Delaware Justice Reinvestment Task Force

Consensus Report | March 2012

Highlights

The Delaware Justice Reinvestment Task Force was convened in July of 2011 by Governor Jack A. Markell to develop data- and research- informed consensus recommendations that will increase public safety, reduce recidivism, and generate savings.

Many of the proposals in this report aim to reduce recidivism—the rate at which those exiting prison commit new crimes. Recidivism is the best measure of a prison system's effectiveness, and reducing recidivism is the key to public safety. Research shows that the most effective use of corrections dollars is to target moderate- to high-risk offenders, a concept referred to as the "risk principle." By concentrating prison and supervision resources on these individuals, Delaware will be positioning itself to protect public safety using the best available science.

KEY CHALLENGES. Because the state does not measure the recidivism rate, it is not known to what extent those released from prison contribute to the state's crime rate, which is higher than the national average. Although Delaware's prison population is not currently growing, the prisons have been consistently over capacity. Without good alternatives to incarceration that will safely reduce the prison population in the future, capital improvements will be necessary.

KEY ASSETS. Delaware has a number of existing initiatives and strengths upon which to build. Through the Governor's I-ADAPT initiative (Individual Assessment, Discharge, And Planning Team), state agencies and community organizations are collaborating to improve reentry outcomes. The Delaware Department of Correction (DOC) already has a number of evidence-based practices in place, such as using a validated assessment tool used to determine probationers' risk of recidivism. The Criminal Justice Council's Statistical Analysis Center (SAC) is poised to provide more robust analysis and support for coordinated criminal justice planning. Other recent changes, including bail guidelines reform, have created opportunities that will allow Delaware to benefit from greater use of evidence-based practices throughout the justice system.

PRISON DRIVERS. Extensive data analysis revealed three major factors that sustain Delaware's correctional population: the high rate of pretrial detention, probation revocations as a result of violations, and long prison stays. Violations of probation are an indication that recidivism may drive the prison population. Therefore, further study of recidivism is required.

CONSENSUS PROCESS. Governor Jack A. Markell signed Executive Order 27 in July 2011 to establish the Delaware Justice Reinvestment Task Force as a bipartisan, inter-branch coalition of criminal justice agencies and stakeholders. Assisted by the Vera Institute of Justice, the Task Force has analyzed data and reviewed corrections and community supervision policies and practices in order to develop a package of reforms that will protect public safety and manage the correctional population. The Task Force has worked with I-ADAPT, the Delaware Justice Information System, the Sentencing Accountability Commission (SENTAC), DOC staff, Administrative Office of the Courts, SAC, and the Police Chiefs' Council.

IMPACT. As part of the Task Force's work, the group reviewed an estimate of the proposals' impact on bed space and cost. Based on available data and assumptions about population trends, the impact analysis indicates that the proposals are likely to free up resources for reinvestment.

A Turning Point

Delaware's criminal justice stakeholders are at a crossroads—they want to spend public safety dollars wisely, yet the numbers suggest that the state can get a better return on taxpayers' investments.

In response to the budget crisis beginning in 2008, the Delaware DOC reversed the trend of increasing expenditures and instead reduced its budget. However, trimming operational expenses can have only a limited impact on correctional expenditures.

Delaware's corrections population remains relatively stable.[1] Yet Delaware's facilities are crowded—the state's four facilities are at 111%, 118%, 174%, and 201% of design capacity.[2] Without reductions in population, Delaware will be hard pressed to spend less on prisons and community supervision without endangering public safety.

The state does not currently measure recidivism, and therefore does not know how much crime is committed by repeat offenders. Because policy makers do not have access to timely, reliable data about the system,[3] they cannot make informed decisions about how to invest their limited resources most effectively.

Recidivism may be contributing to the state's high rate of violent crime. Delaware's arrest rate for violent crime is one in 322, compared with one in 529 for the U.S. as a whole.[4] In 2010, Delaware ranked fourth in the nation for its violent crime rate.[5]

Nevertheless, Delaware can take steps to improve public safety. Based on the experience of other states, reducing the crime rate of those exiting prison can have a significant impact on the overall rate of crime and victimization.

Envisioning the Way Forward

The Task Force's work builds on the efforts of dedicated governmental and nongovernmental organizations and staff. Over the past ten years, the DOC has incorporated evidence-based practices, such as assessing probationers' level of risk to reoffend and criminogenic need factors.

In 2009, Governor Markell established I-ADAPT, a collaboration among many agencies to coordinate reentry efforts. I-ADAPT has brought community service providers to the table to coordinate reentry planning with state agencies, promising a more seamless transition from prison to the community.

The Justice of the Peace Courts reformed the bail guidelines in 2011, updating their policies and underlining the presumption in favor of release. Judges from the Superior Court and the Court of Common Pleas have created an array of specialty courts that tailor responses to specific populations.

To further these efforts, the state's Criminal Justice Council has begun building capacity. The SAC has plans to provide more robust analysis and support for criminal justice policy makers, including recidivism studies that are slated for release later this year.

In this tradition of striving for effective governance, the Delaware Justice Reinvestment Task Force is advancing recommendations that aim to improve public safety outcomes. The bipartisan group includes legislators, judges, the attorney general's office, the public defender, law enforcement officials, and agency officials.

During an intensive eight-month period, the Task Force considered the factors sustaining Delaware's prison population and discussed ways to reduce recidivism, protect public safety, hold offenders accountable, and contain corrections costs. In this consensus report, the Task Force presents a roadmap to a new approach to the business of corrections in Delaware. Informed by data and research, the state can create and sustain change that will yield benefits in the years to come. In the coming months, the Task Force will create a strategic plan for implementation and seek enactment of these policies through legislation, court rules, and agency action, as required.

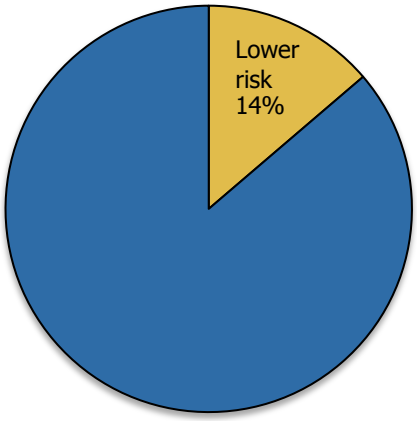
Factors Driving Prison Population

The Delaware Justice Reinvestment Task Force, with assistance from the Vera Institute of Justice, conducted an extensive review of Delaware's sentencing and corrections data, reviewed policies and practices at state criminal justice agencies, and consulted a wide range of stakeholders to identify the factors sustaining Delaware's prison population.

Large pretrial population

With 23% of Delaware's prisons taken up by "pre-sentenced" individuals, Delaware uses more of its prison space for detainees than other similar systems.[6] The data analysis revealed that 14% of 2010 detention admissions could be candidates for release or community supervision instead of incarceration while awaiting trial. This "lower risk" group excludes those who might pose a risk of flight or rearrest,[7] indicating an opportunity to release more people on recognizance or with supervision while ensuring public safety.

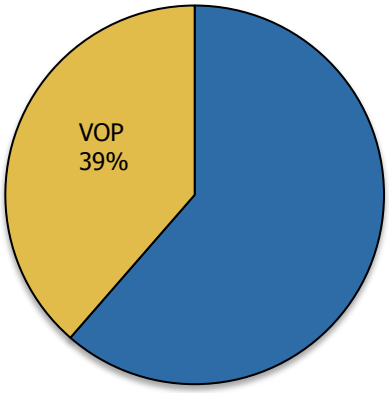
DETENTION ADMISSIONS IN 2010



Violations of Probation

While recidivism data would provide a more complete picture of the rate at which those exiting prison reoffend, the rate of probation violation is an important indication that recidivism drives the prison population. Those who violate conditions of supervision make up a large portion of the incoming prison population. Thirty-nine percent of admissions to prison (Level V) had a violation of probation (VOP) as the lead charge.[8] While 13% of all probation revocations in 2010 were for new crimes, 87% were for other violations, such as missed appointments, curfew violations, or positive drug tests.[9] In 2010, those serving time for VOPs took up 13% of the system's total bed space.[10] The state has made significant progress in reducing violations of probation since Senate Bill 50 was enacted.[11] However, incarcerating this population still consumes substantial resources; treatment or intermediate sanctions would be more effective and less costly responses.

VOP ADMISSIONS IN 2010



Long Length of Stay

Delaware prisoners serve long sentences. The average length of stay for Level V prisoners who served over one year (equivalent to "prison" populations in other states), was over 3 years.[12] The national average is about 2 years.[13] Prisoners have limited opportunity to earn reductions in their sentences even when they have made significant steps toward rehabilitation that reduce their risk to public safety.

Data-Driven Approach to Sentencing and Corrections

The Task Force anchored its proposed policies in the best available research about what works in sentencing and corrections. Outlined below, each policy proposal is linked to the others in a productive cycle designed to deliver results. By concentrating prison and supervision resources on the most violent and high-risk offenders, Delaware will control incarceration costs while protecting public safety.

The Task Force is proposing a set of policies to achieve the following objectives:

1. Concentrate detention resources on high-risk defendants
2. Focus supervision and prison resources on high-risk individuals
3. Hold offenders accountable
4. Reduce barriers to reentry
5. Protect and support victims of crime

Concentrate detention resources on high-risk defendants

ADOPT A PRETRIAL RISK ASSESSMENT TO INFORM FUTURE RELEASE DECISIONS

- Implement an objective assessment instrument that gauges defendants' risk of flight and re-arrest to help magistrates make release decisions. The instrument would incorporate elements to ensure the safety of victims of domestic and sexual violence.
- Provide magistrates with data on rates of re-arrest and failures to appear for scheduled court dates. This would create a track record for release decisions, helping improve future decision making.
- Train magistrates and other stakeholders—such as prosecutors, criminal defense attorneys, and victim service providers—on the administration of the pretrial risk assessment instrument.
- Increase pretrial supervision capacity to ensure adequate supervision for individuals whose risk level indicates that they can be released safely with supervision.

INCREASE USE OF CRIMINAL SUMMONS

- Increase use of criminal summonses through changes in law enforcement agency policies and practices. Using criminal summonses rather than arrest for certain offenses would help reserve detention resources for individuals who pose a risk to public safety.

Focus supervision and prison resources on high-risk individuals

IDENTIFY RISK FACTORS AND ADDRESS THEM

- Assess inmates and probationers for risk and need areas that, if addressed, can reduce recidivism.
- Use assessment information to create case plans for those under correctional control that include services and treatment that address identified needs. These plans would enhance coordination with courts to tailor supervision.
- Improve engagement skills of staff, such as the use of positive reinforcement and motivational interviewing, which research suggests can help staff to be more effective in addressing offenders' criminogenic needs most associated with recidivism.
- Provide adequate programming that is evidence-based and addresses the factors most closely associated with recidivism. The state should require programs in facilities and in the community, including problem solving courts, to be evaluated. Statewide baseline recidivism rates, as well as individual program outcomes, should be analyzed and reported.

ENCOURAGE PARTICIPATION IN PROGRAMS THAT REDUCE RISK

- Reduce time on community supervision for those who are complying with supervision conditions

(including completion of programs) by implementing earned compliance credits and eliminating the conditional release period so that time served on probation reflects the judge's sentencing decision.
- Encourage inmates to complete programs associated with reductions in recidivism by awarding credits to decrease time served.

SENTENCES INFORMED BY RISK AND NEEDS

- Provide risk and needs assessment information to judges to assist in sentencing decisions, such as identifying individuals who are good candidates for alternatives to incarceration.
- Engage in an intensified review of sentences for drug offenses prior to the 2011 reform for potential modification. This proposal would encourage SENTAC to undertake a review already permitted by Delaware law.

Hold Offenders Accountable

- Increase variety, availability, and use of intermediate sanctions for violations of conditions of supervision and document their use. The DOC should provide guidance for probation officers' use of intermediate sanctions so that responses are consistent and proportional to the severity of the violation and the risk posed by the individual.
- Create a sentence guideline for violations of probation that suggests a presumptive maximum. Judges would retain discretion for sentencing individuals determined to have committed serious violations of their supervision conditions.

Reduce barriers to reentry

- Expand I-ADAPT program capacity to plan for the successful reentry of a greater number of offenders.
- Support community service providers' use of evidence-based practices.
- Conduct further study of other common barriers to reentry, including restrictions on employment, availability of housing, medical and mental health care, driver license restrictions, fines and fees, and voting restrictions.

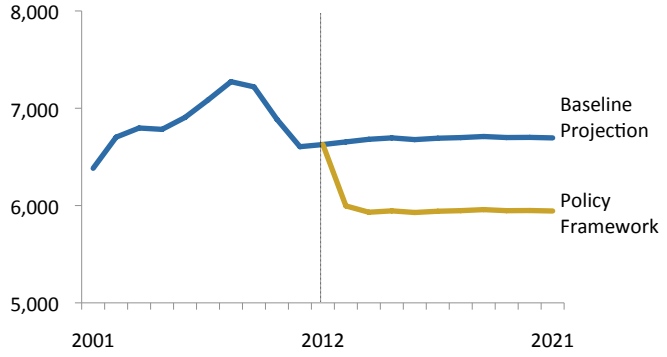
Protect and support victims of crime

- Support victims by reducing recidivism and victimization by implementing risk reduction strategies.
- Increase victims' access to offender information through the Delaware State Police Hotline to ensure victim safety at all hours.
- Enhance the DOC's services and responses to victims.
- Ensure victim confidentiality by redacting identifying information from indictments.
- Provide victim-centered programming, such as victim awareness and the effects of trauma.

Opportunity for Reinvestment

With the adoption of these policies, preliminary estimates suggest a potential reduction in Delaware's projected prison population by up to 740 beds per year. Avoiding the associated cost of food and medical expenses means that a total of up to $27,300,000 could be available for reinvestment over the next five years. Sustained population reductions would allow the DOC to close entire housing units or buildings, resulting in further savings and opportunities for reinvestment.

PRISON POPULATION



The Delaware DOC has made significant spending cuts in recent years in response to the budget crisis. However, these operational cuts can only go so far. To generate further savings requires collaboration among all criminal justice system stakeholders to adopt a more effective strategy for allocating existing resources—such as those advanced here by the Task Force.

Regardless of whether the recommendations generate projected savings, the state has opportunities to reallocate existing funds to programs and practices that produce better outcomes. Rather than paying for pretrial detention, a pretrial release program can improve release decisions and increase public safety. Likewise, investing in the engagement skills of prison and supervision staff instead of marshalling resources to supervise compliant offenders can reduce the likelihood that offenders commit new crimes.

If the state does realize savings from these efforts, the Task Force encourages reinvestment in the priorities identified in this report, especially treatment and program capacity.

Endnotes

1 Delaware Department of Correction Annual Report (2011); Delaware Department of Correction Annual Report (2010); Delaware Department of Correction Annual Report (2009); U.S. Department of Justice, Bureau of Justice Statistics, *Prison and Jail Inmates at Mid-year* (2004-2010); James F. Austin, Presentation to the Delaware Justice Reinvestment Task Force (Feb. 27, 2012).

2 Delaware Department of Correction Annual Report (2011).

3 Vera Institute of Justice, Center on Sentencing and Corrections, Memorandum to the Delaware Justice Reinvestment Task Force, "Administrative Data Challenges and Recommendations" (March 8, 2012).

4 Federal Bureau of Investigation, U.S. Department of Justice, "Crime in the United States" (2005–2011).

5 Federal Bureau of Investigation, U.S. Department of Justice, "Crime in the United States" (2010).

6 Suzanne Agha, Presentation to the Delaware Justice Reinvestment Task Force (Nov. 21, 2011).

7 Delaware Department of Correction data, 2010; Delaware Justice Information System data, 2010.

8 Ibid.

9 Suzanne Agha, Presentation to the Delaware Justice Reinvestment Task Force (Dec. 19, 2011).

10 Ibid.

11 Senate Bill 50, as amended by Senate Amendment No. 3 and Senate Bill No. 150 (2003). The 2003 Probation Reform Law, aimed to reduce the number of revocations to prison for technical violations and standardize and shorten probation terms to make them more manageable for offenders.

12 Statistical Analysis Center data, 2009.

13 U.S. Department of Justice Bureau of Justice Statistics, National Corrections Reporting Program (2009).