



JUSTICE REINVESTMENT IN NORTH CAROLINA

Analysis and Policy Framework to Reduce Spending on Corrections and Reinvest in Strategies to Increase Public Safety



Background

IN 2009, GOVERNOR BEVERLY PERDUE and a bipartisan group of state leaders requested technical assistance from the Council of State Governments (CSG) Justice Center to use a data-driven justice reinvestment approach to develop a statewide policy framework to reduce spending on corrections and reinvest in strategies to increase public safety. Assistance was provided in partnership with the Public Safety Performance Project of the Pew Center on the States and made possible through funding support provided by Pew and the U.S. Department of Justice Bureau of Justice Assistance and the State of North Carolina.

State leaders appointed state legislators, state agency directors, and North Carolina court officials to a bipartisan, inter-branch working group to review the analyses provided by the CSG Justice Center's policy experts.

The CSG Justice Center staff collected data from multiple sources to inform the analyses outlined in this brief, including FBI Uniform Crime Reports, the North Carolina Department of Correction (DOC), the North Carolina Sentencing and Policy Advisory Commission, the North Carolina Administrative Office of the Courts, and the North Carolina Department of Health and

Human Services, along with other state agencies, county agencies and organizations.

In addition to these quantitative analyses, the CSG Justice Center staff conducted meetings and interviews with criminal justice practitioners and stakeholders from around the state, including superior and district court judges, district attorneys, defense attorneys, behavioral health treatment providers, family members, consumers, law enforcement officials, victim advocates, and probation officers.

These meetings helped CSG Justice Center staff improve their understanding of the data that the analyses yielded. The first half of this brief summarizes these findings.

In discussing the data at these meetings, three priorities for the state gradually emerged: strengthen probation supervision, hold offenders accountable in more meaningful ways, and reduce the risk of reoffending. The second half of this brief provides state policymakers with a proposed policy framework organized around these objectives. Eight distinct policies are proposed to realize these objectives. This brief describes various elements of each proposed policy and reviews the data and best practices in other states across the country that support the proposed policy.

Summary of Key Findings

Although North Carolina's crime rate has declined and arrests have remained stable since 2000, the prison population has increased 29 percent and spending on corrections has increased 68 percent over the same time period. If existing policies remain unchanged, North Carolina's prison population is projected to grow an additional 10 percent by FY 2020.¹ State officials estimate that building and operating facilities needed to house the increased number of prisoners will cost \$378 million over the next ten years.

Policymakers and people on the front lines of the state's criminal justice system generally agree that the structured sentencing grid designed and implemented in 1994 (see sidebar on page 4) has been successful in its approach to protecting the public from violent offenders. The sentencing grid has been less successful, however, in positioning law enforcement, court, and corrections officials to respond effectively to low-level felons.

Many people sentenced to probation fail.

- Probation revocations accounted for greater than 50 percent of admissions to prison in FY 2009.
- The majority of probation revocations to prison, 76 percent in 2009, did not involve conviction for a new offense.
- The state spends an estimated \$120 million annually to supervise probationers and spends an additional \$102 million annually to incarcerate probationers who violate the conditions of their supervision.²
- Probation officers do not have the tools to ensure swift and certain responses to minor violations of supervision conditions.

People convicted of low-level offenses are not held accountable in meaningful ways.

- Focus group participants report that it is not unusual for a person on probation to request prison time *instead of* probation. Such a preference for prison time is understandable considering that when a person's probation is revoked because of a violation of a condition of his or her supervision, the time he or she spends in prison is less than the time he or she would spend on probation.
- More than 85 percent of people released from prison return to the community unsupervised despite having higher re-arrest rates than people released from prison to some form of community supervision.³
- The state's current probation resources are concentrated on the supervision of misdemeanants and low-level felons who are less likely to reoffend than people who are currently being released from prison with no supervision whatsoever.

Community-based treatment is allocated ineffectively. These resources are not focused on individuals whose treatment needs are most acute and whose risk of re-offense is highest.

- There are not sufficient treatment resources in the community to ensure that everyone on probation who needs mental health and/or drug treatment receives those services.
- Treatment resources currently are not targeted to any subgroup of people on probation; they are allocated across misdemeanor and felony probation populations, without regard to risk or need.

1. NC Sentencing and Policy Advisory Commission "Prison Population Estimates FY 2010/11 to FY 2019/20." <http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/2011-popproj.pdf>. Comparison based on June 2010 population with projected June 2020 population, includes jail backlog.

2. Estimate based on June 30, 2009 population of 6,803 prisoners admitted on probation revocation that did not involve conviction for

a new offense and \$41 average cost per day for minimum security facilities.

3. People convicted of Class B1-E felonies receive post-release supervision immediately following release from prison. The vast majority of people leaving state prisons are convicted of Class F-I felonies, misdemeanors, and non-Structured Sentencing (DWI) offenses.

Justice Reinvestment Policy Framework

Objectives	1 Strengthen Probation Supervision	2 Hold Offenders Accountable in More Meaningful Ways	3 Reduce Risk of Reoffending
Policies	<p>1(A): Authorize probation officers to employ swift and certain responses to violations.</p> <p>1(B): Focus probation supervision resources on those people most likely to commit crime.</p>	<p>2(A): Ensure that every person convicted of a felony serves a period of mandatory supervision upon release from prison.</p> <p>2(B): Accelerate incarceration of people convicted on multiple occasions of breaking and entering.</p> <p>2(C): Increase time served for people who misbehave while incarcerated.</p>	<p>3(A): Provide incentives for people convicted of low-level felony drug possession to complete probation successfully.</p> <p>3(B): Provide incentives for people incarcerated to complete programs that reduce the likelihood of that person reoffending.</p> <p>3(C): Focus community-based treatment resources on those programs using proven models and practices that have the biggest impact on reducing crime.</p>

Projected Outcomes

The state increases public safety by monitoring people currently released from prison unsupervised and reducing recidivism rates among those on supervision.

- Increases public safety by providing supervision to 15,000 felons otherwise released from prison without any supervision required.
- Targets effective programming to those with higher risk and needs who are more likely to benefit.
- Reduces probation revocations by 20 percent.

The state saves more than \$45 million in corrections costs between FY 2012 and FY 2017.

- Saves the state \$9 million in the next biennium and saves \$45 million by FY 2017 through implementing the policy framework.

- Saves the state almost \$67 million in the next biennium and saves \$269 million by FY 2017 when implementing the policy option framework plus the additional options.

The projected growth in the state prison population is avoided.

- Averts the 1,409 person projected increase between FY 2011 and FY 2017.
- Brings the prison population down to FY 2007 levels by FY 2017 through implementing the policy framework plus the additional options.
- Avoids spending the \$267 million needed by FY 2017 to construct and operate prisons to accommodate this growth.

Detailed Findings

CRIME & ARREST FINDINGS

Reported crime has declined in the past ten years.

- Between 2000 and 2009, the total reported index violent crimes declined seven percent; reported index property crimes fell five percent.⁴
- Reported violent crime and property crime rates have declined 16 percent and 15 percent, respectively, from 2000 to 2009.⁵

Although reported crime rates have declined, arrest rates for property crimes have increased.

- The arrest rate per 100,000 persons age 16 or older for index property crimes increased by almost six percent between 2000 and 2009.⁶
- Total arrests of persons age 16 or older for index property crimes increased by more than 13,000 from 54,118 in 2000 to 67,144 arrests in 2009.

- Despite the increase in arrests for property crimes, they account only for 20 percent of reported property crimes in 2009.
- Overall arrest rates of persons age 16 or older declined by four percent from 2000 to 2009 and arrest rates of persons age 16 or older for violent crimes declined 26 percent.

CONVICTION FINDINGS

Even though the number of felony convictions has increased overall, the vast majority of convictions continue to be for the lower severity offense classes.

- Convictions for the three lowest severity felony classes, G, H, and I, many of which are nonviolent, property, or non-trafficking drug offenses, account for 80 percent of the 33,216 felony convictions in 2009.⁷
- Felony G, H, and I convictions increased 13 percent from 23,338 in FY 2000 to 26,463 in FY 2009.⁸

Structured Sentencing Act of 1994

North Carolina overhauled its sentencing system under the 1994 Structured Sentencing Act, which established sentencing guidelines based on offense severity and prior criminal record. The goal of this change was to provide truth and consistency in sentencing, as well as preserve prison space for the most serious and repeat offenders.

The state received, deservedly, considerable national attention and praise for its efforts to restore credibility to the criminal justice system by establishing truth in sentencing in a fiscally responsible way and by linking sentencing policies with correctional resources. The state was awarded the Innovations in American Government Award by the Ash Center for Democratic Governance and Innovation in 1997.

4. Between 2000 and 2009, the total reported index violent crimes declined from 39,609 to 36,881; reported index property crimes fell from 351,598 to 332,458. NC Department of Justice State Bureau of Investigation "Annual Summary Report of Uniform Crime Reporting Data." 2000 and 2009. <http://crimereporting.ncdoj.gov/>.

5. NC DOJ SBI Annual Summary Report of Uniform Crime Reporting Data <http://crimereporting.ncdoj.gov/> and NC Office of State Budget and Management State Population Estimates and Projections. <http://>

www.osbm.state.nc.us/ncosbm/facts_and_figures/socioeconomic_data/population_estimates.shtm.

6. NC DOJ SBI Annual Summary Report of Uniform Crime Reporting Data <http://crimereporting.ncdoj.gov/>

7. CSG Justice Center analysis of conviction data from the North Carolina Sentencing and Policy Advisory Commission.

8. North Carolina Sentencing and Policy Advisory Commission data.

The percentage of felony convictions that result in sentences to prison has increased.

- The number of felony convictions resulting in a sentence to prison, instead of a sentence of probation supervision and treatment in the community, has increased almost 20 percent since FY 2004.⁹
- The percentage of G, H, and I convictions resulting in a prison sentence increased from 26 percent in FY 2000 to 31 percent in FY 2009, resulting in an additional 2,190 annual prison sentences.¹⁰

Convictions for habitual felon status have increased.

- Convictions of offenders as habitual felons increased 25 percent from 645 in FY 2005 to 808 in FY 2009.¹¹ A person may be sentenced as a habitual felon in felony class C, upon his/her fourth felony conviction, regardless of the severity of the offense.
- Almost 80 percent of individuals convicted as habitual felons were convicted of the lower felony class G, H, or I offenses as their underlying offense.
- The average minimum sentence length for individuals convicted as habitual felons who have a G, H, or I offense as their underlying offense is 93 months. Without a conviction as a habitual felon, these offenders would have an average minimum sentence length of 14 months.
- Most individuals convicted as habitual felons, 82 percent, received a mitigated sentence in FY 2009, supporting the comments heard from prosecutors that the statute is primarily used as a plea negotiating tool to secure a longer sentence and protect the public from repeat offenders.¹²

CORRECTIONS FINDINGS

The increase in the state's prison population has outpaced the growth in the state's resident population.

- North Carolina's resident population increased 16 percent between 2000 and 2009.¹³
- Over that same period, the growth rate for the 18 to 34 year old population, who account for a disproportionately large share of crimes committed in any state, was only 9 percent.¹⁴
- During that same period, North Carolina's prison population increased 29 percent from 31,581 in FY 2000 to 40,824 in FY 2009.¹⁵

North Carolina's state prison population is projected to grow 10 percent, which would cost the state \$378 million over the next ten years.

- State spending on corrections has increased from \$899 million in FY 2000 to \$1.51 billion in FY 2009, a 68 percent increase.¹⁶
- The North Carolina Sentencing and Policy Advisory Commission projects that the prison population will increase by 10 percent, or more than 3,900 inmates, between 2010 and 2020.¹⁷
- The existing prison capacity is about 40,000 beds. The Department of Correction estimates that it will face a shortfall of about 2,900 beds by FY 2020. Building and operating these new prison beds will cost more than \$378 million between FY 2013 and FY 2020 and construction costs alone will approach \$214 million.

9. Ibid

10. Ibid

11. Ibid

12. In FY 2009, 27 percent of all felony sentences to prison were in the mitigated range. NC Sentencing and Policy Advisory Commission, "Structured Sentencing Statistical Report for Felonies and Misdemeanors FY 2008/09." http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/statisticalrpt_fy0809R.pdf.

13. North Carolina Office of State Budget and Management "County/State Population Projections." <http://www.osbm.state.nc.us/ncoosbm/>

facts_and_figures/socioeconomic_data/population_estimates/demog/statesingleage_2000_2009.html.

14. Ibid

15. NC DOC Annual Statistical Reports and online Prison Offender Population Statistics <http://randp.doc.state.nc.us/pubdocs/0007063.PDF>.

16. Ibid

17. Difference between June 2010 population with projected June 2020 population, includes jail backlog. NC Sentencing and Policy Advisory Commission "Prison Population Estimates FY 2010/11 to FY 2019/20." <http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/2011-popproj.pdf>.

More than half of prison admissions are people whose probation was revoked.

- Probation revocations as a percentage of total prison admissions increased from 50 percent in FY 2001 to 53 percent in FY 2009.¹⁸
- The number of people failing on probation and being revoked to prison increased from 11,586 in FY 2001 to 15,976 in FY 2009.¹⁹
- A greater percentage of people fail on probation today with a technical violation than they did five years ago. Between FY 2005 and FY 2009, the number of people whose probation was revoked increased 18 percent.²⁰
- Revocation rates for minimum risk offenders are the lowest, but have increased 49 percent since 2005 from 16 percent to 24 percent of minimum risk offenders terminating supervision.²¹

A large volume of people convicted of misdemeanors cycle through the state prisons.

- North Carolina is one of a few states using state prisons to incarcerate people convicted of misdemeanors with sentences as short as 91 days.
- People convicted of misdemeanors account for almost one quarter of all admissions to prison, but because of their short length of stay (about three months on average), they account for just four percent of the average daily prison population (about 1,600 people on a given day).²²
- Most people convicted of misdemeanor offenses who enter prison (about 67 percent) are incarcerated because their probation was revoked.
- Four out of five people convicted of a misdemeanor offense whose probation is revoked are incarcerated not because they were convicted of another crime, but because they did not comply with the conditions of their supervision.

People in prison for felony convictions serve on average 110 percent of their minimum sentence, but that percentage varies by offense class.

- DOC calculates a person's date of release from prison based on his or her maximum sentence length. People can earn time reductions off their maximum sentence based on their participation in programs or work. Earned time credits can be taken away when people misbehave.
- Prisoners convicted of the more serious felony offenses serve closest to the minimum sentence length, 102 percent, while inmates convicted of less serious felony offenses serve on average 114 percent of their minimum sentence length. This happens because people convicted of less serious crimes and sentenced to prison are not there for enough time to participate in the work and/or programs currently available behind the walls.²³
- Currently, the primary mechanism for punishing misconduct is to take away sentence reduction credits. Because people serving shorter sentences are less likely to earn sentence reduction credits, there is less ability to then take those credits away as a sanction for misconduct while in prison.

More felony cases increase pressures on court processes and jails.

- End of year pending felony cases in the courts increased 47 percent from 48,901 in FY 2000 to 71,971 in FY 2009.²⁴
- In FY 2009, on average, half of the North Carolina's county jail facilities operated at more than 100 percent capacity.²⁵

18. North Carolina Department of Correction Annual Statistical Reports and Department of Correction data.

19. Ibid

20. North Carolina Department of Correction data.

21. Ibid.

22. Includes only Structured Sentencing Act misdemeanor convictions. North Carolina Department of Correction "Annual Statistical Reports" <http://randp.doc.state.nc.us/pubdocs/0007063.PDF>.

23. Individuals convicted of felonies under Structured Sentencing will serve an average of 110 percent of their minimum sentence. Individuals

convicted of Class C offenses serve on average 102 percent of their minimum sentence and individuals convicted of Class I felonies serve on average 114 percent of their minimum sentence length. North Carolina Sentencing and Policy Advisory Commission "Current Prison Population Projections FY 2011 to FY 2020."

24. NC Administrative Office of the Courts <http://www.nccourts.org/Citizens/SRPlanning/Documents/srfy0809.pdf>

25. The average daily jail population in 2009 was 19,880 and current capacity for all county jails is less than 21,000. North Carolina County Commissioners Association 2009 County Jail Census Survey <http://www.ncacc.org/countyines/2010/06/jailsurvey.pdf>.

PROBATION & POST-RELEASE SUPERVISION FINDINGS

DOC recently implemented a probation supervision policy based on the results of a risk and needs assessment.

- People identified as minimum risk have a nine percent re-arrest rate after one year while 31 percent of high-risk individuals on probation are re-arrested after one year.²⁶
- Until recently, DOC did not focus supervision resources, programs, and interventions on the probationers who were most likely to be re-arrested for a new crime.
- Starting in September 2010, the DOC Division of Community Corrections (DCC) assessed people on probation for their risk of reoffending and their need for substance abuse and mental health treatment.
- DCC has adopted supervision strategies that vary based on the results of the risk and needs assessment.

Statewide, probation revocations have increased, but, within the state, the revocation rate varies considerably from one county to the next.

- Since 2005, the number of people sentenced to probation increased nine percent, but the number of people whose probation was revoked increased 16 percent.²⁷
- In some counties, revocation rates were as low as 28 percent, in others, 54 percent.²⁸

It is not unusual for a person on probation to welcome revocation and re-incarceration.

- District attorneys, judges, and probation officers indicated that some people on probation prefer to serve short sentences in prison to spending years on probation, particularly because after serving a brief period of time in prison, under current law they can return to the community without any additional community supervision.
- In FY 2009, about eight percent of people on probation chose to serve a short sentence in prison rather than complete their longer sentence on probation.²⁹

Most people complete their sentence while in prison and return to the community unsupervised.

- Most individuals released from prison, more than 85 percent, receive no supervision upon release.
- The number of individuals released from prison directly into the community unsupervised grew by almost 7,000 from FY 2001 to FY 2009.³⁰
- Community supervision resources are not concentrated on those people most likely to re-offend. Individuals released to no supervision are more likely to be re-arrested within three years than people released to supervision (who typically have been convicted of the most serious offenses), 51 percent compared to 45 percent.³¹
- Individuals convicted of G, H, or I felonies released from prison have higher three-year re-arrest rates than G, H, I offenders sentenced on probation, 45 percent compared to 35 percent, yet those released from prison are not being supervised in the community.

26. According to the 2009 validation study conducted by the NC DOC Office of Research and Planning of the DCC risk assessment tool, the Offender Traits Inventory.

27. CSG Justice Center analysis based on DOC data.

28. Some counties had a revocation rate as high as 54 percent while others had rates as low as 21 percent. For counties with at least 750 terminations of probation annually, the lowest revocation rate was approximately 28 percent.

29. Although North Carolina statute no longer permits individuals on probation to elect to serve a sentence in prison in lieu of serving on probation (G.S. 15A-1341(c) was repealed in 1995), some individuals on probation continue to indicate a preference for revocation rather than time on probation.

30. NC DOC Annual Statistical Reports.

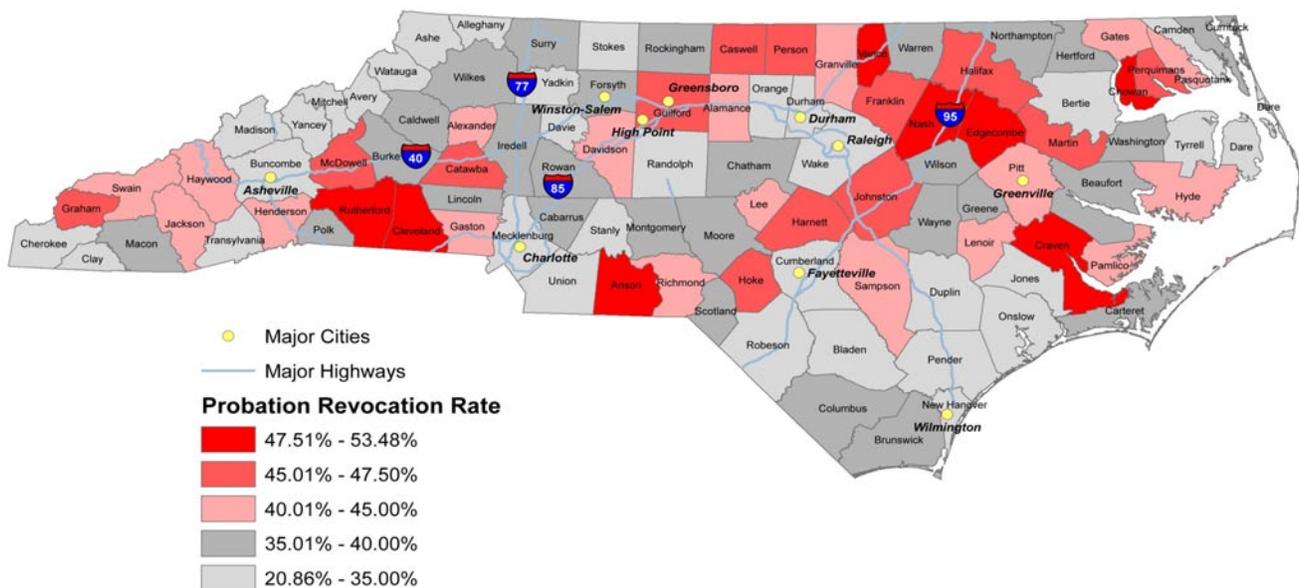
31. NC Sentencing and Policy Advisory Commission "Correctional Program Evaluation: Offenders Placed on Probation or Released from Prison in FY 2005/06." http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/recidivism_2010.pdf.

Total Probation Revocations and Revocation Rates Statewide and in the Six Most Populous Counties

TOTAL PROBATION REVOCATIONS			
COUNTY	FY 2005	FY 2009	05-09
Statewide	21,077	25,207	20%
Mecklenburg	882	1,103	25%
Wake	1,179	1,428	21%
Guilford	836	1,193	43%
Forsyth	814	832	2%
Cumberland	609	600	-1%
Durham	618	758	23%

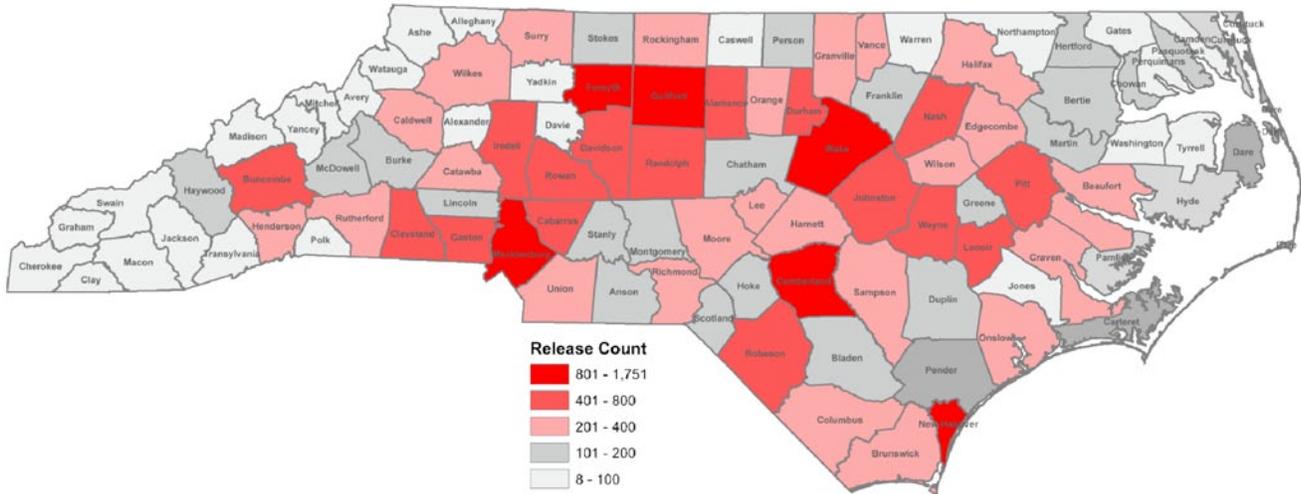
TOTAL PROBATION REVOCATION RATES		
COUNTY	FY 2005	FY 2009
Statewide	35%	36%
Mecklenburg	25%	33%
Wake	32%	31%
Guilford	39%	45%
Forsyth	35%	35%
Cumberland	32%	29%
Durham	31%	33%

Probation Revocation Rate, FY 2009 by North Carolina Counties



Prison Releases by County of Residence (2008)

Supervision Resources Are Not Focused on Those Most Likely to Re-offend



1 Over 25% of people released from prison in North Carolina each year return to six counties: Wake, Guilford, Mecklenburg, Forsyth, New Hanover, and Cumberland.

2 Nearly 54% of the people returning to those six counties were convicted of G, H, or I felonies, spent an average of just over 10 months in prison, and then were released into the community without supervision.

3 At the same time, these same six counties are home to 50% of the State's supervised Class 1, 2, and 3 misdemeanor and low-risk felony probationers. They are supervised for 1.5 to 2 years on average.

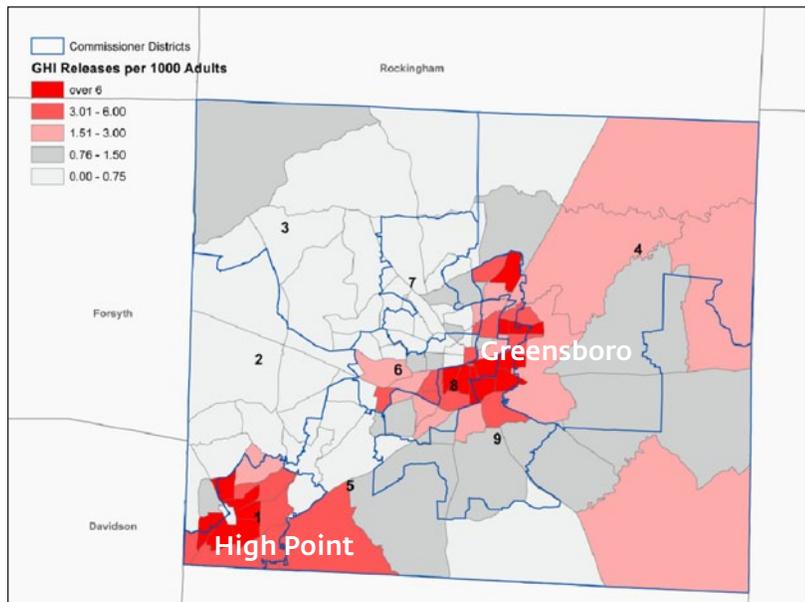
COUNTY	WAKE	GUILFORD	MECKLENBURG	FORSYTH	NEW HANOVER	CUMBERLAND
Total Releases	1751	1262	1197	980	904	840
% of State Releases	6.5%	4.7%	5.4%	3.7%	3.4%	3.1%
# G/H/I Felons	919	731	721	534	461	375
% of County Releases	52%	58%	60%	54%	51%	45%
G/H/I Felons Cost	\$21M	\$20M	\$15M	\$12M	\$10M	\$9M
Low Level Probationers	3626	2761	2839	1872	1779	1714
% of County Probationers	56%	50%	38%	52%	54%	54%

Neighborhood Overlap of High Supervision of Low-Risk Probationers and Prisoners Released to No Supervision: Guilford County

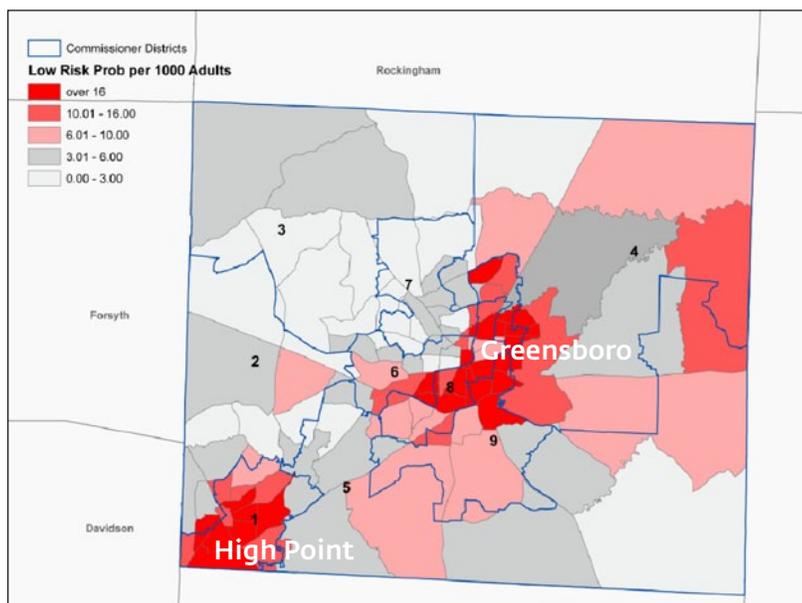
Prison Releases per 1000 Adults (2008)
People Convicted of G/H/I Felonies

Probationers per 1000 Adults (2008)
Class 1/2/3 Misdemeanors and Low Risk Felonies

1 Guilford County Commissioner District 1 has a disproportionately high rate of people returning from prison (11/1000) and under probation supervision (38/1000). Twenty-five percent of the County's returning prisoners and 20% of the County's probationers live in High Point neighborhoods, which are home to less than 8% of the County's adult population.



2 About 61% of the people returning from prison to the 1st District (159 people) were convicted of G, H, or I felonies and were released into the community without supervision.



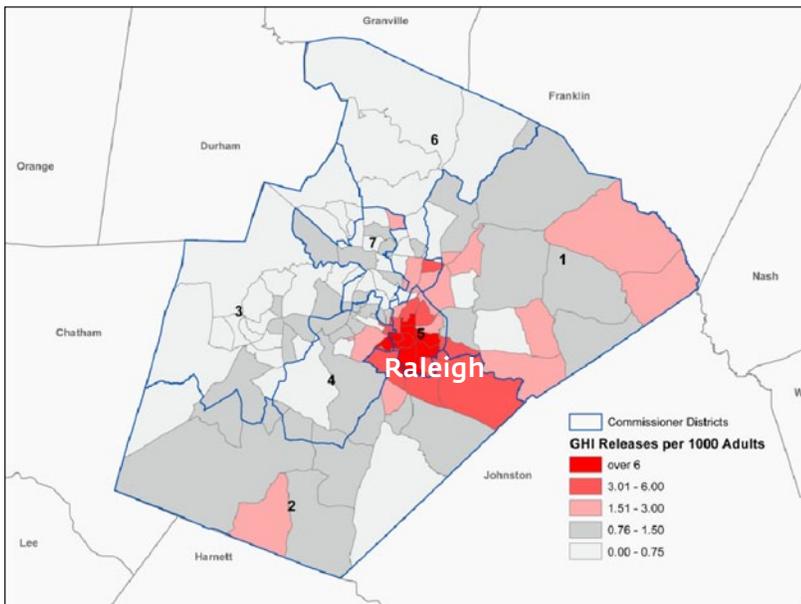
3 At the same time, the 1st District is home to 54% of the County's class 1, 2, and 3 misdemeanor and low-risk felony probationers (509 people), who are under active supervision.

Neighborhood Overlap of High Supervision of Low-Risk Probationers and Prisoners Released to No Supervision: Wake County

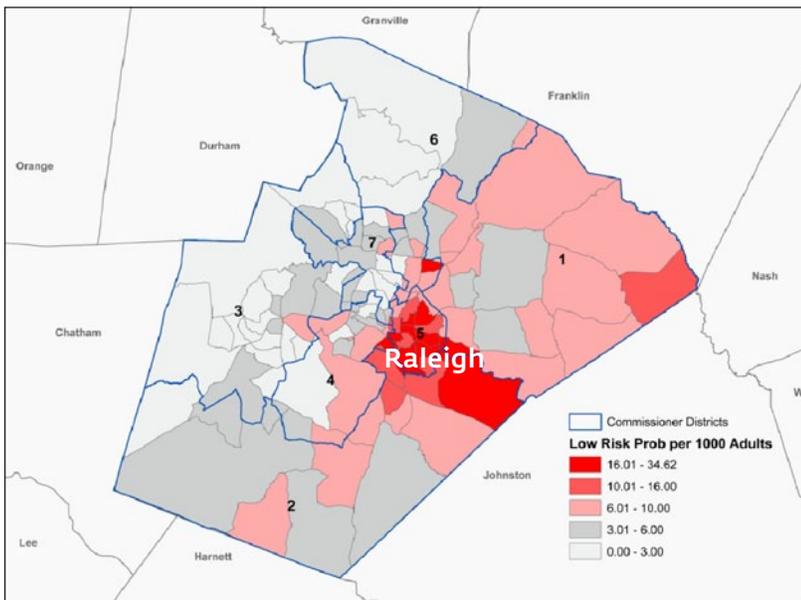
Prison Releases per 1000 Adults (2008)
People Convicted of G/H/I Felonies

Probationers per 1000 Adults (2008)
Class 1/2/3 Misdemeanors and Low Risk Felonies

1 Wake County Commissioner District 5 has a disproportionately high rate of people returning from prison (15/1000) and under probation supervision (33/1000). Thirty-two percent of the County's returning prisoners and 18% of the County's probationers live in the southeast neighborhoods of Raleigh, which are home to less than 6% of the County's adult population.



2 About 54% of the people returning from prison to the 5th District (256 people) were convicted of G, H, or I felonies and were returned to the community without supervision.



3 At the same time, the 5th District is home to 59% of the County's class 1, 2, and 3 misdemeanor and low-risk felony probationers (613 people), who are under active supervision.

BEHAVIORAL HEALTH FINDINGS

Community-based treatment is allocated ineffectively; these resources are not focused on individuals whose treatment needs are most acute and whose risk of re-offense is highest.

- Treatment resources are currently spread across misdemeanor and felony probation populations without regard to risk.
- Approximately 50 percent of probationers are likely to be dependent on or abuse alcohol and drugs and need substance abuse and/or mental health treatment, but only 23 percent are receiving some type of social services through either the Criminal Justice Partnership Program (CJPP) or the Local Management Entities.³²
- Preliminary screening data indicate 65 percent of revoked probationers may have a substance use and/or mental health problem that need some type of treatment.³³
- North Carolina spends approximately \$91 million annually incarcerating probationers with behavioral health treatment needs.³⁴

The type and quality of services provided by community-based programs, funded by the state to reduce recidivism, vary significantly.

- Two stated goals of CJPP are to reduce recidivism and substance abuse dependence among participants. Despite these goals, CJPP participants rarely have access to cognitive-based interventions, which research demonstrates are particularly effective in reducing recidivism. Similarly, substance abuse treatment accounts for just one-third of services provided.³⁵
- Data collected by the state for the services provided through CJPP are not sufficient to measure the performance of these programs or hold them accountable for outcomes.

The **Criminal Justice Partnership Program (CJPP)** is a community-based treatment and supervision program aimed at reducing recidivism, probation revocations, alcoholism and other drug dependencies, and the costs of incarceration to the state and counties. Counties have the discretion to implement a Day Reporting Center, Satellite Substance Abuse Center, or a Resource Center. Adults sentenced to an intermediate sanction as part of their probation, and individuals on post-release supervision or parole are eligible to participate in CJPP programs. Last year about \$9 million was allocated to CJPP to fund 84 programs operating in 94 counties.

³². National estimates indicate that approximately 35 percent of justice involved individuals meet criteria for drug dependence and 17 percent meet criteria for a serious mental illness. CSG Justice Center calculation of number of individuals on probation receiving services based on DOC and HHS data. Local Management Entities (LMEs) are agencies of local government-area authorities or county programs—who are responsible for managing, coordinating, facilitating and monitoring the provision of mental health, developmental disabilities and substance abuse services in the catchment area served.

³³. CSG Justice Center estimate based on DOC data of mental health and SASSI scores of people entering prison for a probation revocation.

³⁴. CSG Justice Center estimate based on average length of stay for revoked probationers and daily rate for minimum security prison.

³⁵. CSG analysis based on DOC data. The statutory goals of community-based programs funded through the North Carolina State-County Criminal Justice Partnership Act can be found at § 143B 273.

Justice Reinvestment Policy Framework

Objective 1: Strengthen probation supervision.

1 (A): Authorize probation officers to employ swift and certain responses to violations.

DESCRIPTION

- Enable judges to establish a sanction period of up to three days in jail and to allow probation officers (PPOs) to respond to certain probation violations without a court hearing.³⁶
- Limit the use of this jail sanction by statutory policy to a maximum of six days per month for each felony probationer.
- Specify that, with advance approval from the chief probation officer (or his/her designee) the sanction may be imposed at the request of a PPO.
- Allow a probationer to waive his/her notice of a violation hearing and ensure that a person who does not waive his right to a notice of hearing receives an administrative hearing within three days after notice is given.
- Ensure that individuals who receive more than one sanction for drug-related activities receive an assessment to determine if they need substance abuse or mental health treatment.

RATIONALE

In FY 2009, 76 percent of people whose probation was revoked were incarcerated not because they were convicted of a new crime, but because they violated the conditions of their supervision. In focus group meetings, probation officers reported they spend anywhere from several hours to days waiting for the court to hold a single probation violation hearing. For probation officers to respond swiftly and certainly to people under supervision when they break the rules, these PPO's need the authority and flexibility to take action without seeking a court hearing. Providing PPO's this discretion also enables them to spend less time waiting for court hearings and more time in the community supervising people on their caseloads.

Probation departments in both Georgia and Hawaii have implemented policies that facilitate swift responses, including brief, but immediate, incarceration when a probationer violates the terms of his or her supervision. Researchers evaluating these policy changes have found that the Georgia policy, which enabled probation officers to impose these sanctions without seeking a court hearing, reduced, by 70 percent, the number of days that people on probation spent in jail because of a violation of a condition of supervision or because they were awaiting a court hearing.³⁷

36. Probation and parole officers (PPO) supervise people on probation, parole, and post-release supervision. The vast majority of people on supervision, more than 95 percent, are on probation.

37. Hawken, Angela and Kleiman, Mark "Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE." 2009. <http://www.ncjrs.gov/pdffiles1/nij/grants/230444.pdf> and Speir, Jon and Meredith, Tammy "An Evaluation of Georgia's Probation Options Management Act" Georgia Department of Corrections, 2007.

1(B): Focus probation supervision resources on those people most likely to commit crime.

DESCRIPTION:

- Direct DOC to allocate supervision and treatment resources according to who poses the greatest risk of reoffending.
- Use a validated instrument to assess Class 1, 2, 3 misdemeanor probationers for risk of reoffending, and, upon completion of the assessment, assign those people determined to pose a low-risk to public safety to a supervision status that requires a very limited degree of resources and reporting.
- Use a validated instrument to assess Class A1 misdemeanors and felony probationers for risk of reoffending, and impose limited reporting requirements for those people who it is determined pose a low-risk to public safety *and* who have demonstrated, for up to nine consecutive months, compliance with the conditions of supervision.
- Require decisions about level of supervision to be based on the results of a validated risk and needs instrument.

RATIONALE:

The DOC Division of Community Corrections has created five levels of supervision. What level of supervision someone is assigned depends on the results of a validated risk and needs assessment.

Under the current structured sentencing grid, a judge may sentence someone convicted of a crime to one of two different forms of probation: Community Punishment or Intermediate Punishment, which involves more stringent conditions of supervision than Community Punishment. Judges decide which of the two levels of probation to use based on the person's offense class and prior record level. The results of an objective, data-driven assessment of a person's likelihood to reoffend are not used to inform the judge's decision.

Currently, low-risk offenders frequently find themselves on Intermediate Punishment, and it is common for moderate to high-risk offenders to be sentenced to Community Punishment. In June 2009, about one-third of individuals with felony convictions sentenced to Community Punishment had a moderate or high-risk of re-arrest. One-third of people convicted of a felony sentenced to Intermediate Punishment scored a low-risk of re-arrest.³⁸

Research shows that reductions in recidivism can be achieved when treatment and supervision resources are concentrated on high-risk, high-need individuals. Furthermore, research demonstrates that applying the same level of supervision resources to high and low-risk offenders is counterproductive and can actually increase recidivism rates for low-risk offenders.³⁹

Focus group meetings among PPOs, district attorneys, public defenders, law enforcement, and judges reflected a consensus that probation caseloads are too high and there are insufficient resources to concentrate on offenders most likely to reoffend.

Transferring low-risk probationers to a limited form of reporting and shortening the length of time spent actively supervising those who have complied with their conditions of supervision enables probation officers to concentrate their attention on high-risk probationers and people leaving prison (see policy option 2-A).

38. CSG Justice Center analysis based on DOC data.

39. Bonta, James, "Offender Risk Assessment: Guidelines for Selection and Risk." *Criminal Justice and Behavior*, 29 355-379. and Presentation by

Dr. Ed Latessa, "What Works and What Doesn't in Reducing Recidivism: Applying the Principles of Effective Intervention to Offender Reentry".

Objective 2: Hold offenders accountable in more meaningful ways.

2(A): Ensure that every person convicted of a felony serves a period of mandatory supervision upon release from prison.

DESCRIPTION:

- Require that individuals convicted of Class F-I felony offenses serve nine months of post-release supervision immediately following their release from prison.⁴⁰
- Require that individuals convicted of Class F-I who are required to register for sex offenses receive five years of post-release supervision immediately following their release from prison.
- Provide that when a person under post-release supervision violates the conditions of his/her supervision, but has not committed a new crime or absconded from supervision, his or her term of incarceration for that violation will last three months. The portion of the post-release supervision term not served prior to revocation will be served upon his or her return to the community. People who commit a new crime or abscond or people required to register as sex offenders who violate conditions of supervision would be returned to prison up to their maximum sentence.

RATIONALE:

Currently, only individuals incarcerated for Class B1-E felony convictions receive nine months of post-release supervision. If such an individual is required to register for conviction of sex offenses, the post-release supervision period is five years. More than 85 percent of individuals who leave prison in North Carolina, however, are released to no community

supervision whatsoever; they complete their sentence while incarcerated. Yet, these people have higher re-arrest rates (51 percent three year re-arrest rates) than people who serve some form of mandatory supervision immediately following their release from prison (45 percent three year re-arrest rates).

When comparing three-year re-arrest rates for people convicted of G, H, and I felonies, the re-arrest rates (45 percent) are higher among those people sentenced to prison who are released to no supervision) than those people sentenced to probation (35 percent).

Currently, people whose post-release prison supervision are revoked because of a violation of a condition of release and are returned to prison (including sex offenders) serve nine months in prison. When that nine-month period of incarceration has concluded, there is no additional post-release supervision. Limiting the term of incarceration for people whose post release supervision is revoked because of a violation of a condition of release ensures they are required to serve additional post-release supervision.

Research demonstrates that supervision resources should be targeted to the people most likely to reoffend and that people are most likely to reoffend within the first months of being released from prison.⁴¹ Probation and parole officers will be able to concentrate their attention on high-risk probationers and individuals leaving prison by minimizing reporting requirements for low-risk probationers and shortening the length of time spent actively supervising those who have complied with their conditions of supervision (see policy option 1B). The combined effects of policy options 1B and 2A would reduce supervision caseloads over the next five years so no additional probation officers would be necessary for this newly supervised population.

⁴⁰. The maximum sentence calculation will match the current calculation for people convicted of Class B1-E offenses where the maximum sentence is 120 percent of the minimum sentence, plus nine months for post-release supervision.

⁴¹. National Research Council, Committee on Community Supervision and Desistance from Crime, *Parole, Desistance from Crime, and Community Integration* (Washington, D.C.: The National Academies Press 2007).

2(B): Accelerate incarceration of people convicted on multiple occasions of breaking and entering.

DESCRIPTION:

- Create a new Habitual Breaking and Entering (B&E) Class E sentencing option for people convicted two or more times of a felony B&E or second degree burglary offense (currently Class H or G offense).⁴²
- Modify the current habitual felon law to apply to people convicted four or more times of felony offenses to be sentenced at no more than four offense classes above their current underlying conviction, up to felony Class C.
- Maintain the current violent habitual felon law.

RATIONALE:

Focus group meetings with district attorneys and law enforcement officials highlighted their experience with a small number of individuals who were responsible for a large number of crimes, particularly breaking and entering. Many felt short prison sentences or sentences to probation were not sufficient punishment for these repeat offenders. They expressed frustration at having to wait until a fourth felony conviction to sentence an offender to a lengthy prison sentence. Currently individuals convicted of B&E or second degree burglary must be convicted of at least four felonies to move from Class H or G to Class C.

National data indicate that property crimes including burglary have the lowest clearance rates and individuals convicted of property crimes have some of the highest three-year re-arrest rates upon release from prison.⁴³

Sentencing individuals convicted of breaking and entering or burglary after their second conviction as a Class E offender instead of waiting for a fourth felony conviction to obtain a Class C sentencing response means law enforcement officials can ensure a more appropriate consequence for this category of offenders.

2(C): Increase time served for people who misbehave while incarcerated.

DESCRIPTION:

- Require people convicted of felony offenses without any misconduct in prison to serve only 100 percent of their minimum sentence.
- Hold people convicted of felony offenses beyond 100 percent of their minimum sentence when they do not comply with prison rules and regulations.

RATIONALE:

Under DOC's current earned time policy, people incarcerated reduce their sentence from the maximum (automatically set by statute at 120 percent of the minimum sentence) only through participating in work or educational programming. Typically in North Carolina prisons, limited opportunities in work and educational programs are available only to more serious offenders sentenced to several years in prison. Less serious offenders serving relatively short sentences typically are unable to earn time off of their sentences. Consequently, people convicted of more serious offenses serve closer to their minimum sentence length (102 percent on average), whereas people who are convicted of nonviolent, property or drug crimes serve, on average, 114 percent of their minimum sentence.

DOC removes earned time credits when a person misbehaves in prison. However, because people convicted of less serious offenses have a limited ability to earn time reduction credits, these people have few, if any, earned time credits to remove for misbehavior. Therefore, the current earned time policy does not provide DOC with sufficient ability to punish inmates for misconduct, especially those who are serving shorter sentences in prison.

⁴². Convictions for first degree burglary would count toward this new sentencing option.

⁴³. US Department of Justice FBI Uniform Crime Reporting data <http://www.fbi.gov/about-us/cjis/ucr/ucr> and Bureau of Justice Statistics "Recidivism of Prisoners Released in 1994" June 2002. <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1134>.

Objective 3: Reduce risk of reoffending

3(A): Provide incentives for people charged with low-level felony drug possession to complete probation successfully.

DESCRIPTION:

- Modify eligibility for the existing drug diversion program to include drug possession offenses currently handled as Class I felonies, excluding possession with intent to sell or deliver.⁴⁴
- Require that all people charged with Class I felony drug possession without any prior felony convictions be offered the opportunity to participate in the drug diversion program.
- Ensure that people included in the drug diversion program and under probation supervision, who are determined to be high-risk and who need drug treatment, participate in state-funded treatment programs.

RATIONALE:

More than 85 percent of people convicted of non-trafficking felony drug offenses in FY 2009 were sentenced to probation.⁴⁵ Research demonstrates that significant reductions in recidivism can be achieved only when treatment and supervision resources are concentrated on high-risk, high-need individuals and when the treatment programs are delivered by high quality community-based providers.⁴⁶

Focus group meetings with district attorneys and law enforcement indicated an interest in providing certain drug possession offenders with treatment and to expand eligibility for G.S. 90-96 to possession of other categories of drugs.

In FY 2009, there were almost 4,500 Class I felony convictions for drug possession. Reclassifying these offenses from felonies to misdemeanors when people successfully complete the requirements of

the felony diversion program reflects the less serious and nonviolent nature of the crime. Furthermore, because a felony conviction carries with it numerous collateral consequences, such as greatly reduced employment and housing opportunities, changing the criminal records of these successful probationers will help them reintegrate into the community.

3(B): Provide incentives for people incarcerated to complete programs that would reduce the likelihood of that person reoffending.

DESCRIPTION:

- Allow judges to rule at sentencing whether a person may be eligible to reduce their sentence to the mitigated range upon completion of prison-based programs recommended for that individual by DOC, if programs are available for that offender.
- Preserve truth-in-sentencing and victims' rights by openly stating if the offender will receive the option at the point of sentencing.⁴⁷

RATIONALE:

This option would allow judges, at sentencing, to incentivize participation in prison programming, such as educational, vocational, and substance abuse services, which have been shown to reduce risk and lower recidivism. States including Wisconsin and Pennsylvania have implemented similar policies, while maintaining truth-in-sentencing laws that provide incentives to participate in institutional programming that can reduce the likelihood of recidivism following release.

Research demonstrates that people maintain learned behaviors for longer periods of time, when given positive reinforcement at a higher ratio than negative reinforcement.⁴⁸ When given positive rewards, in conjunction with swift and certain consequences for negative behavior, people are more likely to achieve sustained behavioral changes.⁴⁹ A study of Washington State's earned time policy, which provides that certain non-violent property

44. Modify G.S. 90-96 Conditional Discharge for first offense.

45. NC Sentencing and Policy Advisory Commission "Structured Sentencing Statistical Report for Felonies and Misdemeanors FY 2008/09."

46. Aos, Steve, Miller, Marna, and Drake, Elizabeth. (2006) "Evidence-Based Adult Corrections Programs: What Works and What Does Not." Olympia: Washington State Institute for Public Policy.

47. This policy option maintains victims rights and would not affect victim impact statements or the sentencing process as defined in § 15A-832.(a)(1) and § 15A-832.(f).

48. U.S. Department of Justice, National Institute of Corrections. "Implementing Evidence-Based Policy and Practice in Community Corrections." October 2009 <http://nicic.gov/Library/019342>.

49. Ibid

and drug offenders who maintain good conduct and participate in work, education, or treatment programs, may shorten the length of time they must serve in prison, found that it saved the state money by reducing a person's length of stay in prison while at the same time reducing their risk of reoffending. Recidivism rates for people who earned time off their sentence decreased by 3.5 percent compared with similar people who did not earn time off their sentence.⁵⁰

3(C): Focus community-based treatment resources on programs that have the biggest impact on reducing crime.

DESCRIPTION:

- Require by statute that community-based treatment resources focus on individuals on probation who are convicted of felonies or sentenced under the felony drug diversion program; and individuals on post-release supervision. Further require community-based treatment resources to focus on people who are at a high-risk of reoffending and who have a moderate to high need for treatment.
- Reassign operational responsibility for overseeing community-based treatment resources to the Division of Community Corrections to improve oversight of programs provided and to ensure that programs are integrated in the management of supervision resources, policies and practices. Ensure DCC has the capacity and staffing necessary to ensure meaningful oversight of the programs.
- Mandate and strengthen data collection on performance measures for community-based substance abuse treatment programs so that the effectiveness of these services can be measured and administrators can be held accountable for performance.

- Require DOC to contract with certified or licensed substance abuse professionals that provide services or use practices that have a demonstrated evidence base and, in partnership with HHS, develop standard service definitions and performance measures for substance abuse and aftercare support services for inclusion in the contracts.
- Cap the percent of funding that may be used for administrative purposes at 15 percent.

RATIONALE:

CJPP is a community-based treatment and supervision program created to reduce recidivism, probation revocations, substance use disorders, and cost of incarceration. Counties receiving CJPP funding have broad discretion with the types of services they provide. These programs are not required to prioritize participants according to risk of re-offending. Instead, these programs serve probationers of all risk levels.

Some components of treatment programs funded through CJPP have been shown to reduce recidivism; others have not. Due to limitations in reporting, it is difficult to determine all the services that are provided through CJPP. A study on Ohio residential correctional programs found that high quality programs had a significant impact on reducing the rate of new felony convictions while low-quality programs had the opposite effect.⁵¹

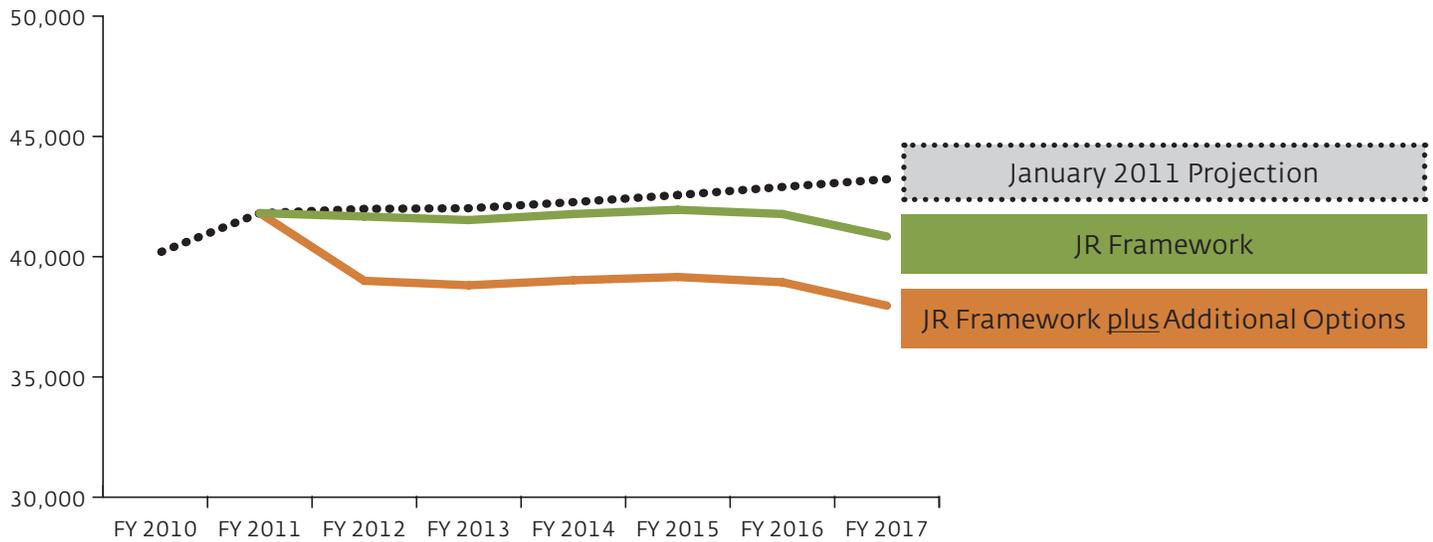
Criminal Justice Partnership programs are not held accountable for outcomes through data collection and other performance measures. There is a need to collect data on recidivism and develop a performance incentive approach.

50. Drake, Barnoski, and Aos (2009) *Increased Earned Release from Prison: Impacts of a 2003 Law on Recidivism and Crime Costs, Revisited* Olympia: Washington State Institute for Public Policy. April 2009

51. Lowenkamp, Latessa, Smith "Does Correctional Program Quality Really Matter? The Impact of Adhering to the Principles of Effective Intervention 2006" http://www.uc.edu/ccjr/Articles/Correctional_Program_Quality.pdf.

Projected Impact on North Carolina's Prison Population⁵²

North Carolina Prison Population: FY 2010 through FY 2017



	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Current Projection	41,811	41,987	42,013	42,267	42,562	42,898	43,220
JR Framework	41,811	41,669	41,522	41,773	41,949	41,773	40,841
JR Framework & Additional Options	41,811	38,997	38,811	39,021	39,155	38,937	37,963

	FY2012 - 2013 COSTS / SAVINGS	FY2012 - 2017 COSTS / SAVINGS
Current Projection	\$48 million costs	\$267 million costs
JR Framework	\$9 million savings	\$45 million savings
JR Framework & Additional Options	\$67 million savings	\$269 million savings

Proposed level of reinvestment

Estimated additional annual investment needed to implement policy options

	POLICY FRAMEWORK	POLICY FRAMEWORK + ADDITIONAL OPTIONS
Prison-based programming (policy option 3B)	\$1 million	\$1 million
Community-based treatment programs for high-risk/high-need offenders on supervision (policy options 2A, 3A, 3C, additional options 1 and 2)	\$3 million	\$6.5 million
Additional probation officer positions (additional options 2 and 3)	\$0	\$2.5 million

52. The impact of the proposed policy framework on the state's current prison population projection if the policies are enacted by July 1, 2011. Estimated impact of additional options includes the impact of the policy framework. The January 2011 prison population projection assumes no

change to the criminal code. Cost savings and proposed level of reinvestment are based on projected savings as calculated by the North Carolina Department of Correction.

Additional Policy Options

Additional Option 1: Limit length of time a person can be incarcerated when he or she has violated a condition of probation supervision.

Description

- Cap, at 90 days, how long someone may be incarcerated when that individual violates the conditions of his/her probation supervision, but has not committed a new crime or absconded from supervision. Require continuation of unfinished probation term upon release after serving 90 days in prison.
- Count the incarceration period served in prison or jail toward that person's underlying suspended sentence; require such individuals who subsequently complete their suspended sentence to serve an additional nine months of post-release supervision.

Rationale:

Of those people in prison because their probation was revoked, three-quarters violated the conditions of their release. Such violations include testing positive for drug use, or violating curfews. These people typically serve seven months in prison upon revocation and then are released without any supervision. Requiring people revoked to prison from probation to return to probation or participate in some other form of post-release supervision reduces the appeal, described earlier in this brief, that some offenders express for doing a short prison sentence in lieu of probation.

Additional Option 2: Increase length of post-release supervision for serious offenders.

Description:

- Increase the length of post-release supervision from 9 months to 12 months for individuals convicted of felony class B1-E offenses.⁵³
- Provide that, when serious offenders violate the conditions of their supervision (but do not commit a new crime), the term of their incarceration will last three months and the portion of the 12 months not served prior to revocation will be served upon his or her return to the community.

Rationale:

Currently, people whose post-release supervision are revoked because of a violation of the conditions of supervision are returned to prison and subsequently released without supervision. Limiting the term of incarceration for people whose post-release supervision is revoked because of a violation of a condition of supervision ensures they are required to serve additional post-release supervision. Individuals convicted of the more serious felony Class B1-E offenses currently receive nine months of post-release supervision. After serving years in prison, these people can use assistance transitioning from incarceration to living in the community. Providing this increase in supervision length would increase the number of people on supervision and require additional PPOs.

⁵³. People convicted of Class B-E sex offenses, who are required to register as sex offenders and receive five years of post-release supervision are excluded from this provision.

Additional Option 3: Divert misdemeanors from prison.

Description:

- Divert people convicted of misdemeanors who are currently being sentenced to prison to either jail or probation supervision.
- Ensure that people convicted of misdemeanors who are diverted from prison and placed on probation may still be mandated to prison when they fail to comply with conditions of release.

Rationale:

People convicted of Structured Sentencing Act misdemeanors and sentenced to prison stay there, on average, for three months, accounting for four percent of the prison population (about 1,600 people total) on any given day. Very few states use prison beds for people convicted of misdemeanors unless that individual is sentenced to a term of incarceration that is one or more years. North Carolina is unusual among states in using state prisons to incarcerate misdemeanor offenders with sentences as short as 91 days in state prisons.

Proposed Level of Reinvestment

To implement policy option 3B (provide incentives to participate in programs in prisons), DOC will need to increase the availability of certain prison-based programs. To that end, \$1 million in additional annual funding would be required to expand programs available to eligible offenders in prisons.

Increasing the number of people who would be eligible for treatment through the community-based treatment resources (see policy options 2A, 3A, 3C and additional options 1 and 2) will also require additional funding. Research shows that reductions in recidivism can be achieved when treatment and supervision resources are concentrated on high-risk, high-need individuals. Increasing funding to provide treatment to this population will be an important component to improve public safety and reduce recidivism rates.

- If the policy framework is adopted, then an additional \$3 million in annual funding above current levels will be necessary to treat the high-risk and high-need people convicted of felonies.
- If the additional options are also adopted, then an additional \$6.5 million in annual funding should be invested above FY 2011 levels to account for the additional number of people on supervision who would be in need of treatment programs in order to reduce recidivism.

Successfully implementing the second and third additional policy options described above is contingent in part on an increase in the number of probation officers and supervisors needed beginning in FY 2013. This would require an additional annual reinvestment of \$2.5 million beginning in FY 2013.

While implementing policy option 1A (swift and certain sanctions) has shown to reduce overall use of jail space by probation violators (by reducing initial length of stay for a violation as well as reducing the number of revocations generally), the state should work with sheriffs to monitor the number of bed-days used by probation violators. If there is an increase, the state should identify funding to compensate the jails for the increase.

To learn more about the justice reinvestment strategy
in North Carolina and other states,
www.justicereinvestment.org

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The Council of State Governments Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. The Justice Center provides practical, nonpartisan advice and consensus-driven strategies, informed by available evidence, to increase public safety and strengthen communities.



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