



# **Safer Communities, Smarter Spending**

*The next phase of criminal justice reform in Pennsylvania*



# **Safer Communities, Smarter Spending: The Next Phase of Criminal Justice Reform in Pennsylvania**

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## **Executive Summary**

Six years ago, Pennsylvania enacted a corrections reform package that successfully trimmed the state prison population and continued reducing Pennsylvania's crime rate.<sup>1</sup> Still, Pennsylvania maintains the highest incarceration rate in the Northeast.<sup>2</sup> In too many cases, incarceration remains the default even when another method of punishment is more effective at deterring crime.

This brief presents specific recommendations to continue improving the efficiency and effectiveness of Pennsylvania's criminal justice system. The recommendations include reducing the commonwealth's prison population through automatic parole; increasing the use of alternatives to incarceration and well-informed sentencing guidelines; creating a consistent and effective probation system; addressing the collateral consequences of criminal convictions; and implementing options to help those convicted of a crime pay down fines, restitution, or court costs.

Onerous sentencing and bureaucratic red tape do not make Pennsylvanians safer. They only add to an already unacceptable level of bloat in our criminal justice system. With these reforms, lawmakers can improve public safety and continue reducing the correctional population.

## **Justice Reinvestment Initiative II**

Since 2010, the rising prison population has spurred a nearly 25 percent increase in corrections costs.<sup>3</sup> Prison population growth and costs would have been even higher if not for the 2012 Justice Reinvestment Initiative (JRI), which focused on evidence-based policies to reduce the state's prison population.<sup>4</sup> According to the Department of Corrections (DOC), JRI reduced the prison population by 1,519 people and averted an estimated \$96.4 million in additional costs.

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<sup>1</sup> Adam Gelb & Jacob Denney, "National Prison Rate Continues to Decline Amid Sentencing, Re-Entry Reforms," The Pew Charitable Trusts, (January 16, 2018), <http://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/16/national-prison-rate-continues-to-decline-amid-sentencing-re-entry-reforms>.

<sup>2</sup> Dr. E. Ann Carson, "Prisoners in 2016," U.S. Department of Justice, (January 2018), <https://www.bjs.gov/content/pub/pdf/p16.pdf>.

<sup>3</sup> Secretary John E. Wetzel & Chairman Leo Dunn, "Budget Testimony," Pennsylvania Department of Corrections & Probation and Parole, (Winter 2018), <https://www.cor.pa.gov/Documents/2018-19%20DOC%20Budget%20Testimony.pdf>.

<sup>4</sup> The Council of State Governments Justice Center, "Justice Reinvestment in Pennsylvania," (January 2012), [https://csgjusticecenter.org/wp-content/uploads/2013/01/JR\\_Pennsylvania\\_State\\_Overview.pdf](https://csgjusticecenter.org/wp-content/uploads/2013/01/JR_Pennsylvania_State_Overview.pdf).

Yet further reforms are needed to address high costs, overincarceration, and recidivism rates as high as 60 percent.<sup>5</sup>

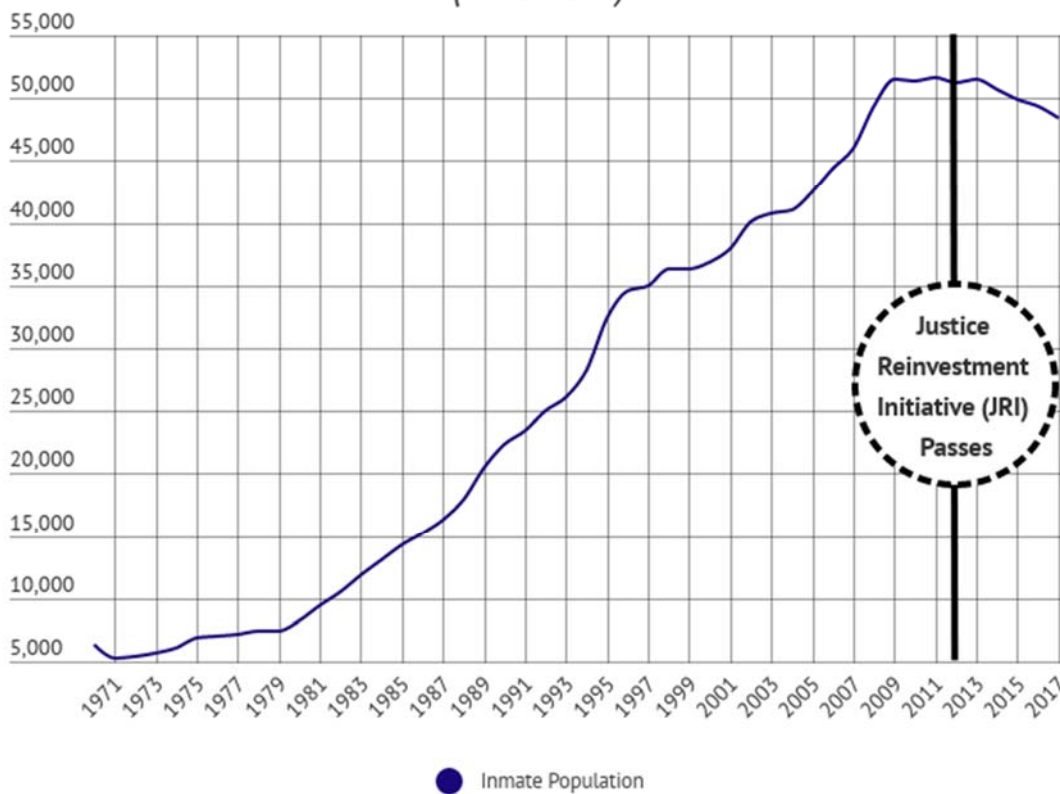
Thankfully, lawmakers are looking to add to JRI's successes through four key goals:

- establishing fair and effective punishments,
- equipping people for life outside the criminal justice system,
- improving public safety, and
- reducing costs to taxpayers.

Last June, the Justice Reinvestment Working Group—a bipartisan, multiagency taskforce<sup>6</sup>—released a report identifying three key challenges still facing Pennsylvania's corrections system: high corrections spending, insufficient support for county probation, and inadequate pretrial and sentencing guidance.<sup>7</sup>

## PENNSYLVANIA'S PRISON POPULATION

(1970-2017)



Source: Pennsylvania Department of Corrections

<sup>5</sup> Dr. Kristofer Bret Bucklen et al., "Recidivism Risk Reduction Incentive 2018 Report," Pennsylvania Department of Corrections,

<https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/RRRI%202018%20Annual%20Report.pdf>.

<sup>6</sup> Pennsylvania Commission on Crime and Delinquency "Current JRI in Pennsylvania (2016),"

[https://www.pccd.pa.gov/Pages/JRI%20Subpages/Current-JRI-in-Pennsylvania-\(2016\).aspx](https://www.pccd.pa.gov/Pages/JRI%20Subpages/Current-JRI-in-Pennsylvania-(2016).aspx).

<sup>7</sup> The Council of State Governments Justice Center, "Justice Reinvestment in Pennsylvania," (June 2017),

[https://csgjusticecenter.org/wp-content/uploads/2017/06/6.26.17\\_JR-in-Pennsylvania.pdf](https://csgjusticecenter.org/wp-content/uploads/2017/06/6.26.17_JR-in-Pennsylvania.pdf).

The report recommended six reforms to address these challenges, some of which passed the state Senate in May<sup>8</sup> and are now under consideration in the House. If adopted, the changes could reduce the prison population by 696 and save approximately \$48.3 million over five years.<sup>9</sup>

Specifically, the report endorsed the following reforms:

### **1. Address inefficient parole practices**

Time spent incarcerated can vary depending on a prison's location. In Pennsylvania, people serving short sentences in *county* prison are usually released around the time they reach their minimum sentence. By contrast, those in *state* prison tend to exceed their minimum sentence by an average of 5.3 months. This is inequitable and drives up costs without improving public safety.

An offender's location should not determine the length of his or her sentence. To ensure time served is fair and uniform throughout the state, policymakers should implement parole practices for nonviolent and short-term offenders that require release after they have served their minimum sentence. Their transition from prison to parole will reduce inequitable prison stays.

### **2. Establish effective sentencing guidelines**

The lack of information about sentencing options available to judges within current guidelines produces sentences that vary by county. For instance, people with similar criminal histories who commit felony retail theft could be sentenced to county prison, probation, state prison, or county intermediate punishment, depending on their location. Judges are given no information about which choice may best reduce recidivism. This lack of guidance can lead to unnecessary incarceration and prevent offenders from accessing effective rehabilitation programs.

The Pennsylvania Sentencing Commission should revise sentencing guidelines to provide judges information about which sentencing options have the best recidivism outcomes to ensure people with similar convictions and criminal histories are treated equally. This reform will make sentences reflective of the risk people pose to society, protect the public, reduce overincarceration, and deliver additional savings to taxpayers.

Policymakers should also seek updates to the calculation of prior record scores (PRS), as they don't accurately represent the risk an offender poses to the community. Dr. Bret Bucklen, director of planning, research, and statistics for the DOC, explains why:

The idea here [PRS changes] is that a prior criminal history becomes "stale" after a certain point. In other words, once an individual stays clean for a long enough period of time, their criminal history no longer predicts reoffending, and they are at no greater risk of committing a crime than someone without a criminal history.<sup>10</sup>

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<sup>8</sup> Bob Dick, "Unanimous Senate Vote Advances Criminal Justice Reform," Commonwealth Foundation, (May 2, 2018), <https://www.commonwealthfoundation.org/policyblog/detail/unanimous-senate-vote-advances-criminal-justice-reform>.

<sup>9</sup> The Council of State Governments Justice Center, "Justice Reinvestment in Pennsylvania," (May 1, 2018), [https://www.commonwealthfoundation.org/docLib/20180501\\_PAJRI.pdf?t=5/1/2018%203:43:49%20PM](https://www.commonwealthfoundation.org/docLib/20180501_PAJRI.pdf?t=5/1/2018%203:43:49%20PM).

<sup>10</sup> Email correspondence with Dr. Bret Bucklen, Director of Planning, Research and Statistics for the Pennsylvania Department of Corrections, (March 22, 2018).

Bucklen's position is corroborated by Alfred Blumstein and Kiminori Nakamura in their journal article, "'Redemption' in an Era of Widespread Criminal Background Checks."

After a specific period of staying crime-free—usually between five and eight years—individuals are no more likely to reoffend than someone of a similar age in the general population.<sup>11</sup>

Modifying the PRS matrix to reflect this evidence and reducing sentence length for high prior scores would allow for more appropriate sentencing without increasing recidivism and could save taxpayers tens of millions of dollars annually.

An additional solution involves streamlining the selection process for offenders eligible for the State Intermediate Punishment (SIP) program. SIP, which treats people for substance abuse challenges if they meet eligibility requirements, has effectively reduced recidivism and saved taxpayers approximately \$33,700 per participant.<sup>12</sup> The current system, on the other hand, wastes valuable time and tax dollars. Making the selection process less cumbersome would allow the state to effectively move more offenders into the program, thereby avoiding additional supervision costs through shorter sentences and lower recidivism rates.

### **3. Customize parole supervision**

Recidivism for Pennsylvania's parolees remains high, costing taxpayers approximately \$224 million annually in additional incarceration costs.<sup>13</sup> Parolee programs lack structure and waste resources.

According to The Council of State Governments Justice Center analysis, more than half of parolees released in fiscal year 2015 went to a DOC Community Corrections Center (CCC) or Community Contract Facility (CCF) instead of being assigned a home plan, which can be more effective in reducing recidivism.<sup>14</sup> The lack of a viable home plan leaves many low-risk individuals stuck in a CCC or CCF.

The JRI Working Group recommends focusing available resources on people struggling most by developing admissions criteria for community corrections facilities based on risk.

The DOC should also expand its performance-based contracts approach with private operators to improve programming for people under correctional control. This would allow DOC to hold providers accountable for their performance by cancelling their contract if they fail to meet their promised goals.

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<sup>11</sup> Alfred Blumstein and Kiminori Nakamura, "'Redemption' in an Era of Widespread Criminal Background Checks," *National Institute of Justice Journal* 263, (2009), <https://www.ncjrs.gov/pdffiles1/nij/226872.pdf>.

<sup>12</sup> Dr. Kristofer Bret Bucklen et al., "State Intermediate Punishment Program," Pennsylvania Department of Corrections, (February 2017),

<https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2017%20SIP%20Annual%20Final.pdf>.

<sup>13</sup> The Council of State Governments Justice Center, "Justice Reinvestment in Pennsylvania," (June 2017),

[https://csgjusticecenter.org/wp-content/uploads/2017/06/6.26.17\\_JR-in-Pennsylvania.pdf](https://csgjusticecenter.org/wp-content/uploads/2017/06/6.26.17_JR-in-Pennsylvania.pdf).

<sup>14</sup> *Ibid.*

Moving toward a swift, certain, and fair sanctions (SCF) model<sup>15</sup> for parole violators should also be a priority.

As Bucklen notes, “Deterrence theory purports three characteristics of punishment that should deter crime: 1) certainty, 2) swiftness, and 3) severity of the punishment. All the accumulated research shows certainty and swiftness are the most important elements, and that severity is ineffective.”

In the three years after North Carolina implemented SCF in 2011, the state saw more than a 50 percent decline in probation revocations to prison.

Similarly, after Washington state adopted SCF, participants saw their odds of any new conviction drop 20 percent and their odds of a new violent felony conviction fall 30 percent.<sup>16</sup>

These three recommendations outlined in JRI have been introduced as Senate Bill 1071.

#### **4. Provide resources to the county probation system**

A lack of county probation resources is contributing to high recidivism rates and corrections costs. Pennsylvania last amended the state funding formula for probation in 1986, with the intention of covering 80 percent of salaries for probation personnel. It hasn’t met this mark since the late 1980s and now covers approximately 18 percent of salaries.<sup>17</sup>

In 2014, the state spent almost \$200 million to incarcerate people who violated the conditions of their supervision. Resources would be better invested in preventing probation violations by increasing the number of interactions probation officers have with their supervisees, and by allowing for effective monitoring and interventions if necessary. Reducing the overall supervised population—as discussed below—should also be considered to help lighten the caseload burden for probation officers.

The savings realized from the JRI reforms discussed above could cover additional funding for county probation, as outlined in Senate Bill 1070. If the savings prove insufficient, policymakers should consider streamlining spending elsewhere or tapping the state’s shadow budget reserves<sup>18</sup> to pay for county probation support.

If lawmakers choose to increase county probation funding, they should create a state-level probation governance body to develop a transparent plan to improve county probation supervision and the cost of implementing accompanying reforms. Any plan should also include measurable goals to determine effectiveness.

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<sup>15</sup> Mark A.R. Kleiman et al., “Theory and Evidence on the Swift-Certain-Fair Approach to Enforcing Conditions of Community Supervision,” *Federal Probation Journal* 78, Issue 2 (2014), [http://www.uscourts.gov/sites/default/files/78\\_2\\_8\\_0.pdf](http://www.uscourts.gov/sites/default/files/78_2_8_0.pdf).

<sup>16</sup> Washington State University, “Evaluation of Washington State Department of Corrections (WADOC) Swift and Certain (SAC) Policy Process, Outcome and Cost-Benefit Evaluation,” (August 31, 2015), [https://s3.wp.wsu.edu/uploads/sites/436/2015/11/SAC-Final-Report\\_2015-08-31.pdf](https://s3.wp.wsu.edu/uploads/sites/436/2015/11/SAC-Final-Report_2015-08-31.pdf).

<sup>17</sup> Legislative Budget and Finance Committee, “Funding of County Adult Probation Services,” (February 2015), <http://www.senatorgeneyaw.com/wp-content/uploads/sites/29/2015/08/April-J.-Billet-Barclay-3.pdf>.

<sup>18</sup> Bob Dick, “Exposing the Shadow Budget,” Commonwealth Foundation, (March 22, 2018), <https://www.commonwealthfoundation.org/policyblog/detail/exposing-the-shadow-budget>.

## **5. Expand support for crime victims**

According to victim advocates, law enforcement agencies sometimes fail to inform victims about their rights or services offered by the state. Because Pennsylvania doesn't require officials to notify the Office of Victim Advocate when a defendant is sentenced to prison, victims often find it difficult to stay informed about their rights related to parole notifications (whether an offender is eligible, decision to approve, etc.).

The Justice Reinvestment Working Group proposes improving accountability by requiring individual police officers, rather than law enforcement agencies, to notify victims of their rights. This JRI recommendation also includes developing a process under which prosecutors must keep the Office of Victim Advocate informed about defendant sentencing.

Expanding eligibility requirements for the Victim Compensation Assistance program would provide additional support for crime victims. However, a Senate fiscal note warns changes to a new Crime Victim Services and Compensation Fund, created under Senate Bill 1072, could become unsustainable in the future.<sup>19</sup> Lawmakers should keep this in mind when contemplating compensation eligibility expansion.

## **6. Adopt fair pretrial practices**

Pennsylvania's pretrial practices vary by county. Some pretrial programs include risk assessments to determine the likelihood of criminal behavior. Others include supervision, and some collaborate with local "problem-solving" courts after a bail decision.<sup>20</sup>

Most pretrial service programs don't conduct a risk assessment and many bail decisions are not informed by evidence. In many cases, judges lack adequate information about defendants, and this could lead to releasing people likely to commit a crime or detaining those better supervised in the community.<sup>21</sup>

The Justice Reinvestment Working Group recommends the Supreme Court review court rules related to bail decisions, determine how to increase the use of risk assessments to inform pretrial decisions, and work to ensure public defenders are available to help people at preliminary arraignments.

The group also recommends an additional study to assess how Pennsylvania can improve its pretrial practices to ensure uniformity throughout the commonwealth.

## **Restructure Pennsylvania's Probation System**

Nearly 74,000 people are on probation in Pennsylvania.<sup>22</sup> When those on post-release supervision, bail supervision, and other forms of supervision are included, the total county-supervised population is even higher—approximately 254,000.

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<sup>19</sup> Senate Appropriations Committee, "Senate Appropriations Committee Fiscal Note," (April 16, 2018), <http://www.legis.state.pa.us/WU01/LI/BI/SFN/2017/0/SB1072P1650.pdf>.

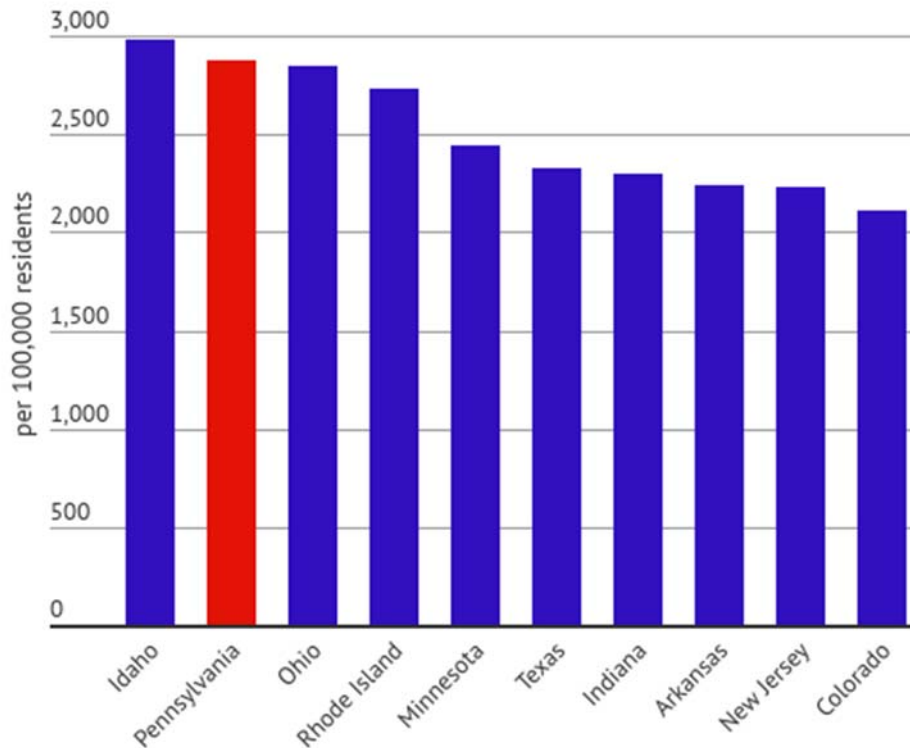
<sup>20</sup> The Council of State Governments Justice Center, "Justice Reinvestment in Pennsylvania," (June 2017), [https://csgjusticecenter.org/wp-content/uploads/2017/06/6.26.17\\_JR-in-Pennsylvania.pdf](https://csgjusticecenter.org/wp-content/uploads/2017/06/6.26.17_JR-in-Pennsylvania.pdf).

<sup>21</sup> Ibid.

<sup>22</sup> Pennsylvania Board of Probation and Parole, "County Adult Probation and Parole Annual Statistical Report," (2015), <https://www.pbpp.pa.gov/Information/Documents/CAPP%20Reports/2015%20CAPP%20Report.pdf>.

Pennsylvania’s statewide community supervision population—defined as those on probation and parole—is the second highest rate among reporting states.<sup>23</sup>

## COMMUNITY SUPERVISION RATE BY STATE



Source: U.S. Department of Justice data as of December 2016

In 2015, probation violators made up 17 percent of Pennsylvania’s prison population.<sup>24</sup> This abnormally high number stems from a poor allocation of resources, especially unnecessarily long probation sentences that increase the likelihood of a technical violation.

<sup>23</sup> Danielle Kaeble, “Probation and Parole in the United States, 2016,” U.S. Department of Justice, (April 2018), <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>.

<sup>24</sup> Carl Reynolds et al., “Justice Reinvestment Initiative in Pennsylvania,” The Council of State Governments Justice Center, (July 2016), <https://www.pccd.pa.gov/Documents/Justice%20Reinvestment/PA%20Presentation%203%20Final.pdf>.



Most instances of recidivism occur within the first year of probation.<sup>25</sup> Lawmakers should consider reducing probation lengths after a year and allowing for early termination of probation for good behavior, as proposed by Sen. Anthony Williams in Senate Bill 1067.

Empirical evidence demonstrates the *type* of intervention, not *length*, is the critical factor in reducing recidivism.<sup>26</sup> Longer sentences and probation periods do not translate into lower crime rates. This is evident in states and cities across the country.

### *Case Studies for Effective Probation Reform*

For instance, in Missouri, policymakers instituted an approach known as “earned discharge” to allow probationers to reduce their probation length if they complied with the conditions of their sentences. The program led to 36,000 probationers and parolees reducing their supervision terms by an average of 14 months. Consequently, the state’s supervised population fell by 18 percent with no adverse effects on recidivism rates.<sup>27</sup>

New York City’s probation reform is likely the most transformative in the country. In the mid-1990s, the city began monitoring probationers via electronic kiosks to free up resources for offenders who pose a greater risk to communities. Next, in 2010, the city implemented early discharge from probation for those who meet specific criteria. These changes produced a lower recidivism rate compared with those who served their full probation sentence (3 percent vs. 4.3 percent) and a 69 percent decline in caseloads over 18 years (1996-2014).<sup>28</sup>

Varying punishments for technical probation violations are a problem as well. Under current law, violators can be returned to prison without any assessment of their risk to the community. Sen. Stewart Greenleaf’s legislation, Senate Bill 1083, addresses this issue by limiting confinement to six months for county probationers who commit a technical violation while supervised.

In 2007, Louisiana established a 90-day limit on incarceration for those whose probation or parole was revoked for a first-time violation of their supervision rules. This reform reduced the average length of incarceration by 9.2 months, led to a 22 percent drop in new crime revocations, freed up 2,034 jail or prison beds and saved taxpayers \$17.6 million.<sup>29</sup>

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<sup>25</sup> The Council of State Governments Justice Center, “50-State Data on Public Safety, Pennsylvania Workbook: Analyses to Inform Public Safety Strategies,” (March 2018), [https://50statespublicsafety.us/wp-content/uploads/2018/03/PA\\_FINAL.pdf](https://50statespublicsafety.us/wp-content/uploads/2018/03/PA_FINAL.pdf).

<sup>26</sup> Center For Effective Public Policy, “Dosage Probation: Rethinking the Structure of Probation Sentences,” (January 2014), <https://www.fppoa.org/sites/default/files/dosage.pdf>.

<sup>27</sup> The Pew Charitable Trusts, “Missouri Policy Shortens Probation and Parole Terms, Protects Public Safety,” (August 2016), [http://www.pewtrusts.org/~media/assets/2016/08/missouri\\_policy\\_shortens\\_probation\\_and\\_parole\\_terms\\_protects\\_public\\_safety.pdf](http://www.pewtrusts.org/~media/assets/2016/08/missouri_policy_shortens_probation_and_parole_terms_protects_public_safety.pdf).

<sup>28</sup> Michael P. Jacobson et al., “Less is More: How Reducing Probation Populations Can Improve Outcomes,” Harvard Kennedy School, (August 2017), [https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less\\_is\\_more\\_final.pdf](https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf).

<sup>29</sup> The Pew Charitable Trusts, “Reducing Incarceration for Technical Violations in Louisiana,” (October 2014), <http://www.pewtrusts.org/~media/assets/2014/11/psppreducingincarcerationfortechnicalviolationsinlouisiana.pdf>.

By reducing the probation population through these commonsense reform measures, lawmakers can reduce probation officers' high caseloads, and allow those officers to give more attention to individuals who pose a high risk to society.<sup>30</sup>

### **Empower Pennsylvanians to Reduce their Criminal Justice Debt**

Pennsylvania's laws lack guidelines to help offenders reduce their debt. Consequently, too many people are left without a pathway to prosperity.

Pennsylvania's local jail system incarcerates thousands of individuals for failing to pay fines, fees, restitution, and court costs.<sup>31</sup> While it's fair to penalize people for failing to meet their financial obligations, prevailing punishments are counterproductive.

In February, the *Pittsburgh Post-Gazette* profiled several Pennsylvanians incarcerated for failing to pay their debts. Among those profiled was Judith Snock, who was unable to pay a speeding ticket. She had recently broken her arm in a car accident and lost her job at a cement factory.

The judge didn't take this into consideration, sending Ms. Snock to jail, where she stayed the night until her retired mother could pull together enough money to pay the fine.<sup>32</sup> Her ordeal highlights the counterproductive nature of what amounts to debtors' prison. A fair system would impose punishments proportional to crimes while allowing offenders to rebuild their lives.

Senate Bill 1036 strikes this balance by requiring judges to determine if a defendant can pay. For those unable, judges can provide for installment payments, require community service, or impose a combination of the two. Additionally, the bill prohibits driver license suspensions for failure to pay due to economic circumstances.

### **Reduce Barriers to Employment After Reentry**

Individuals released from prison face a host of challenges, including dealing with the "collateral consequences," of a conviction—defined as civil penalties imposed by lawmakers or administrative bodies on ex-offenders. One of the most notable examples is the denial of occupational licenses to people with criminal records.

This barrier to employment limits job opportunities. In Pennsylvania, the law governing the use of criminal records by licensing boards is poorly written, creating uncertainty for anyone pursuing one of the more than 200 state-licensed occupations.

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<sup>30</sup> The Council of State Governments Justice Center, "Justice Reinvestment in Pennsylvania," (June 2017), [https://csgjusticecenter.org/wp-content/uploads/2017/06/6.26.17\\_JR-in-Pennsylvania.pdf](https://csgjusticecenter.org/wp-content/uploads/2017/06/6.26.17_JR-in-Pennsylvania.pdf).

<sup>31</sup> The Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness, "Ending Debtors' Prisons in Pennsylvania," [http://www.pa-interbranchcommission.com/\\_pdfs/Ending-Debtors-Prisons-in-PA-Report.pdf](http://www.pa-interbranchcommission.com/_pdfs/Ending-Debtors-Prisons-in-PA-Report.pdf).

<sup>32</sup> Kate Giammarise & Christopher Huffaker, "Modern-day debtors' prisons? The system that sends Pennsylvanians to jail over unpaid court costs and fines," *Pittsburgh Post-Gazette*, (February 16, 2018), <https://newsinteractive.post-gazette.com/blog/modern-day-debtors-prisons-lead-to-hundreds-jailed-each-year-in-pa-for-inability-to-pay-court-costs/>.

The National Employment Law Project finds, “the law’s poor construction produces unclear standards that licensing boards interpret inconsistently.”<sup>33</sup>

To address this problem, the Institute for Justice (IJ) and Right on Crime recommend passage of the Occupational Licensing Review Act.<sup>34</sup>

Section 100.05 of the act establishes a petition process. Individuals with criminal records can petition the appropriate governmental body for a review to determine if they qualify for a license before they begin expensive training.

The act also prohibits any agency, board, or commission, from considering non-conviction information (ex. deferred adjudication & arrest), any conviction sealed, dismissed, or expunged, a juvenile adjudication, a non-violent misdemeanor, or a conviction for certain crimes that occurred more than three years before the decision to issue a license.

Another option is the elimination of licenses for certain occupations. The Wolf Administration recently released a report calling for an end to 13 different occupational licenses.<sup>35</sup> This is a good start, but more can be done to ensure Pennsylvanians with records aren’t barred from work. Eliminating licenses for low-income occupations identified in IJ’s License to Work report<sup>36</sup> is the next logical step after adopting the recommendations in the Wolf Administration’s report.

Easing the path to work by rolling back licensing regulations can reduce recidivism. In a report published by Arizona State University, Stephen Slivinski found states with the highest occupation licensing burdens saw recidivism increase 9 percent from 1997 through 2007. In contrast, states with the lowest burdens saw an average decline in recidivism of about 2.5 percent.<sup>37</sup>

Another reform that aims to remove barriers to work is Rep. Rick Saccone’s House Bill 42. The legislation would prohibit the suspension of driver’s licenses for certain non-driving offenses, including those related to gambling, sale of tobacco, and misrepresenting one’s age to purchase alcohol.

Other penalties would remain in place for people violating the offenses identified in HB 42, but they would not be unduly burdened with a suspension of their driver’s license.

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<sup>33</sup> Michelle Natividad Rodriguez & Beth Avery, “Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records,” National Employment Law Project, (April 2016), <https://s27147.pcdn.co/wp-content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.

<sup>34</sup> Institute for Justice & Right on Crime, “Occupational Licensing Review Act. Model Legislation,” (June 25, 2018), <http://ij.org/wp-content/uploads/2018/06/06-25-2018-Occupational-Licensing-Review-Act-1.pdf>.

<sup>35</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Review of State Professional and Occupational Licensure Board Requirements and Processes,” Commonwealth of Pennsylvania (June 11, 2018), <https://www.dos.pa.gov/ProfessionalLicensing/Documents/EO2017-03-Executive-Report-Occupational-Licensing.pdf>.

<sup>36</sup> Dr. Dick M. Carpenter II et al., “License to Work,” Institute for Justice, (November 2017), [http://ij.org/wp-content/themes/ijorg/images/ltw2/License\\_to\\_Work\\_2nd\\_Edition.pdf](http://ij.org/wp-content/themes/ijorg/images/ltw2/License_to_Work_2nd_Edition.pdf).

<sup>37</sup> Stephen Slivinski, “Turning Shackles into Bootstraps,” Center for the Study of Economic Liberty at Arizona State University, (November 7, 2016), <https://research.wpcarey.asu.edu/economic-liberty/wp-content/uploads/2016/11/CSEL-Policy-Report-2016-01-Turning-Shackles-into-Bootstraps.pdf>.

## **Provide Parole Eligibility for Certain Offenders Serving Harsh Sentences**

According to 2016 data from the Sentencing Project, nearly 5,400 people are serving a sentence of life without parole (LWOP) in Pennsylvania.<sup>38</sup>

Under Pennsylvania law, the state can sentence a person to LWOP for a crime that involves a death, even if they weren't directly responsible. Thurmond Berry's story is a prime example. Berry was carrying a gun when he and three others staged a robbery at a bar in 1975. During the robbery, one of the men with Berry shot and killed another man. Berry was eventually convicted of second-degree murder, which mandates a sentence of life without parole.<sup>39</sup>

He spent nearly four decades in prison. Berry, who struggled with substance abuse, freely admitted he was in the wrong, but he didn't feel the punishment fit the crime. After years of effort, the Board of Pardons finally approved his pardon application.

Berry, who is in his late 60s, reflects a significant portion of the LWOP population, who tend to be much older than the average prisoner and with higher medical expenses. Lawmakers should consider parole for these older offenders, who have a low likelihood of reoffending. In fact, of the 99 Pennsylvanians 50 years of age or older who have had their sentences commuted since the inception of parole, only one returned to prison—a recidivism rate of just 1.01 percent.<sup>40</sup>

Although commutation of life sentences is an option for prisoners, more needs to be done. This is one reason why Sen. Sharif Street has introduced Senate Bill 942 to allow for the possibility of parole for those serving life sentences. The legislation does not guarantee parole and requires offenders to spend at least 15 years in prison before becoming eligible for parole.

Notably, victims would play a role in determining if an offender should be released. Their testimony, public safety, and an inmate's specific circumstances would be taken into consideration when deciding to grant or deny parole. Needless to say, no person unfit for parole should be released.

A more modest version of SB 942 could include parole for offenders of a certain age or those who have not taken a life but are still serving a life sentence.

## **Facilitate Medical and Geriatric Release**

According to the Pennsylvania Department of Corrections, 642 inmates have passed away in prison since 2015 (as of July 1, 2018). This figure puts the number of inmate deaths at approximately 180 annually.

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<sup>38</sup> Dr. Ashley Nellis, "Still Life: America's Increasing Use of Life and Long-Term Sentences," The Sentencing Project, (May 3, 2017), <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>.

<sup>39</sup> Samantha Melamed, "With help, Pa. lifers now have a fighting chance at clemency," *The Philadelphia Inquirer*, (May 10, 2016), [http://www.philly.com/philly/news/20160510\\_With\\_help\\_\\_PA\\_lifers\\_now\\_have\\_a\\_fighting\\_chance\\_at\\_clemency.html](http://www.philly.com/philly/news/20160510_With_help__PA_lifers_now_have_a_fighting_chance_at_clemency.html).

<sup>40</sup> Joint State Government Commission, "Report of The Advisory Committee on Geriatric and Seriously Ill Inmates," (June 22, 2005), <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2005-40-INMATES%20REPORT.pdf>.

In contrast, 160 inmates died each year between 2005-2014.<sup>41</sup> The increase in annual deaths is attributable to an aging prison population. In 2001, there were 1,892 geriatric inmates (classified as 55 years of age or older) in Pennsylvania. Today, the number of geriatric inmates in DOC custody has risen to 6,663. Keeping seriously sick, elderly, or terminally ill patients in prison when they pose no threat to the public is immoral and costly.

According to the National Institute of Corrections, the annual cost of incarcerating elderly inmates with chronic and terminal illnesses is more than two times as high as the incarceration costs for all other inmates.<sup>42</sup>

Under Pennsylvania law, eligible prisoners can be released to a hospital, long-term care nursing facility, or hospice care location to treat their medical needs. In some cases, moving elderly and sick inmates out of prison may shift costs to Medicare and Medicaid. However, releasing inmates before this point could generate savings, given the cost-effectiveness of medical services relative to those available in prison.<sup>43</sup>

However, the process can be cumbersome, as illustrated by Families Against Mandatory Minimums.<sup>44</sup> They found the total number of inmates released under the “Deferment of Sentence” section of the law was just 14 since 2015.

To apply for a sentencing deferment, a prisoner, the DOC, or an individual with standing from the court must petition the sentencing court for release. This option is only available to those suffering from a medical condition. The requirement to petition the court makes release less likely. Lawmakers should change state law to *presume release* for prisoners of advanced age, with serious medical conditions, or the terminally ill, provided certain conditions are met.

These conditions could include voluntary consent from the inmate; consent from the victim; an assessment that the prisoner does not pose a threat to the public; assurance that the prisoner has an alternative place to receive medical treatment; and judgment that the prisoner will not be rendered homeless once released.

## **Conclusion**

About 95 percent of those confined to state prison will eventually re-enter the community.<sup>45</sup> Policymakers should ensure these individuals are equipped to become productive members of society. This requires focusing attention on reducing recidivism and balancing the “tough on crime” practices of the past with proven “right on crime” practices that protect victims’ rights and keep communities safe, while also helping offenders rebuild their lives.

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<sup>41</sup> Samantha Melamed, “More people than ever are dying in prison. Their caregivers? Other inmates. *The Philadelphia Inquirer* (September 27, 2017), <http://www.philly.com/philly/living/more-people-than-ever-are-dying-in-prison-their-caregivers-other-inmates-20170927.html>.

<sup>42</sup> U.S. Department of Justice, “Correctional Health Care,” (2004), <https://s3.amazonaws.com/static.nicic.gov/Library/018735.pdf>.

<sup>43</sup> Dr. Brie A. Williams et al, “Balancing Punishment and Compassion for Seriously Ill Prisoners,” (July 19, 2011), <http://annals.org/aim/fullarticle/747043/balancing-punishment-compassion-seriously-ill-prisoners>.

<sup>44</sup> Families Against Mandatory Minimums, Pennsylvania State Memo, (2018), [https://famm.org/wp-content/uploads/Pennsylvania\\_Final.pdf](https://famm.org/wp-content/uploads/Pennsylvania_Final.pdf).

<sup>45</sup> Timothy Hughes & Doris James Wilson, “Reentry Trends in the United States,” U.S. Department of Justice, (August 20, 2003), <https://www.bjs.gov/content/pub/pdf/reentry.pdf>.

## **About the Author and the Commonwealth Foundation**

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