

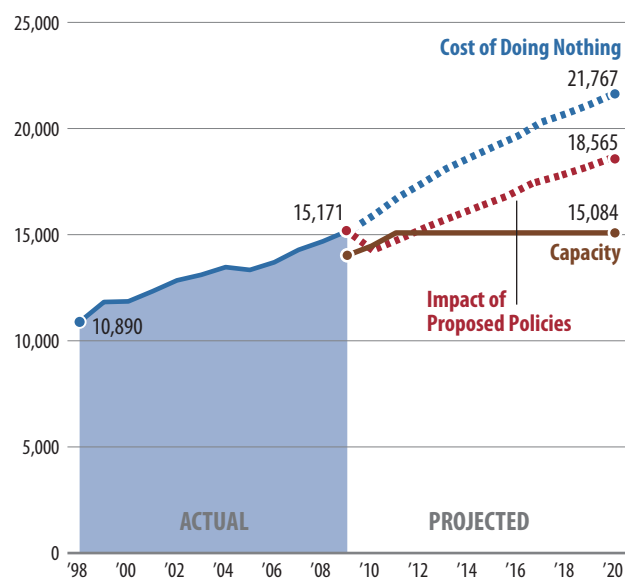
Consensus Report of the Arkansas Working Group on Sentencing and Corrections

Over the past 20 years, the prison population in Arkansas has more than doubled to 16,000-plus inmates. In 2009 alone, the number of inmates grew by 3.1 percent, the eighth largest percentage increase in the country, pushing the state prison system to full capacity and state spending on corrections to an all-time high.

Twenty years ago, corrections cost the state of Arkansas \$45 million, less than 3 percent of all general fund dollars. Today the bill is nearly eight times higher: \$349 million per year, or 8 percent of the general fund.¹

PRISON POPULATION GROWTH

The proposed reforms will reduce Arkansas's prison population projection by more than 3,200 inmates over the next 10 years and save Arkansas taxpayers an estimated \$875 million in prison construction and operation costs.



SOURCE: Projections were calculated by JFA Institute, 2010.

HIGHLIGHTS

Problem. Arkansas's prison population has doubled during the past 20 years, driving corrections costs up 450 percent. At the same time, recidivism and crime rates have remained stubbornly high. If left unchecked, the population will grow by as much as 43 percent in the next decade and cost Arkansas taxpayers an additional \$1.1 billion.

Drivers. An extensive review of data revealed that the state is underutilizing probation, imposing longer prison sentences for non-violent offenses, and delaying transfer to parole.

Process. Since March 2010, a bipartisan, inter-branch working group, assisted by the Pew Center on the States, has met to analyze sentencing data, audit corrections and community supervision policies, consult stakeholders, and forge consensus on a package of reforms that will help taxpayers get a better public safety return on their corrections dollars.

Reforms. The policy recommendations in this report will protect public safety and reduce recidivism by strengthening community supervision; improve government efficiency and sustain progress through performance measurement; and contain corrections costs by concentrating prison space on violent and career criminals.

Impact. The Working Group's policy package is projected to save Arkansas \$875 million through averted prison construction and operating expenses through 2020, and to improve public safety through reduced recidivism.

Despite this growth in prison population and spending, Arkansas taxpayers are getting a poor return on their public safety dollars: recidivism rates remain stubbornly high and the crime rate has not declined as fast as in other states.

If current policies are left in place, analysis shows that over the next 10 years Arkansas's prison population will rise by as much as 43 percent, or more than 6,500 inmates. Growing at a rate of more than 3 percent per year, the population is expected to approach 22,000 inmates by 2020.

The High Cost of Inaction

The cost of continued prison growth would be enormous. Over the next 10 years, the cumulative cost of building and operating new prisons to accommodate this growth will reach approximately \$1.1 billion. Construction costs alone will consume an estimated \$355 million. Indeed, the Arkansas Board of Corrections has requested \$184 million from the state in fiscal year 2011 to construct two new prisons. By the end of the 10-year projection period, state budget makers will need to find an additional \$128 million annually for expanded prison operations.

Further straining the state budget as well as local criminal justice operations, the number of inmates held in county jails while awaiting intake at the Department of Corrections (the "jail backlog") is at an all-time high of nearly 2,000 inmates. Unless action is taken to reduce this backlog, the legislature will need to appropriate more than \$15 million during the next fiscal year for jail reimbursement.

But prison population and cost growth are not beyond the control of policy makers. States that have flattened and even reduced prison populations—including Kansas, Texas, Michigan and others—all began by analyzing the drivers of their growth and forging consensus on a common-sense package of policy reforms.

What Is Driving Prison Growth?

The Working Group conducted an extensive review of Arkansas's sentencing and corrections data, audited policies and practices at state criminal justice agencies, and consulted a wide range of stakeholders to analyze the drivers of the state's projected prison population growth.

Many people would suspect that a growing prison population simply reflects the rise in Arkansas's population and an increase in crime. That is not the case. The state resident population has been growing at a much slower rate than the prison population during a time when crime rates have fluctuated and, more recently, declined.²

Instead, analysis reveals that the prison population is growing in large part because the state is increasingly sending non-violent offenders to prison, holding inmates behind bars for longer terms by increasing sentence lengths, and delaying transfer to parole.

Underutilization of Probation. Due in part to a perception among judges and prosecutors that the Department of Community Correction (DCC) lacks the resources and authority necessary to effectively supervise, sanction and support offenders, courts have been sentencing a greater proportion of offenders to prison.

In 2009, admissions to probation fell 5 percent while admissions to prison grew 7 percent. The cumulative effect of this trend, when traced

PROBATION RATES PER 100,000 RESIDENTS

1,789 U.S. Probation

1,376 Arkansas Probation

back several years, is that Arkansas’s probation supervision rate is now 23 percent lower than the national average, while its imprisonment rate is above the national average.³ Arkansas’s rate of inmate growth is among the nation’s highest.

The issue is not only *how many* admissions to prison, but also *what kind* of admissions. Arkansans enter prison for two reasons: either they were convicted of a new crime or they violated the rules of their community supervision (which can include being arrested for a new crime). In 2009, 42 percent of inmates were admitted for a new crime and 58 percent were admitted for violating the terms of probation or parole.

Looking first at all admissions,⁴ 59 percent were for non-violent offenses; predominantly drug offenses and theft. Looking next at admissions to the Arkansas Department of Correction (ADC) for violations of probation and parole, just over half (54 percent) were parolees who were arrested for a new crime.

The other half were probationers who have violated the terms of their supervision either by committing a new crime or technical violation, such as skipping a required meeting with their supervisory

officer or failing a drug test. Unfortunately, there are limited data on why probation violators are being sent to prison. Regardless, the large share of prison admissions driven by probation and parole violations points toward the need for stronger community supervision.

Longer Prison Sentences for Non-Violent Offenses. Arkansas’s low compliance with the state sentencing guidelines both explains the underutilization of probation and compounds its consequences by increasing not only prison admissions, but also sentence lengths.

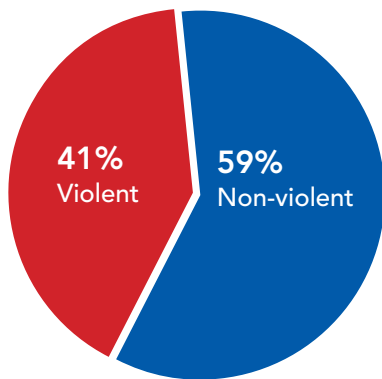
Arkansas implemented voluntary sentencing guidelines in 1994 for “the purposes of equity in sentencing, i.e. similar sentences for similar offenders with similar criminal histories, and proportionality in sentencing by creating a balanced correctional system which reserves the most serious sanctions for the most serious offenders.”⁵ Based on the severity of the offense and the offender’s criminal history score, the guidelines recommend whether the conviction merits placement in DCC (community supervision) or ADC (prison), as well as an appropriate sentence length.

The Working Group’s analysis found substantial non-compliance on both the placement (i.e., probation, jail or prison) and sentence length decisions. Last year, ADC processed more than 1,200 prison admissions where the guideline recommendation did not include incarceration.

Furthermore, the average sentence was nearly twice (196 percent) the presumptive range, indicating that sentences are both out of step with guideline expectations and historical benchmarks. For example, sentence lengths in severity levels 3-5 (which account for more than 70 percent of ADC admissions) have increased by 26 percent since 2001.

Again, this is not just an issue of the *number* of admissions and the *length* of sentence, but also *who* is being sentenced. One-third of all ADC admissions

ADMISSIONS TO PRISON (2009)

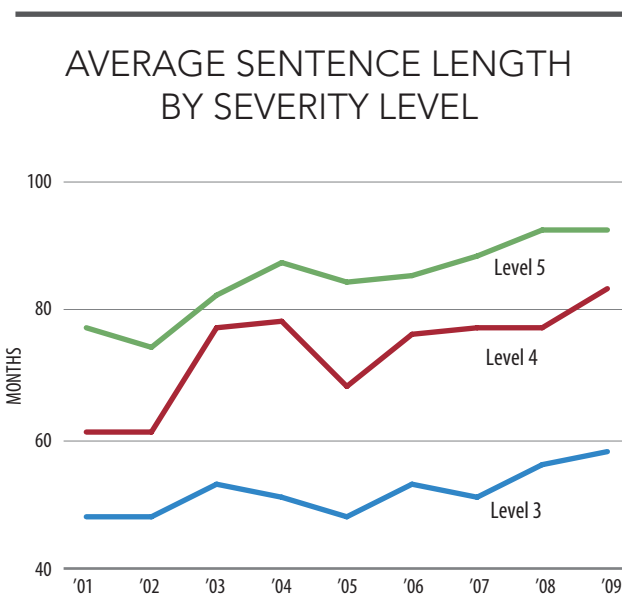


Note: Data exclude parole violators, females and 50- and 70% time-served crimes.

have a recorded criminal history score of zero.⁶ Even among non-violent offenders, a substantial number of those admitted to prison (from one-quarter to over one-half, depending on severity level) have a criminal history score of zero.

Delayed Transfer to Parole. Finally, when offenders are sent to prison they are given a transfer eligibility date (TED) indicating when, absent a disciplinary record or failure to satisfy special conditions, they will be transferred to parole supervision.⁷ The Working Group's analysis indicates that more than half of inmates are held, on average, six months beyond their presumptive TED. No reason is recorded for most of these delays, which accounted for nearly 1,200 prison beds in 2009.

But statistics are just numbers: they can help define a problem, but they do not provide a solution. That is why, following in the footsteps of other states that have taken a fresh look at their sentencing and corrections systems, this bipartisan, inter-branch working group has been charged with developing a consensus package of policy reforms that will contain Arkansas's projected prison population growth and reinvest a portion of the savings in strategies that will enhance public safety.



The Consensus Building Process

For several years, Arkansas has housed a modest share (usually under 10 percent) of its state inmates in local jails. As the state prison population grew, this practice placed an additional burden on local government budgets.

In response, Governor Mike Beebe established the Task Force on Overcrowding in 2009. Through modest policy changes and a revised jail reimbursement rate, the Task Force temporarily succeeded in reducing the strain caused by the jail backlog. This process, however, revealed the need to address larger, more systemic issues related to the state prison population.

In November 2009, Governor Beebe, Chief Justice Jim Hannah and leaders from the Arkansas Senate and House of Representatives requested technical assistance from the Public Safety Performance Project of the Pew Center on the States (Pew) to explore ways to protect public safety, including strengthening community corrections, while controlling the size and cost of the prison system. Pew and its partners have provided similar assistance in more than a dozen states.

In March 2010, the Arkansas Working Group on Sentencing and Corrections, a bipartisan, inter-branch body made up of leaders from the state legislative, executive and judicial branches, as well as local government, began meeting. Our charge was to conduct an analysis of Arkansas's sentencing and corrections data; review current state policies and practices; consider best practices from other states; and propose a package of policy reforms that will contain corrections growth and allow the state to reinvest a portion of the savings in strategies that improve public safety.

For nearly one year, the Working Group has met monthly to conduct a thorough review of existing state policies and their impact, and to consider options for the future. In this process, the Working

Group has been assisted by Pew and two well-respected criminal justice consulting organizations, the Crime and Justice Institute (CJI) and the JFA Institute (JFA). Throughout the process, the Working Group and Pew have consulted a wide range of stakeholders—including prosecutors, defense attorneys, judges, sheriffs, police, chambers of commerce, and the Association of Arkansas Counties—as well as colleagues from neighboring states and national experts.

The following package of policy reforms is the product of the analysis and those discussions. Projections indicate that it will help Arkansas reduce recidivism, protect public safety, hold offenders accountable and contain corrections costs. Over the next several months, the Working Group will push for enactment of these policies through legislation, executive order and agency implementation.

Policies to Protect Public Safety, Hold Offenders Accountable and Contain Corrections Costs

Pursuant to its mission, the Arkansas Working Group on Sentencing and Corrections is proposing a package of reforms that will achieve the following objectives:

1. Protect public safety and reduce recidivism by strengthening community supervision,
2. Improve government efficiency and sustain progress through performance measurement, and
3. Concentrate prison space on violent and career criminals.

From the outset, the Working Group has sought to advance only proposals that achieve one or more of these objectives. Indeed, nearly all of the policy recommendations below can be grouped into more

than one of the three categories.⁸ Furthermore, the policy recommendations reinforce one another in a virtuous cycle: efforts to reduce recidivism fuel reductions in the prison population that will, in turn, sustain progress by allowing for investments that will further improve public safety.

This is not by accident: the Working Group has gone to great lengths to identify, consider and advance a consensus package of common-sense reforms based on available data and research about what works in sentencing and corrections. If implemented with fidelity, this package will result in less crime *and* lower costs.

The reforms proposed below will reduce Arkansas's prison population projection by more than 3,200 inmates over the next 10 years and save Arkansas taxpayers an estimated \$875 million in prison operation (\$645 million) and construction (\$230 million) costs.

Protect Public Safety and Reduce Recidivism by Strengthening Community Supervision

Require DCC to Use Evidence-Based Practices When Supervising Offenders on Probation and Parole

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

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

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

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

Require DCC to convene a group of judges, prosecutors, public defenders and law enforcement officials to determine criteria for discharge.

Reallocate supervision resources to focus on moderate- and high-risk offenders.

Hold Probationers Accountable with Immediate Sanctions for Violations

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

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

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

Create a pilot initiative modeled after Hawaii's Opportunity Probation with Enforcement (HOPE) to be implemented in up to 5 counties.

Improve Government Performance and Sustain Progress with Performance Measurement

Strengthen Reporting Requirements for Sentencing Departures and Encourage Compliance with the Sentencing Guidelines

Merge the sentencing guideline worksheet and departure form with the sentencing and commitment form and require signature from the sentencing judge, prosecution and defense.

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

Develop and Implement Parole Release Guidelines, Streamline the Case Review Process, and Establish Qualification and Training Standards for the Parole Board

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

Begin transfer release proceedings earlier and streamline case review of offenders housed in county jails.

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

Hold Offenders Accountable by Improving Victim Restitution and by Raising Probation Fees

Commission a study of state and local policy pertaining to victim restitution, child support and criminal justice system fines, fees and surcharges. The study shall map state and local policy, determine adherence, estimate the collection gap, and issue policy recommendations.

Raise probation and parole fees from \$25 to \$35 per month, generating approximately \$250,000 per month. Direct 65 percent of the revenue generated from the increased fees to community-based programs that meet evidence-based criteria and 5 percent of the additional revenue to staff development and training on evidence-based practices.

Develop Uniform Eligibility Criteria and Performance Measures for Drug Courts

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

Define success as recidivism reduction and collect outcome data for every participant. Require the court system to publish annual performance reports.

Concentrate Prison Space on Violent and Career Criminals

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

Provide financial incentives to jurisdictions that increase their compliance with the sentencing guidelines.

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

Provide financial incentives to DCC for reducing recidivism.

- Provide additional funding to DCC for reducing the number of probation revocations (relative to baseline) that result from either a technical violation or new crime.
- Grant statutory authority to the Board of Corrections to redirect 1/2 of the savings to DCC.
- Require felony conviction rate of probationers to remain stable or decrease for funding to be redirected.

Revise Drug and Property Statutes and Distinguish Between Drug Users and Career Criminals

Separate “Possession with Intent to Deliver” (PWID) from “Manufacturing and Delivery” in law and set punishments appropriate to the offense.

Equalize penalties for cocaine and methamphetamine offenses and raise the weight ceiling for possession so that less serious offenders can be placed on felony probation if deemed appropriate by the court.

Modernize stolen property thresholds for felony theft of less than \$25,000.

Accelerate Release to Electronic Monitoring for Low-Level Offenders

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

Require DCC to supervise eligible inmates with electronic monitoring until their original Transfer Eligibility Date or 90 days of full compliance, followed by mandatory parole supervision until sentence expiration.

Expand Medical Parole to Contain Corrections Costs

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

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

Working Group Members

Legislative Branch

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

Judicial Branch

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

Executive Branch

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

Law Enforcement

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

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

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

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

4 This analysis excluded admissions for parole violators and 55- and 70-percent time-served crime categories.

5 See Arkansas Sentencing Commission, "Sentencing Standards Grid Offense Seriousness Rankings and Related Material," October 2009.

6 A criminal history score of zero does not necessarily indicate that the offender had a clean record. Points on the criminal history worksheet are assigned as follows: 1 point for each adult felony conviction in severity levels 6-10 (no date restrictions); one-half point for each adult felony conviction in severity levels 1-5 (15-year limitation from date of discharge or expiration of sentence); one-fourth point for each Class A misdemeanor conviction (maximum of one point); and, for juvenile adjudications, one point for a short list of major offenses or one-fourth point for all other adjudications if the juvenile could have been tried as an adult (maximum of two points, where no more than one point can be accrued unless one of the prior adjudications was a listed major offense).

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

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

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

8 The major components of the Working Group's recommendations are listed in this report. Additional implementation details will be developed in legislation, executive order and agency policy.