

Arkansas's 2011 Public Safety Reform

Legislation to Reduce Recidivism and Curtail Prison Growth

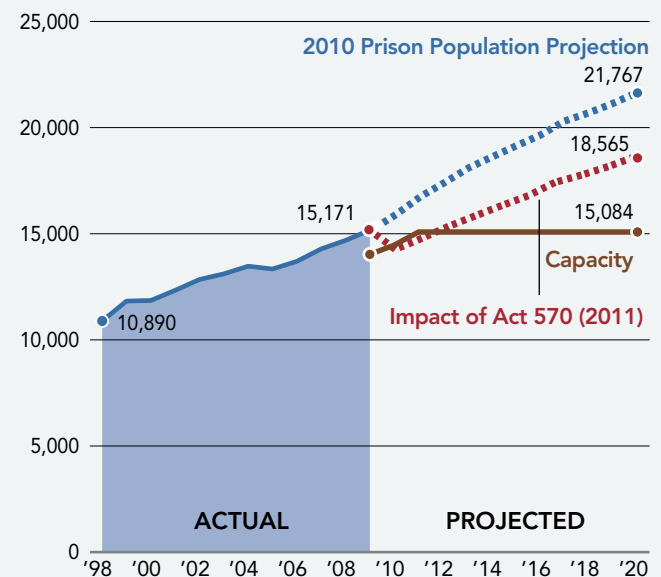
Problem: Arkansas's prison population doubled during the past 20 years, driving corrections costs up more than 800 percent. At the same time, recidivism and crime rates remained stubbornly high. Without action, the prison population would have grown by as much as 43 percent and cost Arkansas taxpayers an additional \$1.1 billion over the next decade.

Findings: An extensive review of data revealed that the state was underutilizing probation, increasing sentence lengths for non-violent offenses, departing substantially from the voluntary sentencing guidelines and delaying transfer of inmates to parole.

Reforms: A bipartisan, inter-branch working group, with technical assistance from the Pew Center on the States and its partners, issued recommendations to protect public safety and reduce recidivism by strengthening community supervision; improve government efficiency through data collection and performance measurement; and contain corrections costs by concentrating prison space on violent and career criminals. The Public Safety Improvement Act passed both chambers of the General Assembly with overwhelming bipartisan majorities and was signed into law by Governor Beebe in March 2011.

PRISON GROWTH CONTAINED

The Public Safety Improvement Act will reduce Arkansas's prison growth by more than 3,200 inmates over the next 10 years and avert an estimated \$875 million in prison costs.



SOURCE: Projections calculated by the JFA Institute, 2010

Impact: The new law is projected to save Arkansas \$875 million in averted prison construction and operation costs through 2020. It will improve public safety by investing a portion of the savings in community-based supervision, sanctions and services as well as other practices proven to reduce recidivism.

Background

Over the past 20 years, the prison population in Arkansas has more than doubled. In 2009, the number of inmates grew by 3.1 percent to 15,171, the eighth largest percentage increase in the country.¹ By the end of 2010 the number had grown another 7 percent to 16,204, pushing the state prison system to full capacity.²

The rapid growth also pushed state spending on corrections to an all-time high.³ Twenty years ago, corrections cost Arkansas \$45 million, less than 3 percent of all general fund dollars. Today the bill is nearly eight times higher, \$353 million per year, and consumes 8 percent of the general fund.⁴

Despite the growth in the prison population and corrections spending, Arkansas taxpayers haven't gotten an adequate return on their public safety

dollars: recidivism rates, measured by returns to prison within three years of release, are stubbornly high at more than 40 percent.⁵ Meanwhile, violent crime in the state has not declined nearly as dramatically as it has in many other states.⁶

If the state had not acted, the prison population was forecasted to grow by as much as 43 percent – more than 6,500 inmates – and approach 22,000 inmates by 2020.⁷ The costs associated with this growth were equally staggering: by the end of the 10-year projection period, the state would have spent more than \$350 million to build new prisons and more than \$120 million annually to house the new inmates.⁸ Indeed, the Arkansas Board of Corrections had already requested \$184 million to construct two new facilities.⁹

The Arkansas Working Group on Sentencing and Corrections

Rather than raise taxes or cut services to pay for the estimated \$1.1 billion in new prison construction and operation costs associated with this growth, state leaders decided to pursue better options. The result was a year-long effort to identify the drivers of the prison population, develop common-sense policy changes to contain corrections growth and reinvest a portion of the savings in evidence-based practices and programs that have been shown to reduce recidivism and improve public safety in other states.

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The Public Safety Improvement Act will help to keep prison beds available for violent criminals while still holding non-violent offenders accountable for their actions. It will slow the growth of our corrections system while working to reduce crime rates and recidivism.”

Governor Mike Beebe
March 4, 2011

This data-driven process was spearheaded by the Arkansas Working Group on Sentencing and Corrections, a bipartisan entity composed of state leaders from the legislative, executive and judicial branches, as well as local government and law enforcement officials. The group received intensive technical assistance from the Public Safety Performance Project of the Pew Center on the States (Pew) and its partners, the Crime and Justice Institute (CJI) and the JFA Institute (JFA).

Over the course of a year, the working group analyzed Arkansas's sentencing and corrections data; reviewed existing community supervision policies and practices; considered best practices from other states; and consulted a wide range of stakeholders including, but not limited to, prosecutors, defense attorneys, judges, sheriffs, chiefs of police and business.

“**Yes, we have thrown the book at criminals. But unfortunately, it's been the state's checkbook.”**

Rep. Darrin Williams
March 16, 2011

The group also relied on input from the Governor's Task Force on Overcrowding, a group originally charged with suggesting ways to reduce the jail backlog, and a group of circuit court judges appointed by Chief Justice Hannah to provide feedback on the analysis and policy recommendations.

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We should not assume that incarceration is the only answer, nor should we assume that incarceration is the most effective way to improve public safety.”

Chief Justice Jim Hannah
January 4, 2011

With feedback from these critical stakeholders, Pew and its partners helped the working group refine its analysis and build consensus for the package of policy reforms that ultimately became the Public Safety Improvement Act.

Key Findings

The working group's extensive review of state data suggested that a number of sentencing and corrections policies and practices, rather than rising crime or demographic shifts, were driving Arkansas's prison population growth. Chief among these factors were sentencing and parole practices that resulted in more non-violent offenders going to prison, and with longer sentences, and delays in paroling them to community supervision.

These findings were exemplified by low compliance with the state's voluntary sentencing guidelines. Both in terms of the placement decision (sentencing to probation versus prison)

and sentence length, offenders were being punished more severely than the guidelines recommended.¹⁰

Specifically, the courts sentenced more than 1,200 offenders to prison in 2009 despite a recommendation in the sentencing guidelines for placement to a community corrections facility or probation.¹¹ In addition, the average sentence for offenders for whom the guidelines did recommend incarceration was nearly twice (196 percent) the recommended sentence.¹²

Other evidence of this trend away from supervising non-violent offenders in the community include:

■ **Underutilization of Probation.**

In 2009, admissions to probation fell 5 percent while admissions to prison grew 7 percent.¹³ The cumulative effect of this trend is that Arkansas's probation supervision rate is now 23 percent lower than the national average, while its imprisonment rate is well above the national average.¹⁴

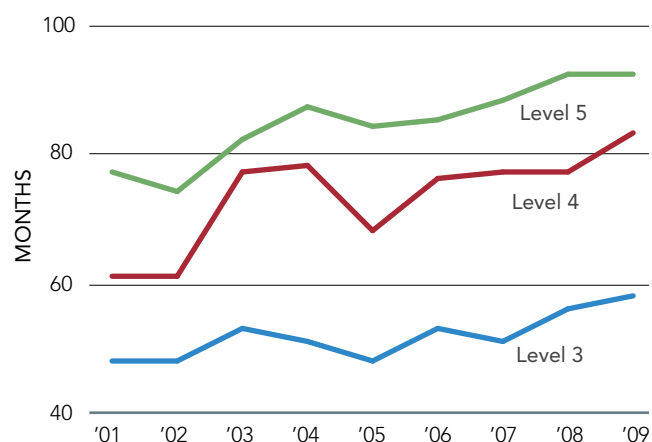
2009 Probation Rates Per 100,000 Residents

1,789 U.S. Probation

1,376 Arkansas Probation

■ **Longer Prison Sentences for Non-Violent Offenses.** More than half of Arkansas's inmates have been convicted of a non-violent offense.¹⁵ Offenders convicted of the least serious offenses (severity levels 1-5 in the sentencing guidelines) accounted for more than 75 percent of all admissions in 2009. In offense severity levels 3-5, which account for more than 70 percent of admissions, sentence lengths have increased 26 percent since 2001.¹⁶

Average Sentence Length by Severity Level



- **Delayed Transfer to Parole.** When offenders are sent to prison they are given a transfer eligibility date (TED) indicating when, absent a disciplinary record or failure to satisfy special conditions, they will be transferred to parole supervision.¹⁷ The working group's analysis indicated that more than half of inmates are held, on average, six months beyond their presumptive TED. No reason is recorded for most of these delays, which accounted for nearly 1,200 prison beds in 2009.¹⁸

These findings, and anecdotal evidence from criminal justice stakeholders, suggested to the working group that the Department of Community Correction (DCC) lacked the resources and authority to effectively supervise, sanction and support offenders on probation and parole. Indeed, the failure of offenders on community supervision remains a leading driver of incarceration: 58 percent of offenders admitted to prison in 2009 were on probation or parole at the time of their arrest.

The working group, therefore, believed that by creating a stronger community supervision system that would serve as a viable alternative to prison the state could both contain corrections spending and improve public safety. If more non-violent offenders are sentenced to probation and transferred to parole supervision, freeing up financial resources in the Arkansas

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Quite simply, we cannot continue to spend more and more and receive so little in return. The Public Safety Improvement Act will address both skyrocketing corrections costs and improve public safety by reducing recidivism.”

Senator Jim Luker
April 22, 2011

Department of Correction (ADC), then a portion of the prison savings can be reinvested in the Department of Community Correction to support recidivism and crime reduction strategies.

Consensus Policy Recommendations

In January 2011, the Arkansas Working Group on Sentencing and Corrections issued a comprehensive set of policy recommendations for more public safety at less taxpayer expense.

The recommendations, which flow from the data analysis, are designed to reinforce one another in a virtuous cycle: efforts to reduce recidivism (through the implementation of evidence-based practices in the Department of Community Correction) should fuel reductions in the prison population and sustain progress by allowing a portion of the savings to be

reinvested in community supervision. At the same time, additional steps to contain the prison population, and corrections costs, should free up additional financial resources both for community supervision reinvestment and overall state budget relief.

At the request of Governor Beebe, the working group's recommendations were translated into legislation and introduced as the Public Safety Improvement Act by Senator Jim Luker, chair of the Senate Judiciary Committee, and House Speaker Robert Moore.

Because the process for developing the policies contained in the legislation was bipartisan, interbranch and inter-

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The question for the working group... was not whether we ought to be tough on crime or soft on crime, but... how do we get the taxpayers the most return for the tax dollars they spend on public safety.”

North Little Rock Police Chief Danny Bradley
January 4, 2011

governmental, the Act was roundly supported by the agencies, associations and organizations that supervise, sanction and support offenders. Among the groups that endorsed the Public Safety Improvement Act were the Arkansas

How the Public Safety Improvement Act Works



Association of Chiefs of Police, the Arkansas Prosecuting Attorneys Association, the Arkansas County Judges Association, the Arkansas Sheriffs Association, the Arkansas State Chamber of Commerce and the Arkansas Public Defender Commission.

With the support of so many criminal justice stakeholders, the bill passed out of both chambers of the legislature with overwhelming bipartisan majorities (Senate: 31-0; House: 79-14) and was signed into law by Governor Beebe on March 22, 2011. The ambitious, omnibus legislation promises to get taxpayers a better public safety return on their corrections dollars and moves Arkansas to the forefront of states advancing evidence-based sentencing and corrections policies.

The Public Safety Improvement Act

The Public Safety Improvement Act represents a rethinking of community supervision and sentencing policy in Arkansas and holds public safety paramount to all other considerations. Indeed, the Public Safety Improvement Act neither changes the available sentencing range or time-served requirement for any violent offense nor applies retroactively to offenders already sentenced.

Among the Arkansas groups that endorsed the legislation were:

- Association of Chiefs of Police
- Prosecuting Attorneys Association
- County Judges Association
- Sheriffs Association
- State Chamber of Commerce
- Public Defender Commission

The bill does enact common-sense reforms based on available data and national research about what works in sentencing and corrections. These reforms fall into one or more of the following three categories:

- 1** Protect public safety and reduce recidivism by strengthening community supervision
- 2** Improve government efficiency and effectiveness through data collection and performance measurement
- 3** Contain corrections costs by concentrating prison space on violent and career criminals

The Public Safety Improvement Act, in the following section, is projected to save Arkansas taxpayers \$875 million in averted prison construction and operation costs through 2020.¹⁹

1 Protect Public Safety and Reduce Recidivism by Strengthening Community Supervision

Require the Department of Community Correction (DCC) to Use Evidence-Based Practices

Conduct risk-needs assessment at intake and use the results to set the conditions of supervision and assign programming.

Collect assessment results, programming outcomes and recidivism data to evaluate effectiveness.

Focus on High-Risk Offenders by Permitting Earned Discharge from Probation and Parole

Grant DCC authority to discharge offenders at ½ of their community supervision term if they have complied with court-ordered conditions.

Require DCC to convene a group of judges, prosecutors, public defenders and law enforcement officials to determine criteria for discharge and provide notification to the prosecuting attorney or parole board before discharge.

Hold Probationers Accountable with Immediate Sanctions for Violations

Grant DCC authority to sanction probationers administratively without returning to the court for approval.

Require DCC to develop and implement a graduated sanctioning grid that includes swift, certain and proportional sanctions—including day reporting, community service and short jail stays—and require its use in determining responses to violations.

Launch Pilots that Couple Random Drug Testing with Swift and Certain Sanctions

Create a pilot initiative modeled after Hawaii's Opportunity Probation with Enforcement (HOPE) to be implemented in up to five counties.

2 Improve Government Efficiency and Effectiveness through Data Collection and Performance Measurement

Strengthen Reporting Requirements and Encourage Compliance with the Sentencing Guidelines

Merge the sentencing guideline worksheet and departure form with the sentencing and commitment form and require signature from the sentencing judge and prosecuting attorney.

Enhance research capacity at the Sentencing Commission and require it to produce annual reports on guideline compliance (including county-level data).

Improve Parole Release Process

Develop and implement parole release guidelines with a presumption of release for offenders without a disciplinary record.

Begin transfer proceedings earlier (6 months prior to release) and streamline case review of offenders housed in county jails with roving intake teams.

Implement mandatory training requirements and appointment qualifications for the Parole Board and require it to produce monthly performance reports.

Hold Offenders Accountable by Improving Victim Restitution and Raising Probation Fees

Commission a study of state and local policy pertaining to victim restitution, child support and criminal justice system fines, fees and surcharges.

Raise probation and parole fees from \$25 to \$35 per month, generating approximately \$250,000 per month. Direct the revenue generated from the increased fees to a “Best Practices Fund” to supplement DCC funds for evidence-based direct services.

Expand Eligibility Criteria and Performance Measures for Drug Courts

Allow offenders with a violent criminal history, not including current offense before the court, to be eligible for drug court participation and focus drug court resources on higher-risk offenders by using a risk-needs assessment.

Define success as, in part, recidivism reduction and collect outcome data for all participants. Require the court system to publish annual performance reports.

3 Concentrate Prison Space on Violent and Career Criminals

Implement Performance Incentive Funding to Reduce Recidivism and Encourage Compliance with the Sentencing Guidelines.

Provide financial incentives to five counties or multi-county partnerships that increase their compliance with the sentencing guidelines and reduce the state cost of corrections by reducing crime, reconvictions and/or admissions to prison.

- Offer state grants to five pilot jurisdictions to strengthen community-based supervision, sanctions and programs such as substance abuse and mental health treatment, victim services and day-reporting centers.
- After one year, provide additional performance-based funding to counties that reduce non-compliance with the guidelines (relative to baseline) and their net burden on the Department of Correction.

Provide financial incentives to DCC for reducing recidivism.

- Provide additional funding to DCC for reducing the number of probation revocations (relative to baseline) that result from either a technical violation or new crime.
- Grant statutory authority to the Board of Corrections to redirect ½ of the savings to DCC.
- Require the felony conviction rate of probationers to remain stable or decrease for funding to be redirected.

Revise Drug Statutes to Distinguish Between Drug Users and Career Criminals

Equalize weight thresholds and penalties for possession, possession with intent to deliver (PWID), and delivery of cocaine and methamphetamine.

- Raise ceiling for simple possession and reclassify as a Class D felony to allow low-level offenders to be placed on probation and other programs that reduce recidivism if deemed appropriate by the court.

Revise felony definitions and classifications for simple possession of all controlled substances to reduce the minimum and maximum term of incarceration.

Separate PWID from manufacturing and delivery in the statute and set punishments appropriate to the offense for each controlled substance.

Enhance or retain punishments for more serious offenses such as large-scale manufacturing and create the new offense of trafficking for possession or delivery of large amounts.

Modernize Theft Statutes and Establish Penalties Proportional to the Offense

Raise the threshold for felony theft from \$500 to \$1,000 to reduce the number of felony convictions for low-level offenders.

Create a new Class D felony classification for theft with a value of less than \$5,000 (Class C felony theft currently begins at \$500) to allow low-level offenders to be placed on probation and other programs that reduce recidivism if deemed appropriate by the court.

Raise the threshold for Class B felony theft from \$5,000 to \$25,000.

Accelerate Release to Electronic Monitoring for Low-Level Offenders

Grant the Parole Board authority to release inmates with an approved parole plan to electronic supervision after 120 days if their recommended sentence from the sentencing guidelines did not include a term of incarceration in the presumptive range.

Require DCC to supervise eligible inmates with electronic monitoring until their original TED or 90 days of full compliance, whichever happens first, followed by mandatory parole supervision until sentence expiration.

Exclude from eligibility those convicted by a jury or of offenses that involve the act or threat of violence or bodily harm.

Expand Medical Parole to Contain Corrections Costs

Broaden the current statute to allow inmates diagnosed by two doctors, one not affiliated with the Department of Correction, as having a terminal illness and a life expectancy of two years or less or as permanently incapacitated and posing no threat to public safety to be paroled with an approved transfer plan.

Allow the Parole Board to revoke parole under this provision if the person's medical condition improves.

The full text of the legislation is online at:

www.arkleg.state.ar.us/assembly/2011/2011R/Pages/BillInformation.aspx?measureno=SB750

Arkansas Working Group on Sentencing and Corrections

Legislative Branch

Senator Jim Luker (D-District 17), co-chair
Representative Kathy Webb (D-District 37), co-chair
Senator Jake Files (R-District 13)
Senator Ruth Whitaker (R-District 3)
Representative Linda Tyler (D-District 45)
Representative Darrin Williams (D-District 36)

Judicial Branch

Chief Justice Jim Hannah, Arkansas Supreme Court
Director J.D. Gingerich, Administrative Office of the Courts
Circuit Court Judge Gary Arnold, 22nd Judicial District (Saline County)

Executive Branch

Director Ray Hobbs, Department of Correction
Director David Eberhard, Department of Community Correction
(Fmr.) Director David Guntharp, Department of Community Correction
Director Sandy Moll, Sentencing Commission
Amy Grimes, Governor's Legal Counsel for Clemency and Corrections
Gary Grimes, Governor's Liaison to Law Enforcement

Law Enforcement

Chief Danny Bradley, North Little Rock Police Department
(Fmr.) Sheriff Ken Jones, Union County
District Attorney Henry Boyce, 3rd Judicial District

Endnotes

1 Pew Center on the States, *Prison Count 2010: State Population Declines for the First Time in 38 Years* (Washington, DC: The Pew Charitable Trusts, April 2010).

2 Data provided by the Arkansas Department of Correction.

3 The Consensus Report of the Arkansas Working Group on Sentencing and Corrections, January 2011.

4 Corrections costs figures come from the National Association of State Budget Officers' *State Expenditure Report* series. Note that corrections costs include not only costs associated with prisons but, depending on the state, correctional services including probation, parole and others. In Arkansas, prison costs consume the vast majority of all corrections costs, and are equivalent to roughly 10 times the combined cost of probation and parole.

5 Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, DC: The Pew Charitable Trusts, April 2011).

6 Analysis of data from the Federal Bureau of Investigation's Uniform Crime Reports, <http://www.ucrdatatool.gov/>.

7 The Consensus Report of the Arkansas Working Group on Sentencing and Corrections, January 2011.

8 Ibid.

9 Andy Davis, "184 Million Sought for Two New Prisons," NWA Online, (Sept. 29, 2010).

10 Arkansas implemented voluntary sentencing guidelines in 1994 for "the purpose of equity in sentencing, i.e. similar sentences for similar offenders with similar criminal histories, and proportionality in sentencing by creating a balanced correctional system which reserves the most serious sanctions for the most serious offenders." For more detail see: Arkansas Sentencing Commission, "Sentencing Standards Grid Offense Seriousness Rankings and Related Material," October 2009.

11 Ibid.

12 Ibid.

13 Wendy Naro and Roger Ocker, "Ten-Year Adult Secure Population Projection 2010-2020," JFA Associates, June 2010.

14 Arkansas's rate of probation is 1,376 per 100,000 residents. The national average is 1,789 per 100,000 residents. See the Bureau of Justice Statistics, "Probation and Parole in the United States, 2009," December 2010. Arkansas's imprisonment rate is 522 per 100,000 residents. The national average is 442 per 100,000 residents. See the Bureau of Justice Statistics, "Prisoners 2009," December 2010.

15 Arkansas Department of Correction, *Statistical Information, FY 2010*: http://www.adc.arkansas.gov/pdf/Statistical_Information_Brochure_FY_2010.pdf

16 The Consensus Report of the Arkansas Working Group on Sentencing and Corrections, January 2011.

17 From the *Arkansas Board of Parole Policy Manual* (June 24, 2010):

When the Board considers inmates with a TE date the Board will have only two options:

1. Transfer the inmate to the Department of Community Correction with specified conditions such as supervision level, programming requirements, and facility placement when appropriate; or
2. Based on the established criteria, deny transfer until the inmate completes a course of action established by the Board that would rectify the Board's concerns.

18 The Consensus Report of the Arkansas Working Group on Sentencing and Corrections, January 2011.

19 Ibid.

Launched in 2006, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.

The Pew Center on the States is a division of The Pew Charitable Trusts that identifies and advances effective solutions to critical issues facing states. Pew is a nonprofit organization that applies a rigorous, analytical approach to improve public policy, inform the public and stimulate civic life.

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