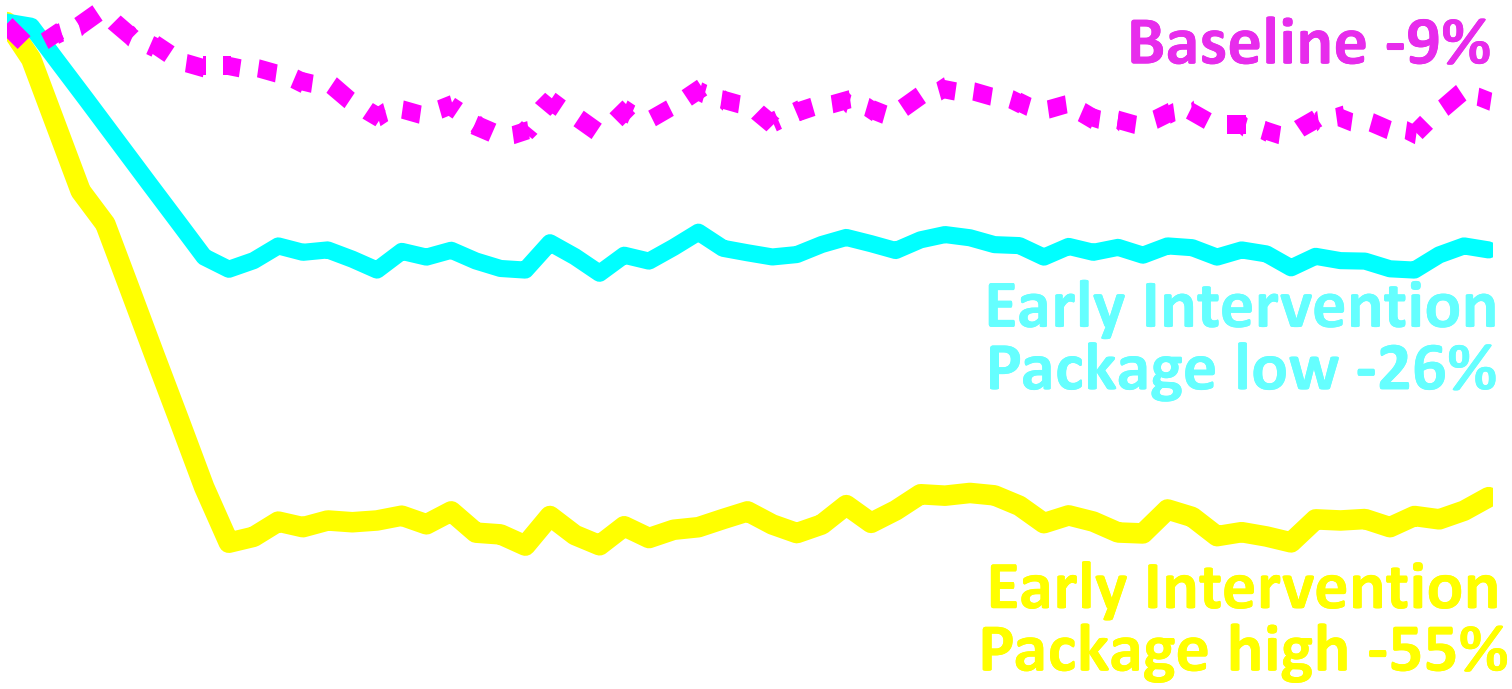
JRI Example, Milwaukee County



Reengineering Justice in Milwaukee

- Implemented universal screening of all pretrial defendants
  - Jail population ADP down by 120
- Implementing new selection criteria for diversion and deferred prosecution
  - Risk-based rather than offense-based
  - Projected impact on the jail is staggering
- Created the concept of and now implementing “dosage probation”
  - Matches amount of intervention to risk level
  - Incentivizes the delivery of risk reducing services
    - Incentive for the offender
    - Aligns probation officer and treatment provider around the risk and needs principles

Estimating the Impact of All Early Intervention Initiatives Combined on the Jail Population in 5 Years



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TANGIBLE
Implications and Outcomes

- Reduced recidivism
  - Elimination “over-interventions” with the low risk
  - Delivering appropriate, risk and need based interventions to the medium and high risk
- System alignment
  - Around outcomes
  - Around the risk principle
  - Around the need principle

- Local cost reductions
  - Ability to close jail pods
  - Forecasting the potential to close an entire correctional facility
  - Conservative cost savings estimated at $385K/year for closing only one dorm; $601K/year including marginal costs
  - Aggressive estimate (without closing facility) estimated at 12M over 5 years
  - Potential savings over 5 year with closing of one facility TBD
- State cost reductions
  - Prison admissions on the decline
  - Anticipated decrease in probation supervision periods

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“Priceless” Outcomes

- Policymakers working together in a truly genuine, collaborative manner
- Policymakers who routinely ask “Upon what evidence are we making this decision?” – who have developed an enormous appreciation for data
- Policymakers who have invited victim advocates to the table
- Policymakers who have agreed to a set of system outcomes and performance measures
- Policymakers who are equally willing to be held accountable to those performance measures
- Policymakers who are encouraging and if needed demanding that their staff follow suit
- Policymakers who are talking to the community about these goals and realignment activities
- Policymakers striving to make criminal justice a true system, one that is purposeful, deliberate, cost efficient and effective in reducing harm and recidivism

"OBLIGATION VERSUS OPPORTUNITY"

"Part of the journey from victim to survivor is to feel that you know what is going on…."

Good afternoon,

My name is Sandra Matheson and I would first like to thank the National Institute of Corrections and its Advisory Board for giving me the opportunity to appear before you today.

Since its' created in 1987, I have served as the Director of the New Hampshire Attorney General's Office of Victim/Witness Assistance (OVWA). The office was created legislatively for two purposes, to provide 24-hour services and support in all of the state's homicide cases from death notification through the criminal justice system and to standardize services for victims of crime statewide through the development of services, protocol and policy development, training and legislative initiatives.

For over 25 years, NIC has been at the forefront of promoting partnerships among community/institutional corrections and victim services and these "partnerships" provide the foundation for my testimony today.

As a result of those partnerships, State Departments of Correction (DOC) now have certain "obligations" to victims that are imbedded in state constitutions and statutes, as well as DOC mission statements and departmental policies.

My testimony will address the importance of DOC victim services, Statewide Automated Victim Notification (SAVIN) Programs and the New Hampshire SAVIN implementation experience, as well as the importance of DOC developing collaborative partnerships with victim advocates, national and state coalitions, community organizations, and other public and private agencies.

VICTIM SERVICES

I often say that many victims of crime do not even begin to heal until after the criminal justice process is over. Every minute of the process is another reminder of the trauma they have experienced. Even if an offender is sentenced to a long prison term, the traumatic impact of the crime on the victim continues. DOC victim service programs fill the need for a seamless system of advocating for crime victims throughout the justice system including post-conviction notification and services.

As part of New Hampshire's SAVIN implementation, with the support of BJA and SAVIN consultant Anne Seymour, a victim focus group was held to learn why victim information

and notification are important to them and the information and types and methods of victim notification that feel are most critical.

According to the participants, victim notification:

- Provides feedback to survivors
- Helps them address safety concerns
- Helps them prepare – mentally and physically – for events related to their cases
- Provides facts about "what is happening" and "what to do next"
- Keeps them informed and offers "peace of mind"
- Provides information about the status of the case and alleged or convicted offender

"Victim notification is important for protection and sanity. Knowledge is power – it provides choices and control over life's circumstances after an experience of losing control…."

"Victim notification is important for the safety of everyone involved; preparation; and mental preparation."

"Knowledge is key to survival"

You have heard testimony about the dire state of funding for criminal justice and corrections nationwide. Ongoing funding cutbacks at the Federal and State levels have also had a profound and devastating effect on both system-based and community victim services at the same time as the number of victims seeking services across the nation is steadily increasing.

In New Hampshire, victims of over 2,200 current state inmates and parolees are registered for DOC Victim Service notification and other direct services. This represents a 450% increase since 1997. This does not include victims of short-term inmates in county jails.

The New Hampshire Coalition Against Domestic and Sexual Violence 14 member crisis centers have seen significant cuts in both their state, VOCA and other grant funding, which has led to significant lay-offs and fewer hours of direct service provision for many programs. With the economic and housing crisis, in 2011 compared to 2010, the number of actual nights spent in domestic violence shelters increased 40.8% for women and 51.6% for children from 2010.

As I previously mentioned, Corrections has many "obligations" to victims including victim safety and protection; information and notification and restitution. Former Attorney General Ramsey Clarke once said,

> *"A right is not what someone gives you; it's what no one can take away from you."*

Yet within the context of crime victims' rights, many rights are indeed "taken away" because corrections and criminal justice systems lack the resources to guarantee that victims' rights are exercised.

That has made us look at the way we fulfill our obligations to crime victims and survivors and their families and to make changes to our response.

STATEWIDE VICTIM INFORMATION NOTIFICATION SYSTEMS

In 2011, New Hampshire received funding from the Bureau of Justice Assistance (BJA) to develop an automated victim information and notification (SAVIN) system and have begun its' implementation. In accordance with BJA funding requirements, a SAVIN Governance Committee (SGC) was developed, consisting of multiple partners including a victim of crime. The SGC developed a mission statement to guide the program's planning and implementation:

> *"The mission of New Hampshire SAVIN is to honor crime victims' rights and promote individual and public safety by implementing a statewide automated victim information and notification system that is integrated within and across the entire New Hampshire criminal justice system."*

Traditionally, most states have contracted with an outside vendor, primarily APPRIS, which results in significant on-going maintenance and sustainability costs. With major budget cuts, there is a move across the nation to integrate victim notification and information, with appropriate privacy protections, with integrated justice information, creating an important technology partnership, sharing vital information that can be life-saving and resulting in significant cost savings to the states.

New Hampshire is currently utilizing the Justice-One Network Environment (J-ONE) system to serve as a conduit for the exchange of information between justice entities including the courts, the Department of Safety and the Department of Corrections. J-ONE is currently being expanded to include interfaces with county jails, law enforcement agencies and prosecutor offices. The mission of the J-ONE system is to:

> "*Improve the effectiveness and efficiency of New Hampshire's criminal justice agencies and the judiciary through the capture of data at its source and to facilitate the distribution of criminal justice data electronically to authorized sources."*

In order to minimize maintenance and sustainability costs, New Hampshire made the decision not to subcontract with an existing program, but to develop and incorporate a subscription statewide automated notification module into the existing J-ONE system. The system will have the ability to automatically send selected information and notifications to victims who register for the service.

Through the support and leadership of BJA, the state will contract with a vendor and utilizing technology solutions in conjunction with J-ONE, New Hampshire will develop a system for collecting, managing and sharing information with registered crime victims, victim advocates, and criminal justice professionals in a timely and cost-effective manner. This will be provided with strict confidentiality of personal information to ensure that no victim contact data is made available to offenders or the public.

The major benefit of the New Hampshire SAVIN system will be that by creating the program within the existing J-ONE system, there will be minimal maintenance and sustainability costs, resulting in significant savings to the state. We will also have the ability to custom design the SAVIN program to meet the specific needs of New Hampshire.

As part of the maintenance costs, AAPRIS, the vendor for the majority of the SAVIN programs nationwide, offers a hotline for victims to contact if they need assistance in registering for SAVIN or if they have safety concerns, questions or need support after having received a notification. A major obstacle for New Hampshire was that the J-One system does not have the ability to provide such a service to SAVIN participants.

In order to address that need, the state partnered with the existing prosecution and crisis center advocates, who have agreed to be responsible for registering victims with the SAVIN program and for providing support to participants if needed. Advocates will screen applicants to make sure that a victim and offender relationship exists in relation to a specific crime and will assist victims in creating a SAVN user account. Once registered with a SAVIN user account, victims will be able to update address and contact information on their own. This collaboration is crucial to the success of the SAVIN program in New Hampshire.

PARTNERSHIPS

With the budget cutbacks, partnerships have become even more important and have brought us new "opportunities" to implement cost saving and cost containment strategies. As noted above, the creation of partnerships between corrections agencies and victim assistance programs, along with the use of innovative programs and technologies are changing we way we meet our "obligations" to victims.

According to the New Hampshire DOC Victim Service's website, *"Collaboration with community and statewide stakeholders helps us stay responsive to the interests of victims as we fulfill our public safety responsibilities."*

The 2010 New Hampshire Justice Reinvestment report from the Council of State Governments noted the importance of providing victim advocates *"the opportunity to work closely with crime victims and survivors to assist them through the prisoner's release period; identify and assess the crime victim's most important needs related to information, notification, protection/safety, restitution and other issues and concerns; and develop a case plan to address their most important needs, and link them with appropriate support and*

services." In response, New Hampshire DOC Victim Services collaborated with the system based victim advocates to develop a draft *Protocol for Victim Safety and Support in Re-Entry and Parol*e whose goal is:

As each inmate transitions from incarceration to the community, NHDOC strives to achieve successful re-entry while maintaining safety and support of the people who were victimized by the crime(s).

This protocol which includes safety planning with victims is intended to complement the New Hampshire Department of Corrections' multiple strategies for reducing recidivism with successful reentry and reintegration of offenders into the community.

Other partnerships include:

- In New Hampshire, as well as in many states, SAVIN programs include Governance Committees that represent partnerships with community/institutional corrections, county jails, victim survivors, victim services, law enforcement agencies, courts, and victim services. The ultimate goal is to provide "seamless" and safe information and notification to victims, which can NOT be accomplished without these important commitments and collaborations.

- In states such as Hawaii, California and Vermont, victim services partner with correctional agencies to facilitate the management of restitution to ensure that victims recover financially in the aftermath of their victimization.

- In West Virginia, parole officers partner with community-based domestic violence advocates to assist victims with safety planning when their offenders are being released to the community.

These are just a few of the incredible collaborative "opportunities" that have arisen from budget cutbacks. Such collaborations between DOC and other community and agency partnerships can assist in ensuring that despite limited resources, we can still continue to honor our "obligations" and ensure that victims of crime continue to receive the support and services they need.

IN CONCLUSION

The availability of innovative technologies and partnerships have allowed us and encouraged us to create justice information systems that engage and involve crime victims. This makes sense not only from information technology and cost-saving perspectives, but from the fact that we can ensure that important victim/survivor information is proactive, processed, and protected.

Decades ago, partnerships between correctional agencies and victim assistance programs would have been considered “strange bedfellows” at best and unthinkable at worst. Today, we are happy to say that such partnerships are increasingly becoming standard operating procedures for both stakeholders, and that the outcomes are more victims/survivors who are engaged and involved; and individuals and communities who feel safer as a result of these critical collaborations. Thank you for your time.

Respectfully submitted,

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National Institute of Corrections (NIC) Advisory Board
Public Hearing
Balancing Fiscal Challenges, Performance-Based Budgeting, and Public Safety

Testimony by Mindy Tarlow
Executive Director & Chief Executive Officer
Center for Employment Opportunities (CEO)
August 23, 2012

My name is Mindy Tarlow and I am the Executive Director and Chief Executive Officer of the Center for Employment Opportunities, or CEO, an organization devoted exclusively to meeting the employment needs of men and women with histories of incarceration. Prior to joining CEO 18 years ago, I spent close to a decade at New York City's Office of Management and Budget where I served as a Deputy Director and concentrated primarily on criminal justice issues. I want to thank the Board and especially my colleague Diane Williams of the Safer Foundation, for giving me the opportunity to testify before you today on behalf of the field of workforce development for formerly incarcerated people and share with you the role we can play in containing costs and benefiting our communities.

Problem Statement

In these difficult economic times, there is a growing public awareness that government budgets are a "zero sum game", meaning spending more in one place means spending less in another. For all expenditures, the urgency to show a return on investment has grown in recent years and will only continue to rise. Yet budget crises can act as catalysts that spur governments to take risks and implement policies they may otherwise have shied away from. In the criminal justice arena initiatives like "justice reinvestment," "pay for success" or other performance-based financing represent new approaches and are the wave of the future. Emboldened by public opinion and pushed by economic realities, officials talk less these days about being "tough" on crime, and more about being "smart" on crime. Consistent with this theme, organizations like the Center for Employment Opportunities emerge as socially and fiscally responsible alternatives to prison spending.

The relationship between employment and crime is complex and while it is widely held that people with jobs commit fewer crimes than people without jobs, studies suggest it's not that simple. The available research is much more nuanced and reveals that rather than "employment" in and of itself reducing crime, it is really the *right* employment model, delivered at the *right* time, to the *right* people that more convincingly links to crime reduction. And if that right linkage to an employment model is made, it not only reduces recidivism, but can also contain costs at all phases of the justice system and elsewhere.

We must do more to build and scale evidence-based employment programs that target the right employment services to the right people at the right time if we are to make an impact on containing corrections costs while improving public safety and the lives of men and women returning from prison, their families, and their communities.

The CEO Model

The Center for Employment Opportunities does only one thing: provide employment opportunities for people with recent criminal convictions. Most clients come to CEO during the fragile period immediately after release from prison, when they are reentering their communities. We work with them for over a year, on average, and operate in an immediate, comprehensive way, putting people to work in paid, supervised transitional work crews. These crews provide structure and income, as well as a skill-building opportunity and platform for entering the full-time labor market, with the support of CEO's team of job development professionals.

Following full-time job placement, CEO has a team of job retention specialists that provide a wide variety of services that help people keep their jobs, such as assistance with child support and guidance in navigating through difficult workplace dynamics or a difficult thing outside of employment that keeps them from focusing on work. We refer them to additional services so they can stay focused on their jobs. CEO also offers financial incentives for staying employed, as well as re-placement services for anyone who has lost a job. We recently started a series of training programs to help people be more competitive, earn certificates, and advance their careers.

CEO started years ago as a demonstration project of the Vera Institute of Justice and spun off as a freestanding organization in 1996. In 2009, our work began to grow outside New York City. We opened offices in upstate New York with federal stimulus funding, and more recently, with support from the federal Social Innovation Fund, we opened offices in Oklahoma and California. Today, we operate seven offices outside of New York City.

Since becoming an independent organization, CEO has made over 16,000 full-time job placements for men and women coming home from prison. Today, CEO serves upwards of 3,000 people each year, primarily in New York State, but with a growing national footprint.

CEO Evaluation

In 2004, CEO participated in the U.S. Department of Health and Human Services' Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project. As part of this project, the independent evaluator MDRC conducted a three year random assignment evaluation of CEO which also included a sophisticated benefit-cost analysis by the Vera Institute of Justice. CEO was the only site in the Hard-to-Employ project that focused exclusively on people with criminal records. HHS and MDRC chose CEO because our model was mature and, based on their criteria, seemed ready for a random-assignment evaluation.

The evaluation of CEO[1] is one of the most rigorous tests of an employment program for former prisoners in recent years. The three-year evaluation found that CEO significantly reduced recidivism. The largest impacts occurred among former prisoners who enrolled shortly after

[1] This information was summarized by the National Transitional Jobs Network from MDRC's final evaluation report. The full report is available http://www.mdrc.org/publications/616/overview.html.

release from prison, the core group of people targeted by CEO. CEO substantially increased employment early in the study period. While the employment effects faded over time for the overall sample, for the recently released subgroup CEO had several positive impacts on post program employment. In general, CEO's impacts on criminal justice and employment were strongest for those who were more disadvantaged or at higher risk of recidivism when they enrolled in the study. The benefit-cost analysis included in the study shows that CEO's financial benefits significantly outweighed its costs under a wide range of assumptions.

The Study Design

The study used a rigorous random assignment design: it compared outcomes for individuals assigned to the program group, who were given access to CEO's jobs and other services, with the outcomes of those assigned to the control group, who were offered basic job search assistance at CEO along with other services in the community with the exception of transitional jobs.

Former prisoners were referred to CEO by their parole officers. Study enrollment was conducted between January 2004 and October 2005 and resulted in a sample of 977 former prisoners: 568 in the program group and 409 in the control group. Because the study's sample members were assigned at random to one group or the other, the two groups, on average, were similar with regard to all personal characteristics at the start of the study. Therefore, one can be confident that any statistically significant differences in outcomes that emerge between the groups over time can be attributed to CEO's program.

The Study Sample

By far, most of the sample members were male, and most were African-American or Hispanic. On average, sample members were 34 years old when they enrolled in the study; 43 percent were age 30 or younger. Just over half the sample had completed a high school diploma or a General Educational Development (GED) certificate (most of these had a GED). About half the study sample had at least one child under age 18, but only a small number lived with any of their children. Nearly one in five (19.3 percent) had a formal child support order. Most had worked in the past, but only three out of five had ever worked six consecutive months for a single employer.

The sample members had extensive histories with the criminal justice system, with an average of seven prior convictions and a total of five years in state prison. Nearly 70 percent of the sample members had prior arrests for violent offenses, and 51 percent had been convicted of a violent offense. Nearly three-quarters of the sample had prior convictions for drug-related offenses. All were under parole supervision when they entered the study.

The Results: Program Impact

CEO significantly reduced recidivism with the largest impacts for the group of participants recently released from prison. This group was significantly less likely than control group members to be arrested (49 percent, compared with 59 percent); convicted of a crime (44 percent, compared with 57 percent); or incarcerated (60 percent, compared with 71 percent). These impacts represent a reduction in recidivism of 16 to 22 percent across the

three outcomes. Such reductions in recidivism are difficult to achieve and have rarely been seen in rigorous evaluations similar to this one.

CEO substantially increased employment early on; for the recently released subgroup CEO had some positive impacts on post program employment but the effects faded over time for the overall sample. First year improvements in employment outcomes were substantial (24.5 percentage points) driven by participation in transitional jobs. In years two and three, on average, recently released program group members had more quarters with unsubsidized employment than their control group counterparts (19 percent of program group members worked seven or eight quarters, compared with 11 percent of the control group). Program group members were also more likely than control group members to have six or more consecutive quarters with unsubsidized employment in the two years after they left CEO.

In addition to those recently released from prison, CEO's impacts on employment and recidivism were stronger for those who were more disadvantaged or at higher risk of recidivism. The subgroups with the largest impacts on employment and recidivism include those with four or more prior convictions, those without a high school diploma or GED, and those with a high risk of recidivism (based on a risk index determined by age, number of prior convictions, and other static factors) at the time of random assignment. Among the subgroup with four or more prior convictions at the time of study entry, CEO reduced convictions for new crimes by 12.8 percentage points. For CEO participants without a high school diploma and for those considered to be at high risk of recidivism, there was a reduction in the number of days spent incarcerated. For those at high risk of recidivism, post-program (years 2-3) average quarterly unsubsidized employment increased by 11 percentage points (27 percent of program group members compared to 16 percent of the control group).

The Results: Cost Benefit Impact

CEO's financial benefits far outweigh its costs. The total financial benefits of CEO were as high as $3.85 for every $1 invested in the program. Put another way, the total financial benefits equaled $10,300 per person served. Total financial benefits include benefits to taxpayers, victims, and program participants. Over 80 percent of CEO benefits were taxpayer benefits. The majority of benefits to taxpayers came in the form of reduced criminal justice system expenditures, primarily due to lower prison costs, but also reductions in the cost of jail and other parts of the system. Another large savings is associated with the value of services that CEO participants provided to government agencies through the transitional job work sites, meaning without CEO, government would have had to pay for these services through other means. When viewed through the lens of taxpayer benefits only, the financial benefits of CEO were still as high as $3.3 for every $1 invested in the program, or $8,300 in savings for every person served.

For purposes of this discussion, cost savings will focus exclusively on taxpayer benefits as they can be translated into government savings. What follows illustrates how targeting the right people at the right time can dramatically increase cost savings:

For the full study group, meaning ALL people who came to CEO, which includes both recently released and not recently released people, CEO's benefits to taxpayers outweighed program costs by $2.1 to $1, or over $4,000 in savings per program group member served. Of these taxpayer benefits, close to $3,000 of per person savings was due to reductions in criminal justice costs (71.5% of total taxpayer benefits).

For recently released study group members only, CEO's benefits to taxpayers outweighed the costs by more than double that of the full sample. CEO's benefits to taxpayers outweighed program costs by $3.3 to $1, or about $8,300 per recently released program group member. Of these taxpayer benefits, over $7,000 of per person savings was due to reductions in criminal justice costs (86.7% of total taxpayer benefits). The difference between these two examples is solely the time between release from prison and enrollment in CEO. By targeting recently released people, the net per person savings to taxpayers **more than doubled from $4,075 to $8,336 per person, or an additional savings of $4,261 per person.**

This translates into millions of dollars in taxpayer savings each year: Today, CEO serves about 2,800 people per year in New York State. If only recently released people were targeted for CEO services, an annual taxpayer savings of over $23 million (almost $20 million of which is from the jail and prison systems) would be achieved. This compares to a taxpayer savings of roughly $11 million ($8.4 million of which is from the jail and prison systems) if no targeting were imposed.

This means that by simply referring people to CEO at the right time, something that the criminal justice system has complete control over, an additional $12 million in taxpayer savings would be achieved each year.

And this is just ONE example of ONE program in ONE state. You can imagine the financial impact of scaling this to other jurisdictions throughout the country.

The CEO example illustrates that by providing employment services that build skills in a supportive environment for the right people (those at higher risk of re-offending) at the right time (as close to release from prison as possible), employment reentry can be part of our economic solution, not part of our economic problem, improving the lives of thousands of people, families and communities.

Sharing, Testing and Scaling What We Know

Combining criminal justice and employment strategies that target services to higher risk people upon release from prison is being taken up at the national level. A white paper on integrating reentry and employment strategies using a resource allocation and service-matching tool (to be released in Fall 2012), will, for the first time, join together the science of recidivism reduction with the best practices from the workforce field for hard-to-employ adults to help practitioners ensure resources are focused on the right people, with the right interventions, at the right time. The white paper and the resource

allocation and service-matching tool are meant to promote an understanding of research-driven best practices from both the criminal justice and workforce development fields; help ensure resources are directed to the individuals that would benefit most from integrated employment and corrections interventions; and provide guidance on tailoring employment services to the needs of individuals with criminal histories. This national effort, in which I am taking part, is a public/private partnership between the Federal Interagency Reentry Council (led by the U.S. Department of Justice and U.S. Department of Labor), the Annie E Casey Foundation, the Council of State of Governments Justice Center, and national experts[2].

I am also proud to say that my home state of New York is already testing these ideas and is deeply engaged in the process of improving employment opportunities for people leaving prisons who are at higher risk of re-offending. Governor Andrew Cuomo, in February 2012, announced the creation of "Work for Success," a jobs initiative aimed at reducing the high unemployment rate among the thousands of New Yorkers returning home from prison. Work for Success will develop a comprehensive statewide approach to increase job readiness and improve employment outcomes for the formerly incarcerated.

"Tens of thousands of people leave New York State prisons each year and without employment most are at higher risk of returning to incarceration," Governor Cuomo said. "The 'Work for Success' initiative will reduce poverty and joblessness for some of our state's hardest to employ citizens, while enhancing public safety and improving economic conditions for the families and communities to which they return."

Work for Success has three components: to promote in-prison vocational skill building and relevant job readiness training throughout correctional programming; to build a "client matching system" that effectively connects people leaving prison with appropriate employment services; and to build the capacity of local communities to address the unique needs of people with histories of incarceration.

I am privileged to chair this initiative along with New York State Deputy Secretary for Public Safety Elizabeth Glazer, who had this to say about the potential of Work for Success: "New York State will launch this model in several sites in a way that is replicable and scalable and, we believe, applicable to other topic areas (e.g. housing, substance abuse). A client matching tool [will be designed and tested] that forensically matches the right person to the right program…so that high risk offenders are appropriately served by programming that works to reduce re-offending." New York State formed an executive committee of government and community leaders as well as national experts that has been meeting for several months, and is currently designing pilot programs.

Does this mean that employment is the immediate answer for all high risk people leaving prison?

[2] Integrating Reentry and Employment Strategies, Prepared for the Annie E. Casey Foundation and the Bureau of Justice Assistance,
U.S. Department of Justice by The Council of State Governments Justice Center, *Henry Rosen, Phoebe Potter, Le'Ann Duran, Martha Plotkin,* Working Paper, July 2012, anticipated release Fall 2012.

No, it does not. People leaving prison have a variety of immediate needs including residential drug treatment, housing, and acute health care, and it is critical to determine which need is most urgent at the time of release. Employment will always be an important measure of community success, but some people are ready for employment upon release, and some may be ready after other more pressing needs are met.

Does this mean that of those leaving prison with immediate employment needs, people at low risk of re-offending should receive no services at all?

No, it does not. But in times of deep fiscal constraints, and with the evidence available on where employment services make the biggest impact on recidivism and cost containment, it makes sense for jurisdictions to triage their existing resources and devote them where they will have the greatest social and economic benefit.

Does this mean no new resources need to be devoted to this issue?

Well, actually, no, it does not….In addition to reallocating existing reentry resources to provide employment services to people who will benefit from them the most, government must also fill gaps in this service delivery system, and create an infrastructure in high-need communities that lack these services. Government must also create more job opportunities for people with criminal convictions and other hard-to-employ populations through public works programs and other legislative actions that increase the number of jobs available for people who need to gain a foothold in the labor market. *All* levels of government share responsibility for this – federal, state, and local.

Conclusion

Workforce and corrections leaders can and should work closely together to form systems that build upon existing evidence to increase public safety and contain costs.

There is a compelling social and economic argument for this: community based employment programs are cheaper than prison and, when implemented well, get results. Yet more needs to be done to quantify and promote the financial return on investment of these models. I believe it is incumbent upon us as a community to continue to build our evidence base and refine our approach through rigorous evaluation and benefit cost analysis. I see it as part of my mandate and part of my job to go as far as I can to demonstrate that what we do has a financial benefit to government and to taxpayers, and that by investing in organizations like CEO and others integrating evidence-based employment reentry strategies, savings can be achieved that can be reinvested in other priorities.

Employing formerly incarcerated people is not just a public safety issue—it can increase labor market participation and the number of taxpaying citizens; improve the well-being of children and families; and build the economic prosperity of communities. If the use of expensive prison beds is reduced and even a fraction of the savings is invested in employment reentry, we will have a healthier economy and safer streets.

Capability and Capacity: Understanding NIC's Delivery of Services

Jim Cosby, Chief

Community Services Division

National Institute of Corrections

Board Identified Areas of Emphasis

- Enhanced Training
- Information Resource Dissemination
- Supporting Realignment Initiatives
- Implementing Systems Approach For Offender Management
- Supporting PREA Standards and Compliance
- Incorporating Victims into Initiatives
- Advancing Pretrial Assessment and Supervision
- Engaging the Juvenile Justice System

From What We Do To How We Do It

- Service Delivery Methods
- Cost Effectiveness
- Future Opportunities
- Information Regarding Our Overall Effectiveness

Service Delivery Methods

- Business Model: Assistance to the field through:
  - Technical Assistance Providers
  - Cooperative Agreements
  - Training: on-line, classroom and satellite events
  - Information Center including the web site
  - Networks
  - Conferences

Service Delivery Methods
Our Business Model

- Demonstrates the leveraging of available resources to effect positive change
- Utilizes a broad range of expertise of technical assistance providers which is efficient and cost effective
- Utilizes a Cooperative Agreement process to engage expert vendors for longer term projects which is results oriented and efficient
- Provides problem solving and innovative ideas for key leaders at low costs through our Networks
- Prepares future and present leaders to effect positive correctional change through relevant training events
- Provides an invaluable resource to the field for research and information gathering through the Information Center
- Allows us to reach a wider correctional audience for new and innovative practices through conference participation

Service Delivery Methods
The Numbers

- In FY 10 and 11 we completed a combined total of 382 Technical Assistance requests
- 84 active Cooperative Agreements with 19 new agreements pending in FY 12 for a total of $6,477,000
- 6,821 students in FY 10 and 8,246 in FY 11 benefited from training (includes on-line, VILT and classroom)
- 9 Networks serve approximately 500 participants
- In FY 2011, there were 570,000 visits to our main web site, 195,000 members in the corrections community and 6,000 requests for specific assistance through the Information Center
- NIC's presence at all major correctional conferences visibility for our services and programs and broadens our sphere of influence

National Institute of Corrections

Future Opportunities

- Two main areas of focus will emerge in the future for correctional practice:
  - Implementation practices/methods
  - Technology

Future Opportunities
Implementation

One recent article by Ray Roberts, Secretary of Corrections/Kansas DOC highlighted the implementation gaps. He wrote:

"How do we build on-the-job-readiness programs with job development, working with local workforce centers….How do we create a cognitive skill- building environment in the prisons and parole offices….What combination of treatment, cognitive skill-building and mentoring will give us better outcomes for the most resistant substance abusers?"

Future Opportunities
Implementation

- The last 20 years has yielded an explosion of data on “what works” in correctional practice
- We now have a road map of Evidence-Based Practices
- Effective implementation of Evidence-Based Practices that can be evaluated and sustained is a key for improving correctional practice in the future

Future Opportunities
Implementation Examples

- TPC – Transition from Prison to Community
- TJC – Transition from Jail to Community
- EBDM – Evidence-Based Decision Making

Future Opportunities
Technology

- Technology is changing so rapidly it is difficult to monitor and assess how it can benefit our field
- The use of technology to identify relevant data will drive change in the future and that it is tied to effective implementation
  - For example, operational data from DOC's is often not utilized in critical decision making due to a lack of knowledge and expertise

Future Opportunities
Technology Examples

- Tele-visiting
  - New initiative in the Community Services Division
- Expansion of on-line training capabilities
- Software development
  - open source software program allowing cross-jurisdictional data entry to enhance program evaluation
- Virtual Conferences
  - In FY 13 NIC will host our first ever virtual conference
- Use of QR codes and other technologies
- Master Criminal Justice calendar of events

Overall Effectiveness and Reach

- Innovative Evidence-Based Practices and Reentry training for line staff will increase our reach with a potential 60,000 training seats
- Examples of demonstrated value

Overall Effectiveness and Reach

Management Development for the Future:

"The MDF is not only a solid core program, but one that we were able to tailor to best fit our needs…out of the initial group of twenty-four from three years ago, we have promoted two Deputy Directors, three Superintendents, two Assistant Superintendents, one Chief Probation Officer and one Criminal Justice Planner! Wonderful program."

Sam Edwards, Deputy Commissioner
Alaska Department of Corrections

Overall Effectiveness and Reach

Evidence-Based Decision Making in Ramsey County, Minnesota:

"Evidence-based practices was a loose concept in Minnesota. NIC provided the support through technical assistance for our three delivery systems to work together on a plan to introduce EBP in a coherent manner….NIC provided the support to make things happen and now the work has a life of its own."

Carol Roberts, Director

Community Corrections Department

National Institute of Corrections

Overall Effectiveness and Reach

Regarding lessons learned during the Orientation for New Parole Board Members training program:

"In the end, each decision should be made by assessing the evidence and balancing the risk to society with the sometimes detrimental effects of continued incarceration. I must be able to articulate the reason for my decision, and ask myself if a rational individual would understand, although not necessarily agree with, what I did."

Kathleen Graves, Member, Prisoner Review Board
Kansas Department of Corrections

Overall Effectiveness and Reach

Rockingham County Pretrial Release:

"From a position of being brand new, NIC brought me into a network of pretrial professionals that has provided me with education and materials…It has not only increased my knowledge of pretrial evidence-based practices, but has increased the knowledge of other key stakeholders."

Raina Holliday, Director of Pretrial Services
Rockingham County, North Carolina

National Institute of Corrections

Questions and Discussions