



Justice Reinvestment in West Virginia

Analyses & Policy Options to Reduce Spending on Corrections & Reinvest in Strategies to Increase Public Safety



Background

IN JUNE 2012, GOVERNOR EARL RAY TOMBLIN, Chief Justice Menis Ketchum, legislative leaders from all four caucuses, and other state policymakers requested technical assistance from the Council of State Governments Justice Center (CSG Justice Center) to employ a data-driven “justice reinvestment” approach to develop a statewide policy framework that would reduce spending on corrections and would reinvest savings in strategies to increase public safety and reduce recidivism. Assistance provided by the CSG Justice Center was made possible through a partnership with and funding support provided by the Pew Center on the States Public Safety Performance Project and the Bureau of Justice Assistance, a division of the U.S. Department of Justice.

To guide the effort, these state leaders established a bipartisan, inter-branch Justice Reinvestment Working Group comprising state lawmakers, corrections and court officials, and other stakeholders in the criminal justice system. The working group met five times between June 2012 and January 2013 to review analyses that the CSG Justice Center conducted and to discuss policy options that would increase public safety and slow the growth in the prison population.

In preparing its analyses, the CSG Justice Center reviewed vast amounts of data, drawing on information systems maintained by West Virginia’s Division

of Corrections (WVDOC), Division of Justice and Community Services (WVDJCS), Parole Board, Office of Technology, Regional Jail and Correctional Facility Authority, State Police, Administrative Office of the Courts (AOC), and the Federal Bureau of Investigation. In total, the CSG Justice Center analyzed over 650,000 individual records across these information systems.

In addition to these quantitative analyses, the CSG Justice Center convened focus groups and meetings with prosecutors, defense attorneys, behavioral health and substance use treatment providers, community leaders, victim advocates and survivors, judges, probation and parole officers, Parole Board members, law enforcement executives, and others. Between June 2012 and January 2013, the CSG Justice Center conducted 84 in-person meetings with nearly 200 individuals.

This report summarizes the CSG Justice Center’s findings and provides state leaders with a policy framework to address key issues that emerged from the quantitative and qualitative analyses. Policy options are organized around three objectives: 1) strengthening community supervision; 2) improving accountability; and 3) reducing substance use.

Summary of Challenges

1. The number of people whose community-based supervision¹ was revoked, as well as the length of time they spend in prison once incarcerated, have increased significantly over the past five years. This trend is the single biggest driver of the state’s growing prison population.
2. An increasing number of people are released from prison without any community-based supervision.
3. Failure to complete the terms of probation or parole often stems from an individual’s substance use. Few of these people receive treatment in their communities.

Justice Reinvestment Policy Framework

Objectives	1. Strengthen Community Supervision	2. Improve Accountability	3. Reduce Substance Use
Policies	<p>1 (A): Adopt a statewide risk/need assessment instrument to determine an individual’s likelihood of reoffending and to focus supervision resources on people who are most likely to reoffend.</p> <p>1 (B): Maximize potential of Day Report Centers to reduce recidivism.</p> <p>1 (C): Ensure effective implementation of evidence-based practices.</p>	<p>2 (A): Ensure that all people released from prison to the community are supervised.</p> <p>2 (B): Respond to violations with swift, certain, and cost-effective sanctions.</p> <p>2 (C): Streamline correctional system processes to reduce delays in parole eligibility and other inefficiencies.</p>	<p>3 (A): Invest in community-based treatment for people on supervision with substance use needs.</p> <p>3 (B): Establish effective partnerships and resources across systems.</p> <p>3 (C): Ensure effective substance use treatment for people incarcerated in state prisons.</p>

1. Community-based supervision includes probation, parole, home confinement, and community corrections. For purposes of this

report, community corrections and Day Report Centers are used interchangeably. Additional information can be found on page 7.

Projected Impact of Policy Framework

Savings

As a package, the policies described in this report could generate significant savings for the State of West Virginia. Adopting the policy framework would slow the growth in the state prison population between 2014 and 2018 and help the state avoid at least \$200 million in construction costs and more than \$140 million in operating costs over that five-year period needed to accommodate the current prison population forecast.

Reinvestment

To achieve these outcomes, a portion of the expected savings must be reinvested in substance use treatment services that are focused on high-risk, moderate- to high-need people on probation and parole supervision, and in training assistance and quality assurance measures. Expanding access to substance use treatment for individuals who will benefit the most will increase public safety by addressing a significant contributing factor to recidivism rates.

FIGURE 1: SUMMARY OF IMPACT, SAVINGS & REINVESTMENT

	2014	2015	2016	2017	2018	TOTAL
Gross Operational Savings (Rounded)	\$13.6M	\$28.2M	\$32.3M	\$32.7M	\$34.9M	\$141.8M
Reinvestment (%)	\$3.5M (26%)	\$5.5M (20%)	\$5.5M (17%)	\$5.5M (17%)	\$5.5M (16%)	\$25.5M (18%)
Housing Plan Assistance	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$0.5M
Training & Sustainability	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$2.0M
Community-Based Substance Use Treatment	\$3,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$23M
Net Savings	\$10.1M	\$22.7M	\$26.8M	\$27.2M	\$29.4M	\$116.3M

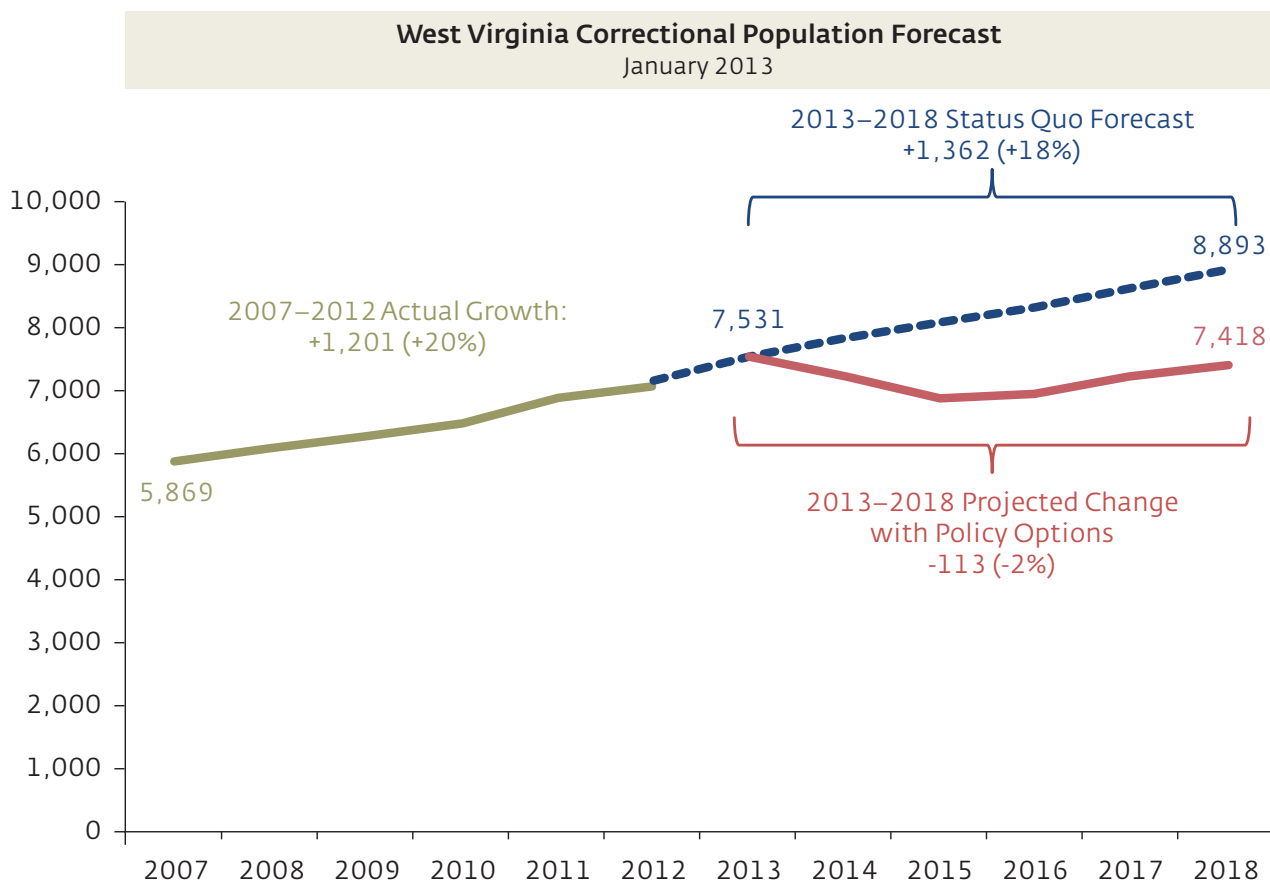
- Estimates are based on calendar year data, adjustments will have to be made to convert to fiscal years for budgeting
- Reinvestment should begin in fiscal year 2014

Assumptions

The following analysis projects the impact of the policy framework on the West Virginia prison population over a five-year period. The model assumes implementation begins in January 2014, with most policies being phased in by the end of 2015. The West Virginia Office of Research and Strategic Planning has forecasted that, absent any changes to current policies and practices, the prison population will increase 24 percent over a five-year period, growing from a projected 7,146 people in 2012 to 8,893 people in 2018.² Using this prison population forecast as well as recent growth trends for specific offender groups, CSG Justice Center staff has projected the impact of each proposed policy option on the relevant prison subpopulation. Impact calculations utilize either month-to-month population

propagations or annual figures to measure bed utilization under a proposed policy change versus the status quo. Considerations for improved outcomes through expanded risk assessment, more effective supervision, better access to treatment, and reduced recidivism were factored into the estimates. In addition, the analysis took into account the possible effects that each of the policies in this proposal might have upon each other. Cost savings and proposed levels of reinvestment are based on projected impacts to the prison population as calculated by the CSG Justice Center in comparison to the West Virginia correctional population forecast, in consultation with the West Virginia Department of Military Affairs and Public Safety.

FIGURE 2. POLICY FRAMEWORK ESTIMATED TO SLOW GROWTH OF THE PRISON POPULATION³



2. Simon C. Bauer-Leffler, and Stephen M. Haas, "West Virginia Correctional Population Forecast 2012–2022: A Study of the State's Prison Population," (Charleston: Office of Research and Strategic

Planning, Division of Justice and Community Services, Department of Military Affairs and Public Safety, January 2013).

3. *Ibid.*

Goal 1: Strengthen Community-based Supervision

CHALLENGE: The number of people whose community-based supervision is revoked, as well as the length of time they spend in prison once incarcerated, have increased significantly over the past five years. This trend is the single biggest driver of the state's growing prison population.

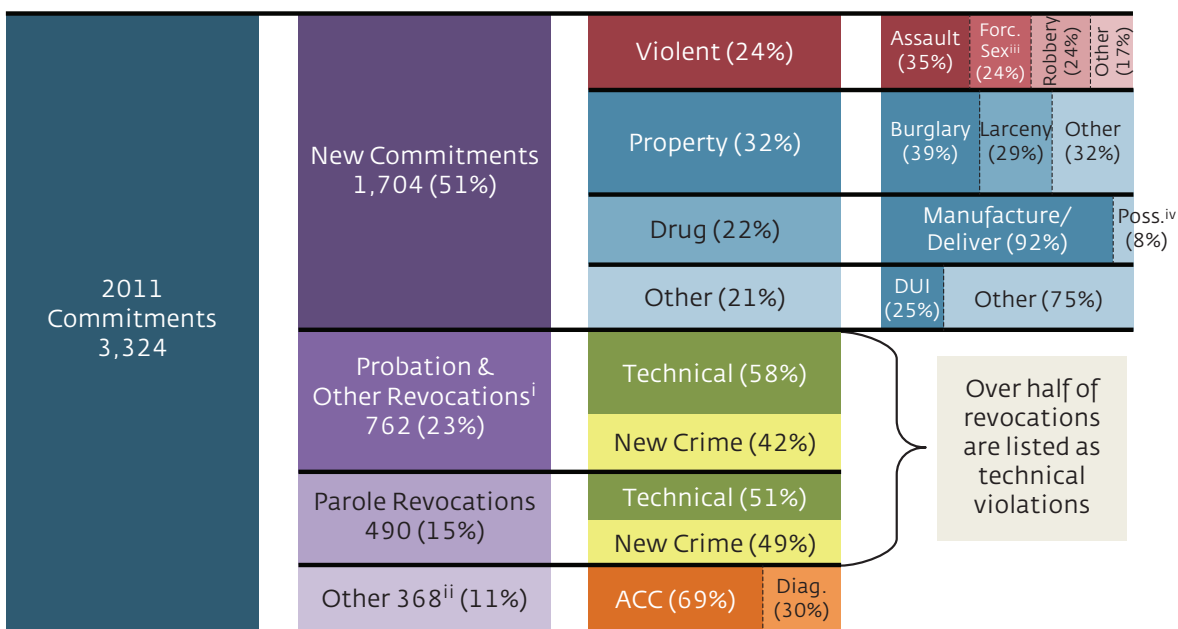
West Virginia's recidivism rate—the percentage of people who are reincarcerated within three years after release from prison—is relatively low, but it has increased 45 percent in the past seven years.

- Nationally, 43 percent of people are reincarcerated within three years of release from prison.⁴
- In West Virginia, 28.5 percent of people released from prison in 2008 returned to prison within three years (727 returned out of 2,546 released). In 2001, 19.6 percent of people released from prison returned within three years (190 returned out of 968).⁵
- Among new commitments to prison, the number of people with a prior incarceration increased 23 percent, from 678 people in 2007 to 835 in 2011.⁶

The number of people incarcerated for committing a new crime has increased over the past seven years.

- West Virginia's violent crime rate increased 13 percent between 2001 and 2010, from 280 to 315 reported crimes per 100,000 state residents. During this same period, national violent crime rates declined 20 percent, from 505 to 404 reported crimes per 100,000 residents.⁷
- Between 2001 and 2010, West Virginia's property crime rate declined 2 percent from 2,281 to 2,240 reported crimes per 100,000 state residents. During this same period, the national property crime rate declined 20 percent from 3,658 to 2,942.⁸

FIGURE 3. MORE THAN HALF OF NEW PRISON COMMITMENTS ARE FOR NONVIOLENT CONVICTIONS⁹



i. Other revocations include revocations from Home Confinement and Community Corrections
 ii. Other includes Anthony Correctional Center (ACC) and Confinement for Diagnostic Purposes (Diag.)
 iii. Forcible sex offenses (Forc. Sex)
 iv. Possession (Poss.)

4. "State of Recidivism: The Revolving Door of America's Prisons," Pew Center on States, (Washington: The Pew Charitable Trusts, April 2011).
 5. "Recidivism of Inmates Released in 2008," (Charleston: West Virginia Division of Corrections, August 2012).
 6. West Virginia Division of Corrections Commitments Data.
 7. "Crime in the United States," United States Department of Justice, Federal Bureau of Investigation, accessed April 2012, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010>. The

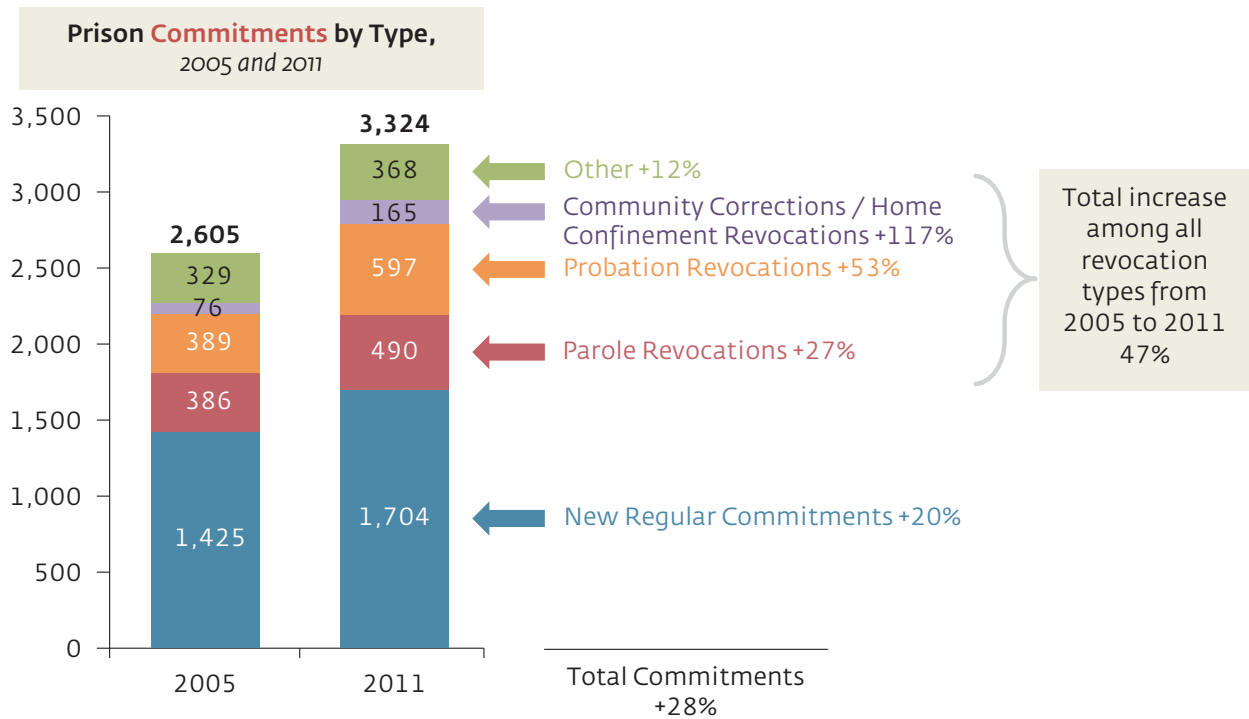
Federal Bureau of Investigation Uniform Crime Report includes under its violent crime category the following offenses: murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault.
 8. *Ibid.*, The Federal Bureau of Investigation Uniform Crime Report includes under its property crime category the following offenses: burglary, larceny-theft, and motor vehicle theft.
 9. West Virginia Division of Corrections Commitments Data.

- Despite the increase in reported violent crime and decrease in reported property crime, the proportion of people convicted of nonviolent offenses in prison is growing. Between 2007 and 2011, the number of people in prison for property and drug offenses increased 42 percent and 32 percent respectively, and together composed 42 percent of the prison population in 2011.¹⁰
- Regular commitments to prison increased 20 percent between 2005 and 2011. In 2011, over half of new commitments were convicted of nonviolent offenses.¹¹

Whereas admissions to prison for people committing new crimes has increased by 20 percent between 2005 and 2011, admissions to prison for people whose community supervision was revoked increased by 47 percent.

- Revocations to prison from all types of community supervision increased 47 percent between 2005 and 2011. Approximately half of people revoked from probation and parole supervision were in prison for violating conditions of supervision, not for committing a new crime.¹²
- Between 2007 and 2011, revocations to prison from probation, parole, home confinement, and community corrections cost the state more than \$150 million.¹³

FIGURE 4. GROWTH IN REVOCATIONS OUTPACES GROWTH IN NEW COMMITMENTS¹⁴



10. West Virginia Division of Corrections Population and Commitments Data.

11. West Virginia Division of Corrections, Commitments and Releases Data. Regular commitments are direct commitments to prison for a new crime.

12. West Virginia Division of Corrections, Commitments and Releases Data.

13. West Virginia Division of Corrections, Commitments and Releases Data. Revocations to prison are for committing new crimes and violating conditions of supervision. The cost of these revocations is not intended to suggest that all of these costs could be avoided.

14. West Virginia Division of Corrections Commitments Data; West Virginia Division of Corrections Commitments and Releases Data.

The number of people whose probation is revoked is increasing at a faster rate than that of the probation population itself.

- Between 2006 and 2011, the total adult probation population increased 11 percent, from 7,472 to 8,306 people. In the same period, revocations to prison increased 16 percent, from 534 to 621 people.¹⁵
- People released in 2011 after being incarcerated as a result of a probation revocation spent nearly two years in prison on average. People failing on probation cost more than \$80 million between 2007 and 2011.¹⁶

Longer sentence lengths for parole revocations contribute to prison population growth. Most revocations are for low-severity violations.

- The number of people in prison as a result of parole revocations has increased 86 percent from 465 people in 2007 to 865 in 2011. Over this five-year period, these revocations cost the state \$53 million.¹⁷
- The length of stay for people in prison as a result of parole revocation is increasing. Between 2007 and 2011, the average length of stay increased 13 percent, from 1.5 to 1.7 years.¹⁸

Types of Community-based Supervision in West Virginia

Unsupervised Probation: Magistrates may place a person convicted of a misdemeanor on unsupervised probation for up to two years.

Home Confinement: As a condition of probation, bail, or an alternative to incarceration, someone charged with a misdemeanor or felony may be ordered to home confinement with electronic monitoring. The home confinement program is paid for through court fees and is administered by the county sheriff.

Drug Court: The West Virginia Drug Court program is a court-supervised substance use treatment program that offers nonviolent, misdemeanor or felony offenders an alternative to incarceration. People enter the program either pre-adjudication or post-adjudication. Drug Courts are funded by the state and are administered by West Virginia's Administrative Office of the Courts, Division of Probation Services.

Day Report Centers: Day Report Centers (DRC) are designed to provide counties with an alternative to confinement for offenders who require case management services in the community. Individuals charged with a misdemeanor or felony offense can be sentenced directly by a judge to Day Report Centers or as a condition of home confinement or probation. There are 22 Day Report Centers that serve 48 out of 55 counties in West Virginia. Day Report Centers are funded by the state, along with a maximum 30 percent match from the county, and are administered by the West Virginia Division of Justice and Community Services.

Probation: Circuit judges can sentence misdemeanor and felony offenders to probation supervision in lieu of prison. West Virginia also uses probation to supervise people convicted of certain sex offenses and child abuse offenses following release from prison. Probation is state funded and the West Virginia Division of Probation Services is responsible for the certification, training, and support of all probation officers who are assigned to the state's 31 circuits.

Parole: Release to parole supervision is a discretionary decision made by the West Virginia Parole Board. The Parole Board is a full-time, nine-member body charged with making parole release and revocation decisions. Parole services are funded by the state and overseen by the West Virginia Division of Corrections, Office of Parole Supervision.

15. West Virginia Probation Annual Statistical reports.

16. West Virginia Division of Corrections, Commitments and Releases Data.

17. West Virginia Division of Corrections Releases Data.

18. West Virginia Division of Corrections, Population and Releases Data.

- In 2011, half of the people returned to prison for a parole revocation had their community supervision revoked for violating the conditions of their supervision, commonly referred to as “technical violations.”¹⁹

Most decisions made about whether to incarcerate someone or place them under community supervision are not informed by risk assessment tools.

- Circuit judges in West Virginia do not receive the results of a risk assessment to inform sentencing decisions.
- About 42 percent of people confined in the regional jail system on any given day are awaiting trial. At the end of 2011, of the 4,550 people confined in regional jails, 1,895 people were held pre-trial. Magistrates make decisions about pre-trial release without information about a person’s risk of flight or reoffending.²⁰
- Judges regularly order people to probation, home confinement, drug court, or DRCs without the benefit of an assessment that indicates the person’s risk of reoffending or criminogenic needs.²¹

Risk assessment tools do not inform most supervision practices.

- Most probation officers do not use risk/need assessments to inform supervision intensity or programming needs. Approximately one out of three probation officers reported that they received training on the use of the Level of Service/Case Management Inventory (LS/CMI) risk/need assessment and about half of those trained used this information to guide supervision practices.²²
- DRCs are required to use the LS/CMI to determine risk of reoffending and identify which services to provide their clients. However, an assessment of practices at DRCs by the WVDJCS indicates that DRCs are not tailoring services based on risk or need, but provide the same level of services and supervision to most people. Furthermore, court orders often contradict assessment results or limit a program’s ability to provide services.²³
- WVDOC uses the LS/CMI risk assessment instrument, along with other diagnostic instruments and a psychological evaluation, to determine placement in prison-based programs.

Understanding Risk Assessment²⁴

Risk assessment tools help users sort individuals into low-, medium-, and high-risk groups. They are designed to gauge the likelihood that an individual will come in contact with the criminal justice system, either through a new arrest and conviction or reincarceration for violating the terms of supervision. They usually consist of 10 to 30 questions designed to ascertain an individual’s history of criminal behavior, attitudes and personality, and life circumstances. Risk assessments can be administered at any time during a person’s contact with the criminal justice system—from first appearance through presentencing, placement on probation, admission to a correctional facility, the period prior to release, and post-release supervision. They are similar to tools used by an insurance company to rate risk: they predict the likelihood of future outcomes according to their analysis of past activities (e.g., criminal history) and present conditions (such as behavioral health or addiction). Objective risk assessments have been shown to be generally more reliable than any individual professional’s judgment. Too often, these judgments are no more than “gut” reactions that vary from expert to expert about the same individual.

19. West Virginia Parole Board, Parole Revocations Data.

20. West Virginia Regional Jail Authority.

21. Criminogenic needs are the characteristics or circumstances (such as antisocial attitudes, beliefs, thinking patterns, and friends) that research has shown are associated with criminal behavior, but which a person can change (i.e., they are dynamic).

22. CSG Justice Center survey to 275 probation officers, parole officers, and community corrections staff. Of the 200 probation officers surveyed, 117 responded to at least a portion of the survey. The Level

of Service/Case Management Inventory (LS/CMI) is an assessment that measures the risk and need factors of late adolescent and adult offenders. The LS/CMI is also a case management tool.

23. Dr. Stephen Haas, “Strategic Planning for the Implementation of ‘What Works’ in Community Supervision and Treatment,” (October 2012).

24. “The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime, and Corrections Spending,” (New York: CSG Justice Center, January 2011).

- The Parole Board currently scores and uses a 10-question risk assessment as part of its decision-making and the Board considers the results of the LS/CMI that WVDOC conducted, if they are available.²⁵ The Board also relies on commentary in a psychological evaluation, including results from the Minnesota Multiphasic Personality Inventory 2 Restructured Form (MMPI-2-RF), which provides a personality profile, but is not intended to predict risk of reoffending.²⁶
- Currently, parole supervision officers use a case management assessment when a person is placed on parole. However, information from that assessment is not used to guide supervision. Rather, the intensity of supervision is based on the length of time people are under supervision as well as their behavior. Parole supervision officers expect to begin using the LS/CMI in the coming months.²⁷

Community supervision systems do not share data or information about supervision practices.

- A person may be placed on multiple forms of community supervision for a single offense, but supervising officers do not have the resources to share information or data about the people they supervise.²⁸
- Focus group meetings with probation and parole officers and DRC personnel indicated that some jurisdictions share information, while others had no established method of communication.²⁹

Policy Options:

1 (A): Adopt a statewide risk/need assessment instrument to determine an individual's likelihood of reoffending and to focus supervision resources on people who are most likely to reoffend.

- Require the Division of Probation, Parole Supervision, and DJCS to use a risk/need assessment to inform supervision practices, focusing resources on those who pose the greatest risk of reoffending as determined by the risk/need assessment.
- Establish supervision standards for people who are identified as having a high risk of reoffending to require a level of supervision sufficient to change behavior.
- Require the use of a pretrial screening instrument that predicts risk of flight and risk of reoffending and that must be utilized within three days of placement in a regional jail to inform judicial decisionmaking.

RATIONALE: Revocations from community supervision are driving prison population growth, yet most decisions about supervision practices are not informed by risk/need assessments. Requiring the use of a risk/need assessment to inform supervision practices is fundamental to reducing recidivism of people under community supervision.

Studies show supervision intensity that is based on risk, need, and responsivity can reduce recidivism by as much as 30 percent.³⁰ Research also demonstrates that applying the same level of supervision resources to high- and low-risk offenders can actually increase recidivism rates for low-risk offenders.³¹

25. *West Virginia Division of Corrections Case Management Manual*, (Charleston: West Virginia Division of Correction, 2011); conversations with Parole Board members.

26. James Bonta, "Offender Risk Assessment: Guidelines for Selection and Use," *Criminal Justice and Behavior*, 29 no. 4 (2002): 355-379.

27. Focus group meeting with West Virginia Parole Supervision officers on August 8, 2012.

28. For example, a person convicted of a single offense may be placed on home confinement with electronic monitoring as a condition of probation or be required to report to a DRC as a condition of parole supervision.

29. CSG Justice Center focus group meetings with probation and parole officers, August 2012; CSG Justice Center focus group meetings with DRC personnel, October 2012.

30. Stephanie Lee, Steve Aos, Elizabeth Drake, Annie Pennucci, Marna Miller, Laurie Anderson, "Return on Investment: Evidence-Based Options to Improve Statewide Outcomes," (Olympia: Washington State Institute for Public Policy, April 2012).

31. James Bonta, "Offender Risk Assessment: Guidelines for Selection and Risk," *Criminal Justice and Behavior*, 29 no. 4 (2002): 355-379; Edward Latessa, "What Works and What Doesn't in Reducing Recidivism: Applying the Principles of Effective Intervention to Offender Reentry," (Cincinnati: University of Cincinnati, 2009). Presentation delivered in Oklahoma City, Oklahoma on September 14, 2011.

Requiring the use of a screening instrument to inform pretrial detention decisions would ensure that decisionmakers have information about a person's risk of flight or reoffending. Such data beyond just an individual's charge and criminal history could lead to better decisionmaking. For example, the Ohio Risk Assessment System found people identified as low risk were 6 times less likely than high-risk people either to fail to appear for future court proceedings or to be re-arrested (5 percent compared to 29 percent).³²

1 (B): Maximize potential of Day Report Centers to reduce recidivism.

- Require Day Report Centers to use a risk/need assessment to focus supervision and treatment resources on people identified as having a moderate to high risk of reoffending and criminogenic need.
- Permit people convicted of felony offenses to be eligible for placement in a program determined by a DRC for up to 12 months.
- Permit people convicted of a misdemeanor subsequent to a prior offense to be placed in a program determined by a DRC for up to six months.

RATIONALE: Ensuring that a risk/need assessment is used to inform decisions about what services and supervision a person will receive at a DRC will improve the impact these centers have on reducing recidivism.

1 (C): Ensure effective implementation of evidence-based practices.

- Require an inter-agency committee to oversee implementation of evidence-based practices, conduct regular assessments for quality assurance, and report to the legislature each year on defined outcomes.
- Require the Division of Probation to establish a committee for the purposes of designing and deploying a method for probation, parole, and DJCS to share information and coordinate across agencies carrying out community supervision. Require the committee to develop a strategy to collect and share information about assessed and collected restitution among supervision agencies.
- Require DJCS to assess regularly the quality of DRC programs.

RATIONALE: As supervision agencies change their practices to assess individuals' risk of reoffense and focus supervision resources on those who are most likely to reoffend, it is important for agency administrators and elected officials to track the results this shift in practice yields and to hold accountable organizations that do not generate the anticipated outcomes. An established inter-agency committee, such as the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency, and Correction, may be best positioned to report on such measures. To minimize redundancy of services and supervision provided to people in DRCs who are on probation and parole, these community supervision agencies should share information or use the same case management system.

As the administrator of the Community Corrections Grant program, DJCS trains DRC staff, probation officers, and community organizations on evidence-based practices. In addition to such training, DJCS should audit program quality regularly to determine the extent to which services and supervision delivered adhere to evidence-based practices.

32. Edward Latessa, Paula Smith, Richard Lemke, Matthew Makarios, Christopher Lowenkamp, "Creation and Validation of the Ohio Risk Assessment System – Final Report." (Cincinnati: University of Cincinnati, 2009).

Goal 2: Improve Accountability

CHALLENGE: *An increasing number of people are released from prison without any community-based supervision.*

The number of people who complete their sentence in prison and return to the community without any post-release supervision has increased significantly.

- The number of people leaving prison without parole supervision increased 33 percent over a five-year period, from 676 people in 2007 to 896 in 2011. More than one-quarter of people leaving prison in 2011 returned to the community without supervision.³³
- Nearly three-quarters of the people who completed or “maxed out” their sentences in prison were never granted parole. Just 16 percent of people maxing out their sentences were convicted of violent offenses and 19 percent were convicted of sex offenses. The remaining two-thirds of the people who max out were convicted of property, drug, and other offenses.³⁴
- For some people, there is very little time between the date they become eligible for parole and the date they complete their sentence. The Parole Board, therefore, may have a very short window to decide whether to release a person to parole supervision before the individual completes his or her sentence in prison.

Missing paperwork, particularly home plans, frequently delays parole hearings, which also contributes to the growing number of people completing their sentences in prison.³⁵

- When interviewing someone for parole, the Parole Board reviews a person’s home plan, psychological evaluation, criminal history, and post-sentence investigation reports. If any of these documents are missing, the person is placed under “further consideration” status. The hearing is postponed until these

documents are completed and submitted. The number of people under further consideration nearly doubled in 5 years from 730 people in 2007 to 1,432 people in 2011.³⁶

- State prison system crowding has resulted in more than 1,700 individuals sentenced to prison to be confined in regional jails. This has contributed to delays in intake processes and program delivery for people in regional jails awaiting transfer to prison. These delays include obtaining the paperwork required by the Parole Board. WVDOC prioritizes movement between the regional jails and WVDOC based on parole eligibility dates, but delays continue.
- In 2011, 57 percent of people placed under “further consideration” received this designation because they lacked a home plan. Another 17 percent were awaiting a psychological evaluation only. In 2010, 402 people under further consideration were ultimately granted parole; however, the delay caused by this incomplete paperwork cost \$2.2 million.³⁷
- When calculating the parole grant rate, the Parole Board takes into account only the number of people who were granted or denied parole. Using this approach to calculating the parole grant rate, 48 percent of people interviewed were granted parole in 2011. This figure, however, does not account for the people who were eligible for parole, but were unable to receive an interview. Modifying the parole grant rate calculation to include all people who were eligible for parole consideration (i.e., including those placed under further consideration) reduces the Board’s actual approval rate in 2011 to 33 percent.³⁸

33. West Virginia Division of Corrections Releases Data.

34. *Ibid.*

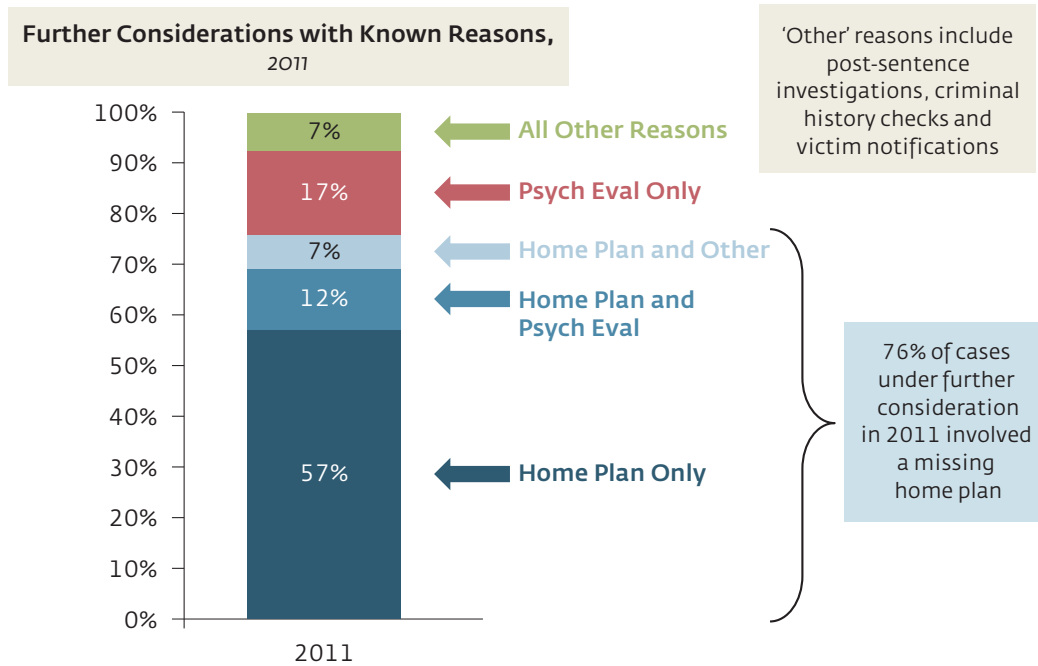
35. People in WVDOC must submit a home plan 60 days prior to their parole hearing that identifies a habitable and available residence in the community. Parole officers investigate submitted home plans and make a recommendation to the parole board about their habitability. The Parole Board decides whether or not to approve a home plan.

36. West Virginia Parole Board, Hearing Data.

37. West Virginia Parole Board Hearings Data. The average time served between being placed on “further consideration” status to granting parole was 112 days. The total cost is \$2.2 million (112 days multiplied by \$48.80 minimum cost per day).

38. West Virginia Parole Board Hearing Data. The parole grant rate is the number of people granted parole divided by the number of people eligible for parole.

FIGURE 5. MAJORITY OF FURTHER CONSIDERATIONS INVOLVE THE HOME PLAN AND PSYCHOLOGICAL EVALUATION³⁹



People convicted of property and drug offenses who are identified as low risk are more likely to be granted parole than people identified as high risk. However, for more serious offenses, people identified as moderate or high risk are more likely to be granted parole.

- The West Virginia Parole Board uses a 10-question risk assessment instrument when assessing a candidate for parole. To its credit, the Parole Board is the only entity in the West Virginia correctional system to use a validated risk assessment.⁴⁰
- Using risk assessment to guide decision-making would suggest that people identified as low risk would be more likely to be granted parole than those who are identified as high risk. This premise does, indeed, apply to the parole grant rate for people

convicted of property and drug offenses. For people convicted of property offenses, 43 percent identified as low risk were granted parole while only 24 percent of high-risk people were paroled. For people convicted of drug offenses, 53 percent of low-risk people and 43 percent of high-risk people were granted parole.

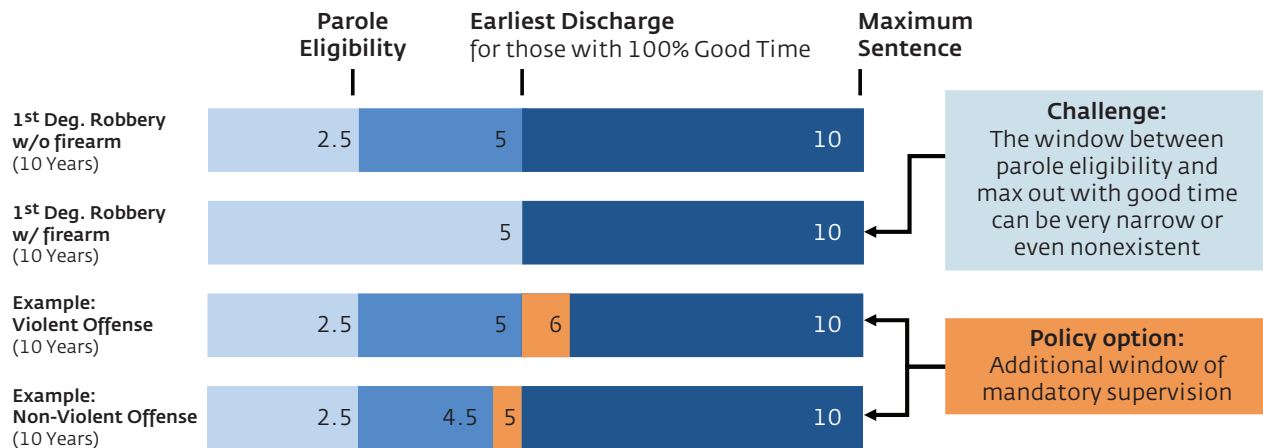
- Conversely, for the most serious offenses, (i.e., violent or sex offenses) the Parole Board is more likely to grant parole to people identified as moderate or high risk of reoffending. In 2011, of people convicted of violent offenses, 30 percent of people identified as moderate risk were granted parole; 21 percent of low-risk and 13 percent of high-risk people were granted parole. For people convicted of sex offenses, 11 percent of people identified as high risk were granted parole, while 8 percent of moderate-risk and 5 percent of low-risk people were granted parole.⁴¹

39. West Virginia Parole Hearings Data.

40. Validating a risk assessment instrument ensures it accurately predicts recidivism for the agency's specific population.

41. West Virginia Parole Board Hearing and Risk Data.

FIGURE 6. MANDATORY SUPERVISION FOR VIOLENT AND NONVIOLENT OFFENSES⁴²



Once a lengthy psychological evaluation is completed, the results typically reflect that the individual does not have significant mental health needs.

- WVDOC does not use a mental health screening instrument, which identifies when there may be a potential mental health problem that should be further assessed. Instead, every person who enters WVDOC undergoes a full psychological examination, which consists of a face-to-face interview with a psychologist, a review of mental health records and collateral information, and a series of tests such as the Revised Beta Examination 3 and the MMPI-2-RF.
- Results from this intensive process indicate that 78 percent of people entering prison in 2011 had minimal or no mental health treatment needs.⁴³

Policy Options

2 (A): Ensure that all people released from prison to the community are supervised.

- Adjust prison “day-for-day good time” policies for people who would otherwise be released to the community unmonitored to effectively create periods of

mandatory supervision for people convicted of violent or nonviolent felony offenses.

- Require that, following enactment of this policy, people sentenced to prison for a violent felony offense undergo one year of mandatory supervision upon reaching their discharge dates, by deducting from good time accrued during their confinement.
- Require that people sentenced to prison for non-violent felony offenses, including those sentenced prior to enactment of this policy, undergo at least six months of mandatory supervision. For people not already paroled six months prior to their discharge date, then they shall spend the remainder of their sentence under parole supervision.

RATIONALE: This policy addresses the growing number of people who complete their sentences in prison and are released to the community with no one watching them. Studies show that people are most likely to reoffend within their first year of release from prison, with an even greater likelihood during the first six months.⁴⁴ A period of mandatory supervision would hold people accountable for their behavior and assist them in their transition into the community. Currently, people confined in WVDOC are eligible for day-for-day good time, which can reduce sentences by half. Deducting from “good time” creates an opportunity

42. Email correspondence with Philip Morrison, Executive Director of the West Virginia Prosecuting Attorneys Institute, August 29, 2012.

43. West Virginia Division of Corrections Commitments Data.

44. Patrick A. Langan and David J. Levin, “Recidivism of Prisoners Released in 1994,” (Washington: United States Department of Justice, Bureau of Justice Statistics, 2002).

for people convicted of the most serious violent felony offenses to serve a period of community supervision without modifying the length of their time in prison. This policy would also create a mandatory period of supervision for people convicted of nonviolent felony offenses. Focus group meetings with victims and their advocates indicated support for requiring everyone with a felony conviction to leave prison with a period of mandatory supervision if not already paroled.

2 (B): Respond to violations with swift, certain, and cost-effective sanctions.

- Respond to significant or repeat violations of the conditions of supervision by people convicted of felony offenses placed on probation, home confinement, parole, or community corrections, with a sanction of confinement in lieu of revocation. This policy does not apply to individuals who abscond from supervision or commit a new crime.
- Allow confinement for up to 60 days in lieu of revocation as an initial sanction and up to 120 days for a second sanction as part of a graduated sanction framework. For people on parole supervision, if the WVDOC determines a person will stay beyond 60 days for a second term of confinement, WVDOC shall provide the Parole Board an opportunity to review and deny further confinement. For all on supervision who require a third period of confinement, a person may be revoked for the remainder of the sentence with credit for prior periods of confinement. To encourage program compliance, violators will be eligible for day-for-day good time credit during each period of confinement.
- Ensure that when a person's sanction involves a brief incarceration in a regional jail, the WVDOC reimburses the Regional Jail and Correctional Facility Authority for this period of confinement, just as required under current policy for a person whose probation or parole has been revoked.
- Require continuation of remaining supervision term upon release from confinement.

RATIONALE: About half of people in prison for revocations from community-based supervision were revoked because they violated the conditions of supervision, such as breaking curfews or testing positive for drug use. These people spend long periods in prison. Sanctioning the individual with two to three months of

confinement followed by a return to supervision and more intensive programming in the community provides a less costly and much more effective method of holding offenders accountable for their behavior.

2 (C): Streamline correctional system processes to reduce delays in parole eligibility and other inefficiencies.

- Restrict the current option of sending a person to a WVDOC facility prior to sentencing to people convicted of child abuse and sex offenses.
- Require WVDOC to screen people for mental health treatment needs. A full psychological assessment should be conducted only when the results of the preliminary screening indicate that the individual may need further assessment.
- Require the Parole Board to interview people whose paperwork is missing a home plan.
- Require WVDOC to prioritize developing alternatives for people who do not have approved home plans, through methods such as hiring or contracting personnel responsible for connecting people in prison with reentry community resources, and providing short-term loans for housing costs such as rent or security deposits.
- Require the Regional Jail and Correctional Facility Authority to provide cognitive behavioral interventions to people bound for WVDOC, which have been shown to be effective at reducing recidivism.

RATIONALE: WVDOC, the Parole Board, and the Regional Jail and Correctional Facility Authority must work together to prepare people for parole eligibility by providing interventions to reduce recidivism and preparing people for release. Due to the large number of people waiting to be transferred from the regional jails to WVDOC, many people are unable to participate in the programs offered by WVDOC to prepare them for release. Focus group meetings with Parole Board members and jail administrators indicated a need for jails to provide programs to people bound for WVDOC to reduce delays in achieving readiness for parole. Providing assistance to people who are eligible for parole hearings but face difficulty obtaining an approved home plan while in prison would help reduce delays. Furthermore, expensive prison resources are often used to confine an individual for 60 days to determine if further confinement is necessary.

There are many assessments conducted during the prison intake process. The psychological evaluation is a time-consuming process that identifies only a small percentage of people with mental health treatment needs. A screening instrument identifies when there

may be a potential mental health problem that should be further assessed. The mental health screen serves as a form of triage. Modifying the current process with a mental health screen is a cost-effective use of resources and is a best practice used in other states.⁴⁵

Goal 3: Reduce Substance Use

CHALLENGE: *Failure to complete the terms of their probation or parole often stems from an individual's substance use. Few of these people receive treatment in their communities.*

Substance use is a chronic problem in West Virginia.

- West Virginians are more likely than residents of any other state to die from a drug overdose. The number of overdose deaths in West Virginia increased 550 percent (the largest increase of any state) between 1999 and 2004. Prescription drug overdose deaths are especially prevalent in the five southernmost counties of West Virginia. Across West Virginia, there were 26 overdose deaths per 100,000 people between 2006 and 2010. In Mingo, Logan, Wyoming, McDowell, and Mercer Counties there were 46 to 90 overdose deaths per 100,000 people.⁴⁶
- To combat substance use in the state, Governor Tomblin issued an Executive Order in 2011 creating the Governor's Advisory Council on Substance Abuse (GACSA) and six Regional Task Forces. Since then, GACSA has issued reports that include recommendations to develop funding sources for substance use treatment and to monitor purchases of prescription drugs.⁴⁷

- In 2012, legislation restricting prescription drug purchases was enacted and Governor Tomblin dedicated \$7.5 million to establish new and expand existing regionally based substance use services.⁴⁸

Drug offenses and substance use contribute to the growing prison population.

- Arrests for drug offenses increased 6 percent between 2007 and 2011. During this same time period, the percentage of people in prison who were convicted of a drug offense increased 32 percent.⁴⁹
- Drug and alcohol use contributes to the growing number of probation and parole revocations, which are one of the main drivers of prison growth. Sixty-two percent of probation revocations to prison in 2010 were identified as needing treatment. Possession or use of alcohol or drugs was cited in 78 percent of technical parole revocations and 65 percent of revocations for new crimes in 2011.⁵⁰

45. "The Criminal Justice/Mental Health Consensus Project Report," (New York: Council of State Governments Justice Center, June 2002).

46. "West Virginia Screening, Brief Intervention, Referral and Treatment Project," West Virginia Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities, accessed January 2013, <http://www.dhhr.wv.gov/bhhf/sections/programs/ProgramsPartnerships/AlcoholismandDrugAbuse/Pages/SBIRT.aspx>; "Region Profiles (1-6)," Region Profiles (1-6)," West Virginia Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities, October 2012.

47. "Progress and Recommendations Report for Governor Earl Ray Tomblin," (Charleston: West Virginia Governor's Advisory Council on Substance Abuse, April 2012).

48. "Governor Tomblin Unveils Plan to Fight Substance Abuse Epidemic," West Virginia Governor's Advisory Council on Substance Abuse, accessed January 2013, <http://www.governor.wv.gov/media/pressreleases/2012/Pages/GovernorTomblinUnveilsPlantoFightSubstanceAbuseEpidemic.aspx>.

49. West Virginia Division of Corrections Stock Population Data.

50. West Virginia Parole Board Parole Revocations Data.

While most people entering prison who needed substance use treatment received services while in prison, many without a need were also assigned to treatment programs.

- In 2011, 66 percent of people entering prison were identified as needing substance use treatment and 96 percent of those people were assigned to at least one substance use-related program.⁵¹
- At the same time, 34 percent of people entering prison were either identified as not having a need or their need for treatment was unknown. Two-thirds of this population was also assigned to at least one substance use-related program.⁵²

Resources to treat people with substance use disorders are focused on people in prison instead of during community supervision, where treatment can have the greatest impact.

- WVDOC provides different degrees of substance use treatment for its population through its three-tiered non-residential substance use program (ALADRUE) and through its Residential Substance

Abuse Treatment (RSAT) program. Research shows that substance use treatment in the community can have a greater impact on reducing recidivism than treatment in prison. No dedicated funds, however, are appropriated to provide substance use treatment to people on probation or parole supervision.

- Of the 7,500 adult probationers in the community at any given time, an estimated 1,450 have a moderate to high likelihood of reoffending and a high need for targeted substance use services. The full continuum of outpatient, intensive outpatient, and residential substance use treatment services, including cognitive behavioral interventions that address “criminal thinking,” are required. An additional 492 people on parole are estimated to need this same range of services.⁵³
- Surveys of probation, parole, and DRC personnel indicate that people are more likely to receive low-intensity services, such as self-help, or outpatient services than to access intensive outpatient or residential treatment. Staff indicated that people with all levels of need for treatment could wait more than a month to receive services.⁵⁴

FIGURE 7. FEW SUBSTANCE USE SERVICES ARE PROVIDED FOR THOSE ON COMMUNITY SUPERVISION⁵⁵

	DRC	PROBATION	DRUG COURT	DOC	PAROLE
Funding for services	\$986,088	\$0	\$1,137,838	\$872,000	\$0
Capacity to provide services	Unknown	None	430	ALADRUE: 944 RSAT: 427	None
Estimated demand for services*† – Total	108	1,449	263	2,431	492
Outpatient	43	580	105	973	197
Intensive Outpatient	43	580	105	973	197
Residential with step-down	22	290	53	486	98

* Demand for services are based on estimates of the proportion of the population under supervision or incarcerated who have treatment needs and a moderate to high criminogenic risk level.

51. West Virginia Division of Corrections Commitments and Program Assignment Data. Substance use need identified through Texas Christian University Drug Screen (TCUDS). Program placement determined by TCUDS results and additional evaluations.

52. West Virginia Division of Corrections Commitments and Program Assignment Data.

53. Stephanie Lee, Steve Aos, Elizabeth Drake, Annie Pennucci, Marna Miller, Laurie Anderson, “Return on Investment: Evidence-Based Options to Improve Statewide Outcomes,” (Olympia: Washington State Institute for Public Policy, April 2012); D.A. Andrews and James Bonta,

“ColorPlot Profile Form for Men,” *The Level of Service Inventory - Revised: U.S. Norms*, (North Tonawanda: Multi-Health Systems, Inc., 2003).

54. CSG Justice Center survey of 275 Community Corrections, Probation, and Parole Personnel.

55. D.A. Andrews and James Bonta, “ColorPlast Profile Form for Men,” *The Level of Service Inventory - Revised: U.S. Norms*, 2003; Steven Belenkoa & Jordon Peugh “Estimating Drug Treatment Needs Among State Prison Inmates.” *Drug and Alcohol Dependence* 77, no. 3 (2005): 269–281. Conversation with Alexa Eggleston and Fred Osher, November, 2012.

- People under community supervision face multiple barriers to receiving treatment, including the inability to pay for services, the inability to reach the services, and the lack of availability of these services generally.⁵⁶

Treatment resources in the community and in prison could be improved.

- The Correctional Program Checklist (CPC) assesses a program's ability to deliver effective programming consistently and to adhere to the principles of effective intervention. The CPC evaluates five domains individually (leadership and development, staff, offender assessment, treatment characteristics, and quality assurance) and assesses the overall effectiveness of the program. A CPC assessment of a prison-based RSAT program concluded that the program is of high quality overall. However, treatment in the program and quality assurance measures received the weakest individual scores and needed improvement.
- A similar assessment of a DRC showed the program also needed to improve the quality of treatment provided and its quality assurance process.⁵⁷

Policy Options:

3 (A): Invest in community-based treatment for people under supervision with substance use needs.

- Create a treatment supervision sentencing option for judges to impose supervised probation with dedicated state treatment resources to people convicted of felony offenses who have a high likelihood of reoffending and who have moderate to high substance use treatment needs.
- Reinvest funding for people serving on probation and parole, who have a moderate to high likelihood of reoffending and a moderate to high need for substance use treatment in the community. Require

these entities to partner with behavioral health providers to provide services to this population.

- Support training, data collection, and other investments in the state treatment infrastructure to ensure treatment is delivered according to research-based approaches for providing substance use treatment to people under community-based supervision.

RATIONALE: Focus group meetings with most stakeholders emphasized the need to expand substance use treatment across the criminal justice system. Research shows that substance use treatment in the community can have a greater impact on reducing recidivism than treatment in prison. However, neither probation nor parole funds any substance use treatment in the community, despite supervising 1,900 people who could benefit the most from such treatment. Reinvesting a portion of the savings generated by other policy options in this framework into substance use treatment would address a critical gap in services.⁵⁸

3 (B): Establish effective partnerships and resources across systems.

- Require behavioral health providers to participate in community corrections boards.
- Require DJCS to review the membership of all community corrections committees to close gaps in the network of service providers. In addition, require DJCS to review the range of available services, sanctions, and programs that address criminogenic needs and develop programming beyond DRCs.

RATIONALE: Establishing new and strengthening existing partnerships among community supervision agencies and behavioral health providers will improve access to treatment and identify gaps in services for people under community supervision. Currently, community criminal corrections boards are not required to include behavioral health providers despite the large number of people on supervision who require behavioral health treatment services. Every jurisdiction receiving Community Corrections Grant funding

56. CSG Justice Center survey of 275 community corrections, probation, and parole personnel.

57. CSG Justice Center assessment of an RSAT program and a DRC using Correctional Program Checklist, conducted in October 2012. The CPC is divided into two basic areas: content and capacity. The capacity area is designed to measure whether a correctional program has the capability to deliver evidence-based interventions and services for offenders, and the content area measures the extent to which the program meets the principles of risk, need, responsibility, and treatment.

58. Stephanie Lee, Steve Aos, Elizabeth Drake, Annie Pennucci, Marna Miller, Laurie Anderson, "Return on Investment: Evidence-Based Options to Improve Statewide Outcomes," (Olympia: Washington State Institute for Public Policy, April 2012); D.A. Andrews and James Bonta, "ColorPlot Profile Form for Men," *The Level of Service Inventory - Revised: U.S. Norms*, (North Tonawanda: Multi-Health Systems, Inc., 2003).

chose to establish DRCs despite having the option to develop many types of services. While DRCs provide a variety of services to their clients, other types of services may be needed in these communities. Identifying current gaps in services around the state would assist communities in ensuring appropriate programs and services are made available and would reduce recidivism.

3 (C): Ensure effective substance use treatment for people incarcerated in state prisons.

- Prioritize substance use treatment resources based on the results of a risk and needs assessment.

- Require the Division of Corrections and the Parole Board to agree to a treatment matrix that uses a risk and needs assessment instrument to focus resources on high risk people with moderate to high substance use treatment needs, and does not inappropriately treat low-risk people.

RATIONALE: Requiring WVDOC and the Parole Board to agree to a treatment matrix would assist placement of people into appropriate services and limit delays in parole eligibility caused by disagreement between WVDOC and the Parole Board about needed programs. Focusing treatment resources on people who are more likely to reoffend and have significant substance use treatment needs will maximize the impact of treatment in prison.

To learn more about the justice reinvestment strategy
in West Virginia and other states, please visit:
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