

Justice Reinvestment Report

Barbara Armstrong

The *Justice Reinvestment Report* of the Alaska Criminal Justice Commission identifies 21 consensus recommendations for criminal justice reform in the state. The report, released in December 2015, is a product of the Justice Reinvestment Initiative in Alaska, an effort “to reform criminal justice systems by reducing correctional populations and their recidivism rates while lowering costs, maintaining offender accountability, and ensuring public safety” (See “Smart Justice in Alaska,” *Alaska Justice Forum* 32(2–3), Summer/Fall 2015). The Alaska Criminal Justice Commission (Commission), established by the Alaska Legislature, is beginning the second year of its three-year term as set out in 2014 in Alaska SB 64, Omnibus Crime Bill. The Commission is continuing its mandate to review and make recommendations “for improving criminal sentencing practices and criminal justice practices, including rehabilitation and restitution” in the state.

During the process of developing their recommendations, the 13 Commission members followed the methodology described in SB 64 which outlined a range of 12 factors to consider. Among these are peer-reviewed data and research on sentencing, corrections, and community supervision; input from criminal justice stakeholders; and public hearings and listening sessions statewide. Technical assistance was provided by The Pew Charitable Trusts at no charge to the state through Pew’s Justice Reinvestment Initiative, a private-public partnership with the U.S. Department of Justice, Bureau of Justice Assistance.

Key findings illustrate the growth over the past decade in the number of offenders incarcerated in Department of Corrections (DOC) facilities: pretrial inmates (persons awaiting a hearing and/or not yet convicted of a crime)—up 81 percent; and the number of post-conviction inmates—up 14 percent. There has also been a rise in the number of offenders in community corrections during the same period: offenders on probation and/or parole—up 62 percent; offenders in community residential centers (CRCs)—up 42 percent; and offenders on electronic monitoring—up 229 percent. Over the past 10 years, the length of stay for sentenced felony offenders in a DOC facility was up 31 percent. In 2014, nearly 75 percent of admissions for post-conviction offenders were for a nonviolent offense. On a typical day, offenders housed in a DOC institution for a technical violation of probation and/or

parole conditions make up over 20 percent of the incarcerated population.

Consensus Recommendations of the Commission

The recommendations of the Commission are briefly summarized below. The Commission noted that these recommendations are a “package of reforms” and that deleting any of the recommendations will impact the effectiveness of the reform strategy.

Implement evidence-based pretrial practices

Recommendation 1: Expand the use of citations in place of arrest for lower-level nonviolent offenses.

Law enforcement officers should issue citations for more nonviolent misdemeanors and Class C felonies with exclusions for offenses against a person, domestic violence offenses, violation of probation/parole conditions, and offenses for which a warrant or summons has been ordered, and with discretion to make arrests when the person is dangerous or a flight risk. This approach may assist in reducing the current high number of pretrial admissions to jail for minor offenses.

Recommendation 2: Utilize risk-based release decision-making.

The Department of Corrections, in collaboration with the Department of Law, the Public Defender, the Department of Public Safety, and the Alaska Court System, should establish a system for pretrial release based on risk assessment for all defendants. The plan should define appropriate release conditions, including a mechanism for the court to make an alternative decision regarding release in certain situations.

Recommendation 3: Implement meaningful pretrial supervision.

DOC should supervise moderate and high-risk defendants released pretrial, and establish a standardized procedure for recommendation of pretrial diversion options and referrals for substance and mental health treatment services. The Alaska Court System should implement a system to remind criminal defendants of court date hearings.

Recommendation 4: Focus supervision resources on high-risk defendants.

Resources

Justice Reinvestment Report by the Alaska Criminal Justice Commission (2015). (http://www.ajc.state.ak.us/sites/default/files/imported/acjc/AJRI/ak_jri_report_final12-15.pdf).

“Resource List Compiled by Commission Staff.” (<http://www.ajc.state.ak.us/acjc/resources.html>)—includes background research and studies reviewed by the Commission.

DOC should focus the most restrictive conditions of release on those pretrial defendants who have been identified as being most likely to reoffend or miss their court appearance, with the option of a bail hearing to present their case for release to the court for those defendants who are being held without release due to conditions that they cannot meet.

Focus prison beds on serious and violent offenders

Recommendation 5: Limit the use of prison for lower-level misdemeanor offenders.

Because research has shown that jail time for persons with lower-level nonviolent offenses can result in increased, rather than decreased, criminal behavior, the Commission has suggested reclassifying a number of nonviolent misdemeanors as *violations*, and redirecting lower-level nonviolent offenders to alternative sanctions such as fines, probation, and electronic monitoring. This recommendation also includes a proposal to make changes to presumptive sentencing ranges for Class A misdemeanors.

Recommendation 6: Revise drug penalties to focus the most severe punishments on higher-level drug offenders.

In light of the rise over the past 10 years in post-conviction prison admissions for drug offenses, and the research on the limited effect long stays in prison have on recidivism for these offenders, the Commission recommended reclassifying the crime of simple drug possession to a misdemeanor. The Commission also recommended making penalties for commercial heroin (selling or intent to sell) commensurate with penalties for commercial methamphetamine and cocaine offenses, and creating a tiered drug statute with regards to the amount and type of drug involved.

Recommendation 7: Utilize inflation-adjusted property thresholds.

Recent research has shown that raising the dollar amount threshold for felony theft does not result in an increase in property crime. Alaska's current felony theft threshold is \$750. The felony threshold dollar amount should be raised to \$2,000, and a process created to ensure sanctions are adjusted to keep pace with inflation. Prison space should be utilized for more serious offenders, rather than nonviolent property crime offenders.

Recommendation 8: Align non-sex felony presumptive ranges with prior presumptive terms.

Following the implementation in 2005 of a presumptive sentencing range for a non-sex felony, the length of stay for all classes of non-sex felonies increased. Because this was not the original legislative intent, the recommendation is to bring presumptive ranges for non-sex felonies back into alignment with the prior 2005 levels. Longer stays in prison have been shown to have no greater impact on reducing recidivism than shorter stays.

Recommendation 9: Expand and streamline the use of discretionary parole.

DOC should increase eligibility for discretionary parole to all but the most serious felony offenders, and the process for parole decision-making for lower-level felony offenders should be streamlined. In instances where it is shown that an offender would be a threat to public safety, parole could be denied.

Recommendation 10: Implement a specialty parole option for long-term, geriatric inmates.

Geriatric inmates are typically much less likely to reoffend than younger inmates, according to research. To reduce the number of the oldest cohort of offenders incarcerated, there should be an automatic parole hearing for offenders between the ages of 55 and 60 years who have served a minimum of 10 years of their sentence.

Recommendation 11: Incentivize completion of treatment for sex offenders with an earned time policy.

Studies have shown that in-prison sex offender treatment can be effective and can have a cost-benefit. Most sex offenders will be released back to the community at some point whether or not they have completed treatment. The Department of Corrections should incentivize participation in and completion of in-prison sex offender treat-

ment by allowing offenders to earn time off of their prison terms for completion of sex offender treatment. DOC should also provide more in-prison sex offender treatment programs that address cognitive behavioral issues of the offender and stress accountability for harm done.

Strengthen supervision and interventions to reduce recidivism

Recommendation 12: Implement graduated sanctions and incentives.

DOC should create a graduated sanctions and incentives matrix using swift, certain, and proportional responses for community supervision field officers (probation and parole officers) to follow when rewarding prosocial behavior and when responding to technical violations of probation and/or parole conditions.

Recommendation 13: Reduce pre-adjudication length of stay and cap overall incarceration time for technical violations of supervision.

The use of a return to prison as a sanction for a technical violation of conditions of parole and/or probation (e.g., missing an appointment with a probation/parole officer, failing a drug screening) should be limited to a specific number of days—such as three days for the first revocation. Technical violators of probation and/or parole supervision represent 22 percent of the incarcerated population, and the average length of stay is 106 days in a DOC facility. Incarceration for such periods has not been shown to be an effective sanction. In order to be effective, sanctions should be disruptive enough that probationers and parolees will want to avoid the sanction, but not so disruptive that they derail the prosocial aspects of the person's life (ability to maintain a job, pay rent, care for children, etc.). Also, uncompleted Community Work Service and the inability to afford court-ordered substance abuse treatment should not result in additional jail time.

Recommendation 14: Establish a system of earned compliance credits.

There should be a statutorily-defined system by which offenders on probation and/or parole who are compliant with the conditions of their release can decrease their length of time under community supervision, e.g., one month of earned credits on probation/parole for each month of compliance with the conditions of their supervision.

Recommendation 15: Reduce maximum lengths for probation terms and standardize early discharge proceedings.

Research has shown that most offenders recidivate during the first three months after release; however, the time that offenders in Alaska spend on probation and/or parole has increased by 13 percent over the past 10 years. The Commission recommended changes to the maximum probation terms based on the type of offense, and recommended decreasing time on probation or parole for compliant offenders, including an adjustment to the minimum time requirement for eligibility for early discharge from probation or parole to one year.

Recommendation 16: Extend good time eligibility to offenders serving sentences on electronic monitoring.

Offenders who are incarcerated usually can reduce their sentence through positive behavior—called earning “good time.” Offenders who are on electronic monitoring are not eligible for this, however, and should have the same option to earn “good time” under the same provisions as offenders in DOC facilities.

Recommendation 17: Focus ASAP [Alcohol Safety Action Program] resources to improve program effectiveness.

The Alcohol Safety Action Program works with court-referred offenders involved in alcohol/drug-related misdemeanor cases, and provides screening and treatment referral services. ASAP's effectiveness could be enhanced by focusing on high-risk misdemeanants—those most likely to reoffend—or alternatively, by limiting the categories of offenses eligible for referral to the program. ASAP should include the use of validated screening tools to assist in assessment of criminogenic risk, and should increase case supervision of moderate- to high-risk offenders, if possible.

Recommendation 18: Improve treatment offerings in CRCs [community residential centers] and focus use of CRC resources on high-need offenders.

Both low- and high-risk offenders are currently housed in community residential centers (CRCs). CRCs should use validated assessment tools to identify offenders at highest risk to reoffend and their treatment needs (e.g., cognitive-behavioral, substance abuse, after care and/or support services), and focus on providing treatment services for this population. Housing low- and high-risk offenders together should be limited.

Please see *Justice reinvestment*, page 6

Justice reinvestment (continued from page 5)

Ensure oversight and accountability

Recommendation 19: Require collection of key performance measures and establish an oversight council.

The following agencies should be mandated to collect and report data on key performance measures each year: the Alaska Court System, Department of Corrections, Department of Health and Social Services, Department of Law, Department of Public Safety, and the Parole Board. A Justice Reinvestment Oversight Task Force should be created to monitor the implementation of the Commission's recommendations, assist in administering the reinvestment of justice reform savings back into the criminal justice system, evaluate government processes regarding victim restitution and assistance, and make additional recommendations on justice reform. This Task Force will report its findings to the Legislature and the Governor.

Recommendation 20: Ensure policymakers are aware of the impact of all future legislative proposals that could affect prison populations.

All proposed sentencing and correctional policies changes should be required to attach a 10-year fiscal impact statement for review by policymakers.

Recommendation 21: Advance crime victim priorities.

Based on roundtable discussions with crime victims, survivors, and victim advocates, the Commission has outlined six proposed administrative reforms to address the concerns and needs of crime victims. These reforms touch on issues such as efforts to increase crime victim participation in the court notification system, reduction of the likelihood of victim-offender contact, crime victim needs during offender transition and reentry planning, enhanced victim-focused training for criminal justice professionals, provision of trauma-informed services for child victims, and increased accessibility of court and criminal justice agency communications for persons with low literacy and/or limited English proficiency.

Reinvestment

Recognizing that its recommendations will result in substantial state general fund

savings over the next decade, the Commission strongly recommended reinvesting a portion of the savings into underfunded, but high priority, services including pretrial supervision, victims' services in remote and rural communities, violence prevention and restorative justice programming, substance abuse and behavioral health treatment, and reentry services.

Additional Recommendations

The Commission reached consensus on the above 21 recommendations, and majority approval for the six recommendations below. These six recommendations were not listed under any specific category.

Additional Recommendation 1: Require that all misdemeanor DUI and refusal to submit to a chemical test offenders serve their incarceration terms in proven prison alternatives (variation on recommendation 5(e)).

The above category of offenders should be referred specifically to supervision under remote surveillance technologies (e.g., electronic monitoring) or to a community residential center.

Additional Recommendation 2: Set the weight threshold at which more serious commercial drug offenses are differentiated from less serious offenses at 5 grams (variation on recommendation 6 (c)).

Serious commercial drug offenses (selling or intent to sell) should have a threshold level of 5 grams of the drug.

Additional Recommendation 3: Bring the presumptive ranges under the ceiling of prior presumptive terms (variation on recommendation 8).

Presumptive sentencing ranges should be brought back under the ceiling of the 2005 presumptive sentencing terms, and allow presumptive probation for both first- and second-time Class C Felony offenders.

Additional Recommendation 4: Return sentence length for Felony C and B sex offenders to pre-2006 levels.

In light of research that has shown that recidivism rates for sex offenders are lower than some other offense types, the majority of the Commission recommended that the length of stay in prison for Felony C and B sex offenders be reduced by returning these crimes to the pre-2006 presumptive sentencing terms.

Additional Recommendation 5: Expand Medicaid funding to provide substance abuse treatment for indigent offenders.

The treatment needs of high-risk offenders—many of whom are Alaska Mental Health Trust Authority beneficiaries—should be addressed by enrolling more of these offenders in Medicaid to ensure availability of services.

Additional Recommendation 6: Limit the use of multiple misdemeanor or revocations for the same allegation of program noncompliance.

The use of multiple revocations of probation and/or parole for misdemeanor offenses that are violations of probation and/or parole conditions should be reduced. Such revocations normally result in additional jail time. This issue should be addressed administratively in the court process, and the offender should be given the opportunity to successfully complete the program conditions of probation and/or parole.

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Alaska Justice Forum

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