

Missouri Working Group on Sentencing and Corrections
Consensus Report
December 2011

SUMMARY

Missouri's prison population has doubled and corrections spending has tripled during the past 20 years. In an effort to get taxpayers a better public safety return on their corrections dollars, state leaders created the Missouri Working Group on Sentencing and Corrections. The Working Group conducted extensive analysis of state data and trends and has reached consensus on a package of reforms that will improve public safety, hold offenders accountable, and contain corrections costs by strengthening community supervision. This package is estimated to reduce Missouri's projected prison population at the end of FY2017 by 245 to 677 inmates at a savings of \$7.7 to 16.6 million.ⁱ The Working Group recommends that \$4 million of those savings be directed to swift and certain sanctions at the local level and a portion of the remaining savings be reinvested in evidence-based practices.

INTRODUCTION

Like most state correctional systems, Missouri's prison population grew dramatically during the past two decades, doubling from 14,074 in 1990 to 30,446 by the end of 2005. Since that time, the prison population has leveled off and grown just one percent to 30,729 inmates in July of 2011.ⁱⁱ

This growth in the prison population produced an even greater spike in state corrections spending. From 1990 to 2009, spending on corrections increased by 249 percent.ⁱⁱⁱ During the past decade, general fund spending on corrections increased 39 percent while overall state general funds spending increased by 14 percent.^{iv} By fiscal year 2011, the Department of Corrections budget had grown to more than \$660 million.^v

Yet all this spending on corrections has not produced commensurate improvements in public safety. While the Department of Corrections has improved its recidivism rate in recent years, nearly 4 in 10 inmates released from prison will return within two years.^{vi} Most importantly, despite the large increases in the size and cost of the prison system, crime rates in Missouri have not kept pace with the national decline (see table below).^{vii} In fact, 19 of the states that experienced a decline in crime also reduced their imprisonment rates over the past decade—including Missouri neighbors Illinois, Kansas and Oklahoma.^{viii}

1999-2009			
	Overall Crime Rate	Violent Crime Rate	Imprisonment Rate
US	-19%	-18%	+2%
MO	-15%	-2%	+7%

Of course, every dollar spent on corrections is a dollar that cannot be spent on education or economic development, or applied to tax relief. Indeed, the percentage of the state general funds consumed by corrections increased from 5.8 percent to 7 percent from 2000 to 2009.^{ix} According to census data, 1 in 6.4 full-time state employees in Missouri now works for the Department of Corrections.^x

Seeking a better public safety return on its corrections dollars, and facing a state budget shortfall of more than \$700 million,^{xi} Missouri’s state leaders reached across party lines and the three branches of government earlier this year to form the Missouri Working Group on Sentencing and Corrections. This report reflects the work of this body and serves as its recommendations to the General Assembly.

THE MISSOURI WORKING GROUP ON SENTENCING AND CORRECTIONS

In his 2010 State of the Judiciary speech, then-Chief Justice William “Ray” Price succinctly identified Missouri’s most pressing problem in sentencing and corrections:

“Perhaps the biggest waste of resources in all of state government is the over-incarceration of nonviolent offenders and our mishandling of drug and alcohol offenders. It is costing us billions of dollars and it is not making a dent in crime.”

In 2011, Judge Price, Governor Jay Nixon, President Pro Tem of the Senate Robert Mayer, and Speaker of the House Steven Tilley agreed that it was time to take a fresh look at the effectiveness of Missouri’s corrections system and develop strategies to reduce recidivism, improve public safety and lower the burden of corrections on taxpayers. These leaders requested technical assistance from the Public Safety Performance Project of the Pew Center on the States and the U.S. Department of Justice as part of the Justice Reinvestment Initiative, and Missouri was selected to participate. Pew has provided or funded similar assistance in more than a dozen states including Missouri neighbors Arkansas, Kansas and Kentucky.

This unprecedented bipartisan, inter-branch collaboration was formally announced at a press conference in August during which Judge Price, Governor Nixon, Senate Pro Tem Mayer, Speaker Tilley, and Attorney General Chris Koster introduced the Missouri Working Group on Sentencing and Corrections and outlined its charge. Specifically, the goal of justice reinvestment

in Missouri – and the charge that state leadership established for the Working Group – is to advance state policies, programs and practices that will:

- Intelligently reduce the prison population and corrections costs;
- Improve public safety by reinvesting a portion of the savings in strategies that reduce crime and recidivism; and
- Hold offenders accountable by strengthening community-based supervision, sanctions, and services.

The Working Group held its first meeting in June 2011 and has been meeting regularly since. The co-chairs of the Working Group, which includes members from the state legislative, executive, and judicial branches, as well as local government, are Senator Jack Goodman (R) and Representative Chris Kelly (D).

With assistance from Pew and its partners, Applied Research Services, Inc. and the Crime and Justice Institute, the group conducted extensive new analysis of state data and programs. Research included: review of national trends in sentencing and corrections; discussion of evidence-based practices in community supervision; analysis of Missouri’s sentencing and corrections data; and audits of corrections agency policy and state law. Through this analysis, the Working Group was able to forge consensus on several recommendations that will help Missouri achieve more public safety at less taxpayer expense.

Throughout its inquiry and deliberations, the Working Group has sought advice and feedback from key stakeholders across the criminal justice system. The group formed a local task force that includes crime victims’ advocates, sheriffs, county officials, circuit court judges, prosecutors, public defenders, and a police chief. This task force ensured that these critical voices outside of state government had direct input into the process. This helped the Working Group craft recommendations that will enhance public safety strategies at the local level, limit unintended consequences for counties and other localities, and adequately fund new initiatives.

DATA ANALYSIS

The Working Group’s foundation was established with a data-driven analysis of Missouri’s sentencing and corrections system.

In 1990, there were 8,868 admissions to the Department of Corrections. Over the course of the next 15 years, when most of the growth in Missouri’s prison population occurred, that number increased by 142 percent to 21,432. During this period, time served for new court commitments (both length-of-stay and percentage of sentence served behind bars) increased for violent offenders but remained largely unchanged for non-violent offenders.

Focusing then on admissions to prison, the analysis found that the overwhelming majority, and an increasing share, of people admitted to prison in Missouri are already under correctional supervision by the state and admitted as revocations of probation and parole.^{xii}

Accounting for nearly three-quarters of admissions (71 percent), revocations are a major driver of Missouri’s prison population. This hasn’t always been the case: In 1990, 55 percent of

Missouri's admissions were for revocations of probation and parole. Nearly two-thirds of this 16 percentage-point increase is the result of an increase in probation revocations.

Given these changing dynamics, the Working Group wanted to shed further light on this population and sought to answer three key questions about revocations: what types of violations have these offenders committed; what types of crimes resulted in their original placement onto probation or parole; and how long had these offenders been supervised prior to their admission to prison?

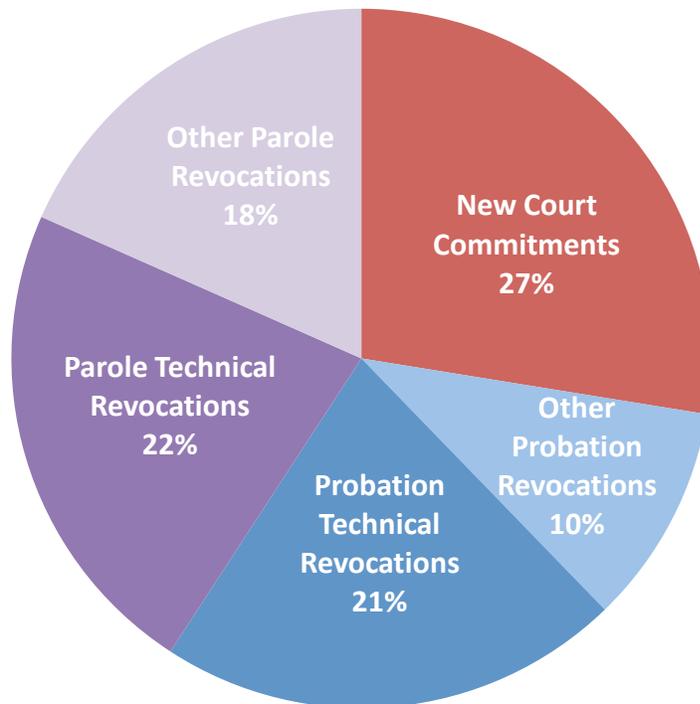
Revocations for Technical Violations

A significant number of Missouri's revocations to prison occur because the probationer or parolee did not follow the rules of supervision. In fact, the majority of revocations occur not because of a new criminal conviction but because the offender had committed a "technical" violation.^{xiii}

In 2010, revocations of probation accounted for 31 percent of the 18,550 admissions to the Department of Corrections. Of these probation revocations, more than 3,800 (21% of all admissions) were categorized by the Department of Corrections as technical revocations of supervision. Revocations of parole accounted for 40 percent of admissions. Of these parole revocations, more than 3,900 (22% of all admissions) were categorized by the Department of Corrections as technical revocations.

All told, revocations for technical violations of probation and parole account for more than 7,800 (43 percent) of Missouri's admissions to prison. On average, these offenders serve 10 months behind bars.

Admissions to Prison (2010)



*Two percent of admissions are categorized as "other."

Revocations of Non-violent Offenders

The probation population consists of less serious, non-violent offenders: only 13 percent of offenders on probation were convicted of a violent or sex offense, compared to 54 percent of the prison population.

Though they were not sentenced to prison in the first place, many of these non-violent offenders make their way into the prison system as probation revocations. Eighty-three percent of probationers revoked to prison were on probation for a non-violent offense. More often than not these revoked probationers leave prison as parolees, and then frequently return as parole revocations. As a result, almost two-thirds of all admissions (63 percent) are offenders whose underlying conviction was for a non-violent drug or property crime.

This revolving door is particularly evident among drug offenders. Drug offenses accounted for 5,175 admissions in 2010. Most of these were convictions for possession of a controlled substance—not sale, manufacturing, delivery, distribution or trafficking. But the vast majority of these admissions are probation and parole revocations, not new court commitments. Of the prison admissions for drug possession between 2000 and 2010, 81 percent resulted from a

revocation. Put another way, a significant number of the inmates convicted of a drug offense entered prison not because of the seriousness of the underlying offense but because they violated the rules of community supervision.

These findings led the Working Group to consider best practices from other states that have been proven to ensure this population succeeds on community supervision, reducing crime and victimization and turning drug-abusing offenders into taxpayers rather than tax burdens.

Time on Supervision

By definition, offenders entering prison as a revocation have spent time on probation or parole. The average probation term in Missouri is 4.5 years, 40 percent longer than the national average of 3 years and 2 months.^{xiv} Yet almost half (48 percent) of revocations occur in the first year of supervision and the vast majority (83 percent) occur before the end of the second year.^{xv}

In other words, offenders who are sent to prison for violating the conditions of probation most often do so in the first two years of supervision. By supervising offenders long after they are at the highest risk to recidivate, Missouri is not effectively allocating its limited supervision resources.

At the same time, Missouri has placed additional burdens on its probation and parole agency. From 2001 to 2010, the supervision caseload in Missouri increased from 62,759 to 73,904 (18 percent).^{xvi} During this same period, the Division of Probation and Parole's budget increased by less than eight percent as the overall Department of Corrections' budget grew 32 percent.^{xvii}

POLICY RECOMMENDATIONS

In order to accomplish its goals of improved public safety, enhanced offender accountability, and reduced corrections spending, the Working Group focused on strengthening community supervision and addressing revocations to prison for violations of probation and parole.

Equipped with the findings above, the Working Group sought to develop policies that will deter violations of supervision, and to ensure that when violations do occur, they are met with sanctions that are proportionate and applied with swiftness and certainty. The recommendations below achieve that aim by giving probation and parole the resources and mandate it needs to effectively supervise, sanction, and change the behavior of offenders.

These recommendations are data-driven, based on research of what works to reduce recidivism, and include a number of best practices from around the country.^{xviii} In particular, several principles of evidence-based practice in community supervision guided the Working Group as it developed its recommendations:

In the absence of any policy reform, Missouri's prison population is projected to remain stable over the next few years, resulting in a population of approximately 30,787 inmates by June 2016. The reforms below will reduce the June 2016 population by approximately 245 to 677 inmates at a net savings of \$3.7 to \$12.6 million.

- Target high-risk offenders, who will benefit most from intensive supervision and programming.
- Frontload supervision resources by focusing on the first days, weeks, and months after offenders are placed on probation or parole, the period when they are most likely to commit a new crime.
- Respond to violations with swift, certain and proportional sanctions by utilizing a continuum of responses—from low-intensity community-based options to incarceration—and applying the sanctions according to the seriousness of the violations.
- Incorporate incentives for offenders to comply with the conditions of supervision.
- Balance surveillance with treatment by combining risk-reduction programming with standard monitoring by supervision officers.

The first set of policy recommendations below addresses revocations to prison by incorporating several of these principles. The second set of recommendations will help ensure these reforms are sustained through quality implementation, ongoing oversight, evaluation, and additional study.

A. Strengthen Community Supervision and Reduce Revocations to Prison

1. Earned discharge from probation and parole: Incentivize offenders who comply with the conditions of supervision by awarding a credit that reduces the term of supervision by 30 days for every 30 days of compliance. This policy incorporates incentives to enhance offender motivation and deter violations; moves successful offenders off supervision so that probation and parole officers can focus on high-risk offenders; and frontloads supervision resources during the time period that offenders are most likely to commit a new crime or break the rules. Specifically, the policy will:

- Apply to all probationers and parolees with judicial or Parole Board concurrence.
- Award credits in the absence of violation reports or motions to revoke community supervision.
- Suspend credits pending the outcome of a revocation hearing and rescind all credits if revocation occurs; additionally, no credits are earned while an offender is on absconder status.

2. Administrative jail sanctions: Grant probation and parole officers the authority to utilize short jail stays as a sanction for violations of supervision. Under current law, probation and parole does not have this authority unless explicitly included in the court or Board order; this change would allow probation and parole to impose the sanction unless it is explicitly forbidden in the court or Board order. In addition to allowing probation and parole officers to respond to violations with swift, certain, and proportional sanctions, the policies provides another option –

short of revocation – for responding to technical violations of supervision. Specifically, the policy will:

- Limit the first jail sanction to no more than 48 hours and the total amount to no more than 15 days.
- Require the Department of Corrections to reimburse counties at a rate of \$30/day for the jail sanctions rather than the current reimbursement rate of \$19/day, subject to the annual appropriations process.
- Not be available to probation and parole officers unless there is money in the reimbursement fund to cover cost of the sanction.
- Not be available if the local sheriff determines there is not sufficient space in their facilities.

3. Cap on revocation time: Require that probationers be placed in one of the Department of Corrections' 120-day or alternative programs (shock incarceration or drug treatment) on their first revocation for a technical violation. The policy will ensure that sanctions are proportional to the violation and focus prison space on violent, chronic, and career criminals. Specifically, the policy will:

- Apply to non-violent offenses in felony Class C & D and Class A & B probationers convicted of a drug offense (Chapter 195).
- Not apply to probationers previously placed in one of the 120-day programs for the current offense.
- Not apply to revocations for a law violation (arrest or new conviction).
- Not apply for revocations based on absconding, violations of stay-away orders, or weapons violations.
- Require that 120-day offenders be released to probation supervision to ensure that the sentencing judge retains jurisdiction and victim restitution is not interrupted.
- Require that the portion of the probation term not served prior to revocation will be served upon return to the community.

B. Ensure Quality Implementation, Sustainability and Ongoing Oversight

4. Oversight body: Statutorily create a formal oversight body to monitor implementation of the above reforms, evaluate outcomes, and certify savings. Specifically, this recommendation will:

- Establish a bipartisan, inter-branch, inter-governmental body to
 - assist in the development of implementation plans, monitor progress, and ensure deadlines are met.
 - certify annual savings generated by the reforms and recommend reinvestment into evidence-based practices that will reduce recidivism.

- Require agencies to collect and regularly report data, measure performance and evaluate outcomes.

5. Victim restitution: Ensure the criminal justice system holds offenders accountable for victim restitution and policymakers address the concerns of crime victims and survivors. Specifically, this recommendation will:

- Encourage the legislature to enact legislation that emphasizes the right to restitution for crime victims and:
 - formalizes and centralizes the responsibility to collect restitution for crime victims;
 - contains tools to allow prosecutors to collect restitution during and after discharge.

6. Missouri's Criminal Code: Revisit Missouri's Criminal Code, which has grown too large and inconsistent. Specifically, this recommendation will:

- Support revising Missouri's Criminal Code, using as a starting point the recommendations of the Missouri Bar Criminal Law Committee, which include the redefinition and reclassification of controlled substances and reduces the crack-powder cocaine sentencing disparity.

MEMBERS OF THE WORKING GROUP

Legislative Branch appointments

Senator Jack Goodman (R- District 29), co-chair
 Senator Jolie Justus (D- District 10)
 Senator Mike Parson (R- District 28)
 Representative Chris Kelly (D- District 24), co-chair
 Representative Gary Fuhr (R- District 97)
 Representative Penny Hubbard (D- District 58)
 Representative Rory Ellinger (D- District 72)

Judicial Branch appointments

Judge W. Ray Price, Missouri Supreme Court
 Judge David Dolan, 33rd Judicial Circuit Court
 Cat Kelly, Director, Missouri State Public Defender
 Jason Lamb, Executive Director, Office of Prosecution Services

Executive Branch appointments

Page Bellamy, Office of Attorney General Chris Koster
 Director George Lombardi, Department of Corrections
 Chairman Ellis McSwain, Division of Probation and Parole, DOC
 Gail Vasterling, Deputy Counsel, Office of Governor Jay Nixon

ⁱ Unless otherwise cited, the analyses in this report were conducted for the Missouri Working Group on Sentencing and Corrections by the Pew Center on the States and Applied Research Services, Inc. (ARS). All figures are yearend counts.

ⁱⁱ Yearend 2010.

ⁱⁱⁱ Budget data comes from the National Association of State Budget Officers' (NASBO) *State Expenditure Report Series* (<http://nasbo.org/Publications/StateExpenditureReport/tabid/79/Default.aspx>).

^{iv} Ibid.

^v Missouri Department of Corrections *Annual Report 2010*.

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

^{vii} Crime data comes from the Federal Bureau of Investigation's Uniform Crime Reports (<http://ucrdatatool.gov>). Incarceration data comes from the Bureau of Justice Statistics' *Prisoner Series* (<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=40>).

^{viii} Ibid.

^{ix} Budget data comes from the National Association of State Budget Officers' (NASBO) *State Expenditure Report Series* (<http://nasbo.org/Publications/StateExpenditureReport/tabid/79/Default.aspx>).

^x U.S. Census Bureau's State Government Employment and Payroll report (<http://www.census.gov/govs/apes/>).

^{xi} Missouri Office of Administration's *Executive Budget Fiscal Year 2012* (<http://oa.mo.gov/bp/budg2012/ExecutiveBudget2012.pdf>).

^{xii} A revocation of probation occurs when the sentencing judge executes or imposes a sentence of incarceration following violations of the conditions of community supervision; a revocation of parole occurs when the Parole Board returns an offender to prison for violating the conditions of their release.

^{xiii} The Department of Corrections categorizes revocations to prison by the type of violation that has occurred. These violations include absconding; escape; felony, misdemeanor, or municipal law offenses; and technical violations. Within the technical violation category are the conditions that can be violated: laws (could include arrests for misdemeanor or felony offenses), travel, residency, employment, association, drugs, weapons, reporting, supervision strategies, intervention fees, and special conditions.

^{xiv} U.S. Department of Justice, Bureau of Justice Statistics' *National Judicial Reporting Program* (<http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf>).

^{xv} 2005-2010.

^{xvi} Missouri Board of Probation and Parole *Annual Report 2010*.

^{xvii} Missouri Department of Corrections *Annual Report 2010*.

^{xviii} Pew Center on the States, *Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry* (Washington, DC: The Pew Charitable Trusts, December 2008).