

## JUSTICE REINVESTMENT IN INDIANA

# Summary Report & Policy Framework



## Background

**I**N JANUARY 2010, GOVERNOR MITCH DANIELS, Supreme Court Chief Justice Randall Shepard, Attorney General Gregory Zoeller, then House Speaker Patrick Bauer, and Senate President Pro Tempore David Long requested technical assistance from the Pew Center on the States' Public Safety Performance Project, who partnered with the Council of State Governments Justice Center (CSG Justice Center), to develop a data-driven criminal justice policy framework for the state. Additional support for the technical assistance came from the U.S. Department of Justice, Bureau of Justice Assistance (BJA), and the State of Indiana. These state leaders committed to a bipartisan, inter-branch effort, using rigorous analyses of state and local data systems, to design strategies that will reduce spending on corrections and reinvest dollars, which would otherwise be spent on prison construction, in efforts to increase public safety in Indiana.

To guide the analysis of Indiana's criminal justice system, state leaders designated members of all three branches of state government to serve on a bipartisan

Justice Reinvestment Steering Committee, which also included representatives from across the criminal justice system. State leaders instructed the Steering Committee to coordinate its efforts with the work of the Criminal Code Evaluation Commission, a bipartisan, multi-branch group created by the Indiana General Assembly to evaluate the state's criminal laws.<sup>1</sup>

CSG Justice Center staff convened focus groups of (and individual interviews with) prosecutors, public defenders, behavioral health treatment providers, victim advocates, judges, local government officials, chief probation officers, community corrections directors, the parole board, law enforcement executives, and others. CSG Justice Center also collected data from multiple sources to inform the analyses outlined in this report, including the Indiana Department of Correction (IDOC) and other state and county-level agencies.

This report summarizes the findings of the CSG Justice Center and the Pew Center on the States.

1. Indiana P.L. 182-2009(ss) states: "The Criminal Code Evaluation Commission is established to evaluate the criminal laws of Indiana. If, based on the commission's evaluation, the commission determines that changes

are necessary or appropriate, the commission shall make recommendations to the general assembly for the modification of the criminal laws."

# Highlights

Between 2000 and 2009, Indiana’s crime rate fell, but not as much as it dropped in neighboring states.<sup>2</sup> During the same time period, the number of people in prison in Indiana grew by over 40 percent; this rate of increase was three times faster than what other states in the region experienced.<sup>3</sup> If existing policies remain unchanged, Indiana’s prison population will continue to grow rapidly (by 21 percent between 2010 and 2017).<sup>4</sup> Costs associated with construction and operation of additional prison beds needed to house the growing prison population will run approximately \$1.2 billion.<sup>5</sup>

The analyses conducted by the CSG Justice Center revealed that any effort to reverse these trends and generate resources that can be used for strategies that will increase public safety must address three challenges:

1. Indiana’s laws do not result in sentences that are proportionate to the severity of the crime.
2. Probation, community corrections, and parole agencies do not coordinate operations, have overlapping authority, and do not share information about individuals under supervision.
3. Adults under community supervision often cannot access substance use treatment programs; responses to violations of supervision conditions are slow and ineffective.

Each of these challenges is listed below, along with corresponding policy strategies and goals.

ISSUE	CHALLENGE	STRATEGY	GOAL
<b>Sentencing</b>	Indiana’s laws do not result in sentences that are proportionate to the severity of the crime.	Shift from a one-size-fits-all sentencing policy for theft and drug offenses to a more graduated approach; give judges options when sentencing a person charged with a nonviolent offense who has prior convictions.	Graduated drug and theft penalties and increased judicial options ensure that the degree of punishment imposed is proportional to the severity of the crime committed.
<b>Community Supervision</b>	Probation, community corrections, and parole agencies do not coordinate operations, have overlapping authority, and do not share information about individuals under supervision.	Strengthen community supervision by focusing resources on high-risk offenders; create incentives for coordination among supervision agencies.	Taxpayers get the most value from their investments in community supervision.
<b>Public Safety</b>	Adults under community supervision often cannot access substance use treatment programs; responses to violations of supervision conditions are slow and ineffective.	Increase availability of substance use treatment in the community and availability of cognitive-behavioral therapy in prison; encourage local governments to reduce the number of Class D offenders sentenced to prison; enable probation officers to use swift and certain sanctions for people who violate conditions of supervision.	Crime and recidivism decline because offenders have access to community-based substance use treatment and are supervised effectively.

2. Comparisons between 2000 and 2009 reported crime and arrests are based on data from the following sources: U.S. Department of Justice, Federal Bureau of Investigation, “Crime in the United States, 2000” (September 2001), <http://www.fbi.gov/ucr/00cius.htm>; U.S. Department of Justice, Federal Bureau of Investigation, “Crime in the United States, 2009” (September 2010), <http://www2.fbi.gov/ucr/cius2009/index.html>.

3. U.S. Department of Justice, Bureau of Justice Statistics. “Prisoners in 2008” (December 2009): <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08>.

pdf. States analyzed include Wisconsin, Ohio, Missouri, Michigan, and Illinois. Figures based on reported changes to their prison population growth between 2000 and 2008.

4. Internal Department of Correction memo: “Actual Vs. Projected Populations” (Indiana Department of Correction), March 2010.

5. CSG Justice Center estimates based on cost figures from an internal Department of Correction memo: “Adult Male Maximum Security Facility Construction, Financing, and Operating Costs,” May 2010.

# Crime, Arrest, & Corrections Trends

**Although Indiana’s crime rate has declined, the number of people arrested for committing nonviolent crimes has increased.**

- Between 2000 and 2009, the violent index crime rate decreased five percent and the property index crime rate decreased eight percent.<sup>6</sup>
- During the same time period, overall arrest rates rose nine percent. While the arrest rate for violent crimes decreased 27 percent, the arrest rate for property crimes increased 22 percent.<sup>7</sup>

**The majority of people admitted to prison in Indiana are property or drug offenders and spend less than one year there.**

- Of those admitted to prison in 2009, 66 percent spent less than one year behind bars.<sup>8</sup>

**Figure 1: Indiana’s prison population has increased over 40% since 2000**

STATE	PRISON POP. 2000	PRISON POP. 2008	CHANGE IN PRISON POP. 2000-2008
Indiana	20,125	28,322	41%
Wisconsin	20,754	23,380	13%
Ohio	45,833	51,686	13%
Missouri	27,543	30,186	10%
Michigan	47,718	48,738	2%
Illinois	45,281	45,474	0%

- In 2009, half of all admissions to prison were for people who had been convicted of the least serious category of felony (Class D felony). Fifty-five percent of prison admissions were property or drug offenders.<sup>9</sup>
- Between 2005 and 2009, the number of people admitted to prison for a Class D felony increased 28 percent. Most of this increase of admissions can be attributed to growth in the number of people convicted of drug crimes, forgery, or theft.<sup>10</sup>

**As Indiana’s prison population has grown, state spending on corrections has increased dramatically.**

- From 2000 to 2008, the state’s prison population climbed from 20,125 to 28,322, a 41 percent increase. During the same time period, however, none of the neighboring states’ prison populations grew by more than 13 percent.<sup>11</sup>
- As of July 2010, approximately 1,500 sentenced individuals were being held in local county jails to ease prison overcrowding.<sup>12</sup>
- Between 2000 and 2008, annual appropriations from the state’s general fund for the IDOC increased by 24 percent, from \$495 million to \$616 million.<sup>13</sup>

**If current policies remain unchanged, the prison population is projected to continue to grow, and the state will need to expand prison capacity at a significant cost to taxpayers.**

- The IDOC projects that between 2010 and 2017, the prison population will increase 21 percent, from 28,474 to 34,794.<sup>14</sup>
- IDOC estimates that the state will need to spend \$1.2 billion, on top of what it already spends on corrections, to build and operate the additional prison beds needed over the next seven years.<sup>15</sup>

**6,7.** Comparisons between 2000 and 2009 reported crime and arrests are based on data from the following sources: U.S. Department of Justice, Federal Bureau of Investigation, “Crime in the United States, 2000” (September 2001), <http://www.fbi.gov/ucr/00cius.htm>; U.S. Department of Justice, Federal Bureau of Investigation, “Crime in the United States, 2009” (September 2010), <http://www2.fbi.gov/ucr/cius2009/index.html>.

**8.** Indiana Department of Correction CY 2009 Releases.

**9.** Indiana Department of Correction CY 2009 Admissions.

**10.** Indiana Department of Correction CY 2005 and 2009 Admissions. References to prison admission data throughout the report are based on the CSG Justice Center’s analysis of these two data sets of admissions.

**11.** U.S. Department of Justice, Bureau of Justice Statistics. “Prisoners in 2008: December 2009: Available at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>. States analyzed include Wisconsin, Ohio, Missouri, Michigan, and Illinois.

**12.** Indiana Department of Correction Fact Card: July 1, 2010.

**13.** FY1999–2001 Indiana Public Safety Budget: <http://www.in.gov/sba/2408.htm>; FY2007–2008 Indiana Public Safety Budget: [http://www.in.gov/sba/files/ap\\_2007\\_c\\_2\\_5\\_pub\\_saf\\_data.pdf](http://www.in.gov/sba/files/ap_2007_c_2_5_pub_saf_data.pdf).

**14.** Projected Populations (Indiana Department of Correction), March 2010.

**15.** CSG Justice Center estimates based on cost figures from an internal Department of Correction memo: “Adult Male Maximum Security Facility Construction, Financing, and Operating Costs,” May 2010.

## SENTENCING

### CHALLENGE:

***Indiana's laws do not result in sentences that are proportionate to the severity of the crime.***

#### Indiana lacks graduated penalties for drug offenses.

- Just two sentence options exist in Indiana for those convicted of selling cocaine: 6-20 years for less than three grams or 20-50 years for three grams or more. As a result, a person selling three grams of cocaine falls into the same felony class as someone selling three kilograms of cocaine.
- The average sentence for someone selling drugs in Indiana is nearly 50 percent longer than the average sentence for sexual assault and 20 percent longer than for burglary.
- The minimum time served in prison (after accounting for earned time credits) in Indiana for someone convicted of selling three grams of cocaine is at least six times longer than the maximum amount of time that person could serve in neighboring Ohio.
- The majority of states have four or five different penalty levels to differentiate between low-level drug users/peddlers and major narcotics traffickers.
- Prosecutors and public defenders agree that penalties need to be adjusted to correspond to the severity of the offense, observing that the Indiana Constitution states that “[a]ll penalties shall be proportioned to the nature of the offense.”

Figure 2: The average sentence for drug sale is longer than for more serious offenses

CRIME TYPE	SENTENCE (MONTHS)
Drug Sale	96
Burglary	79
Sexual Assault	65

#### Indiana also lacks graduated penalties for theft.

- Indiana state statute defines theft, regardless of the value of the stolen material, as a felony offense. In contrast, most states define theft below a certain amount as a misdemeanor. For example, the felony threshold is \$1,000 in Michigan, \$2,500 in Wisconsin, \$500 in Ohio, and \$1,500 in Texas.
- In 2009 alone, six states raised their felony theft thresholds to approximately \$1,000.<sup>16</sup>

#### Judges often do not have options when sentencing nonviolent offenders.

- According to state statute, if an individual who has committed a prior felony within the past three years is convicted for a new Class D felony, that individual must be sentenced to prison.
- Judges do not have the option of sentencing such people, who frequently have addiction problems, to community supervision with mandatory participation in a drug treatment program, even though in many instances such a sentence would be most effective in reducing the likelihood of reoffense.
- Indiana has been a leader among states in developing a broad range of problem-solving courts, including drug courts, reentry courts, mental health courts and other specialized dockets.

Figure 3: Penalties for selling three grams of cocaine

STATE	MINIMUM	MAXIMUM
<b>Indiana</b>	<b>20 years</b>	<b>50 years</b>
Texas	2 years	20 years
Wisconsin	--	Up to 12.5 years
Ohio	Probation	1 year

16. National Conference of State Legislators, “Monetary Increase of Thresholds for Theft-Related Crimes,” January 2010.

# SENTENCING

## STRATEGY:

**Shift from a one-size-fits-all sentencing policy for theft and drug offenses to a more graduated approach; give judges options when sentencing a person charged with a nonviolent offense who has prior convictions.**

### 1-A: Graduate the penalties associated with drug possession and sale.

- Revise Indiana law by implementing various gradations for the possession and sale of cocaine, methamphetamine, and certain controlled substances.<sup>17</sup>
- Provide that possession of up to 5 grams will be a Class D felony, 5-50 grams will be a Class C felony, and more than 50 grams will be a Class B felony. Manufacture or dealing up to 10 grams will be a Class C felony, 10-100 grams will be a Class B felony, and more than 100 grams will be a Class A felony.

*Impact on Public Safety:* The policy change will bring the state's sentencing laws in greater alignment with other states and make the average sentence for sale of lesser amounts of drugs more proportionate to current sentences for more severe crimes such as burglary and sexual assault. Creating gradations in drug penalties enables a judge to impose a far more punitive sentence for someone convicted of selling three kilograms of cocaine than for someone convicted of selling three grams of cocaine.

*Impact on Prison Population:* Because this policy option is not retroactive, it will apply only to people convicted of these categories of crime after July 1, 2011. Accordingly, it will take three to four years before this policy has an impact on the prison population.

### 1-B: Restructure the penalties for theft, establishing a minimum threshold amount for what constitutes a felony offense.

- Revise Indiana law by implementing various gradations for theft to ensure that the degree of punishment imposed is proportionate to the severity of the crime committed.

- Make theft below \$750 a misdemeanor rather than a felony offense for first-time theft offenders.
- Keep theft of \$750 to \$50,000 a Class D felony and repeat offenses of any amount a Class D felony.
- Raise the penalty for theft of \$50,000 or more to a Class C felony instead of a Class D felony.

*Impact on Public Safety:* The policy change will bring the state's sentencing laws in greater alignment with other states, most of which have a felony threshold for theft of anywhere between \$500 and \$2,500.

*Impact on Prison Population:* In 2009, 2,178 people were admitted to prison with a Class D felony sentence for theft, and they spent an average of six months in prison. It is estimated that 30 percent (or 653) of those admitted had been convicted for theft of less than \$750.

### 1-C: Give judges sentencing people who have committed a nonviolent offense more options.

- Allow nonviolent Class D felony offenses to be suspended at the judge's discretion.
- Remove "operating a vehicle with lifetime license suspension" from the current list of non-suspendible offenses.
- Repeal the provision mandating that if an adult is convicted of a felony within three years of committing a felony-equivalent offense as a juvenile, the sentence for the new felony is nonsuspendible.

*Impact on Public Safety:* Providing judges who are sentencing low-level, nonviolent offenders with options beyond just a term of incarceration enables them to impose a sentence that would have the greatest likelihood of reducing recidivism.

*Impact on Prison Population:* In 2009, over 3,600 people were admitted to prison for nonviolent Class D felony offenses, and they spent six months on average in prison for their sentence. The assumption is that eight percent of that number (or 290 people) will be diverted from prison to probation as a result of this policy.

<sup>17</sup> This includes controlled substances from schedules I-III, as defined in IC 35-38-2.



## COMMUNITY SUPERVISION

### Challenge:

***Probation, community corrections, and parole agencies do not coordinate operations, have overlapping authority, and do not share information about individuals under supervision.***

**The number of people on probation has increased significantly, as has the percentage of people whose probation is revoked.**

- The number of people supervised on felony probation increased 56 percent between 1999 and 2008.<sup>18</sup>
- In 1999, 25 percent of people sentenced to probation had their probation revoked. In 2008, 34 percent of people sentenced to probation had their probation revoked.<sup>19</sup>
- The number of property and drug offenders admitted to prison because they violated the terms of their probation increased 53 percent, from 847 in 2005 to 1,297 in 2009.
- Chief probation officers consistently report that probation caseloads are too high, and, as a result, they cannot allocate sufficient resources to supervise those probationers most likely to reoffend.<sup>20</sup>
- There is little difference in contact standards for high and low-risk offenders. A 2010 survey of Indiana's probation officers indicated that high-risk offenders are contacted approximately twice a month, whereas low-risk offenders are contacted once a month.<sup>21</sup>

**In nearly every Indiana county there are multiple supervision agencies with overlapping authority.**

- Some counties have multiple probation departments, despite a rule implemented by the Judicial Conference in 2010 that called for the consolidation of adult felony and misdemeanor probation departments. Lake County, for example, has 14 probation

departments, which makes the adoption of county-wide policies impossible and prevents supervision resources within the county from being distributed where they could do the most to reduce recidivism.

- Approximately half of the probation departments appear to serve misdemeanor, felony, and juvenile offenders together as one single supervising agency. The remainder of the departments serve one or two categories of probationers, but not all three categories of probationers. It is not unusual for a person sentenced to both misdemeanor and felony probation to be reporting to two different officers working in two separate probation departments.<sup>22</sup>
- Only four out of Indiana's 92 counties have consolidated their community corrections and probation departments into one entity. These departments report that by integrating and streamlining the two agencies, they have improved the quality of supervision provided and saved money.

**Policies and practices vary widely from one probation department to the next (and often within the same probation department).**

- In 2009, 77 percent of probation terminations in St. Joseph County were for people who completed the terms of their supervision successfully. On the other hand, in Marion County, just 44 percent of probation terminations were for successful completion of community supervision. Meanwhile, probation revocations in St. Joseph County accounted for 11 percent of terminations, whereas 33 percent of probationers who terminated in Marion County were revoked because of violations of conditions of release.<sup>23</sup>
- Probation officers attribute much of this variation to different sentencing philosophies among judges across the state and within counties.<sup>24</sup> Eighty-eight percent of chief probation officers responding to a survey of probation departments by the Justice Center reported that judges do not use any uniform system of progressive sanctions when determining appropriate responses to violations of probation.<sup>25</sup>

18,19. The Supreme Court of Indiana, "2008 Indiana Probation Report: Statewide Summary."

20. CSG meeting with chief probation officers at the annual Probation Officer Professional Association of Indiana conference on September 15, 2010.

21. CSG Probation Survey, 2010. These figures are based on the 61 percent of survey respondents who reported they had contact standards related to risk.

22. CSG Probation Survey, 2010. Fifty-nine out of the 106 probation departments that responded to the survey said they serve misdemeanor, felony, and juvenile offenders together as one single supervising agency.

23. Indiana Judicial Center, 2009 Probation Quarterly Reports.

24. CSG meeting with chief probation officers at the annual Probation Officer Professional Association of Indiana conference on September 15, 2010.

25. CSG Probation Survey, 2010.

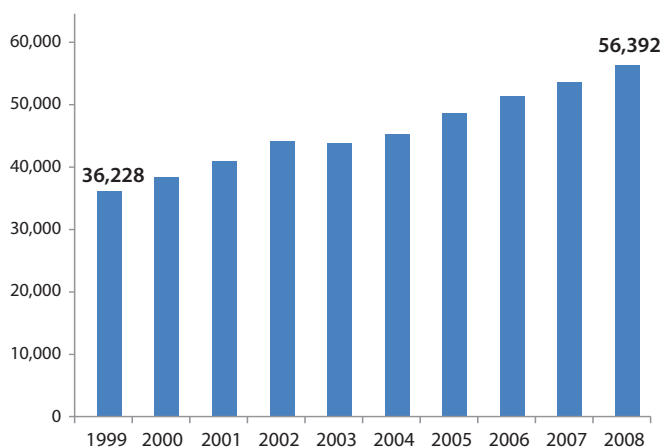
## COMMUNITY SUPERVISION

- In the last six years, laws have been enacted in Arizona, Nevada, New Hampshire, and Delaware to “frontload supervision resources,” meaning that supervision resources are concentrated in the period of time immediately following release from incarceration, as that is when an offender is most likely to recidivate. In fact, research indicates that the probability of re-arrest or violation during the first month after release from prison is nearly double that during the 15th month.<sup>26</sup>

### Criteria defining who should be sentenced to community corrections supervision are vague, making it impossible to assess the effectiveness of these programs.

- The state statute establishing the community corrections program in Indiana, along with administrative policies that govern community corrections, do not specify what categories of offenders should be sentenced to the program. Without such criteria, it is difficult to determine whether a person sentenced to community corrections has been diverted from prison, which is a key objective of the program, or would have otherwise been sentenced to probation.

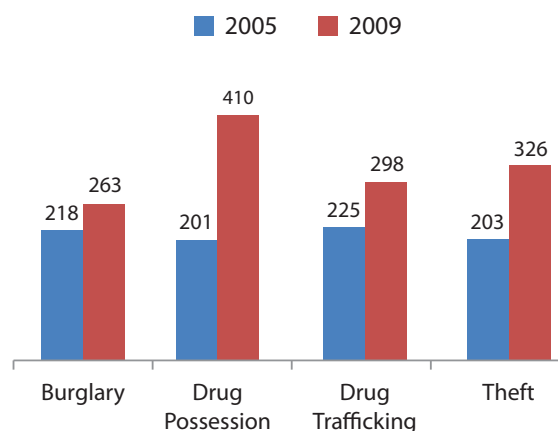
Figure 4: The number of people on felony probation has increased 56 percent in the last 10 years



26. National Research Council Committee on Community Supervision and Desistance from Crime, “Parole, Desistance from Crime, and Community Integration.” 2007.

- Just 51 percent of new community corrections cases in 2008 were for felony offenses; the other 49 percent of cases were for misdemeanors.<sup>27</sup> While user fees collected by community corrections agencies and local funding in some counties offset the costs of serving misdemeanors, these funds are not kept separate from state funding designed to focus on felony offenders.
- Although community corrections was designed to be another option when responding to a violation of a condition of release, only 66 percent of chief probation officers reported that their departments use community corrections as an intermediate sanction when someone does not comply with one or more terms of his/her probation.<sup>28</sup>

Figure 5: Revocations of probation for people convicted of property and drug offenses have increased



27. Indiana Department of Correction, “Community Corrections Quarterly Report for Active Clients – Adults,” 1st quarter, FY 2007-2008).

28. CSG Probation Survey, 2010.

## COMMUNITY SUPERVISION

Many of the types of programs provided to people under community corrections supervision are unlikely to have an impact on their likelihood of recidivating.

- Evaluations conducted across the country of the types of community corrections programs described in Indiana statute (and employed by Indiana community corrections agencies) have found that many have little to no success of reducing crime.<sup>29</sup> Over \$23.9 million in state community corrections funding is used on electronic monitoring and work release, although nationwide research does not demonstrate that either of these programs, by itself, reduces recidivism.<sup>30</sup> Although some counties do incorporate evidence-based elements like cognitive-behavioral approaches into these programs, community corrections directors report that provisions in plea agreements and sentencing decisions mandate participation in particular programs, regardless of what the results of a validated risk assessment reflect, which would give a better indication of the appropriate mix of supervision and treatment.<sup>31</sup>

Figure 6: Probation outcomes differ greatly between counties

INDIANA PROBATION TERMINATIONS 2009			
	COMPLETE	NEW OFFENSE	VIOLATION
Marion	44%	24%	33%
Allen	61%	11%	28%
Madison	59%	25%	16%
Vanderburgh	79%	4%	17%
Lake	56%	22%	22%
Elkhart	56%	21%	23%
Hendricks	70%	11%	19%
St. Joseph	77%	12%	11%
Hamilton	70%	14%	16%
Delaware	76%	11%	13%
Other	71%	15%	14%
<b>State</b>	<b>64%</b>	<b>16%</b>	<b>19%</b>

### Indiana's Community Supervision Agencies

- Probation:** Although the Indiana Judicial Conference is responsible for certification, training, and support of all probation officers, each one of the 152 probation departments across the state is county-administered and funded. Felony probation is used both as an alternative to prison and to supervise people who received a suspended sentence of community supervision, to be served following their release from prison.
- Community Corrections:** Funding for community corrections comes primarily from the state IDOC budget. IDOC then awards counties (or regions) grants to operate their community corrections agencies. Community corrections programming exists in 77 of Indiana's 92 counties. Local programs are usually operated as independent county agencies and guided by a local advisory board. Programming is used to divert people from prison (including people sentenced to community corrections as a condition of probation) and as a supervision method for those released from prison through the Community Transition Program.
- Parole:** There are nine parole districts in Indiana, funded through the state IDOC budget. People released from prison who do not receive a suspended sentence are placed under parole supervision once they return to the community (unless they complete their entire sentence behind bars).

29. Elizabeth K. Drake, Steve Aos, and Marna G. Miller: "Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State," Washington State Institute for Public Policy: <http://www.wsipp.wa.gov/rptfiles/09-00-1201.pdf>.

30. Ibid; Indiana Department of Correction internal document: "CC Funding by Funding Source."

31. Meeting with community corrections directors on October 4, 2010.

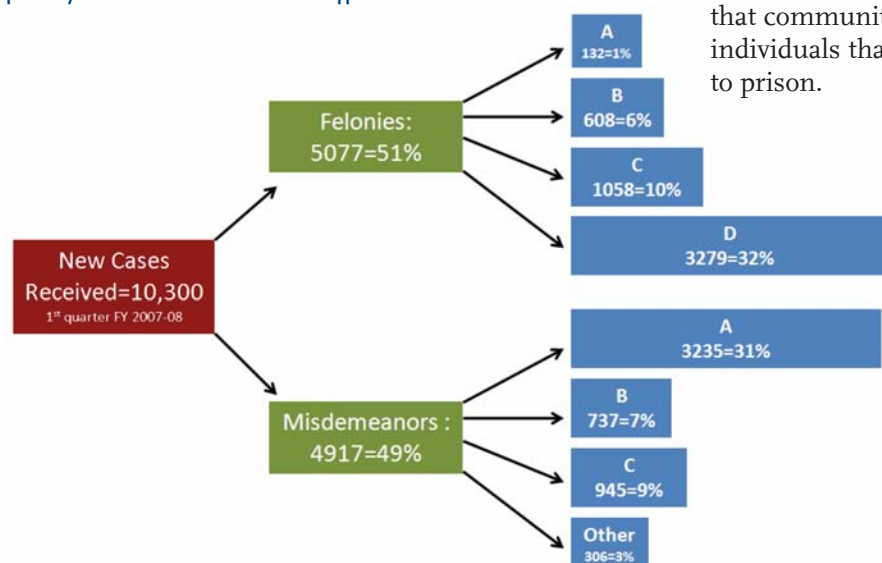


# COMMUNITY SUPERVISION

The number of people on parole has increased, but community corrections and probation are also commonly used to supervise people released from prison.

- In most states, when someone is supervised after their release from prison, it is usually the state parole agency that performs this function. In Indiana, however, only 42 percent of people released from prison to some form of community supervision in 2009 were under parole supervision. Another 40 percent of people released from prison that year were assigned to probation supervision (as part of a suspended sentence). Eleven percent were released to community corrections via the Community Transition Program, and seven percent were discharged with no supervision.<sup>33</sup>
- The number of people on parole more than doubled between 2000 and 2010.<sup>34</sup>
- Judges and prosecutors report that they do not view parole as an effective form of post-release supervision for people coming out of prison. Accordingly, when they want to ensure community supervision for someone coming out of prison, prosecutors recommend, or judges order, in addition to prison time, a suspended sentence of probation to follow the term of incarceration.<sup>35</sup>

Figure 7: Community corrections serves mostly D felony and A misdemeanor offenders



## STRATEGY:

**Strengthen community supervision by focusing resources on people who have a high risk of reoffending and create incentives for coordination among supervision agencies.**

**2-A: Require that state dollars allocated to community corrections agencies be dedicated to the provision of evidence-based practices for felony offenders.**

- Remove community corrections statutory language specifying what program models can be used and replace it with a directive to use evidence-based practices that have been shown to reduce recidivism.
- Mandate that state community corrections funds can be used only for programs serving people convicted of a felony (not a misdemeanor) offense.

*Impact on Public Safety:* Shifting community corrections funding away from programs that do not work and towards research-based programs will increase the likelihood that these investments reduce crime and recidivism.

*Impact on Prison Population:* Ensuring that state funds, and user fees collected from felony offenders, are used to provide community corrections programs only to felony offenders will increase the likelihood that community corrections programs are supervising individuals that would have otherwise been sentenced to prison.

33. Indiana Department of Correction CY 2009 Releases.

34. Internal memo from the Indiana Parole Board, 2010.

35. CSG meeting with Indiana judges on August 27, 2010.

## COMMUNITY SUPERVISION

### **2-B: Create a probation improvement fund that provides counties with economic incentives to reduce probation revocations and coordinate with other supervision agencies.**

- Provide probation departments with competitive grants to support the adoption of best practices.
- Create a performance incentive that provides additional funding for jurisdictions that are able to reduce revocations to state prison.
- Require that funding be made available only to those jurisdictions that are actively working to improve coordination between the community corrections and probation departments operating within the county.

*Impact on Public Safety:* Probation will be more effective at reducing recidivism when using best practices and better positioned to hold offenders accountable when they share information with those supervision agencies operating in their county about the offenders under supervision.

*Impact on Prison Population:* This policy is estimated to reduce probation revocations to prison by 10 percent in 2012 and 15 percent in 2013 (and that reduction is maintained thereafter) from the 2009 level. These reductions are assumed to be an impact not only as a result of the incentives to reduce revocations, but also the policies that focus supervision resources (2-C), increase access to treatment programs (3-A), and enable the use of swift and certain sanctions (3-B).

### **2-C: Focus probation supervision resources on high-risk offenders.**

- Limit active supervision of low and medium-risk offenders to the first nine months for misdemeanor probationers and the first 12 months for felony probationers, unless they have violated a condition of supervision during that initial period.
- Place people who complete this supervision period successfully – and for whom additional active supervision is unnecessary – on administrative supervi-

sion. Administrative supervision requires the person under supervision to report periodically and be moved to active supervision upon any violation or arrest, but reduces the supervision resources otherwise spent on a group of individuals who have a much lower likelihood of reoffending than other people on probation.

*Impact on Public Safety:* One of the most effective ways to reduce recidivism is to focus supervision resources on the people who pose the greatest likelihood of reoffending. Shortening the length of time spent actively supervising probationers and parolees who have complied with their conditions of supervision and who are less likely to reoffend enables probation officers to concentrate their attention on high-risk probationers.

*Impact on Prison Population:* Focusing supervision on the offenders most likely to reoffend will reduce the incidence of those offenders being revoked from probation and admitted to prison.

### **2-D: Require probation (as opposed to parole) supervision after release from prison, except for the most serious violent and sex offenders, who would be supervised on parole.**

- Continue to ensure that following a period of incarceration in prison, all people convicted of murder, a Class A felony, or a sex offense be supervised on parole unless the judge also imposed a suspended sentence.
- Require judges to impose a period of mandatory supervision (defined as a suspended sentence following a prison sentence) for all other offenders sentenced to prison. Require that the period of supervision be at least six months and no more than three years (unless the statute allows the entire sentence to be suspended).

### CHALLENGE:

**Adults under community supervision often cannot access substance use treatment programs; responses to violations of supervision conditions are slow and ineffective.**

**Many people in prison and released from prison need substance use treatment, but are unable to get it.**

- Indiana invests significant resources to provide prison-based treatment for substance use and co-occurring mental health disorders through Therapeutic Communities (TCs), which have been proven effective in reducing recidivism. The investment does not include, however, post-release community-based treatment and aftercare, which research indicates has more of an impact on reducing recidivism than prison-based treatment only.
- There are currently 1,700 TC beds statewide, yet only 1,100 individuals complete TC's each year.<sup>36</sup>
- Just one percent of people released from prison in 2009 who were admitted to prison on a Class D felony offense completed the TC program.<sup>37</sup> Participation (and completion) rates are so meager because this population (Class D felony offenders) serves an average of eight months in prison; however, eligibility for the program, which typically runs for 12 months, is limited to people with a minimum of 14 months and a maximum of 36 months remaining of their sentence.

**There are insufficient substance use treatment resources available to those who need them in the community.**

- IDOC currently does not fund community-based treatment or aftercare for individuals who complete a prison-based TC. Individuals who complete a TC receive a release recovery plan that includes a referral to available community-based services; however,

there is no standardized approach. This fact was also noted in a focus group with behavioral health treatment providers.<sup>38</sup>

- Although 80 percent of probation departments report that they use an assessment to determine the presence of substance use disorder, 61 percent of respondents rated services available to probationers in their community as fair or poor.<sup>39</sup>
- Research has been consistent in demonstrating that substance use treatment lasting at least three months or more is associated with positive outcomes. It also shows that the most significant reductions in recidivism are achieved only when treatment and supervision are provided in tandem.<sup>40</sup>
- According to the Indiana Division of Mental Health and Addiction, in fiscal year 2010, providers indicated that 16,686 out of 35,027 of their referrals originated from the court or criminal justice system.<sup>41</sup>
- Indiana has received \$4 million in funding a year for the last three years (\$12 million total) through the federal Access to Recovery (ATR) program to provide treatment and recovery services in seven counties to adults transitioning into the community after incarceration, among other target populations. However, the grant's focus has not been targeted at the high-risk population that is most likely to reoffend.

**When someone violates a condition of probation supervision, the response by the probation officer and judge is neither swift nor certain.**

- Probation officers feel that if they had some options for holding offenders accountable for violating the conditions of their supervision—as opposed to requiring them to respond in every instance with a court hearing—it could substantially boost the immediacy and effectiveness of responses, in addition to saving money and freeing jail space.
- Sheriffs reported that probationers awaiting violation hearings sometimes spend as long as 90 days in jail.

36. Internal Indiana Department of Correction report, 2010.

37. Internal memo from the Indiana Department of Correction, October 2010.

38. CSG focus group with behavioral health treatment providers on October 6, 2010.

39. CSG Probation Survey, 2010.

40. William M Burdon, Jeff Dang, Michael L Prendergast, Nena P Messina and David Farabee, "Differential effectiveness of residential versus outpatient aftercare for parolees from prison-based therapeutic community treatment programs," *Substance Abuse Treatment, Prevention, and Policy*, 2007.

41. Internal memo from the Indiana Division of Mental Health and Addiction: "A Look at Court/Criminal Justice Data," October 2010.

## STRATEGY

**Increase availability of substance use treatment in the community and availability of cognitive-behavioral therapy in prison; encourage local governments to reduce the number of Class D offenders sentenced to prison; enable probation officers to use swift and certain sanctions for people who violate conditions of supervision.**

### **3-A: Increase access to substance use treatment in the community and cognitive-behavioral therapy in prison.**

- Establish a grant program for localities to increase access to substance use treatment for high-risk felony probationers who have a high need for community-based treatment.
- Increase the number of people who complete the Therapeutic Community program and ensure access to community-based programming upon release to increase the impact on recidivism.
- Increase the availability of cognitive-behavioral therapy programming for people immediately prior to their release from prison.

*Impact on Public Safety:* Connecting a greater percentage of offenders to programs and services that address their drug use and other issues that make them likely to reoffend will reduce rates of recidivism. A meta-analysis of research on correctional programs found that drug treatment in prison reduces recidivism by six percent, cognitive behavioral treatment in prison reduces recidivism by seven percent, and drug treatment in the community reduces recidivism by eight percent.<sup>42</sup>

*Impact on Prison Population:* Increasing participation in prison-based programs will increase the number of people who receive program credits. Reducing recidivism will also reduce the number of people admitted to prison for a violation or new crime.

### **3-B: Enable the use of short, swift, and certain responses for probation supervision.**

- Cap at 15 the number of days a person returned to jail for a probation violation can stay there while awaiting a court hearing.
- Provide probation officers with options, including short stays in local jails, that enable them to hold people on felony probation accountable for breaking the terms of their supervision, as opposed to requiring a court hearing in response to every violation.
- Administrative policies to ensure a process for enabling swift and certain sanctions while protecting due process rights of offenders shall be developed by the Indiana Judicial Conference.
- Probation departments in both Georgia and Hawaii have implemented policies that enable probation officers to respond to minor condition violations with short, swift, and certain sanctions. Researchers evaluating these policy changes have found that the Georgia policy reduced the number of days that probationers spent in jail on violations or awaiting court hearings by 70 percent.<sup>43</sup> The Hawaii program reduced re-arrest rates by 55 percent, re-arrest rates for drug use by 72 percent, and rates of probation revocations to prison by 53 percent.<sup>44</sup>

*Impact on Public Safety:* Ensuring short, swift, and certain responses to violations has been shown to reduce re-arrests and revocations by individuals on felony probation.

*Impact on Prison Population:* This policy will help probation departments reduce revocations to prison as assumed in policy 2-B.

42. Elizabeth Drake, Steve Aos, and Marna Miller (2009). "Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State."

43. Applied Research Services, Inc., "An Evaluation of Georgia's Probation Options Management Act: Executive Summary," October 4, 2007.

44. The full Hawaii HOPE evaluation from the National Institute of Justice is available at: <http://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.

### 3-C: Establish incentives to encourage local governments to reduce the number of Class D felony offenders sentenced to prison.

- Establish a baseline that reflects the average number of people convicted of Class D felony offenses and admitted to the Department of Correction between 2007 and 2010.
- Direct the Department of Correction to calculate each year, for each county, whether the number of people convicted of Class D felony offenses increased or decreased and what, if any, change there was in the number of people sentenced to state prison for this offense.
- Create a funding program that would allow the Department of Correction to provide performance-based funding to those counties that reduce the number of Class D felony offenders sentenced to prison. The prorated incentive would be 50 percent of the marginal costs the Department of Correction would otherwise assume for food, medical, and clothing expenses.
- Reduce other criminal justice funding for those counties that increase the number of Class D felony offenders sentenced to prison.

*Impact on Public Safety:* Research has demonstrated that sentencing nonviolent offenders to a period of intensive supervision with treatment will have a greater impact on recidivism than sending that same individual to prison for a short period of time. Sentencing a Class D offender to probation rather than prison will result in the person being under the supervision of the criminal justice system for at least twice as long on average, given Indiana's credit time policies.

*Impact on Prison Population:* Reducing the number of people admitted for mostly nonviolent Class D offenses will reduce the revolving door of large numbers of individuals cycling in and out of Indiana's prisons for very short periods of time.

# Policy Framework Summary

STRATEGY	POLICY
<b>1. Sentencing</b>	
Shift from a one-size-fits-all sentencing policy for theft and drug offenses to a more graduated approach; give judges options when sentencing a person charged with a nonviolent offense who has prior convictions.	1-A: Graduate the penalties associated with drug possession and sale.
	1-B: Restructure the penalties for theft, establishing a minimum threshold amount for what constitutes a felony offense.
	1-C: Give judges sentencing people who have committed a nonviolent offense more options.
<b>2. Community Supervision</b>	
Strengthen community supervision by focusing resources on high-risk offenders; create incentives for coordination among supervision agencies.	2-A: Require that state dollars allocated to community corrections agencies be dedicated to the provision of evidence-based practices for felony offenders.
	2-B: Create a probation improvement fund that provides counties with economic incentives to reduce probation revocations and coordinate with other supervision agencies.
	2-C: Focus probation supervision resources on high-risk offenders.
	2-D: Require probation (as opposed to parole) supervision after release from prison, except for the most serious violent and sex offenders, who would be supervised on parole.
<b>3. Public Safety</b>	
Increase availability of substance use treatment in the community and availability of cognitive-behavioral therapy in prison; encourage local governments to reduce the number of Class D offenders sentenced to prison; enable probation officers to use swift and certain sanctions for people who violate conditions of supervision.	3-A: Increase access to substance use treatment in the community and cognitive-behavioral therapy in prison.
	3-B: Enable the use of short, swift, and certain responses for probation supervision.
	3-C: Establish incentives to encourage local governments to reduce the number of Class D felony offenders sentenced to prison.



# Impact of Policies

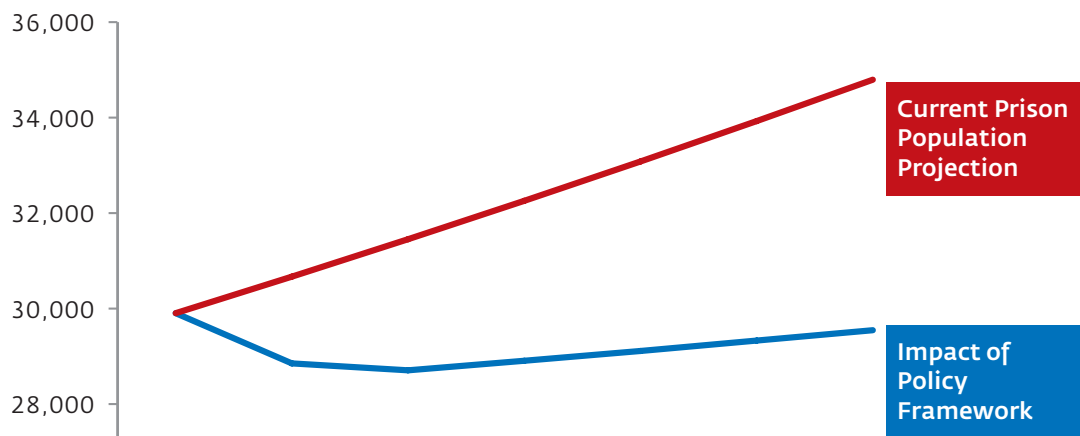
## Assumptions

The following analysis projects the impact of the policy framework on the base prison population projection if the policies are enacted by July 1, 2011. The base prison population projection assumes no change to current trends in prison admissions or to the criminal code. Cost savings and proposed level of reinvestment are based on projected savings as calculated by the Indiana Department of Correction.

## Proposed Level of Reinvestment

The following three policies would require the reinvestment of a portion of the cost savings: Policies 2-B (Probation Improvement Fund), 3-A (Community-based Substance Use Treatment), and 3-C (Class D Admission Reduction Incentive).

Policy	FY2012	FY2013 & Future
2-B: Probation Improvement Fund	\$500,000	\$750,000
3-A: Community-based Substance Use Treatment	\$2,000,000	\$3,000,000
3-C: Class D Admission Reduction Incentive	\$750,000	\$1,000,000



	2011	2012	2013	2014	2015	2016	2017
Current Projection	29,904	30,669	31,453	32,257	33,081	33,927	34,794
Impact of Policy Framework	29,904	28,852	28,707	28,907	29,112	29,330	29,547

Marginal Cost Savings Per Biennium	\$ 12,200,000	\$ 13,600,000	\$ 11,600,000
Avoided Prison Expansion Costs	\$ 1,200,000,000		
Reinvestment Per Biennium	\$ 8,000,000	\$ 9,500,000	\$ 9,500,000

To learn more about the justice reinvestment strategy  
in Indiana and other states, please visit:  
[www.justicereinvestment.org](http://www.justicereinvestment.org)

## JUSTICE★CENTER

THE COUNCIL OF STATE GOVERNMENTS

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