

A photograph of a person wearing an orange jumpsuit, with their hands in handcuffs. The person's hands are positioned in the lower center of the frame, with the fingers slightly spread. The background is a solid black color.

THE BUCKEYE INSTITUTE *for* PUBLIC POLICY SOLUTIONS

# Smart on Crime

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Costs on the  
Rise, Ohio  
Needs Better  
Policies for  
Protecting  
the Public**

*By* **MARC A. LEVIN**

**November 2010**



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Policies for Protecting the Public**

By MARC A. LEVIN

Director, Center for Effective Justice, Texas Public Policy Foundation

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By **MARC A. LEVIN**

## Why This Report Matters to You

Government too often grows far beyond its traditional core functions, but most Ohioans recognize that there is a legitimate governmental role when it comes to public safety. Indeed, because public safety is one of the few core functions of government, it is critical that policymakers hold criminal justice agencies accountable for their performance and seek to maximize taxpayers' return on their investment. And it is a large investment. Since 1983, Ohio taxpayers' spending on corrections has grown five-fold, even after adjusting for inflation.

Nearly all of this money is for prisons, although five times as many offenders are on felony or misdemeanor probation. Undoubtedly, locking up dangerous violent offenders for long periods, though costly, is a sound use of taxpayers' dollars. However, the recent growth in Ohio's prison population and costs is largely the result of an increasing number of nonviolent offenders being incarcerated for short periods of time, including 10,000 for an average of nine months. In 2008, almost half of those admitted to Ohio prisons were assessed as low risk and half received prison sentences of 12 months or less.<sup>1</sup> Is this revolving door, where offenders may leave worse than they came in and with dimmed employment prospects, delivering a good public safety return on Ohioans' tax dollars?

While Ohio must continue to be tough in holding offenders accountable for their crimes, Ohio policy-

makers must view the projected budget shortfall as an opportunity to reshape policies to deliver more public safety for every dollar spent. Fortunately, there are many solutions consistent with the principles of limited government, fiscal responsibility, and public safety that have proven successful in empirical research and in practice on a limited basis in Ohio and in other states, such as Texas. These include performance-based probation funding, drug and other problem-solving courts, earned time through which an offender's behavior is taken into account, graduated sanctions to send a message to probationers and thereby avoid revocations, geriatric parole, and cost-effective alternatives to hold child support offenders accountable.

The Ohio criminal justice system must be subjected to the same scrutiny that is warranted for all other government programs, particularly in tight times. Policymakers should not measure success in corrections by the size of the system and the amount of money spent. Indeed, corrections systems can grow commensurate with their failure rate, as offenders leaving the system reenter. Thus, the key question should not be how many people are in prison, but how much public safety and victim restitution is obtained for each dollar spent. Prisons are a vital part of an overall crime-fighting strategy, but "thinking outside the cell" regarding offenders who are not a danger to the public can both save Ohioans money and make them safer.

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## Executive Summary

Ohio faces significant criminal justice challenges against the backdrop of a total budget shortfall estimated at more than \$8 billion.<sup>2</sup> While the state has implemented innovative criminal justice initiatives in areas such as risk assessment and state funding for community corrections programs that enabled the state to better prioritize prison capacity, further reforms can help the state both control costs and improve public safety.

The Department of Rehabilitation and Correction (DRC) budget is \$1.79 billion.<sup>3</sup> Of that, \$1.29 billion was spent on prisons in 2008, far more than the \$124.39 million spent in 1983, which adjusted for inflation is \$268.89 million in 2008 dollars. Furthermore, Ohio spends 7.3 percent of its budget on corrections, compared with the national average of 6.7 percent.<sup>4</sup> If current policies are maintained, the state projects that the prison system will need another 5,330 beds by 2018, which would require \$424 million in construction costs and \$501 million in annual operating costs.<sup>5</sup> Even now, Ohio's prison population exceeds the system's rated capacity of 38,665 by 30 percent.<sup>6</sup>

The General Assembly did not make significant changes to corrections spending in the budget approved for 2010-2011, but the plan was dependent on \$1 billion in revenue from installing slot machines at racetracks. The Ohio Supreme Court struck down that provision, ruling that it requires voter approval. In light of this development and continued weakness in the economy that has impacted tax revenue, the General Assembly may be forced to identify additional cost savings to comply with the balanced budget provision of the Ohio Constitution.

Fortunately, there are solutions Ohio can implement that would help control corrections spending,

improve outcomes such as recidivism, and promote public safety. Some are contained in Senate Bill 22, legislation that Senator Bill Seitz (R-Green Township) introduced that seeks to improve corrections policy and make better use of taxpayers' dollars. A second approach, the Ohio Justice Reinvestment project, began following a request from Ohio's governor, chief justice, and legislative leadership. In this project, the Council of State Governments Justice Center has been assisting policymakers for over a year to conduct intensive criminal justice data analysis, engage practitioners and stakeholders from across the criminal justice system, and develop a statewide policy framework to reduce spending on corrections and reinvest in strategies to increase public safety. The project has issued publications that provide key statistics and analysis illustrating the corrections challenges Ohio faces.<sup>7</sup>

These state efforts mirror the bipartisan interest in this issue by many of Ohio's representatives in Washington, including the sponsorship of the Second Chance Act signed by then-President George W. Bush to remove barriers to successful prisoner reentry by Rep. Rob Portman in 2004 and Rep. Marcia Fudge's sponsorship of the National Criminal Justice Commission Act of 2010 that was approved by the House in July 2010, which would review the current system to make it more transparent to taxpayers and identify best practices. Many of Ohio's leading newspapers took an interest in the issue, as numerous editorial boards cited the current Justice Center working group's efforts in recent pieces calling on Ohio policymakers to make improvements to the state's criminal justice system.<sup>8</sup>

The stakes are high for public safety and taxpayers. Adopting public safety approaches recommended by a coalition that includes Ohio's leading groups repre-

senting prosecutors, sheriffs, police, and probation officers would avoid more than \$84 million in spending.<sup>9</sup> Furthermore, there are many other opportunities to achieve tens of millions of dollars in savings, avoid the need for any new prisons, and perhaps even reduce the prison population. For example, a performance-based probation funding plan that incentivizes diversion of appropriate nonviolent offenders could save \$75 million a year based on results from a similar juvenile justice model in Texas.<sup>10</sup>

Significant savings are also possible through other measures that are consistent with public safety, such as geriatric parole, earned time, expanding problem-solving courts, and creating clear criteria so that existing community-based residential corrections beds are used for diverting appropriate offenders from prison

rather than as an add-on for offenders who can be safely supervised on basic probation. Also, spreading the use of evidence-based practices, such as graduated sanctions in probation, can increase compliance and thereby reduce probation revocations.

While prisons are the right place to keep violent and dangerous offenders behind bars for long periods, criminological research is increasingly identifying many other options for appropriate offenders who do not pose a danger, but hold them accountable while keeping costs down for taxpayers. Not only can Ohio taxpayers potentially save hundreds of millions of dollars through better corrections policies, but we can ensure that the money that is spent is allocated most effectively to improve public safety.

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## Ohio's Corrections Challenges

### **Growth in Prison Population and Incarceration Costs**

A glance at the numbers brings Ohio's correctional challenges into sharper view. Ohio's prisons held 51,113 inmates on June 29, 2009, and the number is projected by the DRC to grow to 52,546 in 2011. To put this in perspective, in 1984, there were only 18,479 inmates. Looking further ahead to 2018, under current policies, it is projected that 6,647 additional beds are needed for the prison system to operate at 123 percent of capacity and 9,799 beds to operate at 115 percent of capacity.<sup>11</sup> Using an earlier estimate of slightly fewer projected beds needed—9,281 at 115 percent of capacity—the head of the Franklin County Adult Probation Department determined that, based on net savings of \$18,143 per inmate, Ohio could realize a potential annual cost savings of \$84.2 million.<sup>12</sup>

In his testimony before the legislature in early 2009, DRC Director Terry Collins stated in part, "We are at a critical and urgent stage...do we continue on the existing path? Or, do we look for new ways to deal with a very expensive problem? If current trends continue, our research indicates the population will reach 60,000 inmates by 2018. I can tell you, just to build beds of this magnitude would cost roughly \$1 billion, and that does not include operational funding."<sup>13</sup> Although the DRC's July 2009 forecast was for somewhat slower prison population growth, Collins's testimony remains salient.

Additionally, the Ohio prison system is operating

at 133 percent of capacity. To reduce the chance of a federal court order on crowding, such as the one issued in California in 2009 that mandated the haphazard release of 43,000 inmates, the DRC would like to operate at no more than 123 percent of capacity, which would require adding nearly 3,000 additional beds. The national average cost of constructing a 1,000-bed prison is \$105 million to \$250 million, which is at least \$105,000 per bed.<sup>14</sup> Ohio's prisons are projected to grow from just over 50,000 today to at least 60,000 by the year 2016, assuming current policies are maintained.<sup>15</sup>

*In 1983, Ohio's cost per inmate was only \$19.62 per day. By 2008, it was \$42.41.*

Also, the cost of incarceration in Ohio is higher than in many other states and is growing beyond the rate of inflation. The average cost of Ohio prisons per inmate as of October 2009 was \$69.19 per day, which amounts to \$25,254 per year.<sup>16</sup> That compares to \$47.50 in Texas, which is \$17,338 per year.<sup>17</sup> Personnel cost is the single largest cost in the corrections system and

one in four Ohio state employees works for the DRC.<sup>18</sup> Differences in wages are among the factors that contribute to varying per inmate costs among the states. For example, according to the Bureau of Labor Statistics, the median prison guard hourly wage in Texas is \$15.98 compared with \$19.38 in Ohio.<sup>19</sup> In 1983, Ohio's prison cost per inmate was only \$19.62 per day. Adjusted for inflation, the 1983 figure is \$42.41 per day in 2008, which is nearly \$30 less per day than the actual amount. Ohio implemented some operational measures in the past year to control prison costs, such as serving brunch in lieu of breakfast and lunch on weekends and adjusting the inmate classification sys-

tem to reduce the unnecessary use of solitary confinement.<sup>20</sup>

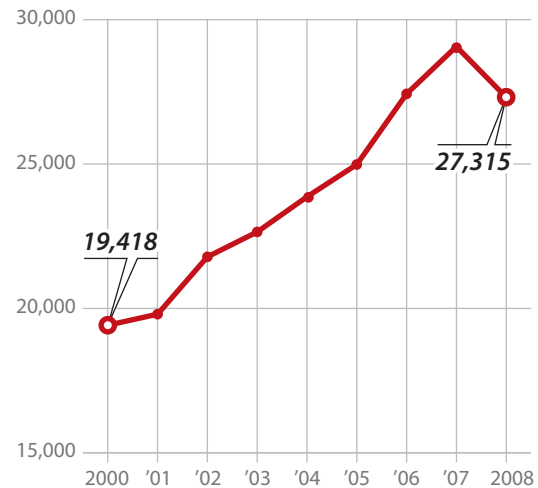
After salaries, prison health care is the second largest prison operations cost item in Ohio and, typically, in other states as well. In 2003, Ohio spent \$122.6 million on inmate health care, but that exploded to \$212.5 million in 2009, due in part to both an overall increase in the prison population and the graying of the population.<sup>21</sup> Ohio spends \$11.40 per day on inmate health care, about 20 percent more than Texas, which used a managed care model and extensive telemedicine in partnership with two public hospitals.<sup>22</sup>

Ohio's incarceration rate of 442 per 100,000 people is just below the national average of 447 per 100,000 people. That figure reflects both the 51,113 prison inmates and 20,560 county jail inmates. The three-fold increase in Ohio's incarceration rate since 1984 is not correlated with the crime rate. The state's crime rate is 3,798 per 100,000 people, which slightly exceeds the national average of 3,731 per 100,000.<sup>23</sup> The figure is the state's lowest rate since 1973, but more than twice that of 1960.<sup>24</sup> An analysis by the Ohio Legislative Budget Office found that the incarceration rate grew approximately 300 percent from 1980 to 2000 while the crime rate dipped slightly.<sup>25</sup>

More recently, Ohio prison admission grew 41 percent from 2000 to 2008, increasing from 19,418 to 27,315.<sup>26</sup> Over this same period, Ohio's violent crime rate rose 4 percent while burglaries rose 14 percent and robberies 18 percent, adjusting for population trends.<sup>27</sup> In 2008, the property crime rate in Ohio was 3,412 crimes per 100,000 persons, which exceeds that of the Midwest states (3,067) and the nation (3,213).<sup>28</sup>

There is considerable evidence that, as a nation, the U.S. has surpassed the point of diminishing returns on prison spending. Violent offenders have traditionally been subject to long sentences, but the growth in incarceration since 1970 has resulted in the incarceration of more and more offenders with lesser criminal records.<sup>30</sup> The Vera Institute of Justice reviewed studies on the relationship between incarceration and crime and concluded that although the surge in prison populations may account for 25 percent of the drop

### Ohio Prison Intakes, 2000–2008<sup>29</sup>



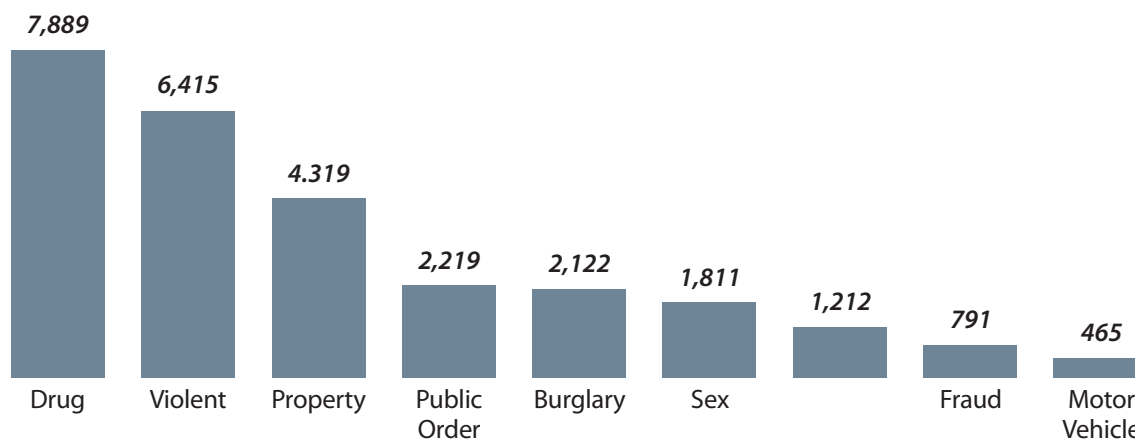
in crime in the 1990s, further growth in incarceration will produce little, if any, decline in crime because the additional inmates swept into prisons have not committed crimes of the same severity or in the same number.<sup>31</sup>

In fact, the states that increased incarceration the most from 1991 to 1998 experienced a smaller decline in crime than those that had a smaller increase in incarceration.<sup>32</sup> Further evidence is found in New York City where both crime and the prison and jail populations have substantially declined since 1999.<sup>33</sup>

Additionally, much of the increase in incarceration has come from the increase in drug offenders behind bars from 40,000 in 1980 to 450,000 in 2005.<sup>34</sup> In 1981, drug offenders accounted for 10 percent of Ohio commitments to prison,<sup>35</sup> but today they account for 15 percent. Violent offenders accounted for 39 percent of Ohio commitments to prison in 1981,<sup>36</sup> but today they account for only 12.6 percent of offenders sentenced to prison.

In Ohio, there are minimum prison sentence ranges associated with violent and gun crimes, sex crimes, serious repeat offenses, and high-level drug offenses. The sentence length ranges from six to twelve months for felonies of the fifth degree to three to ten years for

## Ohio Prison Commitment Offenses in 2008



Source: Ohio Department of Rehabilitation and Correction.

felonies of the first degree. Most property offenses, except some racketeering offenses, do not carry mandatory prison sentences.

Currently, there are approximately 15,000 inmates in prison for a nonviolent fourth-degree (F4) or fifth-degree (F5) felony offense, even though there is a common law presumption against prison time for such offenders.<sup>37</sup> More than 10,000 F4 and F5 property and drug offenders are sentenced to prison annually and stay about 9 months in prison.<sup>38</sup> After serving brief sentences, 72 percent of these low-level drug and property offenders were returned to the community without supervision, which raises the question of whether these short prison sentences without any follow-up are the most cost-effective approach for these nonviolent offenders.<sup>39</sup>

Not only are drug crimes the most common type of commitment offense, but many of the offenders not sentenced for a drug crime also have a drug problem. A profile of 3,294 inmates entering the Ohio prison system in 2004 found that 86.6 percent of males and 85.7 percent of females had a history of drug abuse.<sup>40</sup> Furthermore, 63.2 percent of males and 52.3 percent

of females had a history of alcohol abuse. In 2008, 16,986 inmates participated in alcohol and other drug programming.<sup>41</sup> This represents 33.8 percent of all inmates.<sup>42</sup>

### Parole and Probation

In addition to Ohioans behind bars, there are 17,488 offenders on some form of supervision following a prison term. This figure includes 2,551 parolees, 1,021 compact parolees<sup>a</sup>, 14,427 post-release control (PRC) offenders, and 510 offenders on intensive program prison release. Although there is a difference in terminology, parolees and post-release control offenders are subject to the same type of supervision and sanctions.

In 1996, indefinite sentences that led to parole were abolished for all offenses except murder and the most serious sex offenders. Consequently, the bulk of current inmates serve definite sentences followed by a fixed term of post-release control, with violent offenders serving three years of post-release control, sex offenders five years, and most other offenders serving

a These are offenders from other states who are on parole pursuant to an interstate agreement.

one year at the option of the Ohio Parole Board. Of the 10,035 adults exiting post-release supervision in 2007, 74 percent successfully completed their term and 18.7 percent returned to jail or prison.<sup>43</sup>

In PRC cases, the Parole Board may impose up to nine months of prison sanction time for violations, but the prison sanction time cannot exceed half of the original sentence. For the remaining parole cases, the Parole Board uses the zero-to-nine-month PRC sanction as a guide, but has the option of returning the parolee to prison for up to the maximum duration of the original sentence.

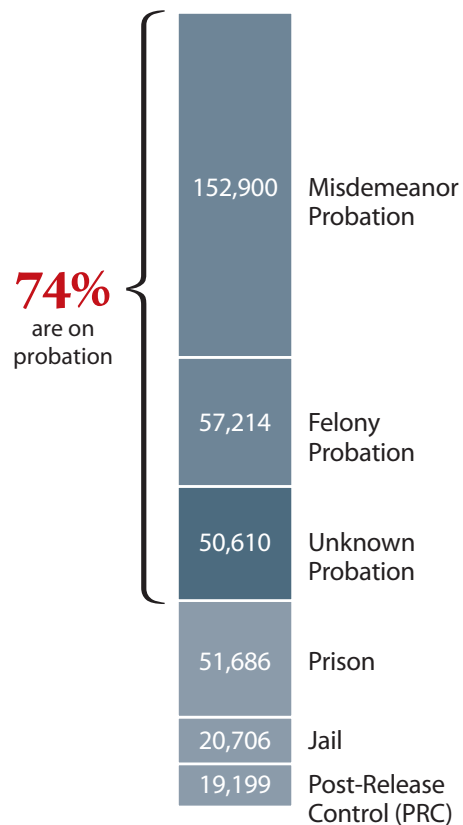
Additionally, there are some 254,898<sup>44</sup> offenders on probation.<sup>b</sup> Probation is operated by county departments, except for 2,581 probationers supervised through an interstate compact and 752 probationers in rural areas that contract with the DRC to provide supervision. Statewide recidivism data is not available for probation. In fact, the DRC does not know exactly how many of the 254,898 probationers are felony probationers and how many are misdemeanor probationers, a clear indication that additional data is needed on the probation system. However, they estimate that 90,000 to 100,000 are felony probationers. The distinction is notable because only felony probationers can be revoked to state prisons while misdemeanor probationers may be revoked to county jails.

While the state's incarceration rate is only slightly higher than the national average, Ohio's probation rate is far higher than the national average at 2,917 per 100,000 people compared to the average of 1,863 per 100,000 people.<sup>46</sup> The parolee rate of 201 per 100,000 people is substantially lower than the national average.

Notably, the number of Ohioans under correctional supervision (prison, parole, or probation) has increased exponentially over the past few decades. In 1982, 1 in 116 Ohio adults were under correctional supervision compared with 1 in 25 in 2008.<sup>47</sup> The na-

## Ohio's Criminal Justice System

There are 352,235 adults under correctional control as of December 31, 2008, including more than 50,000 that the state does not know whether they are felony or misdemeanor probation.<sup>45</sup>



Source: Justice Reinvestment in Ohio: Summary Report of Analyses (Summary Presentation), Council of State Governments Justice Center, July 2010, at [http://www.justicereinvestment.org/files/ohio\\_conference\\_summary.pdf](http://www.justicereinvestment.org/files/ohio_conference_summary.pdf) (November 21, 2010).

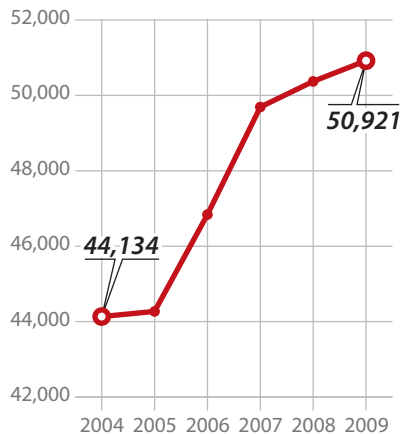
tional average is 1 in 31 adults.<sup>48</sup> Although many times more Ohioans were under correctional supervision in 2008 than in 1982, the index crime rate in Ohio declined substantially from 4,935.5 index crimes per

<sup>b</sup> This figure includes both community control and probation offenders. The distinction between community control and probation relates to the version of the criminal code that applies based on the date of the crime, but the actual supervision provided is the same. Technically, probation refers to a case where a person is still serving a community penalty for a crime committed before July 1, 1996, while community control is the terminology used for a person serving a community penalty for a crime committed after that date.



## Ohio's Prison Population

The overall prison population has increased 15 percent since 2004 ...



... and low-level felony offenders (F4 and F5) account for a majority of those sentenced to prison.

Felony Level	Prison Admissions				Avg. Sentence (months)	
	2003	2008	# Change	% Change	2003	2008
F1	1,842	2,059	217	12%	90	96
F2	2,587	3,133	546	21%	46	51
F3	4,190	6,395	2,205	53%	29	31
F4	5,710	6,777	1,067	19%	14	16
F5	8,542	8,296	-246	-3%	11	12
Total	22,871	26,660	3,789	17%	26	28

**56%** of the prison population are low-level offenders

Source: Council of State Governments Justice Center, "Justice Reinvestment in Ohio: Summary Report of Analyses," July 2010, at [http://www.justicereinvestment.org/files/ohio\\_conference\\_summary.pdf](http://www.justicereinvestment.org/files/ohio_conference_summary.pdf) (November 21, 2010).

100,000 residents in 1982 to a rate of 3,756.6 index crimes per 100,000 residents in 2008.<sup>49</sup> Index crimes as defined by the F.B.I. include serious violent and property crimes, but not drug offenses. The reasons for the sharp growth in Ohio's correctional population are not entirely clear, but they may be partly due to changes in the number of drug offenders and state laws that have enhanced sentences for various offenses.

Parole costs one-sixth of prison and Ohio spends six cents on parole for every dollar spent on prisons.<sup>50</sup> Nevertheless, parole costs rose from \$3.75 per offender per day in 1983 to \$12.34 per offender per day in 2008, also surpassing the 1983 inflation-adjusted cost of \$8.11 per day.

### State Strategies to Reduce Incarceration Costs and Improve Corrections Outcomes

While Ohio has trended towards an increasingly large and costly correctional system, the state has pursued policies designed to control incarceration and recidivism.

In 2008, a record number of offenders were diverted from prison pursuant to the Community Corrections Act (CCA) enacted in 1979. Offenders sentenced under the CCA have, on average, more serious criminal histories than those simply sentenced to probation. Of CCA participants, 17 percent were convicted of a third-degree felony, 28 percent were convicted of a fourth-degree felony, and 47 percent were convicted of fifth-degree felony. The remaining 7 percent were convicted of the most serious felonies—first- or second-degree felonies. In 2008, 407 county CCA programs funded by the state diverted 10,033 offenders.<sup>51</sup> These offenders earned \$25,597,004 in wages, paid \$969,490 in restitution, \$1,593,080 in court costs and fines, and \$601,295 in child support. They also completed 138,049 hours of community work service.<sup>52</sup>

In 2008, CCA prison diversion programs in 42 counties received \$15,758,552 in state funding. The state cost per offender in 2008 was relatively low at \$1,862, far less than a year in prison. Only 6 percent of CCA offenders were terminated for new crimes in

2008, though 38 percent committed technical violations<sup>c</sup> by not complying with all of the terms of their supervision.<sup>53</sup> More than 85 percent of judges, prosecutors, and criminal defense lawyers in a survey by the Ohio Criminal Sentencing Commission released in January 2009 indicated that programs to divert offenders from prison should be a top budget priority.<sup>54</sup>

Although county jails are not the focus of this report, the CCA county jail diversion program resulted in the diversion of 21,068 offenders from jails in 2008. The cost of this program was \$442 per offender or \$3.18 per day as compared to an average daily jail cost of \$75 per day.<sup>55</sup> Freeing up space in county jails may have an indirect impact on state prison costs, as judges may be more likely to place low-level felons in jail when there is space instead of sentencing them to prison.

Additionally, in 2008, more than 5,500 offenders were diverted into community-based corrections facilities (CBCFs) that receive capital and operations funding from the state, which totaled \$57.1 million in 2008. CBCFs are residential facilities with rehabilitative programming, such as drug treatment, vocational training, and education. CBCFs are generally dormitory-style facilities that are smaller than prisons. Each major urban area except Cuyahoga County (Cleveland) has a CBCF, and Cuyahoga County is considering building one. Some rural counties share a regional CBCF. The average length of stay is six months.

According to the Ohio Criminal Sentencing Commission, an advantage of CBCFs is that there are waiting lists for some of the similar programs in prison so short-term inmates might not complete the program, whereas they start immediately in the CBCF. Most offenders entering CBCFs are drug offenders and low-level felons who would otherwise be sent to prison. Ohio Criminal Sentencing Commission Executive Director David Diroll notes that judges view CBCF placement as a way to ensure felons with a substance abuse problem are drug-free for a substantial period of time.<sup>56</sup> The Commission has determined that CBCFs save taxpayers' money because of shorter periods of

confinement and reduced recidivism rates when compared with prison.

A University of Cincinnati study on CCA and CBCF programs noted: “[W]e conclude that current CCA and CBCF programs divert offenders from prison at no appreciable increased risk to public safety. We believe this conclusion can be made because re-arrest rates for CCA and CBCD offenders were comparable to regularly supervised probationers, and were lower than offenders released from prison.”<sup>57</sup> It is noteworthy that CCA and CBCF programs serve offenders with more serious crimes and longer criminal histories than the typical probationer.

In addition to offenders in CCA and CBCF programs, the third major state-funded component of community corrections is Community Residential Services (CRS). CRS primarily consists of halfway houses, most of which are operated by non-profit organizations. The three groups of offenders in halfway houses are either referred by the Court of Common Pleas, placed there as a sanction of probation or parole supervision, or released inmates participating in the Transitional Control program that allows them to serve up to the 180 final days of their sentence in a halfway house. State funding for CRS in 2008 was \$40.1 million.

Without CRS, an additional 7,400 offenders would have remained in prison or been sent to prison.<sup>58</sup> Even assuming each offender spent only 90 additional days in prison, the cost would be \$46.1 million—more than the CRS budget. Currently, CBCFs and halfway houses operate at or above capacity. According to the DRC, additional halfway house capacity could be utilized if more funding became available. With the exception of the funding streams for offenders participating in the CCA, CBCF, or CRS, funding for probation supervision is provided at the county level through local tax revenues.

In 2005, Ohio adopted a graduated sanctions matrix for offenders being supervised following prison. This grid assists in the implementation of the contin-

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c Technical violations can include any failure to comply with the terms of supervision, such as missing meetings, violating a curfew, testing positive for drugs, and failing to pay probation fees or restitution.



uum of sanctions that was authorized by Senate Bill 2 in 1996. The matrix matches parole sanctions with the severity level of the violation. For example, a reporting violation, a traffic misdemeanor, or change of residence violation is considered low severity while a non-traffic misdemeanor, absconding, and association violations (often associating with a gang) are classified as severe violations. Possible sanctions as alternatives to revocation include increased reporting, electronic monitoring, curfew, drug testing, and placement in a halfway house. The graduated sanctions matrix has achieved more uniform application of such sanctions and reduced the number of parole revocations.<sup>59</sup>

Technical revocations from parole have declined from 556 in 2006 to 343 in 2008.<sup>60</sup> In 2008, another 417 parolees were revoked to prison for both technical violations and a new offense. PRC revocations for technical violations also declined from 1,597 in 2005 to 1,362 in 2008.<sup>61</sup> Another 1,695 PRC offenders were revoked to prison in 2008 for both a new felony and technical violations. Offenders leaving prison under judicial release were returned to prison for technical violations and/or a new offense at a slightly higher rate in 2008, with 905 revoked compared to 885 in 2006.<sup>62</sup> In 2008, 169 inmates under transitional control (i.e. those in halfway houses) were revoked to prison compared with 217 in 2006.<sup>63</sup>

According to DRC Assistant Director Ernie Moore, the most common reasons for technical revocations of offenders under supervision following prison terms are absconding, repeated and ongoing substance abuse, violation of a no-contact order forbidding contact with the victim, and conviction for a serious new misdemeanor, such as domestic violence or assault.

Moore notes that, using this grid, higher risk offenders on parole or PRC who exhibit high-risk behavior are sanctioned more severely and, conversely, lower risk offenders are sanctioned at lower levels using the entire spectrum of community-based sanctions. There is a provision to override the sanction grid with the approval of a supervisor if there are unusual circumstances, such as a low-level offender violating

a no contact order with a victim. Moore credits the sanction grid as the reason for the decline in technical revocations among parole and PRC offenders.

Another innovative development is the ongoing implementation of the Ohio Risk Assessment System (ORAS). The goal of risk assessment instruments is to enable community corrections officers, judges, and other decision makers in the criminal justice system to identify which offenders are most and least likely to recidivate and structure the level of supervision or type of sentence accordingly. The ORAS was created by professors at the University of Cincinnati through in-depth interviews with over 1,800 offenders at pre-trial, community supervision, prison intake, and community reentry as reported in a July 2009 study.<sup>64</sup> After interviews were conducted, offenders were tracked for one year to gather follow-up information on recidivism. Five assessment instruments were created using factors that were related to recidivism: Pretrial Assessment Tool, Community Supervision Tool, Community Supervision Screening Tool, Prison Intake Tool, and Reentry Tool.

With ORAS, each offender is assigned a quantitative score based on information relating to criminal history, family and social support, substance use, criminal attitudes and behavior patterns, education, employment and financial situation, neighborhood problems, and peer associations. The ORAS was validated in the study, meaning that offenders classified as high-risk were most likely to re-offend followed by medium- and low-risk offenders. For example, of community supervision offenders, 66 percent of high-risk re-offenders were re-arrested, followed by 48.7 percent of medium-risk offenders, and 19.5 percent of low-risk offenders.

The Pretrial Tool and Community Supervision Tool were implemented and training on the other instrument is ongoing. Prior to adopting the ORAS, other risk-assessment tools were used, many of which were locally developed and not validated. Virginia's use of a similar risk-assessment tool at sentencing for 7,060 low-level drug and property offenders has succeeded in diverting half of these offenders from prison,

with nearly all of the diverted offenders sentenced to probation and half serving a brief sentence in county jail.<sup>65</sup> The re-conviction rate for these diverted offenders is only 13.8 percent.<sup>66</sup>

Additionally, Ohio has a medical parole policy that was streamlined by House Bill 530 that became effective in April 2009. Through this policy, elderly and incapacitated inmates who do not pose a threat to the public may be released. Of the 21 such inmates released in 2000, none recidivated over a three-year period, although three were re-incarcerated for technical violations.<sup>67</sup>

Finally, Ohio also has a Second Chance to Change program that has allowed some incarcerated offenders to receive intensive drug treatment and become eligible for early release, but this program is available in only three male lockups and one female facility.

### **Proposals for Reforms by Legislators**

In the most recent legislative session, lawmakers considered Senate Bill 22, which would enact numerous corrections reforms. The bill's fiscal note estimates that the net effect of the legislation would be to reduce the need for approximately 3,528 inmate beds, resulting in savings of about \$13.7 million in annual incarceration costs.<sup>68</sup> These savings would be achieved primarily by diverting otherwise prison-bound nonviolent offenders into less expensive community-based alternative punishments and reducing the lengths of stay for certain offenders who are sentenced to a prison term. Among the provisions of the legislation are:

**Release of inmates who have served at least 85 percent of their sentences.** The bill authorizes the Director of the DRC to petition the court for the judicial release of an inmate with a stated prison term of one year or more who has served at least 85 percent of the term. There are important exceptions. Inmates serving a life term or convicted of repeat or serious violent offenses are ineligible. The excluded violent offenses are aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault,

kidnapping, rape, aggravated arson, or aggravated robbery. Various firearms offenders are also excluded. The bill requires that GPS electronic monitoring be used upon release. Also, notice of the hearing on whether to release the inmate must be given to the victim(s) upon request and the court must consider a victim's statement in determining whether to grant release. The DRC estimates this provision would eliminate the need for 500 beds with annual savings of \$2,157,150.

**Reduction of property offense thresholds.** Currently, there is a relatively low \$500 threshold at which theft-related offenses, corrupt activity, and vandalism become a felony rather than a misdemeanor. The legislation would increase that threshold to \$1,000. This provision is projected to eliminate the need for 440 prison beds, yielding a cost savings of \$1.9 million. In a January 2009 survey conducted by the Ohio Criminal Sentencing Commission, 58 percent of judges indicated the current threshold is too low, with 39.7 percent concluding it is about right and 2.3 percent stating it is too high.<sup>69</sup> This change would result in some increased utilization of county jail beds.

**Alternatives to incarceration for child support offenders.** Repeated failure to provide child support would remain a felony under the bill, but the legislation would establish a preference for community control sanctions in such cases. This provision is projected to eliminate the need for 263 prison beds with annual savings of \$1.13 million.

**Earned credit for DRC inmates.** Senate Bill 22 expands the use of earned credits for inmates who have not been sentenced for a violent felony of the first or second degree or a sex offense. Other inmates may receive a monthly credit of up to five days, instead of one day under current law, for successful participation in education, vocational training, penal industries employment, or substance abuse treatment. The maximum earned credit is 8 percent of the sentence. This provision is projected to eliminate the need for 1,270 beds, resulting in annual incarceration cost savings of

\$5.48 million.

**Enhanced geriatric parole policy.** Senate Bill 22 would expand eligibility for medical parole, targeting geriatric inmates who, because of their advanced age and medical condition, no longer are determined by the Parole Board to be a danger to the public. The legislation would also authorize the use of nursing homes for such inmates. Keeping elderly prisoners who do not pose a public safety risk in a nursing home, rather than a prison cell, could significantly reduce inmate health care costs, given that geriatric inmates consume a disproportionate share of Ohio's growing correctional medical costs.

### ***Policy Options Supported by Evidence***

There has been significant progress across the nation in identifying cost-effective correctional alternatives. A useful tool for policymakers is the cost-benefit tool developed by the Washington State Institute for Public Policy that identifies programs that cost-effectively reduce crime and those that do not.<sup>70</sup> The Institute has used this tool to develop a corrections portfolio for policymakers that reflects an allocation among prisons and alternatives that, based on empirical research incorporated into their meta-analysis, is projected to achieve the greatest crime reduction per dollar spent.<sup>71</sup>

Many of the most promising policy approaches for enhancing public safety and controlling costs were endorsed by the American Legislative Exchange Council (ALEC) earlier this year in the form of model legislation unanimously approved by ALEC's Public Safety and Corrections Committee.<sup>72</sup> ALEC is a non-profit organization that includes a third of the nation's state legislators, whose mission is "to advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty, through a nonpartisan public-private partnership of America's state legislators, members of the private sector, the federal government, and general public."<sup>73</sup> The four key model bills that were approved, which can be obtained from ALEC, are:

- The "Recidivism Reduction Act." This piece of model legislation aims to reduce recidivism by requiring a to-be-determined percentage of offenders be supervised in accordance with "evidence based practices." It also mandates a to-be-determined percentage of offender programming funding allocation to "evidence based practices."
- The "Swift and Certain Sanctions Act." This model bill requires community corrections agencies to adopt graduated incentives to reward and/or sanction individuals on parole or probation for compliance or violation.
- The "Community Corrections Performance Measurement Act." This model bill establishes a system for objectively and quantitatively measuring community corrections agencies in several key performance areas.
- The "Community Corrections Performance Incentive Act." This model bill aims to incentivize corrections officers to reduce crimes committed by probationers. It does this by giving probation departments a share of the savings to the state gained from reduced incarceration costs.

These approaches are among those highlighted in the following policy options and are described in greater detail in the June 2010 issue of *Inside ALEC* magazine that focuses on public safety.<sup>74</sup>

**Drug Courts.** Of the 8,514 drug offenders in Ohio prisons, 3,759 were convicted of simple possession, nearly as many as the 3,948 convicted of trafficking.<sup>75</sup> Drug courts are a proven alternative to incarceration for low-level drug offenders. Drug courts offer intensive judicial oversight of offenders combined with mandatory drug testing and escalating sanctions for failure to comply. Drug courts have

drawn bipartisan praise this year from White House Office of National Drug Control Policy Director Gil Kerlikowske, Congressman John Boozman (R-AR), Senator Lisa Murkowski (R-AK), Senator Barbara Mikulski (D-MD) and Senator Richard Shelby (R-AL).<sup>76</sup>

According to the National Association of Drug Court Professionals, the average recidivism rate for offenders who complete a drug court program is between 4 percent and 29 percent, in contrast to 48 percent for those who do not participate in a drug court program.<sup>77</sup> Similarly, the Government Accountability Office reported recidivism reductions of 10 to 30 percentage points below the comparison group.<sup>78</sup>

Drug courts have been found to be cost-effective, as their cost can be less than \$3,000 per participant and their estimated net savings, taking into account both reduced corrections spending and avoided victims costs, range an average of \$11,000 per participant.<sup>79</sup> Additionally, a 2005 study found that five Ohio drug courts were cost-beneficial and reduced re-arrests by 8 percent compared to simple probation and by 30 percent compared to placement at CBCFs, which are residential programs that cost more than \$10,000 per offender.<sup>80</sup> Similarly, a 2002 study of Ohio drug courts by University of Cincinnati Professor Ed Latessa found: "it can be concluded that drug courts in Ohio were reducing recidivism, and that when other factors were controlled, participation in a drug court program reduced the probability of rearrest by 15 percent."<sup>81</sup>

Ohio currently has 55 drug courts, including 19 that utilize services funded by the ADAS. These 19 drug courts that receive state grants are required to use treatment providers certified by the department and must follow the department's protocols outlining appropriate levels of care. For example, if an offender is assessed as in need of short-term outpatient counseling, the treatment agency cannot place them in a residential program.

Policymakers should consider whether additional drug courts may be warranted or whether it is possible to increase the capacity of existing courts. Also, the state should explore developing criteria to better

identify those offenders who could most benefit from drug courts, with the goal of ensuring that limited drug court space is prioritized and that the lowest-risk drug offenders who can succeed on basic probation do not take slots in drug courts that can be better used in other cases as appropriate alternatives to incarceration.

**Hawaii HOPE Court.** Like many states, Hawaii faced a problem of probationers not keeping their appointments and declining to take mandatory drug tests. Probationers could commit numerous infractions before action was taken, leading to revocations to prison that might have been avoided had swift and sure sanctions been used to send a message upon initial violations. The state addressed this challenge by creating Hawaii's Opportunity Probation with Enforcement (HOPE) Drug Court where offenders are ordered to treatment and must call in every morning to determine if they must report to the court to take a drug test. If they fail, they are jailed for several days, usually on weekends in order to preserve employment. Although participants can ultimately be imprisoned for multiple failures, it is rare because the immediate accountability of a short jail stay deters future drug use.

This court has proven in a randomized controlled trial to reduce positive drug screens by 91 percent and cut both revocations and new arrests by two-thirds.<sup>82</sup> According to UCLA researchers, for a group of methamphetamine-using probationers, dirty drug tests declined 80 percent after entering the HOPE program.<sup>83</sup> Similarly, for the 685 probationers who were in the program for at least three months, the missed appointment rate fell from 13.3 percent to 2.6 percent and "dirty" drug tests declined from 49.3 percent to 6.5 percent.<sup>84</sup> Research has also found that HOPE reduces new crimes by more than 50 percent.<sup>85</sup>

A pilot HOPE Court was launched in Clark County (Las Vegas), Nevada, in November 2009. Ohio does not have a court similar to the HOPE court.

**Performance-Based Probation Funding.** In December 2008, Arizona became the first state to im-



plement performance-based adult probation funding pursuant to Senate Bill 1476.<sup>86</sup> Under this incentive-based approach, probation departments receive a share of the state's savings from less incarceration when they reduce their revocations to prison without increasing probationers' convictions for new offenses. Probation departments are required to reinvest the additional funds in victim services, substance abuse treatment, and strategies to improve community supervision and reduce recidivism.

California enacted similar legislation in 2009 entitled the California Community Corrections Performance Incentive Act (Senate Bill 678).<sup>87</sup> Also in 2009, Illinois enacted Senate Bill 1298 that allows counties to obtain additional state funds for local probation programs if they agree to reduce their prison commitments by 25 percent compared to their previous three-year average.<sup>88</sup>

The Pew Center on the States Public Safety Performance Project recommends that a performance-based probation funding system should appropriate 30 percent of savings for new conviction and revocation rates to probation departments and an additional 5 percent if the probation department demonstrates improvement in employment, drug test results, and victim restitution collection. Although quantitative results of Arizona's policy are not yet available, probation departments in the state supported the measure and are pleased with the possibility of additional funding.

Ohio adopted a somewhat similar funding policy called RECLAIM (Reasoned and Equitable Community and Local Alternative to Incarceration of Minors) that gives money to counties that treat juveniles who would otherwise be incarcerated and deducts funds for low-risk juveniles who are sent to state facilities<sup>d</sup>. The policy has been highly successful, as the recidivism rate for moderate risk youth placed through RECLAIM was 22 percent, compared with a 54 percent rate for such offenders in state lockups.<sup>89</sup>

In 2009, the first year of its incentive funding plan, Arizona saw a 12.8 percent decrease in revocations of probationers to prison, including decreases in all but three of the state's 15 counties.<sup>90</sup> There was also a 1.9 percent reduction in the number of probationers convicted of a new felony.<sup>91</sup> In Mohave County, the probation department in 2009 reduced its total revocations by 101 and the percent of its probation case load revoked for a new felony dropped from 4.6 percent to 1.1 percent.<sup>92</sup> This saved the state \$1.7 million in incarceration costs that otherwise would have been incurred and Mohave County officials are expecting the state to fulfill its end of the bargain by appropriating 40 percent of the savings to the County in the next budget.

How did Mohave County achieve these results? In short, they implemented evidence-based practices—those techniques that research has shown reduce the risk of criminal behavior. Assistant Probation Chief Alan Palomino noted: “First we looked at our revocation process and at who we were revoking. There were a lot of technical violators who missed appointments or were just not doing exactly what was required of them on their probation. We looked at ways to motivate them toward cooperation and buying into their own probation process.”

The enhancements to their approach to probation in Mohave County included:

- Training probation officers to utilize motivational interviewing, which is a method of therapy that identifies and mobilizes the client's intrinsic values and goals to stimulate behavior change. Motivation to change is elicited from the client, and not imposed from without. It is assumed that ambivalence or lack of resolve is the principal obstacle to be overcome in triggering change. In an example of motivational interviewing, an officer may ask a probationer ques-

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d No funds are deducted for public safety beds, which include juveniles adjudicated for aggravated murder, attempted aggravated murder, murder, attempted murder, kidnapping, rape, voluntary manslaughter, involuntary manslaughter, felonious sexual penetration, and aggravated arson.

tions designed to elicit self-motivational statements such as, “What are you afraid might happen if things continue as they are?” and “What might be some advantages of changing your behavior?”<sup>93</sup> Motivational interviewing has been designated by the National Institute of Corrections as one of eight evidence-based practices that contribute to reduced recidivism.<sup>94</sup>

- Separating the minimum-risk offenders from the medium- and high-risk populations and varying supervision and case load levels for each group with one officer handling minimum-risk offenders in each city within the county.
- Better identification of the needs of each offender, such as substance abuse programs, educational programs, and anger management.
- Implementing Moral Recognition Therapy, which is a cognitive educational program that helps probationers understand that their own choices have put them into their situations and that they are accountable for their actions.
- Immediate consequences for violations and positive accolades for accomplishments.

In some ways, the Arizona measure is similar to the budgetary provision that the Texas Legislature adopted in 2009 that created the Commitment Reduction Program (CRP) within the juvenile justice system. In 2009, the Legislature cut funding for the Texas Youth Commission (TYC) from \$314 million in 2008 to \$210 million in 2010 and \$205 million in 2011, primarily due to a decline in population.<sup>95</sup>

Effectively, part of the savings—\$45.7 million—

was allocated for the CRP through which county juvenile boards that choose to participate may obtain additional funds for community-based programs in exchange for agreeing to target fewer commitments to TYC. Rider 21 to the General Appropriations Act requires that the Texas Juvenile Probation Commission (TJPC) pay TYC \$51,100 for each youth committed to TYC in excess of 1,783 youths per year.<sup>96</sup> However, it appears this provision will not be invoked since TYC commitments have fallen approximately 40 percent this year as juvenile probation departments are on pace to meet and, in many cases, come in far under, their targets.<sup>97</sup> This is particularly notable given that commitments were already at historically low levels.

Though the CRP, departments submit funding plans to TJPC that are linked to the number of youths they pledge to divert from TYC. For example, if a department’s three-year average of commitments to TYC is 25, they can obtain their full share of new funding by pledging to divert five youths from TYC, a figure that is based on the statewide goal of 1,783 or fewer commitments. The department can also obtain partial funding by pledging to divert fewer than five youths.<sup>e</sup>

Plans for new or expanded programs must include supporting evidence or documentation that the new program or service has had positive outcomes in other jurisdictions. Similarly, plans for enhanced supervision or specialized case loads must include evidence of success. Evidence of positive outcomes must also be provided for proposed residential services as well as a description of how the family of a supervised youth will be incorporated into the rehabilitative efforts.

Departments will be evaluated according to the following performance measures:<sup>98</sup>

- Number of juveniles served,
- Percent of juveniles completing the program(s),
- Percent of juveniles with improved out-

e The Commitment Reduction Program does not place a legal cap on the number of youths committed to TYC. Judges may still commit youths for any felony offense or violations of probation. The county juvenile board, which includes the judges in the county who hear juvenile cases, decides whether to participate in the program.

comes (e.g., reduction in substance use or increase in school attendance),

- Number of juveniles committed to TYC,
- Number of juveniles certified to stand trial as adults,
- Re-offending (recidivism) as measured by one-, two-, and three-year re-referral/re-arrest and incarceration rates for all juveniles participating in the program,<sup>f</sup> and
- Cost per youth diverted.

The guidelines specify that maximum diversion funding shall not exceed the rate of \$140 per juvenile diverted per day or \$51,100 annually. The majority of the funds will support non-residential programs that cost much less than this maximum amount, though this figure still compares favorably to the \$99,000 annual cost of TYC commitment in 2009.<sup>99</sup> Under the guidelines, departments that exceed the targets for TYC commitments for 2010 to which they agreed will have their share of this new funding reduced or eliminated in 2011.

If a funding incentive plan similar to the juvenile frameworks in Ohio and Texas and the Arizona adult framework was implemented and resulted in half as many low-level nonviolent (F4 and F5) inmates going to prison each year who are currently staying for an average of 9 months, that would mean 5,000 fewer inmates. That would translate into a savings of \$126.34 million based on the \$69.23 per day prison cost. If 40 percent of those savings were allocated for the community-based alternative, net savings would be \$75.8 million per year, or over \$150 million per biennium budget. Given that there are seven prison inmates for each Ohio prison guard, a 5,000 reduction in the prison population would mean that there would be a need for 714 fewer guards, thereby generating tens of millions of dollars in additional savings. Though guards represent the largest component of DRC's staff, some other staff categories, such as health care workers,

could also be trimmed commensurate with a reduction in the prison population.

**Mandatory Probation and Treatment Requirements for Certain Drug Possession Offenders.** This diversion policy could be applied to individuals caught with small quantities of drugs that are for personal use. Of the \$69.23 spent per day to incarcerate a drug possession offender in Ohio, less than \$0.35 per day is spent on treatment services.<sup>100</sup> While drug offenders diverted from prison should pay for their own treatment if they have the funds, even if the state pays for it, the average cost of treatment in Ohio is \$1,600 compared to \$25,269 for prison.<sup>101</sup>

A 2002 poll found that 60 percent of Ohioans support drug treatment in lieu of incarceration.<sup>102</sup> In 2000, more than 60 percent of California voters passed Proposition 36, requiring that drug possession offenders be redirected from prison into treatment. According to a UCLA study, this measure saved the state \$1.4 billion over five years, dramatically reducing incarceration costs for minor drug offenders.<sup>103</sup> In Arizona, which also implemented this policy more than a decade ago, a study by the Arizona Supreme Court found that 77 percent of drug offenders were drug-free after participating in treatment.<sup>104</sup>

National research also supports the efficacy of treatment. The Drug Abuse Treatment Outcome Survey of 10,000 participants found that residential treatment resulted in a 50 percent reduction in drug use and 61 percent reduction in crime while outpatient treatment resulted in a 50 percent reduction in drug use and 37 percent reduction in crime.<sup>105</sup>

The American Psychiatric Association defines addiction as "a chronically relapsing disorder that is characterized by three major elements: (a) compulsion to seek and take the drug, (b) loss of control in limiting intake, and (c) emergence of a negative emotional state when access to the drug is prevented" and attributes relapse to physical changes in the brain.<sup>106</sup> Of course, this does not mean relapse should not result

<sup>f</sup> There are many ways to measure recidivism. Typically, the re-incarceration rate for a program will be the lowest rate, followed, respectively, by the re-adjudication rate and the re-arrest rate, as not all arrests lead to adjudications and not all adjudications lead to incarceration.

in sanctions, including the possibility of incarceration, but outpatient or residential treatment may still be appropriate in many of these cases. Dr. Nora Volkow, Director of the National Institute on Drug Abuse, stated, “Research findings show unequivocally that drug treatment works and that this is true even for individuals who enter treatment under legal mandate.”<sup>107</sup>

**Create Clear Criteria for Diversion Programs.** The Council of State Governments Justice Center July 2010 report on Ohio found that many probation departments use programs such as community corrections facilities for low-risk nonviolent offenders for whom these programs actually increase recidivism because they may lose their job and be comingled with higher risk offenders who are negative influences.<sup>108</sup> Accordingly, the report concluded that better outcomes both in terms of public safety and cost control could be achieved by instituting clear criteria for which types of offenders should go into community corrections facilities and other diversion programs that cost less than prison but more than basic probation.<sup>109</sup>

**Graduated Sanctions for Probationers.** Currently, there is no published statewide data documenting the number of probationers revoked to prison or technical violations, the type of technical violation(s) involved, and the probationers’ underlying offense. Such data would be valuable for Ohio policymakers, as alternatives to revoking probationers for technical violations could address much of the projected growth in the prison population.

Graduated sanctions are a proven approach to reducing revocations. In a system of graduated sanctions, each technical violation is met with a swift and certain response, such as increased reporting, a curfew, or even “shock-nights” in the county jail. This approach has been recommended by the American Bar Association based on evidence that it reduces re-offending and revocations to prison for technical violations.<sup>110</sup>

One study found that a graduated sanctions program involving frequent drug testing reduced re-

cidivism from 27 percent to 19 percent.<sup>111</sup> A graduated sanctions approach addresses the long-standing problem of a probationer being allowed to repeatedly violate the terms of probation with a response until so many violations accumulate that the probationer is revoked to prison.

Ohio probation departments are authorized by state law to use a range of sanctions including curfews, increased reporting, electronic monitoring, house arrest, and jail time. However, Diroll notes that jail space is not always available and rural areas, in particular, often lack the resources to implement certain sanctions.<sup>112</sup> Also, a probationer can insist on a judicial hearing before any new condition of probation is imposed in response to a violation, which makes it more challenging to swiftly impose sanctions.

In contrast, in Oregon and Maine, a probation officer can impose most types of sanctions without returning to the judge. Additionally, Georgia implemented a policy authorizing the sentencing judge to designate the maximum type of sanction the probation officer may impose, which has resulted in a 70 percent decline in the average number of days that probation violators spent in local jails awaiting disposition of their violation cases and a significant reduction in the time that probation officers spend in court hearings.<sup>113</sup>

The method of handling probation violations varies among Ohio probation departments. Gayle Dittmer, President of the Ohio Justice Alliance for Community Corrections, explains that in some departments each violation is addressed by the judge, an arguably less efficient approach. Other departments respond to violations through an internal administrative hearing process with approval from the court. As a result of the administrative hearing, the court signs off on the imposition of additional conditions of probation. However, unlike other states that have statutorily authorized probation departments to administratively resolve violations, the probationer must waive his or her right to be heard before the judge.

Dittmer notes that there is also at least one Ohio jurisdiction where probation violations are addressed



by a magistrate. More departments in Ohio could create an administrative hearing process and lawmakers could consider legislation allowing for this process to be used to impose sanctions, such as a curfew or increased reporting, without the probationer having a right to a court hearing.

Oregon provides another example of how sanctions can be used in lieu of revocations for technical violators. Given that offenders who are employed are three times less likely to recidivate,<sup>114</sup> the state uses weekend jail time for some technical violators who are employed but do not pose a threat to public safety. For unemployed parolees, the state's use of work crews has proven to be effective in reducing recidivism.<sup>115</sup>

In addition to sanctions, positive incentives for good behavior can be offered. Among the incentives in a grid used by the Harris County Adult Probation Department (Houston, Texas) are double time towards the completion of the probation term, reduced reporting, bus tokens, and written commendations.<sup>116</sup>

There is no statewide information available regarding the extent to which probation departments in Ohio utilize graduated sanctions. More research is needed to determine whether some departments could enhance their use of graduated sanctions, perhaps through implementing a grid similar to the one that has been successful in reducing revocations of parolees and PRC offenders.

**Earned Time Credits and Early Termination.** In 2008, Arizona enacted legislation that gives probationers good time credit for time served when they fully comply with all terms, such as restitution. Probationers receive 15 days of credit for every 30 days they are in compliance. Nevada has also adopted a statute authorizing a reduction in the probation term for good behavior. These policies provide probationers an incentive to perform well. Research has shown that positive incentives work to change offender behavior.<sup>117</sup>

Also, by reducing the total number of offenders on probation, there are fewer opportunities for technical revocations. This policy could have a significant

impact in Ohio because the state has 57 percent more probationers than the national average. Given that the state's crime and incarceration rates are in line with the national average, this high number of probationers is likely due to offenders serving long probation terms. Yet, most probationers who re-offend do so in the first two years—and the majority of those re-offend within the first eight months.<sup>118</sup>

Ohio policymakers should also consider the use of early termination from probation for offenders who are determined to be at the lowest risk level and have fully satisfied all their obligations, including restitution to the victim. In particular, a study could examine whether criteria or guidelines would be beneficial in guiding the decisions of probation officers and judges. Under current law, the sentencing judge has discretion to set the period of probation up to five years and to modify that period up or down based on the performance of the offender.

According to retired Judge Mark Schweikert, Executive Director of the Ohio Judicial Conference, a motion for early termination may be initiated by the offender, but more often occurs on the court's own motion based on a report from the supervising officer. This is most likely to occur in cases where sizable restitution is ordered and the offender completes payment sooner than expected. Schweikert notes that some courts use this tool to manage supervision case loads, but that the prevailing practice is to reduce the supervision level rather than terminate the supervision altogether.

**Cost-Effective Alternatives to Prison for Child Support Offenders.** Failure to pay child support is a felony upon the second occurrence, making it eligible for prison time. When a parent does not pay child support, they violate an important moral and legal obligation. However, incarceration is costly to taxpayers and may contribute to an offender's lack of earnings and inability to pay support. Some 693 offenders entered Ohio prisons during 2008 for non-payment of support. As of January 2009, 406 non-support inmates were on hand, which reflects their average stay

of nine months.<sup>119</sup>

By comparison, in Texas with more than twice the population of Ohio, there are only 28 non-support offenders in prison and short stays in county jails are more commonly used for the purpose of coaxing individuals to pay support who have sufficient funds but refuse to do so.<sup>120</sup>

Ohio is seeking to reduce the number of non-support offenders in state prisons through pilot programs. In 2008, funding began through the CCA for non-support pilot programs in Butler, Clermont, Delaware, Franklin, Hamilton, Lorain, and Lucas counties. The goal of these programs is to divert offenders who otherwise would have been sent to prison for failure to pay child support. The pilot programs have increased support payments by 71 percent.<sup>121</sup> The cost of the pilot programs is \$500,000, but they have saved \$670,000 in prison costs and resulted in the collection of more than \$600,000 in support.<sup>122</sup>

The evidence of the success of the current pilot programs in dramatically increasing collections while diverting offenders from prison is encouraging. These results support the provision in Senate Bill 22 that would establish a preference for community control sanctions in non-support cases. Additionally, the DRC has identified at least seven additional counties that have a significant number of non-support offenders who would be appropriate for such a pilot program.

**Mental Health Courts.** Mental health courts are specialized courts where the judge oversees the supervision and treatment of the offender. A mental health court diverts certain mentally ill offenders from traditional sentencing, redirecting them into appropriate mental health treatment. A clinical case manager screens offenders for participation in the court using an instrument designed to identify individuals with serious mental disorders. Defendants with conditions, such as major depression and schizophrenia, that are on Axis I of the Diagnostic and Statistical Manual of Mental Disorders are typically eligible.

Rather than simply issuing a sentence and going to the next case, the judge coordinates mental health

services for the offender and monitors compliance. Smaller probation case loads are typically used, allowing case managers to effectively monitor participants' compliance with the treatment plan. There are 24 adult mental health court dockets in Ohio.<sup>123</sup>

A 2007 Kent State University study found that the Ohio mental health courts examined were effective in reducing re-incarceration among participants as compared with a control group of similar mentally ill offenders who did not go through the mental health court.<sup>124</sup> National research has been similarly positive.

A RAND Institute study of mental health courts found that "the leveling off of mental health treatment costs and the dramatic drop in jail costs yielded a large cost savings at the end of [its] period of observation."<sup>125</sup> For example, in the Washoe County Mental Health Court in Reno, Nevada, the 2007 class of 106 graduates went from 5,011 jail days one year prior to mental health court to 230 jail days one year after, a 95 percent reduction.<sup>126</sup> Strikingly, the cost to the system was reduced from \$566,243 one year prior to mental health court to \$25,290 one year after.<sup>127</sup>

An evaluation of the Santa Barbara County Mental Health Court found that the participants in the mental health court averaged fewer "jail days after treatment than they had before, with a greater reduction in jail days for participants in the mental health court [than for those in the] traditional judicial system."<sup>128</sup> The American Journal of Psychiatry reported that "participation in the mental health court was associated with longer time without any new criminal charges or new charges for violent crimes."<sup>129</sup> Similar results have been achieved in the Delaware Mental Health Court. Of the 64 offenders who participated in the first three years of the program, 57 completed the program, of which 53 did not recidivate within six months of completion.

Mental health courts are relatively inexpensive to create compared to the potential benefit. Merrill Roter, the Medical Director and Co-Project Director of the Bronx Mental Health Court, notes that some of the programs "cost as little as \$150,000 while others cost multiples of that."<sup>130</sup> Ohio policymakers should study whether there is need to expand the capacity of

the state's mental health courts to serve additional offenders.

**Enhanced Performance Measures.** While performance measures do not themselves control the growth in the prison population or reduce recidivism, they can indirectly do so by assisting policymakers in identifying effective programs and creating an incentive for corrections agencies to improve outcomes. Some improvements in this area are currently underway.

First, the DRC is developing a performance measure reporting process. It is an inmate-oriented report that begins when an offender enters prison and is assessed for criminogenic needs. Next, the process will determine whether the inmate is scheduled for appropriate programs, whether they complete such programs by the time they exit prison, and whether, if they leave under supervision, the Adult Parole Authority follows up with appropriate programming. Eventually, the DRC will link this individual inmate information with its recidivism database. This is not yet possible due to significant levels of missing and poorly entered data.

Second, the DRC is also developing tracking mechanisms and reports for the American Correctional Association (ACA) 4th Edition Standards. The DRC currently utilizes a monthly operational report to track certain activities that they have identified as being related to recidivism reduction. These activities are favorable final release from supervision; number of supervision violation hearings; frequency of family involvement activities; community service hours; and the number of offenders participating in in-house sex offender, substance abuse, employment, and Thinking for a Change groups. Additionally, the DRC Research Bureau produces recidivism data, including an annual recidivism report segregated by each Adult Parole Authority region and by units within the regions.

The DRC's annual report includes the number of inmates participating in education programs, such as the GED program, but the number of offenders who complete each program is not reported, nor is the av-

erage advancement in grade level or proficiency of inmates in an educational program. This data could be assessed through an intake and outtake exam.

Most critically, there is no statewide data or performance measures on probation, due to the fact that probation is operated by county departments. However, in Texas, where probation is also a local function, departments report data to the state on total revocations to prison and technical revocations. The Ohio Supreme Court is currently examining the problem of a lack of statewide data on probation. The ACA recommends probation performance measures for recidivism, substance use, restitution collected, and compliance with "no contact" orders.

There should also be performance measures for CRS to identify the halfway houses that are most effective based on recidivism so that this information can be used when deciding whether to renew contracts.

Instituting additional performance measures would enhance transparency, promote accountability for results, and allow policymakers and the public to better assess the effects of legislative and administrative policy changes on performance.

**Electronic Monitoring.** In fiscal year 2009, 622 DRC offenders were monitored via GPS or radio frequency monitoring.<sup>131</sup> Of these cases, 396 or 64 percent were successfully terminated, meaning that the offender completed the term of monitoring without committing a new crime or technical violations.<sup>132</sup> The DRC uses electronic monitoring for CRS offenders who are in halfway houses and in conjunction with an appropriate home placement for offenders who are successful in employment and compliance while at the halfway house.<sup>133</sup> On average, offenders are in the transitional control electronic monitoring phase for 60 days. There is no statewide data on the number of probationers subject to electronic monitoring.

Electronic monitoring has proven to be effective in supervising offenders. Among the types of electronic monitoring, GPS is the most advanced because, while radio frequency monitoring allows the supervising authority to determine if the offender is at home, GPS

tracks an offender wherever they go. This tool enables the supervising agency to determine if the offender is at work, attending treatment, in a prohibited zone, violating a curfew, or traveling out of state.

A Florida study found GPS has a “prohibitive” effect on absconding.<sup>134</sup> Offenders in the study were 89 percent to 95 percent less likely to be revoked for a new offense if they were on electronic monitoring.<sup>135</sup> This may be because monitored offenders realize they will be caught for violations. The most sophisticated GPS systems even have crime scene correlation, which allows police to determine if any monitored probationer or parolee was at the scene of a crime.

Ohio policymakers and probation departments should consider whether the use of electronic monitoring should be expanded, particularly as an intermediate sanction for other low-risk community supervision offenders who abscond but do not commit another offense.

**Geriatric Parole.** Given that elderly inmates consume a disproportionate share of growing prison health care costs, and the continued graying of the prison population in Ohio and other states, this is an important area for Ohio policymakers to examine.

Studies have shown that offenders over 60 have a minimal recidivism rate.<sup>136</sup> For example, since Oklahoma adopted a geriatric release law in 2000, 135 inmates have been released with none recidivating.<sup>137</sup> While inmates who are dangerous should not be released simply because they are old, screening such inmates to identify those who no longer pose a risk or could be safely placed in a correctional nursing home is a sound approach.

Geriatric parole legislation signed in September 2010 by California was estimated to possibly save the state \$200 million a year.<sup>138</sup> While there is no reliable estimate of what the potential savings in Ohio would be, simply adjusting this number for Ohio’s prison population would amount to potential savings of approximately of \$60 million. The Vera Institute issued an April 2010 report that highlights medical parole developments in states across the nation and makes

recommendations on best practices.<sup>139</sup>

**In-Prison Work Programs.** Policies that enhance the employment of offenders can reduce recidivism, thereby protecting public safety and helping to control the prison population. Without a marketable skill, inmates face particular difficulty finding employment upon release, increasing the odds that they will resume a criminal lifestyle. An ex-offender who is gainfully employed is much less likely to commit another crime and a Washington State Institute for Public Policy study found that correctional industries programs reduce recidivism by 6.4 percent.<sup>140</sup> Ohio Penal Industries (OPI) operates 42 shops employing 2,081 inmates. OPI consumes no general revenue, as the more than \$32 million in sales covers all expenses. The state should study whether it would be feasible to expand OPI to include more inmates even as the program remains self-supporting.

**Employers’ Liability for Hiring Ex-Offenders.** Ohio addressed the issue of ex-offenders being denied occupational licenses by enacting House Bill 130 that became in law in April 2009.<sup>141</sup> It eliminates most types of offenses as barriers to obtaining an occupational license for otherwise qualified individuals. However, many employers will not hire ex-offenders because of the liability risk associated with negligent hiring.

In a national study on this topic, the Urban Institute noted, “The high probability of losing coupled with the magnitude of settlement awards suggest that fear of litigation may substantially deter employers from hiring applicants with criminal history records.”<sup>142</sup> That fear is not without basis. Employers lose 72 percent of negligent hiring cases with an average settlement of more than \$1.6 million.<sup>143</sup>

Ohio can address this by immunizing employers from being sued simply for hiring an ex-offender. Litigation is particularly unjustified where the conduct giving rise to the suit has no connection to the ex-offender’s criminal background. At the least, Ohio can statutorily eliminate punitive damages in such suits.

Punitive damages are based on violating public policy, but public policy should encourage the employment of ex-offenders.

### ***Conclusion and Future Directions***

Ohio has implemented significant programs that are diverting offenders from prison, such as the CCA, CCBE, and CRS initiatives. The ORAS promises to better inform decisions regarding sentencing which, based on the Virginia experience, may lead to the diversion of more nonviolent, low-risk offenders from incarceration. Nonetheless, legislators, prosecutors,

and other stakeholders recognize that the state's dire fiscal situation requires additional policy strategies to ensure that limited corrections dollars are spent in a way that maximizes results.

As demonstrated here, there are many options supported by evidence that policymakers can consider to control costs and protect public safety. Additional data, particularly relating to the probation system, would likely assist policymakers in making sound decisions. By implementing targeted policy reforms supported by research, Ohio can avoid being forced into either building more prisons or, like California, releasing thousands of potentially dangerous inmates who are unprepared to reenter society.





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## About the Author

Marc A. Levin, Esq., is the director of the Center for Effective Justice at the Texas Public Policy Foundation. Levin is an attorney and an accomplished author on legal and public policy issues. In 2007, he was honored in a resolution unanimously passed by the Texas House of Representatives that stated, “Mr. Levin’s intellect is unparalleled and his research is impeccable.” Levin’s criminal justice work with the Foundation has been cited by leading policymakers as playing a key role in Texas reforms that have saved \$2 billion in avoided corrections costs and contributed to the state having its lowest crime rate since 1973.

Levin regularly testifies before legislative committees, advising policymakers and agencies on conservative criminal justice solutions that improve public

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Levin served as a law clerk to Judge Will Garwood on the U.S. Court of Appeals for the Fifth Circuit and Staff Attorney at the Texas Supreme Court. In 1999, he graduated with honors from the University of Texas with a B.A. in Plan II Honors and Government. In 2002, Levin received his J.D. with honors from the University of Texas School of Law. Levin formerly served as State Vice Chairman of the Young Conservatives of Texas.

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