

A photograph of the Tennessee State Capitol building, a grand neoclassical structure with a prominent portico of columns and a central dome topped with a flag. The building is set against a clear blue sky.

TN

**Tennessee
State Government**

Final Report of the Governor's Task Force on Sentencing and Recidivism

Recommendations for Criminal Justice Reform in
Tennessee

September 2015



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The Governor’s Task Force on Sentencing and Recidivism received technical assistance from the Vera Institute of Justice through a grant from the Robert W. Wilson Charitable Trust. Points of view and recommendations expressed in this report are those of the Task Force and do not represent the views of Vera or the Robert W. Wilson Charitable Trust.

Executive Summary

Improving public safety throughout the state is critical to the lives of all Tennesseans. To that end, in 2011 Governor Bill Haslam created the Public Safety Subcabinet. The Subcabinet is a unique, comprehensive and multifaceted effort to develop, implement and monitor public safety policy. It includes commissioners and directors from 11 state agencies.

In 2012, after a year of study, research, and stakeholder outreach, the Subcabinet submitted a multi-year multi-agency public safety action plan. Under that plan, significant reforms were undertaken in Tennessee corrections, including, for example, the consolidation of parole and probation supervision within the Tennessee Department of Correction (TDOC), the creation of the Shelby County Office of Re-entry, and increased inter-agency collaboration and data-sharing.

Three years later, more than 80 percent of the 41-step multi-year action plan has been completed, and the Subcabinet is preparing a new action plan for the Governor's consideration.

As an extension of the Subcabinet's work, Governor Haslam appointed 27 members to the Governor's Task Force on Sentencing and Recidivism in August 2014. The Task Force included six members of the legislature, five current and former district attorneys general, three sheriffs and police chiefs, a county mayor, five executive branch officials, three judges, one public defender, one victim advocate, one community programming provider, and two representatives of the business community (see Attachment A for a list of Task Force members by name).

The Governor charged the Task Force at their first meeting in September 2014 with a mission:

To improve public safety in Tennessee by identifying (1) strategies to reduce recidivism among individuals leaving prisons and jails and (2) changes to sentencing laws and practices that will more effectively use criminal justice resources to reduce crime and address the growth of the prison and jail population.

To achieve its mission, the Task Force was supported by the Vera Institute of Justice (Vera) and its staff that traveled the state soliciting stakeholder opinions, organized presentations for Task Force meetings, and facilitated four working groups: Sentencing Structure, Sentencing Classifications and Enhancements, Community Supervision, and Programming and Treatment.

Work group sessions were conducted both during and in between Task Force meetings (about 5-7 times per work group). As experienced facilitators of task force work groups, Vera staff exposed Task Force members to a variety of stakeholder opinions by selecting experts and practitioners to make presentations to the members, arranging field trips (e.g. prisons, probation and parole offices, nonprofit reentry organizations) and also providing substantive reports and memorandums to assist work groups in arriving at recommendations. Once drafted, the recommendations were presented to more than 220 people (i.e. judges, public defenders, district attorneys, sheriffs, chiefs of police, domestic violence stakeholders) for feedback.

These recommendations are now ready for the consideration of the Subcabinet and Governor Haslam to be included in a new multi-year action plan.

Summary List of Recommendations

Recommendations to Hold Offenders More Accountable

1. Institute truth in sentencing for felony convictions that result in incarceration through the establishment of a clear minimum period of incarceration that is conveyed to all interested parties at the time of sentencing.
2. Enhance sentences for (a) third or subsequent drug trafficking offenders and (b) third or subsequent aggravated burglary (home burglary) offenders.
3. Enhance sentences for repeat domestic violence offenders by making third and subsequent convictions for domestic violence assault a felony rather than a misdemeanor, as is the case currently.
4. For domestic violence cases, allow (a) law enforcement to seek emergency orders of protection and (b) automatic orders of protection in cases where there is an arrest and deadly force is used.

Recommendations to Reduce the Number of Repeat Offenders

5. Develop additional alternatives that are swift, certain, and proportionate responses for non-compliance with conditions of probation and parole when such non-compliance does not rise to the level of a new criminal prosecution or absconding from supervision.
6. Continue to support recovery (drug treatment) and other specialty courts, such as mental health or veteran, with funding for individual courts based on an effective evaluation system.
7. Establish individualized case management plans for felony offenders on community supervision (both probation and post-prison), thereby reducing the number of standard and special conditions and tailoring the conditions of supervision to fit each offender's individual risks and needs.
8. Invest in evidence-based, cost effective, and coordinated transitional programming and treatment services both during and after incarceration.
9. Ensure that all incarcerated felony offenders who are released will have a system of post-release community supervision.
10. Develop and implement a system of positive incentives for those on community supervision, including but not limited to a reduction in the time period of supervision.
11. Increase the employability of those with criminal convictions by taking steps to help them keep or obtain driver's licenses or state photo identifications.
12. Examine the management and treatment of sex offenders to reduce recidivism and protect society.
13. Raise the felony property crime threshold to \$1,000.
14. Support a Social Impact Bond model of investment as a way of funding promising re-entry programs.

Recommendations to Increase Access to Reliable Data and Information

15. Establish a criminal justice research council to provide non-partisan, professional statewide research and information development.
16. Ensure that validated risk and needs assessments are uniformly used as a part of decision-making in felony cases, including pre-trial decisions, sentencing decisions, decisions on programming and treatment options, and post-prison supervision conditions for those who have been incarcerated.

Introduction and History

The level of crime in Tennessee continues to be of concern to the state's leaders. The good news is that, overall, crime is on a downward trend. In 2014, reported Group A crimes (46 major categories of crime) had dropped 9.4 percent compared to 2010.¹ Yet, it is clear that Tennessee's major crime rate (based upon murders, aggravated rapes, robberies, aggravated assaults, burglaries, auto thefts, and other felony theft offenses), for which data is collected and tracked more carefully than in some other states, has remained consistently above the national average. Of particular concern is the major violent crime rate (based upon reported murders, aggravated rapes, robberies, and aggravated assaults). In 2013, Tennessee's major violent crime rate was 582.6 per 100,000 inhabitants compared to 367.9 per 100,000 inhabitants nationwide.²

Reducing recidivism in Tennessee is critical to improving public safety. The Task Force believes that the state can improve the way it manages felony offenders under its custody and supervision to reduce reoffending and victimization. Since 1981, Tennessee's imprisonment rate has increased by 256 percent.³ In the most recent statewide study of recidivism, from 2010, 46 percent of people released from prison or jail in Tennessee were reincarcerated within three years, and this rate remained relatively flat for those released in years 2001 to 2005.⁴ Moreover, 40 percent of admissions to TDOC prisons are people who have violated the terms of probation or parole (sometimes known as "technical violations"⁵) rather than committed a new criminal offense.

¹ Data provided by the Tennessee Bureau of Investigation.

² Data provided by the Federal Bureau of Investigation.

³ E. Ann Carson, *Prisoners in 2013* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2014, NCJ 247282), 7; Stephanie Minor-Harper, *Prisoners in 1981* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 1982, NCJ 82262), 2.

⁴ Dr. Mary Karpos, *Tennessee Department of Correction Recidivism Study Felon Releases 2001-2007* (Nashville, TN: Tennessee Department of Correction, 2010), 4.

⁵ In this Report, the Task Force avoids the term technical violation, even though it's widely used both within and without Tennessee, preferring non-compliance, violation, or infraction. That is because it does not accurately reflect the public safety implications of non-compliance (such as through a positive drug test) even if such non-compliance does not rise to the level of a new criminal offense.

In recent years the national prison population has begun to decline, and states around the country have achieved simultaneous reductions in their prison populations, their recidivism rates, **and** their crime rates. In 2013, a number of states in the South saw their total prison and jail population decrease from the previous year: Georgia (-2.6%), Kentucky (-4.9%), Louisiana (-2.2%), Mississippi (-1.6%), North Carolina (-0.6%), and South Carolina (-1.5%).⁶ During that same time, Tennessee’s prison population grew by 0.4 percent. Between 2008 (when the national prison population reached its peak) and 2013, the 10 states with the largest decreases in their imprisonment rate also experienced an average 13 percent decline in their crime rates.⁷

These issues—high recidivism rates, an unacceptably high violent crime rate, and growing prison population—were the impetus for the creation of the Task Force. The Task Force’s recommendations are devised to address these issues.

Tennessee’s present sentencing and corrections system was designed in the 1980s when the state experienced a prison overcrowding crisis, which led to federal oversight and the eventual passage of the Tennessee Criminal Sentencing Reform Act of 1989.⁸ That legislation created the current correctional structure whereby felony offenders are either “locally sentenced” or sentenced to TDOC custody.⁹ “Locally sentenced” offenders are those with felony sentences between one and three years (and up to six years in the largest counties) who are incarcerated in local jails or county workhouses. All other felony offenders serve their prison sentences in TDOC custody.¹⁰ Currently, Tennessee has 29,319 people incarcerated for felonies. Of those, 69.8 percent are in a TDOC prison, 16.8 percent should be in a TDOC facility but are currently

⁶ Carson, *Prisoners in 2013*, p. 3.

⁷ Pew Charitable Trusts, *Most States Cut Imprisonment and Crime* (Washington, DC: Pew Charitable Trusts, 2015).

⁸ Tennessee Sentencing Commission, *Report on Truth in Sentencing* (Nashville, TN: Tennessee Sentencing Commission, 1995), App. A, 44-45. *See also* Tenn. Code Ann. § 40-35 *et seq.*

⁹ Tenn. Code Ann. § 40-35-104.

¹⁰ These offenders serve their sentences in a TDOC prison or in local correctional facility pending an open bed in a TDOC prison. Those felony offenders in local jails awaiting a TDOC prison bed are referred to as TDOC’s “back-up” population.

part of TDOC “backup” in a local correctional facility (that is, awaiting space in a TDOC prison), and 13.4 percent are locally sentenced.¹¹

The Sentencing Reform Act of 1989 also set out the current sentencing matrix that determines sentence length and the amount of time an offender will serve in prison, based on (1) the offender type and (2) the felony offense class. This matrix classifies offenders by conviction history (“especially mitigated”, “standard”, “multiple”, “persistent” or “career offender”) and assigns a sentence range for each felony class (A through E). Each type of offender and felony class is assigned a sentence with a percentage that represents the amount of the sentence required to be served before the offender is eligible for parole consideration (a “release eligibility date” or “RED” date). In general, especially mitigated offenders’ RED dates are at 20 percent of their sentence, standard offenders’ are at 30 percent, multiple offenders’ are at 35 percent, persistent offenders’ are at 45 percent and career offenders’ are at 60 percent. So, for example, a standard offender (a person with fewer than two prior felony convictions) who is convicted of a class D felony and sentenced to 4 years in prison would have a RED date at 30 percent time, meaning the offender would be eligible for parole release in 1.2 years.¹²

Overlaying this system are numerous legislative reforms that have increased sentences for particular offenses, including restricting parole eligibility for certain offenses or enhancing sentences or penalties for certain offenders. These changes have resulted in a complex system where some offenses are covered by the general matrix described above, with RED dates set at 20-60 percent; other offenses where RED dates are set at 85-100 percent, but various amounts of sentence credits are allowed;¹³ and a few offenses with no parole eligibility and sentence credits are not allowed.¹⁴

¹¹ Tennessee Department of Correction, *Tennessee Felon Population Update May 2015* (Nashville, TN: Tennessee Department of Correction, 2015), 4.

¹² That does not mean the offender will be released at that date. Under the present system, the offender would then undergo the parole determination process before the Board of Parole. The Board of Parole has the discretion to decide whether the offender merits parole release.

¹³ Tenn. Code Ann. § 40-35-501(i)(1), (j), (k).

¹⁴ Tenn. Code Ann. § 40-35-501(l).

Task Force Approach and Framework

The primary mission of the Task Force is to improve public safety. To that end, the Task Force recommendations fall into three general categories: (1) recommendations to hold offenders more accountable, including through sentence certainty and sentence enhancements; (2) recommendations designed to reduce recidivism and to increase success for those people under probation and parole supervision; and (3) recommendations to improve access to reliable data to better inform policy and practice.

Accountability: Greater accountability in the realm of sentencing and community supervision demands not only increased sentences for some serious offenses (which the Task Force recommends) but also more refined tools and programming for those offenders whose sentences are served or are continued in the community.

Reducing recidivism: There are too many beds in Tennessee prisons occupied by people who were on probation or parole and were returned to prison for violating a condition of their supervision (rather than for committing a new criminal offense). In fiscal year 2014, 40 percent of system-wide prison admissions were for parole and probation violators.¹⁵ Such imprisonment, intended to punish non-compliance, does little to advance the chances that such persons will be able to resume a normal, law-abiding life. It removes individuals from families and communities and adversely impacts opportunities for employment, treatment, or education. Incarceration, when not needed for immediate public safety, simply adds to the likelihood of failure and recidivism. Although some offenders on supervision require increased monitoring and interventions to ensure compliance when their behavior begins heading into risky territory, Tennessee probation and parole officers need a broader array of alternatives to detention and incarceration to better supervision outcomes. These should be accompanied by increased training and education of officers about the other ways to improve compliance and achieve positive change in their supervisees' behavior and about the detrimental impact of removal from the community on offenders' long-term recidivism.

¹⁵ Tennessee Department of Correction, *Tennessee Felon Population Update May 2015* (Nashville, TN: Tennessee Department of Correction, 2015), 8.

Better data and information: The experience of the Subcabinet has demonstrated the success of data-driven approaches to policy development and oversight, which is reflected in the Task Force’s recommendations for a criminal justice research council and the incorporation of risk and need assessment information in criminal justice decision-making.

The consensus of the Task Force was around these three broad categories and the recommendations that embody them. But the Task Force discussions also explored other issues, such as concerns about overreliance on incarceration in Tennessee; the desire for more front-end tools to combat substance abuse; and the need for more resources for victims, especially domestic violence victims. Thus, the consensus recommendations from the Task Force do not represent the only ideas that Task Force members have about how to reduce recidivism and improve public safety, but those upon which there was general agreement.

Task Force Recommendations

Recommendations to Hold Offenders More Accountable

1. Institute truth in sentencing for felony convictions that result in incarceration through the establishment of a clear minimum period of incarceration that is conveyed to all interested parties at the time of sentencing.

The Task Force recommends that the present sentencing system be replaced with a sentencing system of sentence transparency and certainty. Under the new system, every sentencing order that includes prison or jail time would indicate a minimum period of incarceration, as well as the maximum period. The court's order would clearly communicate the minimum period of incarceration to all parties at the time of sentencing. The minimum incarceration period would be the earliest an offender could be released from prison or jail. The earliest release date would be a presumptive release date; while no offender could be released from prison or jail before the presumptive release date, disciplinary infractions while incarcerated could extend the release date. This model would end fully discretionary parole release decided by the Board of Parole before the presumptive release date.

Although the Board of Parole would be retained to maintain and make parole decisions for legacy offenders (those sentenced under prior law and whose sentences have not expired), this model would end discretionary parole release, as individuals would be released upon reaching the presumptive release date. A risk and needs assessment for each offender should begin at prison and jail intake so that the plan for each individual's post-release supervision is in place upon his or her presumptive release date. A period of post-release supervision of between 6 and 18 months would be instituted for all persons released from incarceration, in accordance with a risk and needs assessment. (See Recommendation 9.)

One possible model for such a revision would maintain the existing classification of felony offenses, the range of punishment associated with each offense, and the categorization of offenders. The actual length of incarceration would be defined at the time of sentencing, based on two factors: the overall length of sentence imposed, and the offender's prior history. The release eligibility date (the "RED" date, under the current system) would become the presumptive release date. Upon reaching this presumptive release date, an offender would be released unless any misconduct committed while incarcerated resulted in significant

institutional sanctions. If the offender committed misconduct while in custody, the date of his or her presumptive release could be extended according to a pre-determined sanctions grid. An inmate might achieve a reduction in those sanctions by participating in approved programs, but in no event would sanction reductions reduce the length of incarceration below the original presumptive release date.

The purpose of this recommendation is to make sentencing more transparent, not to necessarily change the length of prison sentences or the average time served, although release eligibility dates could be adjusted in order to ensure better use of prison beds for serious offenders. The present sentencing structure in Tennessee engenders confusion among all participants in the justice system—prosecutors, judges, defense attorneys, defendants, and victims alike—and therefore undermines public confidence in the justice system.¹⁶

Transparency and certainty at the time of sentencing are essential to maintaining the legitimacy of the criminal justice system.

A full examination of the current system of sentencing in Tennessee is warranted. Before any revisions of the sentencing system are made, an analysis of the average amount of time currently served by offenders for each crime category should be completed.¹⁷ The analysis would then inform any revised sentencing ranges. In order to incentivize compliance with prison rules, a new system must include, as the proposed model above does, the ability for the offender's in-custody behavior to have an impact on the total length of his or her incarceration. Additionally, adequate training of corrections staff and oversight of the in-custody discipline system would be essential, since so much more would be at stake in any finding of rule-breaking.

¹⁶ Public opinion research has found that the percentage of a sentence served was more important to respondents than its length. A 2012 national survey conducted by the Pew Center on the States showed that 68 percent of respondents favored a person being sentenced to five years and being released on parole after serving four of those years, while only 19 percent favored a person being sentenced to ten years and being released on parole after serving five years. See Public Opinion Strategies and The Mellman Group, *Public Opinion on Sentencing and Corrections Policy in America* (Philadelphia: Pew Center on the States, 2012).

¹⁷ Such an analysis cannot be completed within the time frame of the Task Force and its report.

2. Enhance sentences for (a) third or subsequent drug trafficking offenders and (b) third or subsequent aggravated burglary (home burglary) offenders.

The Task Force recommends increasing penalties for two classes of offenders: recidivist drug traffickers and recidivist aggravated burglars. The Task Force believes these repeat offenders pose a particular public safety challenge and require longer prison sentences.

In the case of repeat drug traffickers, an enhanced penalty of 85 percent service of a sentence and no probation eligibility would attach to third or subsequent convictions for A, B and C drug sale, manufacture or distribution convictions. The prior convictions for drug sale, manufacture or distribution could be for any felony class.

Recidivist aggravated burglars (those who burglarize homes) would similarly be subject to 85 percent service of a sentence and ineligible for probation upon a third or subsequent conviction for aggravated burglary.

3. Enhance sentences for repeat domestic violence offenders by making third and subsequent convictions for domestic violence assault a felony rather than a misdemeanor, as is the case currently.

While incidents of domestic violence comprise half of all reported violent crime¹⁸, penalties for domestic violence do not reflect the significant public safety hazard they represent. Moreover, while Tennessee law provides recidivist enhancements for other offenses, such as drug possession, there are no such enhancements for misdemeanor domestic violence. Recidivist misdemeanor domestic violence offenders currently receive no enhanced penalty for repeat offenses. The Task Force recommends that a third or subsequent misdemeanor domestic violence conviction should become a felony.

In crafting such an enhancement, two factors should be taken into consideration: the look-back period for the previous convictions and the nature of the current and previous offenses. As regards the former, the prior convictions should be within the preceding 20 years. And the previous and current offenses for misdemeanor domestic violence should be limited to intimate-partner violence, between current or former intimate partners. Tennessee defines domestic violence broadly to include not only intimate partners and family members but also

¹⁸ According to the Tennessee Bureau of Investigation's Incident Based Reporting System.

any current or former co-habitants. The Task Force recommends that this enhancement apply only to intimate-partner violence.

4. For domestic violence cases, allow (a) law enforcement to seek emergency orders of protection and (b) automatic orders of protection in cases where there is an arrest and deadly force is used.

Tennessee saw a 12.6 percent decline in reported domestic violence incidents from 2010 to 2014. While this progress is hopeful, many members of the Task Force believe that domestic violence remains an urgent public safety priority and there should be more tools for victims' protection available to victims themselves and to law enforcement. The current system for victims to obtain orders of protections against assailants imposes serious hardships, thereby discouraging victims from taking necessary steps to protect their safety. The Task Force recommends that emergency orders of protection, available 24 hours a day and processed by a judicial officer, be made available to victims. An in-person hearing should be required within 14-30 days following the issuance of the order.¹⁹ Law enforcement officers who are called to the scene of an incident should be able to initiate this process.

Additionally, in cases where there is an arrest, and victims allege the use or the attempted use of deadly force by the assailant, an automatic order of protection should issue, with an in-person hearing required within 48-72 hours from its issuance.

Recommendations to Reduce the Number of Repeat Offenders

5. Develop additional alternatives that are swift, certain, and proportionate responses for non-compliance with conditions of probation and parole when such non-compliance does not rise to the level of a new criminal prosecution or absconding from supervision.

Many decades of research on human behavior indicate that an immediate response to behavior is always more effective than a delayed response.²⁰ TDOC has a robust sanctions

¹⁹ Alabama requires a hearing within 14 days of issuing a temporary order; North Carolina allows for a hearing within 20 days; Georgia authorizes up to 30 days before a hearing.

²⁰ Amy L. Solomon, et al., *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes* (Washington, DC: Urban Institute, Justice Policy Center, 2008), 13.

matrix that provides a range of sanctions for violations that officers can quickly impose. These community-based sanctions should be the preferred response when offenders violate the terms of their supervision. Any response that requires secure confinement can have negative consequences on positive supports an offender has in the community. Even a short period of detention or incarceration can cause offenders to lose jobs, housing, or custody of their children. Only when all community-based sanctions have been imposed and an individual continues to violate should secure confinement sanctions other than a revocation to prison be considered.

Short-term administrative jail sanctions. TDOC should strive to respond to violations with a community-based response. If those responses are ineffective with an individual, short-term jail stays can be used as a sanction in lieu of revocation. The least amount of time should be used, initially one-to-three days, and should only escalate to up to 7 days if a shorter term has been used and has not been effective at curbing that individual's behavior. Administrative sanctions would allow probation and parole officers (PPOs) to impose the jail time without first obtaining direct judicial approval, enabling a more immediate sanction. To protect due process rights, offenders may have an administrative hearing or waive their right to one.²¹

Limiting eligibility for revocation to offenders who have already served a short-term jail sanction. Offenders on probation and parole supervision should be ineligible for revocation by a judge or the Board of Parole unless they have already been subject to a short-term jail sanction. This limited eligibility would not apply to absconders or those who have committed a new criminal offense.

Guidelines for revocations. To determine the appropriate sanction for those offenders who are revoked for a non-criminal violation, TDOC will collaborate with the judiciary and the Board of Parole to develop advisory guidelines to use in determining the confinement period for probation and parole revocations. The guidelines would be based on the severity of the violation and the defendant's risk level.

²¹ See N.C. Gen. Stat. 15A-1343.2(e) (discussing the waiver procedure for allowing probation and post-release supervision officers to impose administrative jail sanctions).

Pilot probation revocation center analysis. Using prison and jail beds to respond to low-level non-compliance with parole and probation conditions should be avoided by using a comprehensive graduated response matrix and community resources for treatment and programming. However, when confinement for non-compliance is necessary, revocation centers may be an effective alternative to prisons and jails. Revocation centers should be used sparingly, following the use of administrative jail sanctions as discussed in this recommendation, and as a means of last resort in responding to violations. Revocation centers should allow for work/study release, allowing violators to continue their employment or studies in the community, thereby reducing the negative impact of the incarceration on the individual's pro-social activities while also enforcing accountability. Tennessee should pilot a probation revocation center located in the jurisdiction with the highest concentration of offenders who are entering prison as a result of a revocation and who have jobs or are enrolled in school at the time of the revocation.

6. Continue to support recovery (drug treatment) and other specialty courts, such as mental health or veteran, with funding for individual courts based on an effective evaluation system.

Since 2003, Tennessee, by statute, has recognized that drug courts can be an effective sentence for offenders who are abusing substances or are chemically dependent.²² Each jurisdiction in Tennessee is authorized to start a drug court, with statutory provisions providing direction relating to eligibility and guiding principles.²³

This recognizes the growing consensus that drug courts achieve statistically significant reductions in the recidivism rates of program participants relative to treatment in prison groups.²⁴ Tennessee should continue to expand and standardize these recovery courts; ensure

²² Tenn. Code Ann. § 16-22 (2014).

²³ The Act tasks the Office of Criminal Justice Programs in the Department of Finance and Administration with developing standards of operation for drug court treatment programs.

²⁴ Washington State Institute for Public Policy, *Evidence-Based Adult Corrections Programs: What Works and What Does Not* (Olympia, WA: Washington State Institute for Public Policy, 2006). While there is a large body of research on the benefits of drug courts, there has been some criticism of the research methodology and of courts adjusting admission criteria to favor participation of those with the most potential to succeed. See Joanne Csete and Denise Tomasini-Joshi, *Drug Courts: Equivocal Evidence on a Popular Intervention* (New York: Open Society Foundations, 2015), 15.

that eligibility to participate is based on established, evidence-based criteria; and ensure that a validated risk and needs assessment tool is used to determine the appropriate type and level of programming, services, and supervision. Additionally, Tennessee should build on its commitment, reflected in recent appropriations, to create additional recovery courts that combine the services of drug courts with mental health and veterans' courts.

7. Establish individualized case management plans for felony offenders on community supervision (both probation and post-prison), thereby reducing the number of standard and special conditions and tailoring the conditions of supervision to fit each offender's individual risks and needs.

Currently, parole and probation supervision mandates compliance with standard conditions (for all offenders) and special conditions (imposed on certain offenders related to their offense or other characteristics) based on the discretion of the judge or the Board of Parole. These conditions may include anything from curfews to travel restrictions to abstinence from alcohol. Often, people on parole or probation supervision are subject to myriad standard and special conditions that are unnecessarily onerous and confusing, making it more likely that they will end up in violation. Standard probation and parole conditions should be few in number but significant and relevant, so that supervisees can reasonably comply. Many states have reconsidered the long list of conditions placed on offenders on probation and parole. Georgia, for instance, now has only five standard conditions, and between 2007 and 2013 saw marked decreases in both non-criminal violations of the terms of supervision and new criminal offense revocations for parole (from 567 to 134 non-compliance violations and from 2,993 to 2,065 new criminal offense revocations).²⁵

Part of limiting supervision conditions to those that are necessary and meaningful is matching supervision regimes to individual offenders. All offenders should have individualized case plans that are tailored to their risks and needs, provide transparency in expectations between the officer and the offender, and allow the officer and offender to work together to identify goals and priorities to complete supervision requirements. Individualizing case plans and working

²⁵ National Reentry Resource Center, *Reducing Recidivism: States Deliver Results* (New York: Council of State Governments Justice Center, 2014), 7.

collaboratively with people on parole and probation supervision to define expectations and goals has been shown to improve success for those on supervision.²⁶

8. Invest in evidence-based, cost effective, and coordinated transitional programming and treatment services both during and after incarceration.

Addressing treatment and service needs prior to release from jail or prison can be a cost-effective way to reduce recidivism.²⁷ Even for those facing long prison terms, treatment, education, and other programming during incarceration can reduce violence in prison, build skills needed after release, and address the issues that led to criminality in the first place. Building upon the work in re-entry planning already begun by TDOC, it would serve Tennessee's long-term public safety goals to invest in cost-effective, evidence-based programming and treatment pre- and post- release that address criminogenic risk factors (those that contribute to the likelihood of reoffending). Prison and re-entry programming that employs the principles of risk, needs, and responsivity can make the best use of limited resources to maximize the impact of interventions on recidivism. Using these principles ensures that the intensity of treatment matches the risk of reoffending, targets criminogenic needs, and is compatible with the individual's learning style and particular characteristics.

The factors that are most central to criminal behavior include antisocial thinking, antisocial peers, antisocial personality patterns, and substance abuse; problems with stable housing and employment; inadequate education; and a lack of positive family support.²⁸ Both prison and re-entry programs must address these factors, identified through a validated risk and needs assessment instrument, with a specific consideration for gender-specific programming and the impact of past trauma on the ability of an individual to be responsive to particular programs. Rates of post-traumatic stress disorder and exposure to violence among incarcerated males

²⁶ Amy L. Solomon, et al., *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes* (Washington, DC: Urban Institute, Justice Policy Center, 2008), 23-29.

²⁷ See generally, Fred Osher, Henry Steadman, and Heather Barr, *A Best Practice Approach to Community Reentry From Jails for Inmates with Co-occurring Disorders: the APIC Model* (Delmar, NY: National GAINS Center, 2002).

²⁸ D.A. Andrews, James Bonta, and J. Stephen Wormith, "Recent Past and Near Future of Risk and/or Need Assessment," *Crime & Delinquency* 52, no.1 (2006): 7-27.

and females in the U.S. are exponentially higher than rates among the general population.²⁹ Significant past trauma, especially childhood trauma, may impact an individual's ability to benefit from many commonly used cognitive interventions. In such instances, the trauma must be effectively treated to maximize the benefits of the programming.³⁰

Additionally, Tennessee should explore creating structured-transitional release centers as a step- down from prison to community re-entry. TDOC has already partnered with The Next Door to create an evidence-based pre-release transitional center for women and should explore expanding this model. Transitional centers provide services that help prepare individuals for the challenges of returning to the community after release. Such services, typically focused on securing housing and employment and reestablishing family relationships severed by incarceration, can help reduce recidivism.

Because TDOC considers all programming dollars as an investment in recidivism reduction and public safety, it should, like any investor, do research on what will bring the best return for those dollars. TDOC should complete an assessment of current programmatic and treatment capacity, quality, and availability across the state in relation to the identified needs of its population and the communities to which they will be returning. This will ensure an efficient allocation of program and treatment resources by identifying gaps and surpluses in programming and better aligning services to the population's needs. One class of offenders of particular concern to the Task Force is those convicted of aggravated assault, a major driver of violent crime in the state. Evidence-based programming targeted to these offenders and their criminogenic needs is critical.

²⁹ Niki A. Miller and Lisa M. Najavits, "Creating Trauma-Informed Correctional Care: A Balance of Goals and Environment," *European Journal of Psychotraumatology* 3 (2012).

³⁰ See Substance Abuse and Mental Health Services Administration, *SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach* (Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 2014).

9. Ensure that all incarcerated felony offenders who are released will have a system of post-release community supervision.

Offenders who are not statutorily eligible for parole, and offenders who are statutorily eligible for parole but not approved by the parole board or who waive parole release, should serve the last portion of their prison sentences on community supervision.

In fiscal year 2014, more than 4,000 offenders released from TDOC custody (TDOC prisons and TDOC backup) had served the totality of their sentences in prison (or had “maxed out”). For some offenses, sentence expiration is mandated by Tennessee law. Hundreds of other offenders each year voluntarily forego grants of parole release and choose to expire their sentences to avoid post-release supervision. Tennessee has a higher unsupervised release rate (30.7%) than the U.S. average (21.5%).³¹

Mandatory post-release supervision is a sensible policy for managing offenders’ transitions to the community and improving re-entry outcomes. Studies have shown that post-release supervision reduces recidivism.³² Cost-benefit analyses demonstrate that the most effective way to design a period of post-release supervision is to include it within the sentence imposed, rather than to add it on to a sentence.³³

10. Develop and implement a system of positive incentives for those on community supervision, including but not limited to a reduction in the time period of supervision.

TDOC should reframe its approach to community supervision to emphasize positive incentives for success as much as negative sanctions for violations. Specifically, Tennessee should create a structured incentive system, analogous to the sanctions matrix, and should establish earned time/earned discharge for probation and parole supervision.

³¹ Pew, *Max Out*, p. 4, Fig. 2.

³² The Pew Charitable Trusts, *Max Out: The Rise in Prison Inmates Released Without Supervision* (Washington DC: The Pew Charitable Trusts, 2014) 6.

³³ *Ibid.*, pp. 9-10.

Research on human behavior indicates that offenders, like all people, are most likely to change their behavior in response to a combination of positive and negative feedback. In seeking compliance with the terms of supervision, officers are more likely to succeed in their public safety mission if they incorporate both sanctions for non-compliant or negative behavior and positive responses or incentives to acknowledge compliance and success. People on probation or parole supervision who actively participate in required programming and comply with their case plans should accrue credits toward reducing their supervision terms. These earned credit programs are powerful incentives for compliance. They also allow community supervision agencies to focus on higher-risk, higher-need populations and discharge early those who have proven they can be successful in the community. Rather than simply shortening supervision terms, earned discharge policies are the “ultimate incentive” for compliance and make smart use of supervision resources by concentrating supervision resources during the early part of parole and probation supervision, when violations are most likely to occur.³⁴

11. Increase the employability of those with criminal convictions by taking steps to help them keep or obtain driver’s licenses or state photo identifications.

Driving with a suspended or revoked license as a result of unpaid fees or fines unrelated to moving violations is a common offense across Tennessee, consuming judicial resources and trapping people in a cycle of poverty, debt, and desperation.³⁵ Suspending driver’s licenses for non-vehicle offenses, when driving is a necessity for most Tennesseans to care for children and keep a job, only pushes people further outside the law, encourages disrespect for the law, and exacerbates the depth of their involvement with the criminal justice system.

In some cases, such as DUI, restricted licenses are already available to allow people to work, and such restricted licenses are more appropriate here as well. Allowing probation and parole officers or recovery (drug) court teams to play a role in helping restore driving privileges or obtain a restricted license as an incentive for compliance is another option.

³⁴ Solomon, *Putting Public Safety First*, pp. 16-17.

³⁵ There is broad interest among the Task Force members in examining more effective ways to encourage compliance with court-ordered financial penalties, costs, and restitution.

The issuance of driver licenses for those eligible, and state identification cards to those who are not, upon release from TDOC custody is currently underway. TDOC and the Department of Safety and Homeland Security have already formally agreed to provide driver licenses or IDs to inmates upon discharge. This agreement is part of the Public Safety Subcabinet's Action Plan. TDOC is to be commended for its newly implemented Offender Re-entry Plan, which requires securing inmates' birth certificates and some form of state identification two years prior to the projected release date, and it is making every effort to ensure that all individuals reentering the community have state identification and a social security card to ease some of the many barriers to re-entry.

12. Examine the management and treatment of sex offenders to reduce recidivism and protect society.

Current restrictions on where sex offenders can live and be present impose severe limitations in housing options, resulting in homelessness; barriers to employment (even for jobs for which they would otherwise be eligible despite their crime); and challenges in accessing treatment and pro-social community activities. Treatment options for sex offenders are already limited; movement restrictions exacerbate the issue. These restrictions can significantly increase the risk of reoffending and decrease the likelihood of participation in and completion of treatment.³⁶

Tennessee should examine sex offender management and treatment, with an eye toward increasing sex offender housing and treatment options, and reconsidering residency restrictions to ensure all sex offenders have a stable home and can receive treatment services. The reexamination process should include input from various stakeholders including, but not limited to, state and local government officials and agency representatives, and community treatment providers. Consultation with national experts in sex offender treatment, as well as reviewing other state's reports on sex offender supervision, treatment, and management, may also be useful.³⁷

³⁶ Keri B. Burchfield, "Implications of Residence Restrictions on Sex Offender Housing", *Criminology & Public Policy*, 10, no. 2 (2011): 413-414.

³⁷ West Virginia and Washington have published reports on their efforts to address the management and treatment of sex offenders after leaving prison

13. Raise the felony property crime threshold to \$1,000.

Currently, property crimes in Tennessee are designated as felonies for property valued at \$500 or more. This threshold applies to all property crimes, from theft to shoplifting to criminal mischief.

Under this recommendation, the following misdemeanor and felony classes would be proposed:

- 0-\$999 = A Misdemeanor
- \$1,000-\$9,999 = E felony
- \$10,000-\$49,999 = D felony
- \$50,000-\$99,999 = C felony
- \$100,000-\$249,999 = B felony
- \$250,000 and over = A felony

The current felony property crime threshold of \$500 is well below the national average of \$950, and has not been modernized to account for inflation since 1989. This recommended change brings Tennessee in line with other states and rethinks what should be considered a felony in an effort to reallocate and reprioritize public safety resources. The designation of crimes as misdemeanors or felonies impacts both the penalty imposed, and, sometimes more significantly, the resulting post-sentence completion consequences, such as those regarding housing and employment.

14. Support a Social Impact Bond model of investment as a way of funding promising re-entry programs.

The Task Force is cognizant of the upfront dollars it will take to finance additional re-entry programs throughout the state. One tool that should be explored is the use of pay-for-success financing tools or Social Impact Bonds (SIBs) to fund evidence-based re-entry programs discussed in the recommendation above.

Social impact bonds are an innovative financing tool for social programs. Private investors pay the up-front costs of providing social services and government agencies re-pay the investors, with a return only if a third-party evaluator determines that the services achieved the agreed

upon outcomes.³⁸ At their most beneficial, SIBs give private investors the opportunity to provide funds for initiatives that have the potential to save government money in the long term by preventing or ameliorating serious social problems and reducing costs for later remedial services.³⁹

Social impact bonds are one way to scale up current programs that have already been evaluated and have demonstrated effectiveness in achieving desired outcomes. Service providers have the assurance of multi-year funding commitments with up-front capital, which allows the service providers to replicate their programs to reach more people. Social impact bonds are a complex tool and involve the interests of multiple stakeholders, including agencies at multiple levels of government, an intermediary, service providers, evaluators, investors, and the public.⁴⁰ There must be specific articulation of a target amount of the desired social outcome and target population. Finally, state funding must be set aside for the outcomes payment.⁴¹

Recommendations to Increase Access to Reliable Data and Information

15. Establish a criminal justice research council to provide non-partisan, professional statewide research and information development.

To provide ongoing information to the General Assembly, Tennessee should establish a criminal justice research council. In 1995, Tennessee's Sentencing Commission was abolished due to concerns about the Commission's encroachment on legislative prerogatives. Recognizing

³⁸ John K. Roman, Kelly A. Walsh, Sam Bieler, and Samuel Taxy, *An Overview of Pay for Success: Funding the Infrastructure for Evidence-Based Change* (Washington, DC: Urban Institute Justice Policy Center, 2014), 3.

³⁹ John Roman, Kelly Walsh, Samuel Bieler, and Samuel Taxy, *Sharing Risk: How Pay for Success Can Make Government More Efficient* (Washington, DC: Urban Institute Justice Policy Center, 2014).

⁴⁰ Laura Callanan, Jonathan Law, and Lenny Mendonca, *From Potential To Action: Bringing Social Impact Bonds to the US* (McKinsey & Company, 2012), 8-9.

⁴¹ Social Finance, Presentation to the Governor's Task Force on Sentencing and Recidivism, Nashville, TN, May 6, 2015.

that history, the criminal justice research council would have a more limited scope, focusing on data collection, analysis and dissemination.

The council would serve as an informational resource, providing policy-makers in the legislative and executive branches with objective research and analysis on current crime trends, resource allocations, corrections capacity and usage, corrections outcomes, community program outcomes, and cost-benefit calculations; and research and analysis on proposed policies and budget allocations, including budget and population impact statements; and reviews of current research and practices drawn from national sources.

To perform these functions, the council would require adequate staffing, drawn from social science research and legal experts, and access to all relevant state and local data. The members of the council must be seen as credible and objective representatives of their constituent groups and the membership must be as diverse in its perspectives and experience as possible.

Areas that the council should particularly focus on include data on (a) crime trends by categories of offenses; (b) criminal sentences by various categories of offenses; (c) actual incarceration times for various categories of offenses; (d) probation and parole violations, including the reasons and results; (e) the impact of policies proposed by this Task Force on recidivism trends and prison population; and (f) caseloads of judges, prosecutors, and public defenders.

16. Ensure that validated risk and needs assessments are uniformly used as a part of decision-making in felony cases, including pre-trial decisions, sentencing decisions, decisions on programming and treatment options, and post-prison supervision conditions for those who have been incarcerated.

TDOC already uses a validated risk and needs assessment tool for in-prison programming and for community supervision assignments and referrals. Tennessee should ensure that a validated risk and needs assessment tool is being uniformly used throughout the state, including in local correctional systems. (At the pretrial stage, a different, more targeted risk tool should be implemented, as the risks to be measured are somewhat different.) Parts of the risk and needs assessment should be shared with community providers upon release, while respecting the privacy rights of the individual, especially if the person reentering the community is no longer under supervision and has completed his or her sentence.

Areas for Additional Consideration

The Task Force recommendations are broad and comprehensive in scope, and yet there are still areas of concern to members of the Task Force that are not addressed in the recommendations. While these issues do not rise to the level of recommendations, they are suggestions for future areas of policy review.

- Increasing penalties for recidivist DUI offenders: Tennessee law currently provides for enhanced penalties for repeat DUI convictions, including mandatory jail time and felony classification for fourth and subsequent convictions.⁴² While repeat DUI offenders represent an urgent public safety threat, repeat DUI convictions do not rise above an E felony status. This issue came to the attention of the Task Force late in its deliberations, and there was insufficient time to consider remedies and appropriate enhancements. Creating greater penalties than a Class E felony for repeated DUI convictions is an idea worth exploring further by the Public Safety Subcabinet.
- Local jails in Tennessee: One challenge to reducing recidivism in Tennessee is the reliance on local correctional facilities and county jails to house felony offenders. These local facilities have higher recidivism rates than TDOC prisons. One-third of sentenced felons in Tennessee are housed in non-TDOC facilities which vary significantly in terms of programming and treatment resources. As of May 31, 2015, there were 29,319 sentenced felons in the state. Of these, 70 percent were housed in TDOC prisons. Seventeen percent were housed in local correctional facilities, but considered part of the TDOC “backup” population, awaiting an open bed in a TDOC prison. Thirteen percent were “locally sentenced”, meaning that based on the length of their prison sentence, they would serve it entirely in a local correctional facility.⁴³ Based on a 2010 study by TDOC, the 3-year recidivism rate for TDOC releases was 39.8 percent for offenders released in 2005 but 51.1 percent for the same release cohort from local jails.⁴⁴ The most comprehensive state effort to reduce recidivism for all felony offenders would require the involvement of local correctional officials and an examination of how and whether local correctional systems could incorporate the recidivism reduction strategies the Task Force urges TDOC to undertake in TDOC facilities.

⁴² 55-10-402(a)(4)

⁴³ Tennessee Department of Correction, “Tennessee Felon Population Update”, May 2015, 4.

⁴⁴ Dr. Mary Karpos, Tennessee Department of Correction Recidivism Study Felon Releases 2001-2007 (Nashville, TN: Tennessee Department of Correction 2010), 5.

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