



Report of the Vera Institute of Justice to the Tennessee Governor's Task Force on Sentencing and Recidivism

Summary and Analysis of the Task Force's
Recommendations to the Public Safety Subcabinet

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This report is an overview and analysis of the work to date of the Tennessee Governor's Task Force on Sentencing and Recidivism from the Vera Institute of Justice. It includes background information, a summary and analysis of the current proposed recommendations, answers to the questions raised by the Task Force in work group meetings and in the May 2015 Task Force meeting, and suggestions for additional consideration. This is *not* the draft report of the Task Force, which the Task Force will receive for its review and comment later this summer. Rather, this is Vera's analysis and guidance to the Task Force regarding the current state of the recommendations and decision-making process, with suggestions for additional considerations. Vera's analysis also incorporates impact projections on the Tennessee Department of Correction's (TDOC) prison population, where available.

Overview and Summary

This report is primarily an analysis of the current Task Force recommendations, organized by work group. The current recommendations of the work groups are:

Sentencing Structure

1. Revise the current sentencing structure in order to achieve greater certainty and transparency at the time of sentencing.
2. Establish a criminal justice research council to provide a nonpartisan forum for statewide sentencing policy development, information development, research, and planning concerning criminal sentences and their impacts.
3. Implement risk analysis at all stages of decision-making, including pre-trial, sentencing, and post-prison supervision.

Sentencing Classifications and Enhancements

4. Raise the felony property crime threshold to \$1,000.
5. Enhance penalties for repeat drug trafficking.
6. Enhance penalties for repeat aggravated burglary.
7. Enforce more severe penalties on repeat domestic violence offenders by enhancing a third or subsequent domestic violence misdemeanor conviction to a felony, and make an arrest for domestic violence assault trigger an automatic order of protection.
8. Allow restricted driver's licenses for those who lose their licenses as a result of unpaid fines for non-moving violations or convictions in criminal cases.

Community Supervision

9. Establish individualized case plans for offenders on community supervision.

10. Use positive incentives as a key component to supervision, including establishment of a structured incentive system and implementation of earned discharge from community supervision.
11. Reevaluate standard and special conditions of community supervision by reducing the number of standard and special supervision conditions and tailoring supervision conditions to fit an individual offender's risks and needs.
12. Convene a committee of stakeholders to reexamine the management and treatment of sex offenders.
13. Identify alternative responses for those under community supervision who are not compliant with payment of fines and fees, allowing offenders to keep driver's licenses.
14. Develop additional alternative responses for non-compliance with conditions of probation and parole when such non-compliance does not rise to the level of a new felony. Such alternative responses should include administrative, short-term jail sanctions (1-7 days) and a pilot probation revocation center that allows work release.
15. Require mandatory post-prison supervision with targeted services.
16. Provide intensive reentry planning for offenders who will leave prison with no community supervision. Consider a transitional housing program with a work/study release component.
17. Reconsider statutory limitations on eligibility for earned and good time in prison.
18. Incorporate a coaching model into training and implementation plans when rolling out new, or enforcing current, policies, programs, and practices in community supervision.

Programming & Treatment

19. Invest in transitional programming and treatment services pre- and post-release to reduce recidivism. Such programming and treatment must be evidence-based, cost-competitive, and responsive to the needs of the targeted population.
20. Provide fiscal, administrative, and legal support for a Social Impact Bond model of investment to pilot promising reentry programs in at least two counties.
21. Ensure that risk and needs assessments are standardized and uniformly used as part of a comprehensive treatment and programming continuum from jail intake through reentry.
22. Continue to expand the use of recovery and specialty courts statewide.
23. Complete issuance of state identification cards to all TDOC inmates upon release.

Proposals currently under consideration are:

1. Invest in effective interventions to combat aggravated assault, particularly for offenders aged 18-34, and create opportunities in state law to sentence these offenders to these alternatives.
2. Cap the amount of time an offender can serve in a secure setting due to a revocation of probation or parole based on a violation that is not a new felony offense.

For each work group and each recommendation or proposal, Vera has provided context and analysis of the recommendation's or the proposal's potential impact on reducing recidivism, prison population and costs, and improving public safety, based on available research and the experience of other jurisdictions. Based on this analysis, the Task Force's recommendations fall into one of three categories:

- **First**, recommendations or proposals under consideration that have the potential to enhance public safety, reduce recidivism, and reduce prison population and costs (Recommendations 2, 4, 8, 9-13, 15-23; Proposal 1; see pages 9-11, 13, 15, 17-19, and 21-28);
- **Second**, recommendations or proposals under consideration that may have the potential to enhance public safety, reduce recidivism, and reduce prison population and costs, depending on the details and safeguards adopted (Recommendations 1, 3, 14; Proposal 2; see pages 8, 10, 20, and 22); and
- **Third**, recommendations or proposals under consideration whose impacts on enhancing public safety and reducing recidivism are not supported by available research (Recommendations 5-7, see pages 13-14).

Background

Since 1981, Tennessee’s imprisonment rate, measured by the number of people incarcerated per 100,000 residents, has climbed 256 percent, from 171 in 1981 to 438 in 2013, according to data from the U.S. Department of Justice’s Bureau of Justice Statistics.¹ In the most recent statewide study of recidivism, from 2010, the percentage of people released from prison or jail in Tennessee who were reincarcerated within three years was 46 percent, and this rate remained relatively flat for the 2001 to 2005 release cohorts.²

In recent years the national prison population has begun to decline, and states around the country have achieved 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 populations decrease from the previous year: Georgia (-2.6%), Kentucky (-4.9%), Louisiana (-2.2%), Mississippi (-1.6%), North Carolina (-0.6%), South Carolina (-1.5%).³ 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.⁴ While Tennessee’s overall crime rate has declined since 2010, its violent crime rate ranks among the top five U.S. states.⁵ Several states that have undertaken comprehensive criminal justice reforms in recent years have achieved significant reductions in their recidivism rates, such as Georgia (-10%), North Carolina (-19.3%)

¹ 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.

² Mary Karpos, *Tennessee Department of Correction Recidivism Study Felon Releases 2001-2007* (Nashville, TN: Tennessee Department of Correction, 2010), 4.

³ Carson, *Prisoners in 2013*, p. 3.

⁴ Pew Charitable Trusts, *Most States Cut Imprisonment and Crime* (Washington, DC: Pew Charitable Trusts, 2015).

⁵ Tennessee is one of fifteen states that are compliant with the National Incident-Based Reporting System (NIBRS). NIBRS has more robust reporting requirements, and counts far more crime than the more commonly used Uniform Crime Reports (UCR) system. As a result, it is common that NIBRS-compliant states report a higher rate of crime than UCR states. However, Tennessee’s violent crime rate is far above that of even the other 14 NIBRS-compliant states. FBI, *Crime in the United States 2013* (Washington, D.C.: FBI, 2014), Table 5; BJS, *Status of NIBRS in the States* (Washington, D.C.: BJS, 2014).⁶ National Reentry Resource Center, *Reducing Recidivism: States Deliver Results* (New York: Council of State Governments Justice Center, 2014), 1.

and South Carolina (-17.9%), all with recidivism rates below 29% for their 2010 release cohorts.⁶

These issues—high recidivism rates, a growing prison population, and an unacceptably high violent crime rate—were the impetus for the creation of the Governor’s Task Force on Sentencing and Recidivism. The Task Force will make recommendations to the Public Safety Subcabinet, a multiagency executive branch group chaired by Commissioner Bill Gibbons of the Department of Safety and Homeland Security, which leads and coordinates Governor Haslam’s public safety policy initiatives.

The Task Force and its Mission

In August 2014, Governor Haslam appointed 27 members to the Governor’s Task Force on Sentencing and Recidivism. The Task Force includes six members of the General Assembly, 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. It met for the first time in September 2014. The Task Force was charged by the Governor 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 is supported by the Vera Institute of Justice (Vera) and staff from the Governor’s Public Safety Subcabinet. The Task Force will make recommendations to the Governor through this Public Safety Subcabinet by the end of the summer of 2015.

There is no one answer or silver bullet to address public safety challenges such as crime rates and prison population growth, but the Task Force’s title and mission are appropriate places to start.

Prison populations are the result of two factors: the number of new prison admissions and how long individuals stay. Sentencing laws control both the classification of crimes (which offenses merit a prison sentence) and the length of sentences or sentence ranges.

Recidivism, a return to prison for a new crime or a violation of the terms of community supervision, generally results from a previously incarcerated individual’s inability to return to a law-abiding life in the community. Sentences for those who commit a new crime after release from prison or jail are likely to be longer because they have previously been convicted and served prison or jail time. Thus, recidivists contribute to both the prison population (because they

⁶ National Reentry Resource Center, *Reducing Recidivism: States Deliver Results* (New York: Council of State Governments Justice Center, 2014), 1.

are new admissions and will likely serve a somewhat longer sentence as a repeat offender) and to a rising crime rate.

Guiding Principles

As the Task Force pursues its mission of identifying ways to reduce recidivism and effectively use criminal justice resources to improve public safety, it is helpful to review the approaches that have guided the discussions of the work groups.

Rather than relying on anecdotes, recent headlines, or intuition to judge the effectiveness of policies or programs, a policy-recommending body like the Task Force has to examine empirical evidence of their effects. *Evidence-based Practices (EBP)* are policies, programs, or approaches for which there is consistent, scientific evidence of effectiveness; well-designed empirical studies have proven them to have measurable, successful outcomes. In its work, the Task Force has considered policies and practices—ranging from community programming to community supervision practices—that have demonstrated their ability to reduce recidivism and therefore increase public safety. Implementing practices that are evidence-based will enable Tennessee to build on the lessons learned in other jurisdictions, invest limited resources in more effective programs, and maximize the prospect of reducing recidivism and increasing public safety.

The foundation of most evidence-based criminal justice practices are the principles of *Risk, Needs, and Responsivity (RNR)*. Assessing an individual for his or her “risk” places the person within a group according to the overall demonstrated likelihood of persons within that group committing a crime, while needs refer to the factors that research has linked to criminal behavior and that make it more likely the person will offend, known as “criminogenic needs”.

Responsivity requires that, to be most effective, programs and supervision approaches must be tailored to the learning styles, psychological and emotional state, and cultural background of the offender and be provided by well-trained staff. To reduce the risk of recidivism, it is crucial to assess offenders’ individual risk levels and particular criminogenic needs using validated assessment tools, and to respond appropriately to these risks and needs. Interventions should be targeted to specific needs and differentiate between offenders of different risk levels. Higher-risk offenders with greater criminogenic needs should receive more intensive services for a longer time, while those at lower levels should receive minimal interventions. Assessing risk and needs can enhance the effectiveness of policies at multiple stages of the criminal justice system—from pre-trial detention decisions to probation and parole supervision.

Many of the Task Force’s recommendations wisely incorporate evidence-based practices and encompass the principles of risk, needs, and responsivity.

The Work Groups

Under the leadership of Commissioner Bill Gibbons (Department of Safety and Homeland Security) and Commissioner Derrick Schofield (Department of Correction), the Task Force divided into four work groups, with members choosing the group they wished to join:

Sentencing

1. Sentencing Structure
2. Sentencing Classifications and Enhancements

Reducing Recidivism

3. Community Supervision
4. Programming and Treatment

To date, the Task Force has held five full meetings. Additionally, its work groups have met both in person and by conference call at and between these meetings.

Dividing the Task Force into work groups has allowed members to engage with relevant topics, learn more about them, and make more specific recommendations to the Subcabinet. Each work group's goals and topics were chosen by the members. The work groups met during Task Force meetings and between them (about 5-7 times each), heard from experts and practitioners from other jurisdictions, and received substantive reports and memoranda from Vera. Nine months, however, is a short span of time to delve deeply into the complex issues of sentencing and recidivism. As a consequence, some of the recommendations from work groups are awaiting further detailed analysis of their impact on public safety, prison populations and other factors; others raise issues for future consideration in policy areas that the Task Force did not have time to explore fully.

Below are reports on the activities and recommendations of each of the four work groups, accompanied by Vera's analysis of the recommendations.

1. SENTENCING STRUCTURE

Goal of the Work Group: To identify ways that Tennessee’s sentencing structure can be improved in order to increase public safety.

As in most states, Tennessee’s criminal code has changed over time as a result of legislation responding to issues of particular concern from year to year. Consequently, the code has come to have inconsistencies in proportionality and has led to confusion among practitioners and the general public about the actual penalties for offenses.

Areas of Focus and Discussion: There were three general areas of discussion within the work group. Principally, the work group members—and the Task Force in general—were concerned about the lack of transparency and certainty at the time of sentencing. The work group discussed at length the many factors in law, policy, and practice that influence sentence length, and the need for both victims and offenders to understand the likely time that an offender would serve for a particular crime. There was unanimous agreement that the current sentencing structure in Tennessee needs revision in order to address these issues. Devising a new system will require a criminal justice research council, the second area of discussion for the work group. The lack of clarity regarding time to be served, caused in part by the accretion of new laws and penalties over the original criminal code, requires both legislators and executive branch officials to have access to timely data and analysis of the impact and outcomes of current and proposed laws and policies. Finally, the work group was interested in the use of risk and needs assessments at time of sentencing and during post-incarceration supervision.

To assist with its deliberations, the Sentencing Structure work group met with and heard from several representatives from other states that faced similar challenges. Virginia Sentencing Commission Executive Director Meredith Farrar-Owens presented to the work group on Virginia’s sentencing reforms, which include both determinate sentencing and the use of a risk assessment at sentencing. After instituting determinate sentencing in 1995, Virginia’s prison population had grown by 2012, though by a modest 9 percent.

North Carolina Justice Reinvestment Administrator George Pettigrew and University of North Carolina Law Professor Jamie Markham described to the work group North Carolina’s experience in instituting determinate sentencing in the 1990s. Determinate sentencing led to dramatic and unsustainable prison population growth in North Carolina, which was the impetus for criminal justice reforms in 2011. The 2011 reforms included use of short-term Confinement in Response to Violations (CRV), rather than revocation to prison, and Advanced Supervised Release, under which an earlier, supervised release date is set out in a sentencing order as an incentive for completion of programming and good behavior in prison.

Dr. Richard Stroker, of the Center for Effective Public Policy and formerly of the South Carolina Department of Corrections and the South Carolina Department of Probation, Parole, and Pardon Services, facilitated a discussion about how to improve parole decision-making.

RECOMMENDATIONS

Following its months of meetings, reading, and discussions, the work group agreed on the following three recommendations:

Recommendation 1: Revise the current sentencing structure in order to achieve greater certainty and transparency at the time of sentencing.

The work group found that the current sentencing structure in Tennessee engenders confusion among all participants in the justice system—prosecutors, judges, defense attorneys, judges, defendants and victims alike—and therefore undermines public confidence in the justice system.⁷

One possible model for such a revision, proposed by a workgroup member and received favorably by the rest of the workgroup, would keep the existing classification of felony offenses, the range of punishment associated with each offense, and the categorization of offenders would be maintained. The actual length of incarceration would be determined with definiteness 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 would become the presumptive release date. Upon reaching this presumptive release date, an inmate would be released unless his or her conduct while incarcerated resulted in institutional sanctions. If an inmate received certain institutional sanctions, 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 will sanction reductions reduce the length of incarceration below the original presumptive release date (that will take into account the possibility of earning a 15 percent sentence credit for good time, for which most sentences are currently eligible).

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 intake into state incarceration 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 will be required for all persons released from incarceration, in accordance with the risk and needs assessment.⁸

⁷ 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).

⁸ Post-release supervision that is based on the specific risk/needs/responsivity of the individual offender is also likely to lead to greater public safety. See Recommendation 15 for a more in-depth discussion of post-release supervision.

Analysis: Transparency and certainty at the time of sentencing are essential to maintaining the legitimacy of the criminal justice system. When the actual length of a criminal sentence is based on so many variables that no one can identify the amount of time an offender will serve, distrust of the system, the system’s players, and its processes is inevitable. Importantly, belief in the legitimacy of the system is based on perceptions of fairness even more than actual outcomes.⁹ A full examination of the current system of sentencing in Tennessee is warranted. But eliminating discretionary parole release could result in significant prison population growth. It is therefore imperative that 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, as well as a review of the current prison discipline system in Tennessee, be completed.¹⁰ That analysis should 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. This should include not only incentives for good behavior but incentives for participation in programming and treatment that may improve reentry outcomes and reduce recidivism. 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.

Recommendation 2: Establish a criminal justice research council to provide a nonpartisan forum for statewide sentencing policy development, information development, research, and planning concerning criminal sentences and their impacts.

To develop the revised sentencing system proposed in Recommendation 1 and 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 that history, the criminal justice research council would have more limited authority over sentencing laws.

As of February 2015, at least 22 states, the District of Columbia, and the federal government have a sentencing or criminal justice research body or council that is charged with sentencing policy research and development.¹¹ Such bodies are created to study sentencing and the criminal justice system generally and to focus on a few important goals: enhancing public safety; promoting fairness, consistency, and proportionality in sentencing; and more effectively and efficiently using limited criminal justice resources by reducing reliance on incarceration. Public safety is enhanced by incarcerating dangerous and high-risk people, but it is also enhanced by limiting the use of long prison sentences (which can reduce the ability of many to achieve a normal, law-abiding life after release) and punishing some people with community-based sanctions and programs that address their underlying criminogenic needs.¹² A criminal justice

⁹ Tom Tyler, “Obeying the Law in America: Procedural Justice and the Sense of Fairness,” *Issues of Democracy* 6, no.1 (2001): 19.

¹⁰ Such an analysis cannot be completed in the time span of this Task Force.

¹¹ National Association of Sentencing Commissions, “About NASC,” <http://thenasc.org/aboutnasc.html> (accessed May 29, 2015).

¹² Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: The National Academies Press, 2014).

research council can help ensure that Tennessee’s criminal justice system operates effectively to achieve these goals.

Some features essential to the success of a criminal justice research council (“council”) are

- **Objectivity.** The council’s work would rely on the availability and analysis of data drawn from many sources. Its findings and any advice it might give state government must be based on its objective reading of data, and information gathered from research and the experience of other states. The ability of the council to influence—but not dictate—policy is critical to its success.
- **Data capacity.** Data is critical for a council to function and to have an objective voice. Detailed, reliable, and complete data from both state and local jurisdictions is central to fiscal impact statements, corrections population projections, program evaluations, and creating and monitoring guidelines. Armed with sufficient data, a council can credibly stand as the neutral, objective entity in the room.
- **Resource management.** The most effective and successful criminal justice commissions are those that develop an expertise in resource management and provide their states with information about prison capacity and costs.¹³ This role goes hand-in-hand with a criminal justice research council that prioritizes the collection of data and remains objective and neutral.
- **Diversity.** Diverse membership accomplishes two goals: First, it ensures that sentencing issues will be considered from a variety of perspectives, including those of practitioners from across the system as well as members of the community most affected by crime and incarceration. Second, it brings substantive expertise on sentencing and criminal justice issues to policy discussions. A council made up of representatives from critical state and local agencies, legislators, community members, and at least one expert from outside government (such as an expert in criminology or budgeting) will make it more likely that data and evidence will guide criminal justice decision-making.
- **Funding for sufficient operational resources.** Without sufficient funding or staff, a council cannot perform its duties. An unpublished study by Vera in 2008 concluded that a well-functioning criminal justice research council should have between five and ten full-time staff members and an annual operating budget of between \$500,000 and \$900,000. The foundation of building the credibility and respect that the council would need to influence policymaking is the development of comprehensive data capacity. Resources—in terms of funding and staff—are needed to collect data, develop sophisticated data systems and simulation models, and conduct data analyses. Staff with legal expertise would also be critical to working with and advising state officials.

Analysis: A criminal justice research council in Tennessee would serve many purposes. In addition to its role in developing the specific policy, practice, and legislative changes needed to implement Recommendation 1, a council could offer ongoing information to support the work of Tennessee’s legislative, executive, and judicial branches, by conducting research and evaluations

¹³ Richard S. Frase, “State Sentencing Guidelines: Diversity, Consensus, and Unresolved Policy Issues,” *Columbia Law Review* 105 (2005): 1216; Rachel E. Barkow, “Sentencing Guidelines at the Crossroads of Politics and Expertise,” *University of Pennsylvania Law Review* 160 (2012): 1604 (quoting Kevin R. Reitz and Curtis R. Reitz, “Building a Sentencing Reform Agenda: The ABA’s New Sentencing Standards,” *Judicature* 78 (1995): 189).

and serving as a neutral clearinghouse of data and information on current and proposed policies and practices.

Recommendation 3: Implement risk analysis at all stages of decision-making, including pre-trial, sentencing, and post-prison supervision.

States like Virginia, Georgia, and some local jurisdictions have begun piloting and using evidence-based risk assessment tools at sentencing or to inform plea negotiations. State and local jurisdictions have used these tools for some time to inform pre-trial release/detention decisions, to set parole and probation conditions, and to determine the terms of supervision. Tennessee law currently mandates the use of risk and needs assessment tools for preparation of pre-sentence reports and for development of supervision plans.¹⁴

Analysis: Expanding the use of validated risk assessment tools in other areas of the criminal justice system has merit, but pre-sentence assessment tools pose important constitutional and jurisprudential issues. Tennessee should consider protections of the right against self-incrimination and development of procedures for alternatives to potential self-incrimination that are fair and that do not inadvertently provide disincentives to participation in the risk assessment process. Risk assessments can be useful in determining whether an offender is appropriate for alternatives to incarceration; however, there are reasons to proceed with caution when considering the use of such tools for determining the length of sentence or term of incarceration. Concerns have been expressed by experts that the focus of some risk assessment tools on factors such as marital status, neighborhood, and financial status may have a disparate racial impact.¹⁵ The National Center for State Courts has advised that “risk and need assessment information should be used in the sentencing decision to inform public safety considerations related to offender risk reduction and management. It should not be used as an aggravating or mitigating factor in determining the severity of an offender’s sanction.”¹⁶

¹⁴ Tenn. Code Ann. 41-1-412 (2014).

¹⁵ See generally Sonja Starr, “The New Profiling: Why Punishing Based on Poverty and Identity Is Unconstitutional and Wrong,” *Federal Sentencing Reporter* 27, no. 4 (2015): 229-236.

¹⁶ Pamela M. Casey, Roger K. Warren, and Jennifer K. Elek, *Using Offender Risk and Need Assessment Information at Sentencing* (Williamsburg, VA: National Center for State Courts, 2011), 11.

2. SENTENCING CLASSIFICATIONS AND ENHANCEMENTS

Goal of the Work Group: To ensure proportionality, rationality, and modernization of Tennessee’s sentencing regime in order to be responsive to current public safety challenges and needs.

Areas of Focus and Discussion: The work group’s discussions focused on crime categorizations and penalties in current statutes, particularly addressing domestic violence, property crime, driver’s license revocations, and drug crimes.

To support the work group’s discussions, Vera prepared and presented research and policy surveys on issues that had been raised as areas of possible discussion by members of the larger Task Force and the work group. When examining property crimes, the work group learned that Tennessee’s \$500 felony threshold was far lower than the national average, which is more than \$900. Discussions of current drug laws found that many neighboring states, including many that have made significant changes to their criminal justice system in recent years, have higher felony marijuana weight threshold than Tennessee’s. Additionally, a number of states have narrowed their school zone enhancements for drug crimes in order to tailor the enhancement to the concern about the proximity of children to drug dealing.

Several other enhancements were examined by the work group, including: eliminating the third and subsequent felony marijuana possession enhancement, and enhancing repeat drug trafficking and aggravated burglary sentences. The work group ultimately decided that the third and subsequent possession enhancement was an important public safety tool and agreed on enhancements for recidivist aggravated burglary and drug trafficking. Initial impact analyses of some of these enhancements are presented below.

The group had numerous discussions about how to respond to repeat domestic violence offenders, the challenge of Tennessee’s broad definition of domestic violence and its adverse public safety implications (such as exclusion from coverage under the federal National Instant Criminal Background Check Systems, which only cover intimate-partner violence), and the effectiveness of programming interventions, such as batterers intervention programs.

Another issue, raised by numerous Task Force members, is driving on a suspended, revoked, or cancelled driver’s license. The work group learned that Tennessee law provides for suspension, cancellation, or revocation of a driver’s license for many offenses unrelated to moving violations, such as nonpayment of court fines and fees and failure to pay child support. These sanctions impose additional employment challenges for those already struggling to pay their court fines, and flood courts with thousands of cases that might be better handled administratively. Finally, the work group discussed inconsistencies in state law that demand to be remedied, such as penalties for rape, which is probatable but not parolable.

RECOMMENDATIONS

Reduce Penalties for Low-level Non-violent Offenses

Recommendation 4: 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

Analysis: \$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 wisely 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.

Raising the felony threshold to \$1000 would decrease the TDOC population by 0.78% over five years.¹⁷

Increase Penalties for Serious Drug and Violent Felonies

Recommendation 5: Enhance penalties for repeat drug trafficking.

An enhancement would apply to a third or subsequent conviction for drug trafficking. Defendants would have to serve 85 percent of their sentence or a mandatory minimum.

Analysis: Requiring all recidivist drug sellers, manufacturers, or traffickers to serve 85 percent of their sentence would increase the state's prison population by 4 percent over five years.¹⁸ A narrowly-tailored enhancement, for the most serious traffickers, would have a more modest impact.

Recommendation 6: Enhance penalties for repeat aggravated burglary.

An enhancement would apply to a third or subsequent conviction for aggravated burglary. Defendants would have to serve 85 percent of their sentence or a mandatory minimum.

¹⁷ Data analysis is from Applied Research Services, Inc. (ARS) based on TDOC data.

¹⁸ Ibid.

Analysis: Similar to repeat drug trafficking, repeat aggravated burglary would become an 85 percent crime or subject to a mandatory minimum. The increase to an 85 percent crime would not have a significant impact on the TDOC population, as current parole policies already mirror this enhancement.¹⁹

Recommendation 7: Enforce more severe penalties on repeat domestic violence offenders by enhancing a third or subsequent domestic violence misdemeanor conviction to a felony, and make an arrest for domestic violence assault trigger an automatic order of protection.

Analysis: The population impact of the domestic violence felony enhancement cannot be ascertained through TDOC data because it relies on misdemeanor-level data. However, some research indicates that incarceration, even when combined with treatment, produces higher recidivism rates for domestic violence offenders than fines or other court-ordered proscriptions, such as treatment and counseling interventions.²¹ Although recidivism reduction may not be the sole goal of sentencing decisions, it is important to consider whether sanctions other than incarceration may be more effective in reducing domestic violence in Tennessee.

The goal of Recommendations 2, 3, and 4 is to reduce crime by incapacitating and deterring the most serious criminals. However, there is little evidence that longer sentences have this desired impact. The most recent meta-analysis of the best research on the relationship between sentencing and crime reduction estimates that incarceration through incapacitation has had only a modest impact on the reduction in crime during the last several decades.²² Moreover, longer prison sentences have diminishing returns, as many offenders age out of their criminal behavior before their sentences are completed.²³ Rather than increasing reliance on prison sentences for these offenders, Tennessee may want to consider investing in policing resources, both numbers of police officers and technological resources that allow law enforcement to predict crime patterns.²⁴

¹⁹ Ibid.

²⁰ This figure is based on ARS's analysis of TDOC data.

²¹ Thomas P. George, *Domestic Violence Sentencing Conditions and Recidivism* (Olympia, WA: Administrative Office of the Courts, 2012), 15-17. This study was based on data from the state of Washington.

²² Travis et al., *The Growth of Incarceration in the United States*, p. 155. A recent study estimated that the crime prevention effects of incarceration had a modest to negligible impact on crime rates—6 percent for property crime in the 1990s, less than 1 percent of the property crime decline since 2000, and no impact on the decline in violent crime during the last 24 years. See Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, *What Caused the Crime Decline?* (New York: Brennan Center for Justice, 2015), 15. The deterrence impact of longer sentences has been found immaterial. See Travis et al., *The Growth of Incarceration in the United States*, pp. 139-140.

²³ Travis et al., *The Growth of Incarceration in the United States*, pp. 143-144.

²⁴ Roeder et al., *What Caused the Crime Decline?*, p. 4.

Driving on Revoked Licenses

Recommendation 8: Allow restricted driver’s licenses for those who lose their license as a result of unpaid fines for non-moving violations or convictions in criminal cases.

Analysis: Driving with a suspended or revoked license (as a result of unpaid fees or fines unrelated to moving violations) is a common offense across states, consuming judicial resources and trapping people in a cycle of poverty, debt and desperation. For other offenses, such as DUI, restricted licenses are available to allow people to work. Such restricted licenses are more appropriate here. Another alternative is allowing parole and probation officers to play a role in helping restore driving privileges or obtain a restricted license as an incentive for compliance on supervision. This recommendation acknowledges that suspending driving licenses for non-vehicle offenses, a necessity for most people in the state 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.

PROPOSAL STILL UNDER CONSIDERATION

Consider Alternatives for Certain Violent Offenders

Proposal 1: Invest in effective interventions to combat aggravated assault, particularly for offenders aged 18-34, and create opportunities in state law to sentence these offenders to these alternatives.

Recognizing that aggravated assaults are a critical public safety issue in Tennessee but increased penalties may not be the most impactful response, the work group is looking into what effective interventions exist for aggravated assaults by younger offenders, and is considering making a recommendation in that area.

3. COMMUNITY SUPERVISION WORK GROUP

Goal of the Work Group: To reduce recidivism by implementing community supervision policies and practices that will increase success and reduce returns to prison.

Areas of Focus and Discussion: The Community Supervision Work Group's meetings and discussions focused on current Tennessee Department of Correction practices, as well as evidence-based and promising practices in the field.

TDOC presented its new supervision standards, which were implemented in 2014. They include graduated levels of supervision based on an offender's risk and compliance, and a Probation and Parole Violation Matrix that provides guidance on the appropriate response to violations of supervision conditions. The work group learned about the challenges TDOC faces in reducing recidivism rates for people on community supervision, with a particular focus on the sex offender population and max-outs (people who serve their entire sentence in prison, returning to the community with no supervision). Information sessions were held with probation and parole officers (PPOs), supervisors, district directors, and correctional administrators to better understand what is working and what can be improved to ensure that people supervised are successful in the community and are not recidivating. Among many things, these information sessions highlighted the importance of having a good risk and needs assessment tool; the challenges parolees and probationers face with housing, employment, and transportation; the increased challenges for sex offenders and people in rural areas; inconsistencies in judicial responses to violations regionally and within the same districts; and the limited options for rewarding and incentivizing positive behavior.

The work group heard several presentations from policy experts, practitioners, and researchers about effective practices and how other states have responded to these challenges. Vera staff discussed mandatory supervised release programs in other states, such as West Virginia and Kentucky, which require certain offenders to spend a portion of their sentence on community supervision after release from prison (commonly referred to as post-prison supervision).

Dr. Jennifer Pealer, Assistant Professor, East Tennessee State University, presented information on the evidence that using research-based risk assessments to guide supervision levels and interventions produces more successful outcomes; the higher risk population needs more intense supervision, the lower risk population needs less, and over-supervising low-risk offenders may actually increase their risk of reoffending.

Dr. Richard Stroker, Senior Manager, Center for Effective Public Policy, an expert in community supervision, offered the work group concrete examples of turning evidence-based principles into specific strategies to more effectively manage probation and parole populations and change offender behavior. These strategies have been implemented by supervision agencies across the country and evaluated by researchers. They are rooted in an approach that sees every supervisee as an individual with his or her own life goals. These strategies include establishing a case plan with each offender that incorporates recognition of his or her desires and goals and is appropriate to his or her needs and situation; using incentives and rewards, along with sanctions, to encourage positive behavior; responding to all violations appropriately and consistently, using

structured tools to guide officers' decisions on rewards and sanctions; and adopting a balanced approach that includes measures for control, programming, and treatment.

Effective community supervision is aimed at achieving success for those on supervision, with the goal of reducing their continued involvement in criminal activity, improving their lives and outcomes, and increasing public safety. Success on supervision means fewer crimes, greater public safety, and fewer returns to prison. No longer is the goal solely to monitor probationers or parolees until they commit an infraction and then revoke their probation or parole. In the last 35 years, the field has learned a lot about what works to help supervisees succeed and resume a law-abiding life. This involves knowing individuals' risk of reoffending, supervising them at a level consistent with their risk, identifying the criminogenic factors that drive their behavior, and designing a case plan that responds to those needs. It also means minimizing disruptions in the positive aspects of a person's life: school, job, involvement with a church or program, family care, etc. Unnecessary conditions, office visits, and programming should therefore be avoided. Violation or revocation actions that put people in jail or prison can be especially harmful if not needed to immediately deal with a risk to public safety. Each period of reincarceration puts the supervisee further behind in achieving normalcy.

The work group discussions and considerations of the information presented resulted in the following recommendations, which represent the emerging consensus of the work group.

RECOMMENDATIONS

Promote Offender Success on Community Supervision

Recommendation 9: Establish individualized case plans for offenders on community supervision.

All offenders should have individualized case plans that are tailored to their needs, provide transparency in expectations between the officer and the offender, and allow the probation/parole officer and offender to work together to identify goals and priorities to complete supervision requirements.

Analysis: Individualizing case plans and working collaboratively with people on parole and probation supervision to define expectations and goals has been shown to improve success for those on supervision.²⁵

Recommendation 10: Use positive incentives as a key component to supervision, including establishment of a structured incentive system and implementation of earned discharge from community 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

²⁵ 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.

structured incentive system, similar to the sanction matrix, and should establish earned time/earned discharge for probation and parole.

Analysis: Research on human behavior indicates that offenders, like all people, are most likely to change their behavior with a combination of positive and negative responses. In seeking compliance with the terms of supervision, officers are more likely to succeed in their mission if they incorporate both sanctions for non-compliance or negative behavior and positive responses or incentives to acknowledge compliance and successes. People on parole or probation supervision who actively participate in required programming and comply with their case plans should accrue credits toward 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.²⁶

Recommendation 11: Reevaluate standard and special conditions of community supervision by reducing the number of standard and special supervision conditions and tailoring supervision conditions to fit individual offenders’ risks and needs.

Analysis: 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). 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. The goal should be to establish standard conditions that are few in number but significant and relevant, with which 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.²⁷

Recommendation 12: Convene a committee of stakeholders to reexamine the management and treatment of sex offenders.

Tennessee should create a committee to reexamine sex offender management and treatment, with an eye toward increasing sex offender housing and treatment options, establishing a more comprehensive and effective plan to supervise sex offenders, and reconsidering residency restrictions to ensure all sex offenders have a stable home and can receive treatment services. The committee should be comprised of stakeholders including, but not limited to, state and local government officials and agency representatives and community treatment providers. The committee should work in consultation with a national expert in sex offender supervision, treatment, and management.

²⁶ Ibid., pp. 16-17.

²⁷ National Reentry Resource Center, *Reducing Recidivism*, p. 7.

Analysis: 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.²⁸ These concerns are shared by many of the members of the Programming and Treatment Work Group.

Recommendation 13: Identify alternative responses for those under community supervision who are not compliant with payment of fines and fees, allowing offenders to keep driver’s licenses.

Analysis: Losing a driver’s license is a huge barrier to securing and maintaining employment, and thus to an offender’s ability to pay fines and fees. This issue is discussed in more detail above, Recommendation 8.²⁹

Prioritize prison beds for serious and high-risk offenders

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.³⁰ 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 need to be jolted into compliance when their behavior begins heading into risky territory, a broader array of alternatives to detention and incarceration are needed. These should be accompanied by increased training and education of officers about the other ways to achieve positive change in their supervisees’ behavior and about the detrimental impact of removal from the community on offenders’ long-term recidivism.

²⁸ Keri B. Burchfield, “Implications of Residence Restrictions on Sex Offender Housing”, *Criminology & Public Policy*, 10, no. 2 (2011): 413-414.

²⁹ Other states and jurisdictions, notably Houston, Texas, have devised other alternatives for non-payment of fines and fees, such as mandatory community service through which offenders earn credit against outstanding fines and fees. Tex. Code Crim. Pro. Art. 45.049.

³⁰ Tennessee Department of Correction, *Tennessee Felon Population Update March 2015* (Nashville, TN: Tennessee Department of Correction, 2015), 8.

Recommendation 14: Develop additional alternative responses for non-compliance with conditions of probation and parole when such non-compliance does not rise to the level of a new felony. Such alternative responses should include administrative, short-term jail sanctions (1-7 days) and a pilot probation revocation center that allows work release.

Develop additional alternative responses analysis: Many decades of research on human behavior indicate that an immediate response to behavior is always more effective than a delayed response.³¹ TDOC has a robust sanctions matrix that provides a range of sanctions for violations that officers can impose quickly. 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, secure confinement sanctions other than a revocation to prison should be considered.

Short-term jail sanctions analysis: TDOC should strive to respond to violations with a community-based response. If those responses are not proving to be effective 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, 1-3 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 allow PPOs to impose the jail time without 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.³²

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 Recommendation 14a, 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.

³¹ Solomon, et al., *13 Strategies*, p. 13.

³² 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).

Ensure people leave prison with supervision

Recommendation 15: Require mandatory post-prison supervision with targeted services.

Offenders who are not statutorily eligible for parole, and offenders who are statutorily eligible for parole but not approved by the parole board, or refuse parole, should serve the last 12 months of their prison sentence on community supervision.

Analysis: Mandatory post-release supervision is a sensible policy for managing offenders' transitions to the community and improving reentry outcomes. Studies have shown that post-release supervision reduces recidivism.³³ 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.³⁴

Although providing supervision addresses an important gap, it is worth noting that simply mandating supervised release without linking that supervision to services targeted specifically to those who would otherwise serve the totality of their sentences – or “max out” – may not have the desired effect. Without appropriate services, these individuals may violate the conditions of their release, return to prison and once again face the prospect of maxing out their sentences behind bars.³⁵ Policy approaches to the max-out challenge need to take into account both the need for services and the question of how to address violations of supervision that may lead back to maxing out.

Recommendation 16: Provide intensive reentry planning for offenders who will leave prison with no community supervision. Consider a transitional housing program with a work/study release component.

In fiscal year 2014, more than 4,000 offenders were released from TDOC custody (TDOC prisons and TDOC backup) who had served the totality of their sentences (or “maxed out”) in prison. 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 sentence to avoid post-release supervision. Tennessee has a higher unsupervised release rate (30.7%) than the U.S. average (21.5%).³⁶

Analysis: Offenders who are released to communities with no community supervision fare worse and have higher recidivism rates than those discharged to parole supervision.³⁷ Even states with mandatory supervised release have some offenders who max out of prison after the remainder of the sentence is revoked after violation of conditions of release. Revocation of entire remaining

³³ The Pew Charitable Trusts, *Max Out: The Rise in Prison Inmates Released Without Supervision* (Washington DC: The Pew Charitable Trusts, 2014) 6.

³⁴ *Ibid.*, p. 9-10.

³⁵ See generally Vera Institute of Justice, *The Potential of Community Corrections to Improve Safety and Reduce Incarceration* (New York: Vera Institute of Justice, 2013).

<http://www.vera.org/sites/default/files/resources/downloads/potential-of-community-corrections.pdf>.

³⁶ *Ibid.*, p. 4, Fig. 2. http://www.pewtrusts.org/~media/Assets/2014/06/04/MaxOut_Report.pdf.

³⁷ The Pew Charitable Trusts, *The Impact of Parole in New Jersey* (The Pew Charitable Trusts, 2013) 2-3. http://www.pewstates.org/uploadedFiles/PCS_Assets/2013/PSPP_NJParole-Brief.pdf.

sentences should be avoided in order to ensure the number of people being released without supervision is minimal. In the small number of cases where this does occur, intensive reentry planning should be provided prior to release, such as a transition housing program that would allow an offender to gradually transition into the community.

Recommendation 17: Reconsider statutory limitations on earned and good time in prison.

Analysis: Providing further incentive to inmates for program participation and good behavior may increase compliance in TDOC prisons. Moreover, educational programming has been shown to decrease recidivism and be cost effective.³⁸ This recommendation should be coordinated with Recommendation 1, which would set an earliest presumptive release date at the time of sentencing that could be moved later, but not earlier. As discussed earlier, the earliest presumptive release date should take into consideration Tennessee’s longstanding sentence credit system to incentive participation in prison programming.

Engage Community Supervision staff

Recommendation 18: Incorporate a coaching model into training and implementation plans when rolling out new, or enforcing current, policies, programs, and practices in community supervision.

Analysis: Many evidence-based practices and strategies in community supervision contradict long-held beliefs and practices in probation and parole. Successful implementation requires a supportive approach to staff that includes coaching in addition to classroom-style training. Coaching by trained instructors or supervisors is a key element in the implementation of nationally recognized evidence-based practices, such as Effective Practices in Community Supervision (EPICS) and SOARING2. Both of these strategies are in use in community supervision agencies across the country. Coaching ensures that practices are implemented correctly and effectively, and that staff are supported in using new tools and approaches.

PROPOSAL STILL UNDER CONSIDERATION

Proposal 2: Cap the amount of time an offender can serve in a secure setting due to a revocation of probation or parole based on a violation that is not a new felony offense.

Analysis: Currently, more than 40 percent of TDOC admissions are due to revocation of probation or parole for reasons other than commission of a new felony offense. TDOC can prioritize use of prison beds and resources on violent and high-risk offenders by imposing sanctions of confinement only on those who commit a new felony while under supervision. If confinement sanctions are used, they should be graduated, with a maximum amount of confinement time set for first and subsequent offenses. Such an approach will ensure

³⁸ Lois M. Davis, Robert Bozick, Jennifer L. Steele, Jessica Saunders and Jeremy N. V. Miles. *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults* (Santa Monica, CA: RAND Corporation, 2013), 57. http://www.rand.org/pubs/research_reports/RR266.

accountability for non-compliance while taking into consideration the appropriate and proportionate response.

Other states that have limited the amount of time someone spends in secure confinement for violations that are not new felonies include Georgia (180-day cap at its probation detention centers), and North Carolina (90-day cap on detentions, and defendants must have already served the 90-day detention period for violations twice before a court can revoke probation).³⁹

³⁹ Off.Code Ga. Ann. § 42-8-35.4(a) (2015), N.C. Gen. Stat.. § 15A-1344(d)(2) (2015).

4. PROGRAMMING AND TREATMENT

Goal of Work Group: To identify ways that programming and treatment can be used at each stage of the criminal justice system to reduce recidivism and achieve increased public safety.

The evidence has mounted over the last 30 years that the most effective way to prevent those with criminal convictions from reoffending is to marry an appropriate level of correctional control with targeted programming and treatment as needed to address criminogenic needs. As related in the discussion of the community supervision work group, this requires both a validated risk and needs assessment instrument administered by a well-trained staff person and repeated at recommended intervals, and the availability of quality programming that the tool indicates is needed. Such programming should begin as soon as possible in an individual's involvement with the criminal justice system as it can contribute to the successful completion of each stage of a sentence.

Areas of Focus and Discussion: The work group engaged in a vigorous effort to understand both the kinds of programming that now exist in Tennessee and some of the research findings on effective interventions. The members also looked at the points in the system at which treatment and programming are most important in preventing further criminal justice system involvement and recidivism.

Alternatives to incarceration: The members learned about the principles of effective intervention and recovery courts. They toured, met with staff, and attended a graduation at Davidson County Drug Court, a court-operated residential drug court program.

Reentry: The members heard presentations from several community organizations on the availability of services for those leaving prison: Project Return presented on the difficulty of finding employment upon reentry; The Next Door provided information on reentry and aftercare services for women leaving prison; and Men of Valor presented on reentry services for men. Additionally, Vera staff provided information on local, regional, and statewide reentry councils. The work group members also toured and met with staff at Project Return and The Next Door.

In-Prison Programming and Treatment: The work group heard from TDOC staff about the availability and types of rehabilitation and reentry services, including diagnostic and classification processes within TDOC and from North Carolina Department of Public Safety staff on vocational, secondary, and postsecondary education available within their prisons and upon reentry.

Financing: Members of the workgroup coordinated a presentation to the entire Task Force by Social Finance on the use of an innovative financing tool to expand reentry services.

RECOMMENDATIONS

Recommendation 19: Invest in transitional programming and treatment services pre- and post-release to reduce recidivism. Such programming and treatment must be evidence-based, cost-competitive, and responsive to the needs of the targeted population.

Analysis: Addressing treatment and service needs prior to release can be a cost-effective way to reduce recidivism.⁴⁰ 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 already begun by TDOC in reentry planning, 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). Both prison and reentry programming that employ 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.⁴¹ Both prison and reentry 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 posttraumatic stress disorder and exposure to violence among incarcerated males and females in the US are exponentially higher than rates among the general population.⁴² Significant past trauma, especially childhood trauma, may impact the 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.⁴³

Additionally, Tennessee should explore creating structured-transitional release centers as a step-down from prison to community reentry. 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

⁴⁰See 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), <http://gainscenter.samhsa.gov/pdfs/reentry/apic.pdf>.

⁴¹ 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.

⁴² Niki A. Miller and Lisa M. Najavits, “Creating Trauma-Informed Correctional Care: A Balance of Goals and Environment,” *European Journal of Psychotraumatology* 3 (2012).

⁴³ 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), <http://store.samhsa.gov/shin/content//SMA14-4884/SMA14-4884.pdf>.

securing housing and employment and reestablishing family relationships severed by incarceration, can help reduce recidivism. Several states, including Ohio and Connecticut, have created pre-release centers where individuals with 6 to 18 months left in custody receive services to address a variety of issues, including employment, housing, parenting, and substance use.⁴⁴

While expanding and investing in high quality programming requires budgetary expenditures, effective programming that reduces recidivism is ultimately cost effective. For example, an investment in educational opportunities in prisons has been shown to be a cost-effective way to reduce recidivism and the costs of reincarceration.⁴⁵ To the extent that the state realizes cost savings through the adoption of other recommendations by the Task Force, the state can use these anticipated savings as the basis for an upfront investment. A number of states that have implemented systemic criminal justice reforms in recent years have done just that. Georgia, for example, invested nearly \$20 million in community programming, including drug courts and other programming for people on community supervision.⁴⁶ The investment was supported by projected cost savings from other reforms.

Recommendation 20: Provide fiscal, administrative, and legal support for a Social Impact Bond model of investment to pilot promising reentry programs in at least two counties.

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

Social impact bonds are an innovative financing tool for social programs. Private investors pay the upfront costs of providing social services and government agencies repay the investors, with a return, only if a third-party evaluator determines that the services achieved the agreed upon outcomes.⁴⁷ 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 serious social problems and reducing costs for later remedial services.⁴⁸

Analysis: Social impact bonds can be a 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 multiyear funding commitments with upfront capital, which allows the

⁴⁴ Mary O’Leary, “Connecticut Inmates Begin Reintegration Program as Part of Gov. Malloy’s Second Chance Society Initiative,” *New Haven Register News*, April 21, 2015.

⁴⁵ Davis, et al. *Evaluating the Effectiveness of Correctional Education*, p. xviii.

⁴⁶ The funding was focused on expanding the availability of drug courts across the states, and creating statewide operating standards and a certification process. GA H.B. 1176 (2012). Many states have adopted the ten key components of successful drug court design, developed by the National Association of Drug Court Professionals. Many courts around the nation have adopted these standards, including courts in Tennessee.

⁴⁷ 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, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413151-An-Overview-of-Pay-for-Success-Funding-the-Infrastructure-for-Evidence-Based-Change.PDF>.

⁴⁸ 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),

<http://www.urban.org/research/publication/sharing-risk-how-pay-success-can-make-government-more-efficient>

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, the intermediary, service providers, investors, and the public.⁴⁹ There must be specific articulation of a desired social outcome and target population. Finally, state funding must be set aside for outcomes payment.⁵⁰

Two things are important to note. First, SIBs are *not* a systemic solution for financing community programming. They should be used where a specific issue is identified, there is evidence of an intervention that targets that issue, outcomes can be clearly defined, and investors are willing to take some risk.⁵¹ Reentry programming to reduce recidivism falls squarely in this category. Second, SIBs are not yet proven tools, with preliminary data from the initial UK project just being released.⁵²

Recommendation 21: Ensure that risk and needs assessments are standardized, uniformly used, and implemented as part of a comprehensive treatment and programming continuum from jail intake through reentry.

Analysis: For the past several years, TDOC has used a validated risk and assessment tool.⁵³ Tennessee should ensure that a validated risk and needs assessment tool is being uniformly used throughout the state, including in local correctional systems.⁵⁴ (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 is no longer under supervision and has completed his or her sentence.

Along with the system-wide use of risk and needs tools, TDOC should complete an assessment of current programmatic and treatment capacity, quality, and availability in relation to the

⁴⁹ Laura Callanan, Jonathan Law, and Lenny Mendonca, *From Potential To Action: Bringing Social Impact Bonds to the US* (McKinsey & Company, 2012), 8-9, http://mckinseysociety.com/downloads/reports/Social-Innovation/McKinsey_Social_Impact_Bonds_Report.pdf.

⁵⁰ Social Finance, presentation to the Governor's Task Force on Sentencing and Recidivism, Nashville, TN, May 6, 2015, on file with the Vera Institute of Justice.

⁵¹ Roman et al., *An Overview of Pay for Success: Funding the Infrastructure for Evidence-Based Change*, p.3.

⁵² Data on this project, however, looks positive with recidivism for the targeted population declining by 11 percent over the period of the pilot while the equivalent national recidivism rate rose by 10 percent. Emma Disley and Jennifer Rubin, *Phase 2 Report From the Payment By Results Social Impact Bond Pilot At HMP Peterborough* (United Kingdom, Ministry of Justice Analytical Series, 2014), 2, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325738/peterborough-phase-2-pilot-report.pdf.

⁵³ TDOC is currently transitioning from the LSI-R to a proprietary tool designed by the National Council on Crime and Delinquency for Tennessee. Local jails in Tennessee use various risk assessment tools, such as the LS/CMI (Shelby County Correctional Center) and others. The practice varies by facility. There are a number of nationally-known risk and needs assessment tools in use, such as the Wisconsin (now know as the CAIS); COMPAS; and LSI-R. See generally D.A. Andrews, James Bonta, and Stephen Wormith, "The Recent Past and Near Future of Risk and/or Need Assessment", *Crime & Delinquency* 52, no. 1 (2006): 7-8; Winnie Ore and Chris Baird, *Beyond Risk and Needs Assessments* (San Francisco, CA: National Council of Crime and Delinquency, 2014).

⁵⁴ There are jurisdictional challenges to mandating specific practices in local correctional systems. This is an area that a work group focusing on individuals who are serving their sentences in local jails should address. See discussion p. 32.

identified needs of its population and the communities to which they will be returning. This will ensure an efficient allocation of limited program and treatment resources by identifying gaps and surpluses in programming and better aligning services to the population's needs.

Recommendation 22: Tennessee should continue to expand its use of recovery and specialty courts.

Analysis: Since 2003, Tennessee, by statute, has recognized that drug courts can be an effective way of sentencing nonviolent offenders who are abusing substances or are chemically dependent.⁵⁵ Each jurisdiction in Tennessee is authorized to start a drug court with statutory provisions providing direction relating to eligibility and guiding principles.⁵⁶

This recognizes the growing consensus that drug courts achieve statistically significant reduction in the recidivism rates of program participants relative to treatment in prison groups.⁵⁷ Tennessee should continue to expand and standardize these recovery courts; ensure 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.

Recommendation 23: Complete issuance of state identification cards to all TDOC inmates upon release.

Analysis: While TDOC is to be commended for its newly implemented Offender Reentry Plan, which requires securing inmates' birth certificates and some form of state identification two years prior to the projected release date, various stakeholders report that individuals are currently still being released without a state-issued identification. While this could be the result of a backlog from the old system, TDOC should make every effort to ensure that every individual reentering the community has state identification, a social security number, and one month's worth of any prescribed medication to ease some of the many barriers to reentry.

⁵⁵ Tenn. Code Ann. § 16-22 (2014).

⁵⁶ 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.

⁵⁷ 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), <http://www.wsipp.wa.gov/ReportFile/924>. 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.

BELOW ARE SOME EXAMPLES OF ADDITIONAL POLICY OPTIONS THAT VERA BELIEVES RESPOND TO THE GOVERNOR'S OBJECTIVES AND DESERVE CONSIDERATION BY THE TASK FORCE:

Respond appropriately to drug offenses

In recent years, there has been growing momentum in states around the country to reconsider how their criminal justice systems can more effectively and appropriately respond to drug offenses. Many states have reformed their laws, policies, and practices in light of research demonstrating the effectiveness of community-based sanctions and substance abuse treatment for some drug offenders, as well as public attitudes that now overwhelmingly support treatment and prevention efforts over punitive sanctioning policies.⁵⁸ These reforms have included reducing or repealing mandatory penalties for drug offenses, limiting automatic sentencing enhancements, and modifying drug-sentencing schemes. Reconsidering and revising some drug policies would likely help Tennessee more effectively use its criminal justice resources to reduce crime, lower recidivism, and improve public safety. In particular, Tennessee could:

1. Reevaluate the school zone enhancement for drug offenses.

A number of states have reconsidered the efficacy and wisdom of automatic sentence enhancements that subject an offender to an increased penalty if certain triggering criteria apply. In particular, at least five states have made changes to their drug-free school zone enhancements.⁵⁹ Some of the reforms have included limiting application of the enhancement to hours when children are reasonably expected to be present and decreasing the size of the school zone; South Carolina has stipulated that its enhancement applies only when a defendant has knowledge that they were within proximity of a school.⁶⁰

2. Reconsider the weight threshold for felony marijuana possession.

Many states have, in recent years, recalibrated their drug sentencing schemes to better differentiate between minor and more serious offenses and to provide more flexibility in the types of sentences for drug offenses. Tennessee's felony weight threshold for marijuana possession, at 0.5 ounce, is lower than comparable states.⁶¹ Georgia and South Carolina's marijuana felony threshold is one ounce, for example, while North Carolina's is 1.5 ounces.⁶² In Virginia, all marijuana possession amounts are a misdemeanor.⁶³

3. Eliminate the third and subsequent marijuana possession felony enhancement.

The enhancement making a third and subsequent marijuana possession a felony was one of the first issues the sentencing enhancements work group reviewed and initially considered to

⁵⁸ Ram Subramanian and Rebecka Moreno, *Drug War Détente? A Review of State-level Drug Law Reform, 2009-2013* (New York: Vera Institute of Justice, 2014), 5, <http://www.vera.org/sites/default/files/resources/downloads/state-drug-law-reform-review-2009-2013-v6.pdf>.

⁵⁹ *Ibid.*, p. 10

⁶⁰ *Ibid.*, p. 10

⁶¹ Tenn. Code Ann. § 39-17-418 (2014).

⁶² O.C.G.A. § 16-13-30(d) (2014); N.C. Gen. Stat. § 90-95 (2014); S.C. Code Ann. § 44-53-370 (2014).

⁶³ Va. Code Ann. § 18.2-250.1 (2014).

recommend eliminating. That changed because concerns were raised about the importance of the felony designation for enforcing firearms restrictions on these offenders. However, the combination of Tennessee’s low marijuana possession threshold and the third and subsequent felony enhancement for possession make Tennessee’s marijuana possession laws particularly stringent compared to neighboring states. These laws may result in low-level drug offenders being sentenced more severely than is needed to address the state’s public safety goals and, by subjecting some individuals to long prison terms, may actually reduce their ability to be law-abiding after release. To the extent that the enhancement provides an important law enforcement tool against gun possession, such a restriction could still be maintained for repeat offenders even without the felony designation.

Develop policies for release of elderly or aging prisoners who are at low risk of recidivism.

Prisons in Tennessee and throughout the United States house a growing population of elderly adults.⁶⁴ Sentencing policies that result in longer terms of incarceration—such as mandatory minimum sentences and truth-in-sentencing laws—have contributed to the number of elderly prisoners and make it likely this population will continue to grow.⁶⁵ Between 1999 and 2007, the number of people 55 or older in state and federal prisons increased by 77 percent and the number of inmates ages 45 to 54 grew 68 percent, according to the U.S. Bureau of Justice Statistics.⁶⁶ From 2007 to 2010, the number of state and federal prisoners age 65 or older grew 94 times faster than the total prison population.⁶⁷

TDOC’s most recent statistical abstract shows that on the snapshot date of June 30, 2014, about 15 percent of Tennessee’s prison population (4,668 inmates) were age 50 and above; 1,155 prisoners (almost 4 percent of the total population) were 60 years or older.⁶⁸ Though 50- or 60-year-olds are not generally considered elderly, health practitioners, corrections officials, and researchers agree that the aging process appears to be accelerated for incarcerated individuals, meaning that an inmate’s physiological age may exceed his or her chronological age.⁶⁹

⁶⁴ See Tina Chiu, *It’s About Time: Aging Prisoners, Increasing Costs, and Geriatric Release* (New York: Vera Institute of Justice, 2010), <http://www.vera.org/sites/default/files/resources/downloads/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>; Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States* (New York: Human Rights Watch, 2012), http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf; and Tina Maschi, Alexandra Kalmanofsky, Kimberly Westcott and Lauren Pappacena, *An Analysis of United States Compassionate and Geriatric Release Laws: Towards a Rights-Based Response for Diverse Elders and Their Families and Communities* (New York: Be the Evidence Press, Fordham University 2015).

⁶⁵ Maschi et al., *An Analysis of United States Compassionate and Geriatric Release Laws*, p. 4; Chiu, *It’s About Time*, pp. 3-4.

⁶⁶ Chiu, *It’s About Time*, p. 4

⁶⁷ The older prison population increased by 63 percent, while the total prison population grew by 0.7 percent during the same period. Human Rights Watch, *Old Behind Bars*, p. 6

⁶⁸ Tennessee Department of Correction, *The Tennessee Department of Correction Fiscal Year 2013-2014 Statistical Abstract* (Nashville, TN: Tennessee Department of Correction, 2014), 25, <http://www.tn.gov/correction/pdf/StatisticalAbstract2014.pdf>; State definitions of “older” or “elderly” inmates varies, with many states using age 50 as a threshold, but others using 55, 60, or 65. Chiu, *It’s About Time*, pp. 4-5.

⁶⁹ Maschi et al., *An Analysis of United States Compassionate and Geriatric Release Laws*, p. 4.

Elderly or “geriatric” prison populations present significant challenges for corrections officials and state budgets, as these individuals often have extensive and costly medical needs.⁷⁰ Compared to young prisoners, older inmates have higher rates of both mild and serious health conditions, including hearing loss, visual impairment, hypertension, arthritis, and dementia, to name a few.⁷¹ Some geriatric prisoners require levels of medical care equivalent to that offered in assisted living, nursing homes, or hospice care.⁷² Because of these increased medical needs, corrections departments generally must spend much more to incarcerate elderly prisoners than younger inmates.⁷³

Older inmates are also far less likely than younger prisoners to commit additional crimes or violate parole conditions after release from prison. Research has consistently found age to be one of the most significant predictors of criminality, with criminal activity tending to peak in early adulthood and to decrease as an individual grows older.⁷⁴ Studies indicate that the early release of some elderly prisoners can pose a relatively low risk to public safety.⁷⁵ For example, a 2004 study found a recidivism rate of only 9.5 percent among offenders over 50, compared to a rate of 35.5 percent of young offenders under age 21.⁷⁶

Due to the growing numbers and higher costs of incarcerating elderly prisoners, as well as the lower risk of recidivism among such prisoners, states have increasingly considered early release options for certain older inmates who pose a relatively low public safety risk.⁷⁷ As of 2015, 47 states, the District of Columbia and the federal Bureau of Prisons had various processes allowing for the early release of some geriatric inmates, including discretionary parole, inmate furloughs, and medical release.⁷⁸ To be eligible for release, older inmates must meet certain requirements, generally related to their age, medical condition, and risk to public safety as well as, in some states, the severity of their offense and the length of their sentence served. For example, in Alabama inmates can be considered for early release if they are 55 or older and suffer from chronic debilitating disease or life-threatening illness; in Texas, inmates are eligible for consideration at any age if they are elderly, physically disabled, or terminally ill and are not a threat to public safety.⁷⁹

These early release policies can potentially save state corrections systems significant amounts of money. While there are concerns that such releases may simply shift the costs of these individuals’ healthcare to other state agencies, they may still result in overall savings to the state,

⁷⁰ Ibid., p. 6.

⁷¹ According to the Journal of the American Medical Association, prisoners over 55 have an average of three chronic conditions and up to 20 percent have a mental illness. Chiu, *It’s About Time*, p. 5.

⁷² Human Rights Watch, *Old Behind Bars*, p. 7

⁷³ Chiu, *It’s About Time*, p. 5; and Human Rights Watch, *Old Behind Bars*, p. 5 (“According to information gathered by Human Rights Watch, including previously unpublished data, annual medical expenditures are three to eight times greater for older state prisoners than for others.”)

⁷⁴ Maschi et al., *An Analysis of United States Compassionate and Geriatric Release Laws*, p. 5.

⁷⁵ Chiu, *It’s About Time*, p. 5.

⁷⁶ Ibid., p. 5. Recidivism was measured after two years of release, for offenders who were sentenced under federal sentencing guidelines.

⁷⁷ Ibid., p. 2.

⁷⁸ Maschi et al., *An Analysis of United States Compassionate and Geriatric Release Laws*, p. 7-8.

⁷⁹ Chiu, *It’s About Time*, p. 7.

due to the added cost of prison security and control measures for these individuals if kept incarcerated.⁸⁰

Tennessee currently has a limited medical furlough policy which allows the TDOC commissioner to release an individual from TDOC institutional custody to community supervision.⁸¹ However, such furloughs are limited to inmates who are “in imminent peril of death” or have severe physical or psychological deterioration, and the release can be revoked at any time. Tennessee should consider developing a broader early release policy for older offenders who pose little risk to public safety. Such a policy could potentially ease the strain on corrections facilities and save the state money without significantly endangering public safety.

Create a work group to address the status of those individuals who are serving their sentences in local jails.

In Tennessee, many offenders serving a sentence between one and three years must serve their sentence in the county’s jail or workhouse, if there is one.⁸² Offenders from Shelby County and Davidson County who are serving a sentence between four and six years are likewise be assigned to a county facility.⁸³ As of April 2015, there were 3,895 people serving felony sentences in Tennessee jails.⁸⁴ These individuals do not receive the same programming and reentry planning as those who are in TDOC operated facilities, which raises concerns about the impact on the state’s recidivism reduction goals. A 2010 study of Tennessee recidivism rates by TDOC highlighted a “glaring disparity” in the rate of return for those individuals leaving local jails.⁸⁵ The report stated that, “Felons released from jails are returning at significantly high rates. Comparisons of return rates by type of release and offense consistently demonstrate that felons released from jail are both more likely to return to prison and do so within a shorter span of time.”⁸⁶

Reducing the recidivism rates for these individuals is an area worthy of attention, and Governor Haslam should form a workgroup to investigate and make recommendations on this topic.

⁸⁰ Ibid., p. 2; Human Rights Watch, *Old Behind Bars*, p. 6.

⁸¹ Administrative Policies And Procedures, State of Tennessee Department of Correction, Index # 511.01.1, effective June 15, 2014, <http://www.tn.gov/correction/pdf/51101-1.pdf>.

⁸² Tenn. Code Ann. § 40-35-104(b) (2014).

⁸³ Tenn. Code Ann. § 40-35-104(b)(2) (2014).

⁸⁴ Tennessee Department of Correction, *Tennessee Jail Summary Report* (Nashville, TN: Tennessee Department of Correction, 2015), <http://www.tn.gov/correction/pdf/JailApril2015.pdf>. The costs of jails also comprise a large share of TDOC’s budget. According to TDOC, per diem rates paid by TDOC to local jails ranged from \$30-\$67 in fiscal year 2014, and costs TDOC more than \$185 million in fiscal year 2013. (By comparison, on a per diem basis, TDOC estimate the per diem costs of TDOC confinement to be \$74.19.)

⁸⁵ Karpos, *Tennessee Department of Correction Recidivism Study Felon Releases 2001-2007*, p. 64.

⁸⁶ Ibid.