



## **You Get What You Measure: New Performance Indicators Needed to Gauge Progress of Criminal Justice Reform**

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### **Executive Session on Community Corrections**

This is one in a series of papers that is being published as a result of the Executive Session on Community Corrections (2013-2017).

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After nearly 40 years of uninterrupted expansion that put one in 100 adults behind bars (U.S. Department of Justice, 2014) and one in 31 under some form of correctional control (U.S. Department of Justice, 2015), the U.S. penal system has undergone a wave of reforms. In the states and at the federal level, the recent reforms have reduced incarceration and supervision rates while the crime rate has sunk to half-century lows (Pew Charitable Trusts, 2016). These tandem trends have convinced many policy makers and a large majority of the public that locking up and monitoring more and more people for longer and longer periods of time is neither the only nor the best way to protect public safety.

Shifting national attitudes about crime and punishment have led to calls for even more aggressive reforms to criminal penalties and deeper reductions in correctional populations. Elected officials and opinion leaders from opposite ends of the political spectrum have begun a dialogue about what it would mean — and take — to cut the current prison population in half, a once far-fetched fantasy that several

advocacy groups have adopted as their outright objective.

Tracking the sheer number of incarcerated individuals and those under correctional supervision is essential but not enough to know whether we are making progress toward a more fair and effective criminal justice system. To understand whether these fundamental aims are being achieved, we need at least two new and more nuanced indicators:

- **Correctional Population Composition:** This measure would track the profile, or composition, of the prison and supervision populations. It would shed light on the critical question of what percentage of these population consist of those who pose a threat to public safety, and how many are people who could safely pay their debt to society in less expensive and more effective ways.
- **Recidivism by Risk:** A second metric would adjust recidivism rates to account for the changing composition of persons under correctional control. It would help gauge how well corrections agencies are succeeding with individuals across the risk spectrum, and guard against perceptions of failure if recidivism rates rise due to the higher-risk composition of caseloads rather than sagging performance.

## Correctional Population Composition

The central goals of many state reforms have been to protect public safety, hold those who break the law accountable and control corrections costs. Underlying those goals is a sense, supported by research, that the correctional net had been cast too wide—that with such high rates of correctional control, scarce resources were devoted to those whose crimes were relatively minor and who posed relatively little risk to public safety.

In the past 10 years, more than half the states have adopted policies designed to focus their expensive prison beds on those who commit the most serious offenses and individuals who are most likely to relapse back into criminal activity. The new policies generally divert some of those deemed to be lower-level or lower-risk into non-prison sanctions or reduce the time they spend locked up. Common policy changes include redefining property and drug crimes and reclassifying them to carry lesser penalties, restricting revocations of parole and probation for rules violations, and expanding eligibility and funding for drug courts and other alternatives. Further, to manage this influx of individuals who might otherwise have been incarcerated, and to provide incentives for good behavior, several states have adopted policies that allow compliant individuals under community supervision an early discharge, jettisoning a lower-risk population from their caseloads.

This mix of reforms ought to concentrate correctional resources on those who engage in

more serious criminal activity, but with current performance measures most states cannot readily determine whether the new policies are working any better than those they replace. Beyond a simple count of incarcerated individuals, the typical state data report offers basic demographic information and breaks down how many people are serving time for violent, property, drug and other crimes.

These numbers are helpful, but by themselves they reveal only fragments of the information necessary to paint a meaningful portrait of the population of people in prison or under community supervision. For instance, other things equal, a person currently serving time for a relatively minor crime may have a string of prior violent convictions that may make him a greater threat to society than someone in prison for a first offense of a more serious crime. The opposite could be the case as well, of course, with an assaultive offense committed by a person who has no criminal history and is at very low risk of repeating that behavior. Yet another person serving time for a property offense might be considered a “nonviolent offender” but have such a long record of major property crimes that a prison term could be warranted.

A more holistic picture of prison use, a “prison composition index,” would consider the current offense of conviction and either prior record or risk of recidivism. By joining some combination of these elements into a measure or set of measures that describes the composition of the population of individuals incarcerated, policymakers and the public could develop a better understanding of how their prison beds are being used, and whether their

reforms are succeeding in focusing prison beds on people who should be incarcerated to meet the demands of public safety and justice.

The distinction between those twin demands is crucial. From a purely retributive perspective, a state might construct a correctional composition measure that is based solely on people’s current and prior criminal convictions. From the viewpoint of public safety, the barometer would focus on assessments of risk of reoffending, which often blend prior record with other variables such as substance abuse and anti-social attitudes that research finds are correlated with recidivism. Since policy makers and practitioners need to fulfill both crime control and justice purposes, they may wish to create two separate measures rather than try to merge them.

The process for establishing these metrics needn’t be cumbersome. For calibrating offense severity, it might be appropriate to use offenses that state statutes already consider to be serious violent crimes for purposes of parole eligibility. Criminal history or chronicity measures could be based on a certain number of prior state prison incarcerations or those that meet a state’s definition of “habitual offender.” For risk level, states could use an existing assessment tool to identify people who pose a high risk of recidivism, especially for serious offenses, or the percentage of people classified for maximum security facilities. And states with sentencing guidelines that already base recommendations on a combination of current offense and prior record might simply count the people for whom prison is the preferred sentencing option.

The index ought to be applied both to prison admissions and standing populations of incarcerated individuals. The admissions stream would provide a rough barometer of the type of people the courts are putting behind bars, which includes convictions for new criminal offenses and revocations of probation supervision. The standing population measure would give a sense of the combined decision-making of correctional administrators and paroling authorities, who determine how long individuals actually spend behind bars with varying degrees of flexibility set by law.

Similar constructs should be created for the populations on probation and parole. Tracking the profile of those on community supervision would help illuminate the parallel composition issue: What percentage of the community corrections population needs to be on supervision and how many could be safely discharged or placed on administrative caseloads to help officers focus their efforts and resources on higher-risk individuals? Shining a light on supervision composition also would help counteract perverse incentives for agencies to keep some people—the ones who play by the rules and pay their supervision fees—on their caseloads for longer than is warranted.

Pennsylvania is probably the first state to attempt to use a sophisticated prison composition index. Under the direction of Bret Bucklen, PhD, the Pennsylvania Department of Corrections uses an “Offender Violence Risk Typology” tool, which merges information about current offense, prior

record and risk level to create three categories of incarcerated individuals. According to the index, 69 percent of Pennsylvania’s prison admissions and 59 percent of the standing population in 2013 fell into the least serious of the three categories, figures that had changed little since 2010. Those figures ought to speak volumes to the Pennsylvania legislature and governor about how they are using taxpayer dollars.

Some stakeholders may object to the index on the grounds that it would essentially establish a line between who should and shouldn’t be sent to prison. But there should be no mistaking the difference between a performance measures and a sentencing guideline. Sentencing decisions in individual cases involve myriad factors about the offenses and the people who commit the offences that can’t possibly be captured by statewide statistics. Broad performance measures that characterize the profile of the overall population of those incarcerated wouldn’t and shouldn’t have any application to specific cases. However, creating a way to systematically and concisely understand who is in prison and on supervision is an essential tool in elevating the state of practice in sentencing and corrections.

Others may be concerned that policy makers or practitioners could be tempted to manipulate the index by increasing the length of prison terms for people who commit serious offenses. Over time, this would increase the proportion of the standing prison population consisting of these types of offenses. To monitor whether this is occurring, states can keep close track of sentence

lengths, both to prison and probation, and actual time served, as well as the overall size of the correctional population. Looking at these trends alongside the composition of the corrections system will produce a revealing picture of how new policies are shaping the deployment of correctional resources.

### Recidivism by Risk Level

A second major objective of state corrections reform policy has been to improve public safety by reducing recidivism rates. Every state monitors and reports recidivism, which most commonly is defined as return to prison within three years of release. Corrections administrators, policy makers, criminal justice stakeholders, the media and the public use recidivism as the single-most important indicator of whether prison and post-release supervision policies, programs and practices are fulfilling their purposes, especially deterrence and rehabilitation.

There is growing recognition that the traditional binary (yes-or-no) recidivism definition is insufficient. Recidivism has multiple dimensions that deserve measurement, including discerning between violations of supervision rules and arrests and convictions for new criminal acts, whether new offenses are felonies or misdemeanors, and how much time has elapsed between placement on probation and parole and the noncompliant behavior.

In addition to these aspects, recidivism rates are influenced heavily by the risk levels of the people being released and supervised. A state

that puts a lot of lower-risk people in prison will have a lower prison recidivism rate than a state that's using its facilities for those who are at high risk of reoffending. This appears to be the case in Oklahoma, which in a national study by the Pew Charitable Trusts and the Association of State Correctional Administrators had a three-year return-to-prison rate of 26.4 percent for people released in 2004, the third lowest in the country (Pew Charitable Trusts, 2011). As the former Oklahoma Department of Corrections research administrator put it: "A lot of people who might be put on probation or diverted into an alternative program in another state wind up going to prison in Oklahoma. These lower level folks aren't as likely to recidivate, so it benefits our overall numbers and makes us look like we're doing an even better job than we're doing." (Pew Charitable Trusts, 2011: 17) And if the risk levels of incarcerated individuals and those under community supervision change over time, then recidivism rates will change independent of agency efforts aimed at reducing reoffending. The result would be a skewed picture of performance.

This is exactly what would happen if state sentencing and release policy reforms work as intended. If a state diverted or reduced length of stay for large numbers of those who commit low-risk offenses, the population of incarcerated individuals, as documented by the prison composition index, would become more serious or higher risk and the state's prison recidivism rate might go up. Even if recidivism dropped for medium- and high-risk people released from prison, subtracting all of the people who score

low-risk from the calculations might cause the recidivism rate to rise. This would create a mistaken impression that recidivism reduction strategies were failing.

On the other hand, since people who commit drug and property crimes tend to reoffend at higher rates than people who commit violent crimes, policy changes that reduce the proportion of incarcerated individuals who have committed nonviolent offenses would likely push the recidivism rate for people on probation up while driving it down for those on parole. This would signal that recidivism-fighting initiatives on the parole side were working well when in fact they might not be working at all, and vice versa for probation.

The recidivism by risk measure seeks to account for this, providing a more accurate picture of progress toward reducing recidivism. One easy way to construct the measure would be for states to report recidivism rates by the risk level of those who commit offenses. In addition to publishing an overall statewide prison recidivism rate of, say, 43 percent, we would know that the rate for people who commit low-risk offenses was 20 percent, and 40 percent and 60 percent for those who commit medium- and high-risk offenses. Using five or more risk groups, which many agencies do, would allow for finer and more helpful distinctions.

Tracked over time, these stratified rates would help corrections administrators and policy makers assess the extent to which recidivism trends are due to how corrections and reentry

agencies are playing their cards or due instead to the hands they were dealt. That is critical to understanding the extent to which policies and practices may need to be improved, and whether staffing and programmatic resources may need to be augmented.

Finally, in order to place emphasis on positives rather than negatives, corrections agencies ought to report and seek to raise their success rates, or successful completion rates, rather emphasizing the failure associated with recidivism. Some agencies already report success rates as the inverse of recidivism, and doing so can help improve the culture and performance of community supervision officers and people under supervision alike.

## Conclusion

Governors and legislatures in red and blue states alike have enacted substantial sentencing and corrections policy shifts, often by wide bipartisan majorities. The state reforms, along with others at the local and federal levels, have cut the national incarceration rate by 13 percent since its peak in 2007.

A hallmark of these reforms has been policies designed to focus their populations on those who commit violent offenses or have extensive criminal histories and reinvest some of the savings into community supervision programs and other efforts to reduce recidivism. Voters, in opinion surveys and at the ballot box, appear to be solidly behind the shift.



We need new performance measures that shed light on progress toward these important goals. The raw number of people in prison is an important barometer, but we need to know more about who they are. That gauge, in turn, will help illuminate whether institutional and community corrections agencies are succeeding in reducing the likelihood they will come back again.

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