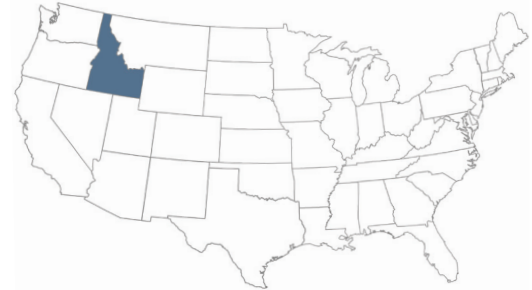




January 2014

# Justice Reinvestment in Idaho:

## Analyses & Policy Framework Overview



**I**DAHO'S CRIME RATE IS AMONG THE LOWEST in the nation. Recidivism in the state, however, is increasing, and adults sentenced to prison for nonviolent crimes do twice as much time as adults sentenced to prison for nonviolent crimes in other states.<sup>1</sup> In 2012, Idaho's incarceration rate was the eighth highest in the country.<sup>2</sup>

Since 2008, the state's prison population has increased by 10 percent and is projected to increase another 16 percent over the next five years, from 8,076 people in FY2014 to 9,408 people by FY2019. Increasing the capacity of the prison system to absorb the growth over that time period will cost Idaho an estimated \$288 million in operating and construction costs.<sup>3</sup> Frustrated by rising corrections spending and a high rate of recidivism, policymakers came together to identify a more effective path forward.

In June 2013, Idaho Governor C.L. "Butch" Otter, Chief Justice Roger Burdick, legislative leaders from both parties, and other state policymakers requested technical assistance from the Council of State Governments Justice Center (CSG Justice Center) to employ a data-driven "justice reinvestment" approach to develop a statewide policy framework that would decrease spending on corrections and reinvest savings in strategies to reduce recidivism and increase public safety. Assistance provided by the CSG Justice Center was made possible in partnership with The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance.

Senate Concurrent Resolution 128, enacted in March 2013, established a bipartisan Interim Legislative Committee to study Idaho's criminal justice system using the justice reinvestment approach. State leaders also established the interbranch Justice Reinvestment Working Group, which is made up of state lawmakers, corrections and court officials, and other stakeholders in the criminal justice system. Both groups were co-chaired by Senator Patti Anne Lodge (R-District 11) and Representative Richard Wills (R-District 23). The groups reviewed analyses that the CSG Justice Center conducted and discussed policy options to increase public safety and avert growth in the prison population.

In preparing its analyses, the CSG Justice Center reviewed vast amounts of data, drawing on information systems maintained by the Idaho Department of Corrections (IDOC), Idaho Commission of Pardons and Parole (Parole Commission), Idaho Supreme Court, Idaho State Police, and others.<sup>4</sup> In total, the CSG Justice Center analyzed over 570,000 individual records across these information systems.

In addition to these quantitative analyses, the CSG Justice Center convened focus groups and meetings with prosecutors, sheriffs, victim advocates, district judges, police chiefs, and others. Between June 2013 and January 2014, the CSG Justice Center conducted more than 100 in-person meetings with nearly 250 individuals. Ultimately, the CSG Justice Center helped state leaders identify three challenges contributing to Idaho's prison growth.

1. The Council of State Governments Justice Center (CSG Justice Center) categorized crimes in Idaho for analysis purposes based on Idaho Department of Correction (IDOC) data describing each offender's most serious offense for the current sentence. Analyses on "violent crimes" include assault/battery, sex crimes, crimes against children, rape, murder, manslaughter, kidnapping, terrorism, robbery, aggravated arson, cruelty to animals, and other person crimes. "Nonviolent crimes" include all other offenses.

2. U.S. Department of Justice, Bureau of Justice Statistics, "Prisoners in 2012," (Washington, DC: U.S. Department of Justice, 2013).

3. Email correspondence and analysis between IDOC and CSG Justice Center, November-December 2013. The "cost of doing nothing" is based on IDOC's forecasted prison population through FY2019, the IDOC FY2012 operational costs per day, and estimated construction costs to accommodate the population forecast.

4. In this phase of justice reinvestment, CSG Justice Center staff were unable to match case-level criminal justice data with state mental health data.

Since 2010, the Bureau of Justice Assistance (BJA) has supported the Justice Reinvestment Initiative (JRI), which has assisted state and local governments as they generate cost-effective, evidence-based policies to generate meaningful savings for states while maintaining a focus on public safety. In a public-private partnership with The Pew Charitable Trusts, BJA provides technical assistance and financial support for these system-wide criminal justice reform efforts.

Idaho joins 18 other states in pursuing JRI through technical assistance from the Council of State Governments Justice Center, one of our innovative partners. We at BJA are pleased to support the work in Idaho culminating in this report, a pivotal achievement of the state's Justice Reinvestment Interim Committee and the Justice Reinvestment Working Group. We look forward to future collaboration as Idaho stakeholders work to adopt and implement the policy changes described in this report.

A handwritten signature in black ink, reading "Denise E. O'Donnell". The signature is fluid and cursive, with the first name "Denise" and last name "O'Donnell" clearly legible.

Denise O'Donnell, Director  
U.S. Department of Justice,  
Bureau of Justice Assistance

## Summary of Challenges

**CHALLENGE 1: A REVOLVING DOOR.** *The state's supervision and diversion programs are not reducing recidivism.*

- Idaho sentences most people convicted of felonies to Rider or probation, but 30 percent fail and end up spending time in prison.<sup>5</sup>
- Responses to supervision violations are oftentimes slow and inconsistent.
- Investments in substance use treatment, while significant, are still insufficient to ensure the thousands of people on probation and parole receive the treatment they need.

**CHALLENGE 2: INEFFICIENT USE OF PRISON SPACE.** *The majority of the prison population comprises people whose community supervision was revoked, people sentenced to a "Rider," and people convicted of a nonviolent crime who are eligible for parole but have not yet been released.*

- A large percentage of Idaho's prison beds are occupied by people whose probation and parole supervision has been revoked. These individuals serve relatively long periods of time in prison, diminishing resources available for recidivism-reduction efforts.
- Low-risk individuals who successfully complete a Rider and then start a term of probation return to prison within three years at almost twice the rate of low-risk individuals who start a new probation term without ever having been through a Rider program.<sup>6</sup>
- Most people stay in prison well beyond their fixed term, regardless of the type of offense they committed and their assessed risk level.
- Time served in prison for nonviolent offenses is close to double the national average and twice as long as the average minimum term required.
- People approved for parole often remain in prison, due largely to delays in institutional program completion.

**CHALLENGE 3: INSUFFICIENT OVERSIGHT.** *Idaho lacks a system to track outcomes, measure quality, and assure reliability of recidivism-reduction strategies, so policymakers are unsure whether their investments are yielding intended outcomes.*

- State agencies lack sufficient staff and data systems to measure and report on key indicators that contribute to delays in corrections and parole processes.
- The network of contracted substance use treatment providers is not evaluated in a robust manner.
- Risk assessment tools appear to be working, but have not undergone a rigorous evaluation recently to test for validity and reliability.

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5. A "Rider" is a sentence in which the court retains jurisdiction over individuals for up to 365 days. Individuals sentenced to Rider are those who the court thinks might benefit from a short period of incarceration together with programming and further evaluation rather than an immediate sentence to a prison term. During the Rider period, IDOC is responsible for determining the appropriate placement of the

individuals, as well as programming, treatment and education needs. Upon completion of a Rider, the court decides if the individual should be placed on probation or sent to prison. If the latter, the individual will remain in the custody of IDOC.

6. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

## Policy Framework

These challenges were presented to the interim committee and the working group. Then, with help from the CSG Justice Center and input from stakeholders from across the criminal justice system, the groups developed a proposed policy framework to strengthen probation and parole supervision; tailor sanctions for parole violations; make more productive use of prison space; and assess, track, and ensure the sustainability of recidivism-reduction strategies.

State leaders agreed that high rates of failure among people sentenced to community supervision and diversion programs in Idaho are costly and undermine public safety. To strengthen supervision practices and the programs critical to reducing recidivism, the policy framework enables probation and parole officers (PPOs) to respond to specific supervision violations with swift and certain sanctions. The framework also supports investing in community-based treatment and providing training to PPOs to help change the behavior of people on probation and parole.

Recognizing that some responses to supervision violations are inconsistent in Idaho, state leaders designed a framework that tailors sanctions for parole violations. In addition, the framework recommends that judges receive recidivism outcome data about various sentencing options. Furthermore, the framework proposes that prison space be used more efficiently by regulating the amount of time served above the fixed minimum term for people sentenced to prison for nonviolent offenses.<sup>7</sup>

To ensure that any policy changes achieve their intended results, the policy framework recommends creating an oversight committee, evaluating the effectiveness of program investments, validating the state's risk assessment instrument, and reinvesting in data and information technology capacity to help streamline corrections and parole processes.

### JUSTICE REINVESTMENT POLICY FRAMEWORK

1. Strengthen supervision practices and programs to reduce recidivism.	2. Tailor sanctions for supervision violations, provide recidivism outcomes at sentencing, and structure parole to make more productive use of prison space.	3. Assess, track, and ensure impact of recidivism-reduction strategies.
<p><b>1(A):</b> Respond to supervision violations with swiftness and certainty</p> <p><b>1(B):</b> Increase community-based treatment and programming</p> <p><b>1(C):</b> Prioritize supervision resources based on the individual's risk of recidivism</p> <p><b>1(D):</b> Train PPOs in evidence-based strategies to change offender behavior</p> <p><b>1(E):</b> Improve the management of victim restitution and other legal financial obligations</p>	<p><b>2(A):</b> Tailor confinement responses for probation and parole violations</p> <p><b>2(B):</b> Provide judges with recidivism outcome data for various sentencing options</p> <p><b>2(C):</b> Use risk assessment to inform the parole decision-making process</p> <p><b>2(D):</b> Reserve prison space for individuals convicted of violent offenses by regulating the percent of time above the minimum sentence that people convicted of nonviolent offenses may serve</p>	<p><b>3(A):</b> Establish an oversight committee to measure and assess policy impacts</p> <p><b>3(B):</b> Require that risk and needs assessments be routinely reviewed for quality</p> <p><b>3(C):</b> Increase the capacity of state agencies to collect and analyze data in order to reduce inefficiencies and cut costs</p> <p><b>3(D):</b> Evaluate the quality of programs and use results to improve outcomes</p>

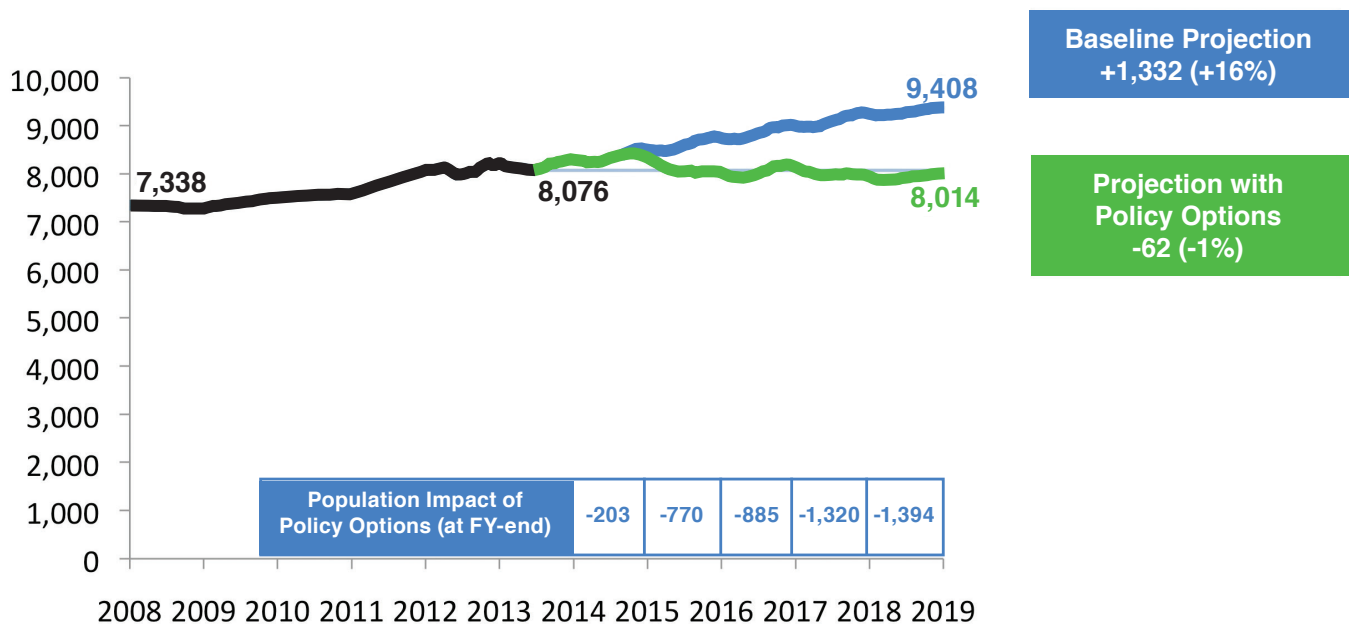
7. This policy will not affect sentencing decisions.

## Projected Impact

As a package, the policies described in this report have the potential to generate significant savings and reductions in recidivism for Idaho. By slowing the growth in the state prison population between 2015 and 2019, effective implementation of the policy framework will help the state avoid at least \$213 million in construction costs and \$75 million in operating costs that would otherwise be needed to accommodate

the forecasted growth.<sup>8</sup> While IDOC projects the prison population to grow to 9,408 by FY2019, the policy framework is projected to mitigate the amount of growth by 1,394 beds (see Figure 1).<sup>9</sup> As a result of improvements to the criminal justice system, the policy framework estimates a 15-percent reduction in recidivism.

**FIGURE 1: PROJECTED IMPACT OF JUSTICE REINVESTMENT POLICY FRAMEWORK ON IDAHO'S PRISON POPULATION**<sup>10</sup>



### 5-Year Projected Outcomes (2015-2019)

- Reduce recidivism 15%
- Reduce prison population 1%
- Avoid \$288 million in costs



- Reinvest \$33 million in treatment, supervision, and training



8. Operating cost estimates are based on FY2012 IDOC cost per day of \$53. Construction cost estimates were created in consultation with IDOC and are roughly based on a 2008 system plan figure of \$160,000 per bed for project and construction costs.

9. Email correspondence and analysis between IDOC and CSG Justice Center, November-December, 2013.


10. *Ibid.*

## Reinvestment

To achieve these outcomes, a portion of the expected savings must be reinvested in funding for training PPOs in effective interventions, providing community-based treatment services to people on probation and parole

supervision who have a higher risk of reoffending, and implementing quality assurance measures. In total, the framework positions the state to reinvest \$33 million of the projected savings through FY2019 (see Figure 2).

**FIGURE 2: SUMMARY OF JUSTICE REINVESTMENT POLICY FRAMEWORK SAVINGS AND REINVESTMENTS**

	<u>FY2015</u>	<u>FY2016</u>	<u>FY2017</u>	<u>FY2018</u>	<u>FY2019</u>	<u>Total</u>
<b>Cost Savings (in millions)</b>						
Operating Cost Savings	-\$0.8	-\$10.3	-\$15.8	-\$21.6	-\$26.4	<b>-\$74.9</b>
Construction Cost Savings					-\$213.2*	<b>-\$213.2</b>
<b>Total Savings</b>	<b>-\$0.8</b>	<b>-\$10.3</b>	<b>-\$15.8</b>	<b>-\$21.6</b>	<b>-\$239.6</b>	<b>-\$288.1</b>
<b>Reinvestments (in millions)</b>						
Treatment Supervision–1(B)	\$2.5	\$3.0	\$3.0	\$3.0	\$3.0	<b>\$14.5</b>
Strengthen Supervision–1(C) and 1(D)	\$2.0	\$2.0	\$2.0	\$2.0	\$2.0	<b>\$10.0</b>
Proactive Restitution Collection–1(E)	\$0.5	\$1.0	\$1.5	\$1.5	\$1.5	<b>\$6.0</b>
Quality Assurance and Data/IT Capacity–3(B), 3(C), 3(D)	\$0.5	\$0.5	\$0.5	\$0.5	\$0.5	<b>\$2.5</b>
<b>Total Reinvestment</b>	<b>\$5.5</b>	<b>\$6.5</b>	<b>\$7.0</b>	<b>\$7.0</b>	<b>\$7.0</b>	<b>\$33</b>
<b>Net Savings</b>	<b>\$4.7**</b>	<b>-\$3.8</b>	<b>-\$8.8</b>	<b>-\$14.6</b>	<b>-\$232.6</b>	<b>-\$255.1</b>

\*Estimated construction costs to build for the projected growth would undoubtedly be divided into various projects over the next five years. Without knowing how that construction plan might develop, the estimated construction cost savings are all incorporated into FY2019.

\*\*An up-front investment is required to launch critical reinvestment policies and generate substantial cost savings in future years.

## CHALLENGE 1: A REVOLVING DOOR. *The state's supervision and diversion programs are not reducing recidivism.*

### Findings and Analysis

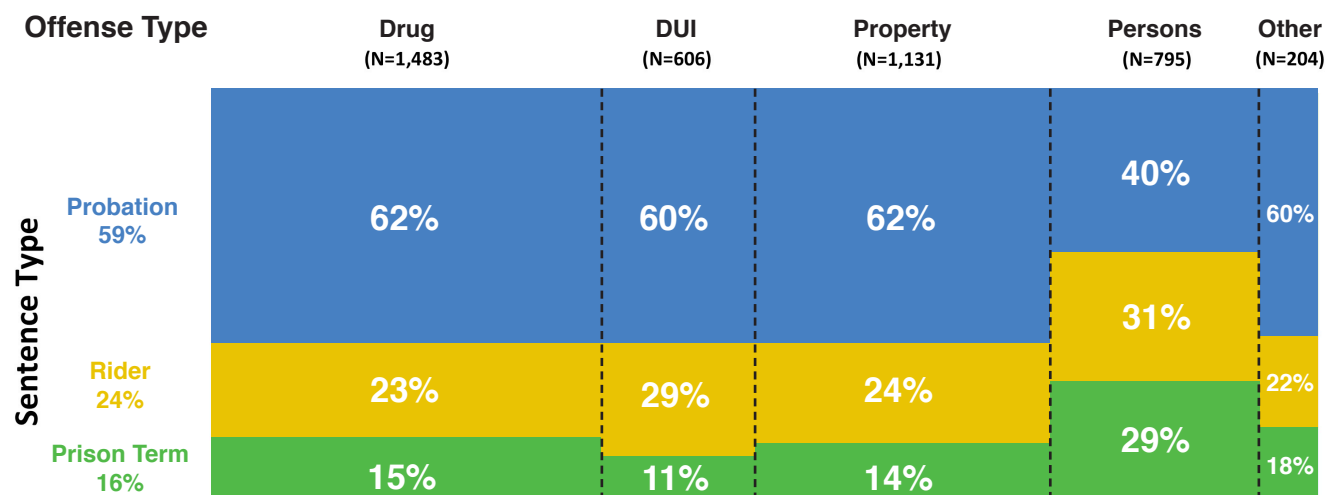
**Most adults convicted of felony offenses in Idaho are sentenced to Rider or probation, but 30 percent fail and end up spending time in prison.**

- Of new felony sentences in 2012, 59 percent were sentenced to probation. Analysis shows that most of these individuals were convicted of property and

drug offenses and were assessed as being at a low to moderate risk of reoffending (see Figures 3 and 4).<sup>11</sup>

- In 2012, 43 percent of probation terminations were revocations to prison for either a Rider or a term prison sentence (see Box on page 8 for more information on Riders).<sup>12</sup>

FIGURE 3: FY2012 NEW FELONY SENTENCES BY SENTENCE TYPE AND OFFENSE TYPE <sup>13</sup>



11. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and release data.

12. *Ibid.*

13. *Ibid.*; all remaining figures in this document represent data from FY2012 unless otherwise specified.



## Idaho's Sentencing Options and Supervision Types

Once an individual is convicted of a felony, the court has a variety of sentencing options at its disposal.

**Probation:** The least restrictive sentencing option, adult probation is state-funded and the IDOC is responsible for the certification, training, and support of all PPOs. As of June 30, 2013, PPOs in the seven IDOC probation and parole districts were supervising approximately 11,500 adult probationers. IDOC currently manages close to 190 PPO positions, two-thirds of which are funded by the General Fund and a liquor tax. The remaining one-third of the PPOs' salaries are paid for by probation and parole supervision fees.<sup>14</sup>

**§19-2524:** As initially written in 2007, this statute allowed the court to order a mental health and/or substance abuse assessment at sentencing. If clinically appropriate, the judge could order treatment to be paid by the Idaho Department of Health and Welfare (IDHW).

In 2012, §19-2524 was amended so that, effective March 1, 2013, a screening is required to assess the behavioral health needs of an individual convicted of a felony, unless waived by the court. If needed, further assessments are conducted without court involvement, and a plan of treatment is prepared and included in the presentence investigation (PSI) report. For those who meet diagnostic criteria for a substance use disorder, §19-2524 permits the court to order community-based substance use treatment services as a condition of probation, with expenses covered by IDOC. For those who meet diagnostic criteria for a serious mental illness, §19-2524 permits the court to order community-based mental health treatment services as a condition of probation, with expenses covered by IDHW.<sup>15</sup>

**Problem-Solving Courts:** High-risk, high-need individuals who plead guilty to certain offenses may be sentenced to a problem-solving court, where a judge has a specialized docket and plays an active role in overseeing and assessing the "client" and his or her treatment progress as an alternative to incarceration. Problem-solving courts are funded by the state and administered by the Idaho Supreme Court. There are 64 problem-solving courts across the state, including drug, mental health, DUI, and veterans' courts. In FY2012, 613 people were admitted into felony problem-solving courts, which represented almost 14 percent of all new felony sentences that year.<sup>16</sup>

**Retained Jurisdiction or "Rider":** A "Rider" is a sentence in which the court retains jurisdiction over individuals for up to 365 days. Rather than an immediate sentence to a prison term, individuals sentenced to Rider are those who the court thinks might benefit from a short period of incarceration together with programming and further evaluation. During the Rider period, IDOC is responsible for determining the appropriate placement of the individuals, as well as programming, treatment, and education needs. Upon completion of a Rider, the court decides if the individual should be placed on probation or sent to prison.<sup>17</sup> There are three options for Rider placements, all of which take place in IDOC facilities: 1) Correctional Alternative Placement Program: A 90-day intensive substance use treatment program; 2) Traditional: A 180-day correctional intervention that addresses cognitive and behavioral issues, substance use, and general education; and 3) Therapeutic Community: A nine-month treatment program for people demonstrating higher levels of criminality and chronic substance use.

**Prison Term:** The court may relinquish jurisdiction and sentence an individual to a term of incarceration. Everyone entering prison is assessed and then placed in Pathways to Success, a comprehensive, institution-based treatment model that has 17 curriculum tracks to provide the appropriate programming and treatment based on each individual's risk and needs (For more information on how prison terms work in Idaho, see Box on page 20).

**Parole:** Release to parole supervision is a discretionary decision made by the Parole Commission after the individual has served his or her fixed term, or minimum, in prison. The Parole Commission is a part-time, five-member body charged with making parole release and parole revocation decisions. Parole supervision services are funded by the state and overseen by IDOC. As of June 30, 2013, PPOs were supervising approximately 2,900 parolees.

14. Funding for 122.5 PPOs is provided by the General Fund and a liquor tax; 65 PPOs are funded by the cost supervision fees.

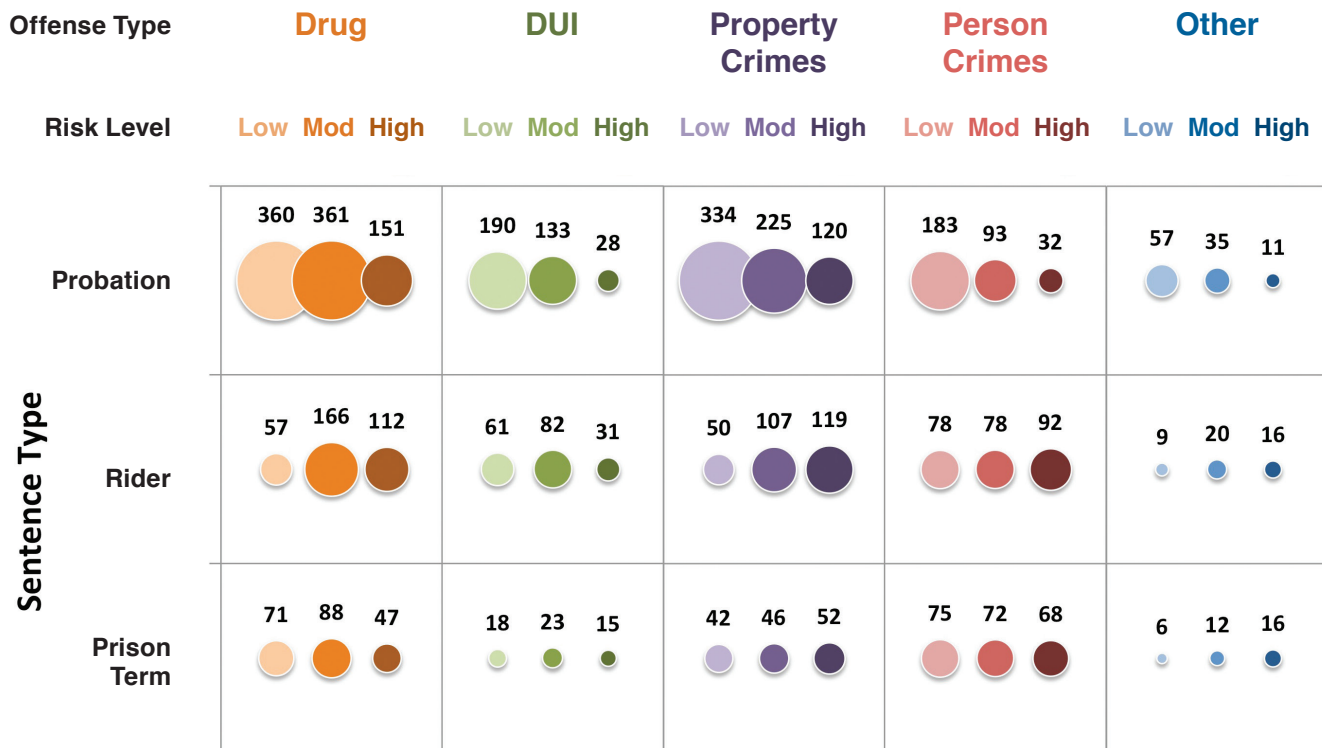
15. For more information on §19-2524, see the statute at [legislature.idaho.gov/idstat/Title19/T19CH25SECT19-2524.htm](http://legislature.idaho.gov/idstat/Title19/T19CH25SECT19-2524.htm).

16. Email correspondence with the Idaho Supreme Court on December 9, 2013.

17. For more information on Rider, see the statute at [legislature.idaho.gov/idstat/Title19/T19CH26SECT19-2601.htm](http://legislature.idaho.gov/idstat/Title19/T19CH26SECT19-2601.htm).



FIGURE 4: NEW FELONY SENTENCES BY SENTENCE TYPE AND RISK LEVEL <sup>18</sup>



**Probation sentences in the state are lengthy, yet revocations from probation tend to occur early in the supervision period.**

- The average probation sentence in Idaho is five years. In comparison, the average probation sentence in the U.S. is three years, or 40 percent shorter.<sup>19</sup>
- Idaho is one of 17 states that do not cap felony probation sentences in statute.<sup>20</sup> Probation sentences in Idaho are limited only by the maximum prison sentence allowed for each individual offense.
- In 2012, people revoked from probation had been on supervision an average of 1.3 years before being revoked, while people who successfully completed probation spent an average of 3.2 years

on supervision. Probation failure rates in Idaho in 2012 aligned well with assessed risk level, seeing as 87 percent of high-risk probationers terminated probation due to revocation, compared with only 18 percent of low-risk probationers (see Figure 5).<sup>21</sup>

- In Idaho, four out of every five probation revocations occur within the first 36 months of the probation term.<sup>22</sup>
- In 2012, Idaho had the fourth highest percentage of people on probation in the U.S., with 2,691 misdemeanor and felony probationers per 100,000 residents, compared to the national average of 1,633 probationers per 100,000 residents.<sup>23</sup>

18. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and release data.; N=4,485; "Low Mod High" refer to low, moderate, and high risk levels. For more information on determining risk levels, see Box on page 11.

19. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data; U.S. Department of Justice, Bureau of Justice Statistics, "Felony Sentences in State Courts, 2006-Statistical Tables" (Washington, DC: Bureau of Justice Statistics, 2006).

20. The other states that do not cap felony probation sentences in statute include Massachusetts, Colorado, Montana, Pennsylvania,

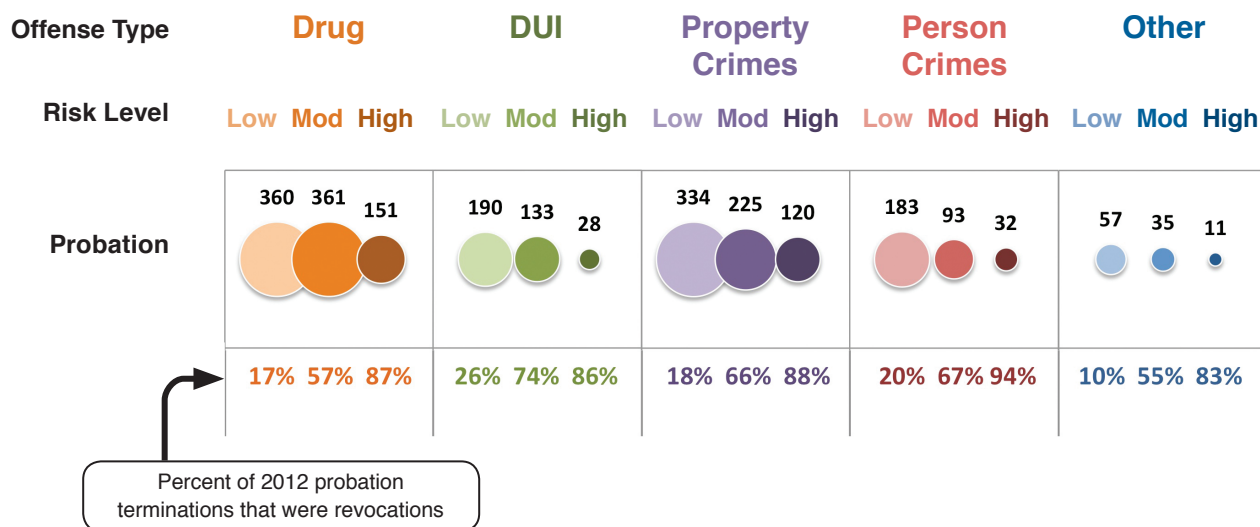
Rhode Island, Oregon, Washington, Tennessee, Minnesota, Wisconsin, South Dakota, Virginia, Arizona, Indiana, Vermont, and Wyoming.

21. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

22. *Ibid.*

23. U.S. Department of Justice, Bureau of Justice Statistics, "Probation and Parole in the U.S. 2012" (Washington, DC: U.S. Department of Justice, 2013).

FIGURE 5: NEW PROBATION SENTENCES BY RISK LEVEL <sup>24</sup>



## Responses to violations oftentimes lack swiftness and certainty.

- PPOs frequently do not impose administrative sanctions in response to supervision violations without returning to court because state law is unclear whether they have the authority to do so.<sup>25</sup>
- Current use of sanctions varies statewide. According to prosecutors and judges, people on probation and parole often accumulate multiple violations before any sanctions are imposed.

- PPOs believe they would be more successful at holding individuals accountable for supervision violations if there were an array of intermediate sanctions available for them to use without requiring that they return to court for a hearing.<sup>26</sup> IDOC standard operating procedures do grant PPOs authority to impose certain intermediate sanctions, but the PPOs say it is unclear what sanctions can and cannot be imposed without court review.<sup>27</sup>

## Intermediate Sanctions

Intermediate sanctions are a range of responses to probationers' and parolees' behavior that PPOs can use to help ensure accountability and deter recidivism. They can also help PPOs respond consistently to violations with a level of swiftness and severity that is directly related to the probationer's or parolee's risk level and the condition of supervision that has been violated. Standardizing responses provides a measure of fairness while giving PPOs necessary flexibility. A low-severity sanction might involve increased monitoring or travel restrictions. Higher-severity responses could include placement in intensive outpatient treatment or a short, immediate jail sanction.<sup>28</sup>

24. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

25. Administrative sanctions are immediate consequences that a PPO can impose on a probationer or parolee to address violations of supervision.

26. Faye S. Taxman, David Soule, and Adam Gelb, "Graduated Sanctions: Stepping into Accountable Systems and Offenders," *Prison Journal*, 79(2) (1999); CSG Justice Center focus group with PPOs, July 16, 2013.

27. IDOC, Standard Operating Procedure 701.04.02.020, Violation Response Matrix: Community Corrections; telephone conversation with IDOC staff on November 31, 2013.

28. Crime and Justice Institute, *Implementing Evidence-Based Policy and Practice in Community Corrections, Second Edition* (Washington, DC: National Institute of Corrections, 2009); Tony Fabelo, Geraldine Nagy, and Seth Prins, *A Ten-Step Guide to Transforming Probation Departments to Reduce Recidivism* (New York: CSG Justice Center, 2011).

## The use of short jail stays in response to probation violations is an option for some PPOs, but usage and application vary widely.

- As a special condition of probation, courts may authorize the use of discretionary jail time (DJT). However, PPOs must receive judicial approval prior to responding to a violation and imposing DJT, which can often take days, diminishing the impact of the sanction.
- There is no cap on DJT length or on the frequency with which it may be used. A statewide survey of county sheriffs indicated that people who come to jail

on a DJT sanction stayed from 1 day to as long as 30 days per sanction.<sup>29</sup> Sheriffs pointed to a need for greater consistency in policy on how PPOs use DJT because it leaves jails unable to predict and manage the size of their jail populations.<sup>30</sup>

- IDOC's policies on responding to supervision violations lack some of the key principles that research shows are effective responses, including encouraging positive behavior and sanctioning negative behavior based on the frequency and seriousness of the violation and the individual's risk level.<sup>31</sup>

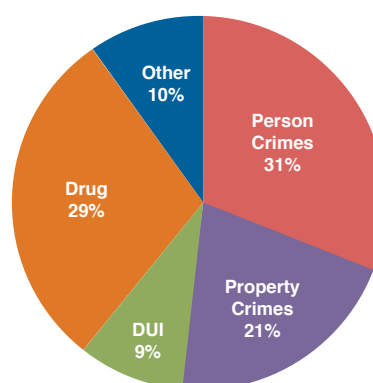
## Understanding Risk Assessment

Risk assessment tools help users sort individuals into low-, medium-, and high-risk groups. They are designed to gauge the likelihood that an individual will come in contact with the criminal justice system, either through a new arrest and conviction or reincarceration for violating the terms of supervision. These tools usually consist of 10 to 30 questions designed to ascertain an individual's history of criminal behavior, attitudes and personality, and life circumstances. Risk assessments can be administered at any time during a person's contact with the criminal justice system—from first appearance in court through presentencing, placement on probation, admission to a correctional facility, the period prior to release, and during parole.<sup>32</sup> They are similar to actuarial tools used by an insurance company to rate risk: they predict the likelihood of future outcomes according to their analysis of past activities (e.g., criminal history) and present conditions (such as behavioral health or addiction). Objective risk assessments have been shown to be more reliable than any professional's individual judgment.<sup>33</sup>

## There has been a significant increase in the number of people convicted of a drug offense and sentenced to prison, which is driving, in part, the growth of the prison population.

- Between FY2007 and FY2011, drug-related arrests increased 17 percent, from 5,098 to 5,967 arrests.<sup>34</sup>
- The number of people sentenced to a prison term for a drug offense increased 23 percent between FY2008 and FY2012.<sup>35</sup>
- In 2012, drug offenses accounted for about one-third of new prison term commitments (see Figure 6).<sup>36</sup>

FIGURE 6: NEW PRISON TERM SENTENCES BY OFFENSE TYPE <sup>37</sup>



29. CSG Justice Center electronic survey of Idaho sheriffs, September of 2013. The survey's response rate was 66 percent, or 29 out of 44 Idaho sheriffs contacted.

30. CSG Justice Center focus groups with sheriffs, October 9-10, 2013.

31. IDOC, Standard Operating Procedure 701.04.02.020, Violation Response Matrix: Community Corrections; American Probation and Parole Association, "Effective Responses to Offender Behavior: Lessons Learned for Probation and Parole Supervision" (Lexington: The American Probation and Parole Association, 2013).

32. For more information on the use of assessments in Idaho, see Box on page 25.

33. Christopher Lowenkamp and Edward Latessa, "Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders," *Topics in Community Corrections*: 2004; Edward Latessa,

"The Challenge of Change: Correctional Programs and Evidence-Based Practices" *Criminology & Public Policy*, 3 (2004); The Council of State Governments Justice Center, *The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime, and Corrections Spending* (New York: CSG Justice Center, January 2011).

34. Idaho State Police, "Crime in Idaho 2011" (Meridian: Idaho State Police, 2012); Idaho Statistical Analysis Center's Crime in Idaho online data tool.

35. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data. When this analysis includes data on individuals in Rider, the number of people sentenced to a prison term for a drug offense increases to 28 percent.

36. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

37. *Ibid.*

## IDOC Substance Use Treatment Delivery

IDOC provides substance use treatment for people sentenced to a prison term, a Rider, and probation. Pathways to Success is the institution-based framework for providing treatment to individuals sentenced to a prison term. Individuals sentenced to a Rider receive treatment through either the intensive residential therapeutic community or one of two other less-intensive treatment options.<sup>38</sup> Substance Use Disorder Services (SUDS) funding provides treatment and drug testing to people on probation and parole supervision.

IDOC is responsible for providing treatment to those on felony probation or parole supervision who are referred into treatment at sentencing under one of three referral streams: §19-2524, Rider/parole reentry, or “risk to revoke.” In 2011, IDOC implemented regional intake and diagnostic teams in probation and parole district offices to oversee the behavioral health assessments, treatment recommendations, and reports to the courts. Also, IDOC hired clinical staff to help facilitate the evaluations of §19-2524 individuals in preparation for sentencing.<sup>39</sup> IDOC created a voucher system to deliver SUDS treatment, working in collaboration with a managed service contractor that monitors the quality of the network of providers.

### **The state allocates considerably more funding to provide treatment through institution-based programs than to the delivery of treatment in the community, where it can be more effective.**

- In FY2012, 2,247 people were admitted into the Rider program, where the average length of stay was approximately 5.5 months. If calculating cost estimates using IDOC’s daily rate of \$53 per day, the 2012 Rider cohort cost the state about \$19 million in prison operating costs alone, while IDOC spent only \$5 million through SUDS funding to provide treatment for 3,663 participants in the community.<sup>40</sup> Because the intensity of treatment delivery differs between Rider (residential treatment) and SUDS (outpatient and intensive outpatient), SUDS was able to reach more individuals with fewer resources.
- District judges surveyed recognized the critical importance of providing both quality community-based supervision and treatment to lower recidivism. They noted that effective supervision paired with treatment

and risk-reduction programs would increase confidence in sentencing an individual who has been assessed as having a high need for substance use treatment to probation rather than to Rider.<sup>41</sup>

### **Many people on probation and parole do not receive the substance use treatment they need.**

- There is a gap in treatment services for people on probation and parole supervision. Although as many as a third of the people on probation and parole supervision, or about 4,700 people as of June 30, 2013, were assessed as having a substance use treatment need, the number of annual referrals to treatment was considerably less, at 3,700.<sup>42</sup>
- Unmet substance use treatment needs can contribute to revocations from community-based supervision. In 2012, 66 percent of people entering prison for probation and parole revocations had a need for substance use treatment.<sup>43</sup>

38. U.S. Department of Health and Human Services, National Institutes of Health, National Institute on Drug Abuse, “Therapeutic Community,” *Research Report Series NIH 02-4877* (Bethesda: National Institutes of Health, August 2002). Therapeutic communities are typically drug-free residential settings that rely on peer influence and group processes to promote abstinence and pro-social behavior. Treatment activities follow a progressive and hierarchical model whereby staff members (or mentors) help residents develop pro-social values, such as honesty, a work ethic, and a sense of personal accountability and responsibility.

39. For more information on §19-2524, see Box on page 8.

40. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data; IDOC, “FY13 Substance Use Disorder Utilization Report” (Boise: IDOC, 2013); Communication with IDOC staff in November-December 2013.

41. CSG Justice Center instant responder survey of Idaho District Judges, September 25, 2013.

42. IDOC, “FY13 Substance Use Disorder Utilization Report.”

43. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

### **Probation and parole district offices feature in-house clinicians and substance use counselors who struggle to balance delivering risk-reduction programs with conducting behavioral health assessments.**

- Seven clinicians and 21 Drug and Alcohol Rehabilitation Specialists (DARS) are trained to provide substance use treatment and cognitive behavioral therapy to people on probation and parole.
- DARS and clinicians report that they spend 24 and 40 percent, respectively, of their standard workweek delivering programs to individuals and groups. A greater share of their workweek—30 percent and 49 percent, respectively—is concentrated on conducting and reviewing assessments.<sup>44</sup>
- While the Global Appraisal of Individual Needs (GAIN) assessment provides standardized information in the PSI report, it is conducted by clinicians and DARS and is reported to take between 3-5 hours to finish. This includes both the assessment and write-up, and is completed for every individual prior to felony sentencing.<sup>45</sup>

### **PPOs need further training on how to apply principles of effective intervention to community supervision.**

- Although all PPOs are certified by the Peace Officer Standards and Training Council, much of the required coursework focuses on the use of firearms, physical agility, and arrest techniques. PPOs receive less training on how to use a cognitive behavioral approach in client interactions.<sup>46</sup>
- The degree to which PPOs receive advanced certification and in-service training varies by region. In focus groups with PPOs from across the state, some officers noted that they received certification on administering the state's risk assessment tool; others said they had not, despite it being a critical aspect of their job.<sup>47</sup>

- People on felony probation and parole in Idaho are assessed for risk of reoffense and assigned to caseloads accordingly. However, high-risk probationers and parolees are only required to receive one face-to-face contact each month, one additional monthly contact, and quarterly home plan confirmations. Research shows that higher-risk individuals should receive more frequent, meaningful engagement with supervising officers in order to change behavior.<sup>48</sup>

### **The victim restitution collection process is managed inconsistently throughout the criminal justice system and competes with other legal financial obligations.**

- In FY2012, 58 percent of felony sentences included restitution orders. The median amount owed was \$727. In 2012, Idaho courts ordered a total of \$12 million in restitution.<sup>49</sup>
- There is no policy in place to collect restitution from people in the Rider program or in prison. The individual and the case manager together determine how much restitution can be collected based on the person's ability to pay. Meetings with various stakeholders have revealed concerns about the limited institutional restitution collection.
- A precedent for institutional restitution collection already exists. People who participate in Community Work Centers have 25 percent of their earnings garnished from their wages and put towards restitution and operational costs of the facility.<sup>50</sup>

44. CSG Justice Center electronic survey of IDOC clinicians and DARS, November 2013.

45. CSG Justice Center focus group with IDOC Presentence Investigators, July 17, 2013.

46. CSG Justice Center focus group with PPOs, July 16, 2013.

47. *Ibid.*

48. Donald Arthur Andrews and James Bonta, *The Psychology of Criminal Conduct* (Cincinnati: Anderson, 2010).

49. Idaho Supreme Court, FY2012 felony filing and disposition data.

50. Community Work Centers are residential facilities that allow offenders who are nearing release to work while they are reuniting with families and the community. There are four Community Work Centers located in Nampa, Boise and Idaho Falls. These facilities house court-retained jurisdictional offenders together with offenders preparing for parole from state prisons.

- Restitution obligations often compete with other legal and financial obligations, including the cost of probation and parole supervision, which is currently \$60 per month. Approximately one third, or 65 out of 190, of PPO positions are funded by supervision fees, and PPOs have been asked to prioritize the collection of this fee in particular, simply to sustain their livelihood.<sup>51</sup>
- PPOs are required to help individuals they are supervising who owe restitution and other legal financial obligations to develop payment plans and monitor the payments/account balances; however, this task takes away time PPOs could be using to provide supervision.

## Victim Restitution and Compensation

Courts order restitution as part of the sentence when it is demonstrated that the victim sustained pecuniary losses (such as medical expenses, lost wages, or stolen or damaged property) as a result of the crime. Restitution is crucially important to victims because they often lack the resources to pay for all the losses they sustained as a result of the crime committed against them. In addition, collection of restitution can provide the victim with consolation that the person who committed the crime is being held accountable for his or her actions.

Court-ordered restitution does not guarantee that the person ordered to pay it will do so, however, it creates a process through which victims can legally pursue restitution that is owed to them. Many people incarcerated who owe restitution have few resources, and their financial prospects are often unlikely to improve soon after their return to the community.<sup>52</sup>

Victim compensation is also available to assist victims of crime who have suffered a financial loss. Although services (such as mental health treatment, wage loss, or funeral expenses) are only funded if all other sources of payment are exhausted, the victim receives reimbursement for expenses at the outset and directly from the Crime Victims Compensation Office, which then collects the money from the offender.<sup>53</sup>

51. Communication with IDOC staff, November-December, 2013.

52. For more information about victim restitution, see "Making Restitution Real Toolkit," The National Center for Victims of Crime, accessed December 1, 2012, available at [www.victimsofcrime.org/](http://www.victimsofcrime.org/library/publications/restitution-and-compensation/restitution-toolkit)

[library/publications/restitution-and-compensation/restitution-toolkit](http://www.victimsofcrime.org/library/publications/restitution-and-compensation/restitution-toolkit).

53. State of Idaho Crime Victims Compensation website, available at [crimevictimcomp.idaho.gov/](http://crimevictimcomp.idaho.gov/).



## STRATEGY 1: *Strengthen supervision practices and programs to reduce recidivism.*

### Policy Options

#### 1(A): Respond to supervision violations with swiftness and certainty

- Delegate authority in statute for PPOs to deliver administrative responses to violations with swiftness and certainty.
- Revise IDOC's current violation sanctions grid so that it creates a set of meaningful responses that PPOs can use to respond to specific probation violations without a court hearing. These responses might include requiring cognitive behavioral treatment, rapid assignment into substance use treatment, or DJT in two- or three-day stays. The severity of the response should increase in proportion to the nature of the violation and the individual's assessed risk level. Also, list the violations that would still require the PPO to report to the sentencing judge prior to imposing a sanction.
- Increase rapid drug testing capability to ensure that probationers and parolees are meeting the conditions of their supervision.
- Establish procedures to protect the due process rights of individuals on probation while imposing these sanctions, such as extending the right to a court hearing if the probationer does not agree to the sanction imposed. Require administrative approval before a PPO can take such action to ensure this authority is used appropriately.
- Enable PPOs to use DJT as a sanction for people on parole, invoking the same procedural due process protections.
- Reimburse the county government for costs incurred if it has agreed to the use of its jail for these purposes.

**RATIONALE:** This policy would provide PPOs statewide with the authority and flexibility to ensure that responses to supervision violations are swift and certain. Probationers and parolees must understand the process for handling infractions from the outset, and this process must promote accountability and responsibility to achieve ideal outcomes. Furthermore, responses must be applied consistently and be proportionate to the violations committed.<sup>54</sup> Proportionality improves the perception that responses are fair, just, and neutral, which can in turn deter future unwanted behaviors.<sup>55</sup> The use of incentives to reinforce positive behavior is equally important in probation and parole supervision. Research has found that supervision outcomes are greatest when sanctions are imposed with the following four factors concurrently: swiftness, consistency, proportionality, and rewarding behavior with incentives. Although they may be effective independent of one another, they work best in concert.<sup>56</sup>

The Hawaii Opportunity Probation with Enforcement (HOPE) program, which aims to reduce crime and drug use among people sentenced to probation, is one example of the benefits of applying a model of swift, certain, and proportionate sanctions to address probation violations. In a one-year randomized controlled trial comparing HOPE probationers with similar probationers not in the program, HOPE probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with their supervision officers, and 53 percent less likely to have their probation revoked.<sup>57</sup>

54. American Probation and Parole Association, "Effective Responses to Offender Behavior: Lessons Learned for Probation and Parole Supervision."

55. Taxman, Soule, and Gelb, "Graduated Sanctions: Stepping into Accountable Systems and Offenders."

56. Eric Wodahl, Brett Garland, Scott Culhane, and William McCarty, "Utilizing behavioral interventions to improve supervision outcomes," *Criminal Justice and Behavior*, 38(4) (2011), 386-405.

57. Angela Hawken and Mark Kleiman, "Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE," December 2009, accessed December 10, 2013, [www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf](http://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf).



## 1(B): Increase community-based treatment and programming

- Broaden the authorized expenditure of felony probation and parole SUDS funding, which will be renamed “Treatment Supervision,” to include services addressing the criminogenic needs most closely associated with recidivism (e.g., criminal thinking and attitude) as well as the main responsivity factors (e.g., mental health and co-occurring disorders) impeding service delivery.
- Increase funding for Treatment Supervision, both as a sentencing option courts may impose to require that individuals serve a term of probation while completing programs and treatment addressing criminogenic needs, and as a response to supervision violations.
- Require IDOC, IDHW, and the Supreme Court to analyze the risk and needs assessment subdomain scores of its high-risk probationers and parolees to determine their treatment needs. Conduct a gap analysis to find out where those needs are not being met (i.e., lack of cognitive behavioral therapy, substance use treatment, mental health treatment).

- Include additional funding to provide community-based treatment programs for probationers and parolees who are assessed at a higher risk of reoffending.

**RATIONALE:** Research clearly demonstrates that community supervision of higher-risk individuals with substance use needs that does not incorporate treatment has minimal impact on recidivism. For example, a meta-analysis from the Washington State Institute for Public Policy looked at studies on surveillance-oriented supervision and found it to have no effect on recidivism. However, when the intensity of such community-based supervision incorporates treatment programming based on risk, need, and responsivity, recidivism can be reduced by as much as 30 percent (see Figure 7).<sup>58</sup>

Increasing resources for community-based treatment and programming will help reduce recidivism by addressing probationer and parolee risk and need factors. Attending to these factors may improve judicial confidence in probation and enhance the likelihood that individuals will receive a probation sentence rather than a Rider or prison term.

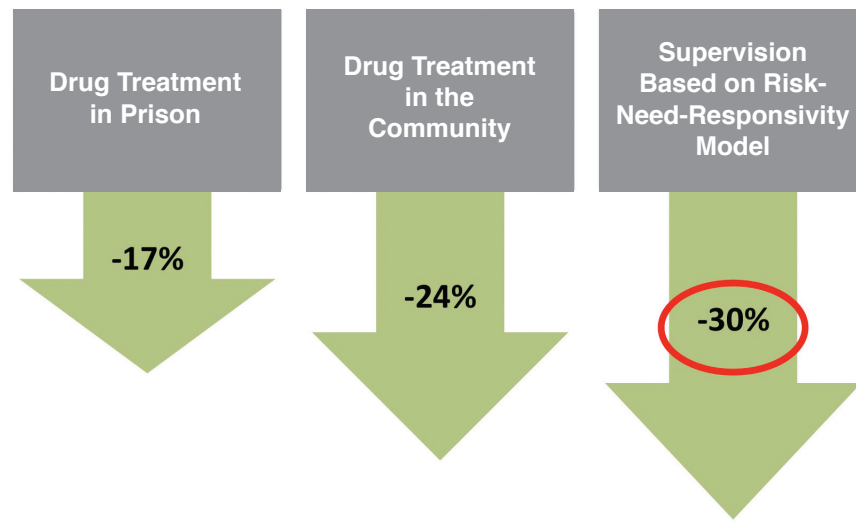
## Elements of Effective Programs

The most effective programs aim to change an individual's behavior by focusing on each person's unique circumstances and the risk factors linked to their criminal behavior. Cognitive behavioral programs help people who have committed crimes identify how their thinking patterns influence their feelings, which in turn influence their actions. They include structured social learning programs where new skills, behaviors, and attitudes are consistently reinforced. Cognitive behavioral programs that target areas such as attitudes, values, and beliefs have a high likelihood of having a positive influence on future criminal behavior, an individual's choice of peers, whether he or she abuses substances or expresses anger, and his or her interactions with family. Most effective cognitive behavioral programs are action-oriented and include components for people to practice skills through role play with a trained instructor.<sup>59</sup>

58. Stephanie Lee, Steve Aos, Elizabeth Drake, Annie Pennucci, Marna Miller, and Laurie Anderson, “Return on Investment: Evidence-Based Options to Improve Statewide Outcomes,” (Olympia: Washington State Institute for Public Policy, April 2012).

59. Edward Latessa, *From Theory to Practice: What Works in Reducing Recidivism?* (Cincinnati: University of Cincinnati Press, 2007).

FIGURE 7: RESEARCH ON THE IMPACT OF TREATMENT INTERVENTION ON RECIDIVISM RATE <sup>60</sup>



### 1(C): Prioritize supervision resources based on the individual's risk of recidivism

- Require that a hearing be held to review suitability for authorizing discharge from probation or parole prior to an individuals' third consecutive year of supervision without a revocation.
- Transfer probationers and parolees to the Limited Supervision Unit (LSU) provided the following conditions are met: no reported major violations or supervision revocations, probation sentence is not for an offense categorized as violent, sexual, or driving under the influence (DUI), and most recent assessment indicates individual is not high-risk.<sup>61</sup>
- Shift applicable moderate-risk probationers and parolees to an LSU caseload after 12 months.
- Shift low-risk probationers and parolees to an LSU caseload after 6 months. Recommend that probationers and parolees discharge from LSU after 12 months provided no major violations or supervision revocations have been reported.
- Provide the court and the Parole Commission an opportunity to review cases prior to discharge.

**RATIONALE:** One of the most effective ways to reduce recidivism is to focus supervision resources on the people who pose the greatest risk of reoffending. As part of that strategy, the intensity of supervision should be greatest when people are initially placed on probation or parole since that is when they are most likely to reoffend.<sup>62</sup>

Because the state's average probation term is five years, however, PPO resources are spread thinly across many probation and parole cases, regardless of when people began their term of supervision or the risk they pose. Transferring probationers and parolees to an LSU after they have demonstrated compliance with conditions—with exceptions—would reduce the probation population over time by allowing successful probationers to complete supervision terms in a timelier manner. As a result of the probation population decrease, PPOs would have reduced caseloads and be able to focus their attention on individuals who are most likely to reoffend.

60. *Ibid.*; the Risk-Need-Responsivity principle contends that matching the level of service to the individuals' risk of reoffending should be based on static factors (e.g., age at first arrest or gender) and dynamic factors (e.g., substance abuse or antisocial attitudes). High-risk individuals should receive more intensive intervention. The need principle asserts that criminogenic needs should be assessed and targeted in treatment. High-risk offenders should receive intensive treatment, while low-risk offenders should receive minimal or no treatment. The responsivity principle maintains that an individual's rehabilitative intervention

should be tailored to the learning style, motivation, abilities, and strengths of the individual.

61. A Limited Supervision Unit is a caseload of lower-risk individuals who have complied with the conditions of their supervision and demonstrated that they require less-intensive supervision.

62. Andrews and Bonta, *The Psychology of Criminal Conduct*; CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

### 1(D): Train PPOs in evidence-based strategies to change offender behavior

- Require that all current and new PPOs be trained by the end of 2016 on how to apply core correctional practices, including motivational interviewing, cognitive restructuring, structured skill building, problem solving, reinforcement, and the use of authority in their interactions with probationers and parolees to increase compliance with supervision conditions.
- Establish a train-the-trainer approach to ensure that Idaho builds the long-term capacity necessary to deliver ongoing training to PPOs on evidence-based strategies.

**RATIONALE:** Supervision officers' skills and the quality of their interactions with probationers and parolees can greatly impact recidivism. To maximize this impact, PPOs must be trained to effectively work with the individuals on their caseloads. By developing a collaborative relationship, PPOs can help probationers and parolees develop new skills and make better decisions.

Using core correctional practices does not replace other programming and services, but it ensures that PPOs are fully utilizing their capacity to help people on probation and parole change their behavior. Evaluations of similar training approaches in other jurisdictions have found significant effects on recidivism.<sup>63</sup>

### 1(E): Improve the management of victim restitution and other legal financial obligations

- Collect restitution from individuals in prison by deducting 20 percent from deposits made into their trust accounts.
- Create a subcommittee under the Idaho Criminal Justice Commission to study the following topics related to legal financial obligations: priority of collections; rules and guidelines concerning the monitoring, collection, and disbursement of financial obligations; and processes for collecting outstanding debts from individuals who have completed terms of supervision and incarceration yet still owe financial

obligations. The task force will submit a report for the legislature's review by the 2015 session.

- Prioritize under the commission's responsibilities the design, in statutory policy, of a pilot program establishing a state-administered revolving fund that victims to whom restitution is owed may opt into to receive timely payments for amounts owed up to \$10,000. Using all methods of debt collection—including tax and lottery intercepts, wage garnishments, and termination of hunting and fishing licenses—the Crime Victims Compensation Program will then collect the amount of court-ordered restitution owed under the restitution order.

**RATIONALE:** Victim advocates in Idaho identified improving the management of restitution as a key priority for the state. Changes under this policy option will increase accountability among people who have committed crimes and have been ordered to pay restitution. Although further research is needed, studies suggest that compliance with restitution orders, particularly among juveniles, is associated with lower recidivism rates.<sup>64</sup> Specifically, a Pennsylvania study found that individuals on probation who had fulfilled restitution orders were less likely to be rearrested than those who had not.<sup>65</sup>

Restitution management varies considerably based on whether the individual owing it is on supervision or in prison. An example of effective restitution management is Idaho's Crime Victims Compensation Program, which provides timely restitution payments for crime victims' expenses, including medical and mental health treatment, before converting the restitution order to a civil judgment and collecting payments from the offender.

Anecdotally, collection rates are lower for restitution owed to individual victims than for restitution owed to the Crime Victim's Compensation Program, in large part because of the range of collection tools the program brings to bear.

Creating a pilot program in Idaho will apply effective policies and practices to provide greater certainty to victims who are owed restitution. Altogether, changes under this policy option will help victims address the losses they sustained.

63. *Ibid.*

64. Glen Kercher, Matthew Johnson, Ilhong Yun, and Amy Proctor, "Restitution in Texas: A Report to the Legislature" (Huntsville: Crime Victims Institute, Criminal Justice Center, Sam Houston State University, 2005).

65. Barry Ruback, "Restitution in Pennsylvania: A Multi-method Investigation" (University Park: Pennsylvania State University, 2002).

**CHALLENGE 2: INEFFICIENT USE OF PRISON SPACE.** *The majority of the prison population comprises people whose community supervision was revoked, people sentenced to a “Rider,” and people convicted of a nonviolent crime who are eligible for parole but have not yet been released.*

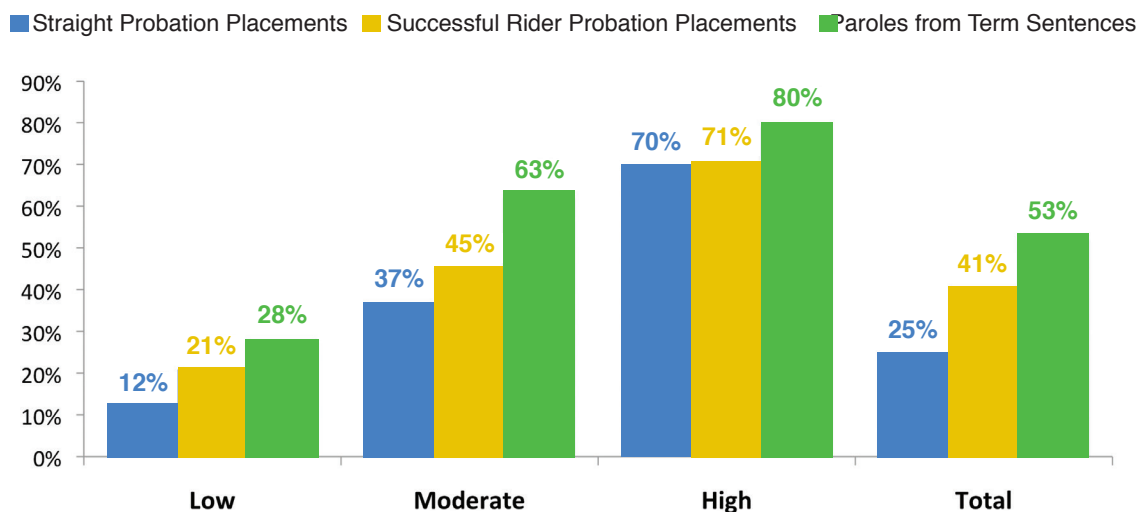
## Findings and Analysis

**Most people convicted of a felony in Idaho are sentenced either to probation or to a Rider, but about 30 percent ultimately fail to complete the terms of the initial sentence and are placed in prison.**

- In 2012, 59 percent of new felony sentences were disposed to probation, 24 percent to Rider, and the remaining 16 percent to a prison term.<sup>66</sup>
- In 2012, 84 percent of new felony sentences were either placed on probation or sentenced to participate in the Rider program. However, 30 percent of those people initially diverted from a prison term went to prison within the next three years either through a probation revocation or for failing in Rider (see Figure 9).<sup>67</sup>

- Low-risk individuals who successfully complete a Rider and then start a term of probation return to prison within three years at almost twice the rate of low-risk individuals who start a new probation term without ever having been to Rider (21 percent compared to 12 percent) (see Figure 8).<sup>68</sup>
- Sentencing high-risk individuals to Rider does not reduce their recidivism rate, which is equivalent to high-risk individuals sentenced to probation. Of high-risk individuals who completed a Rider prior to a term of probation, 71 percent returned to prison within three years, compared to 70 percent of high-risk individuals who started a new probation term without Rider (see Figure 8).<sup>69</sup>

**FIGURE 8: THREE-YEAR RECIDIVISM (INCARCERATION) RATE BY SENTENCE TYPE AND RISK LEVEL (FY2008-2009 PROBATION PLACEMENTS OR PAROLE RELEASES)**<sup>70</sup>



66. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

67. *Ibid.*

68. *Ibid.*

69. *Ibid.*; this analysis reflects data that preceded the expansion of the Rider program.

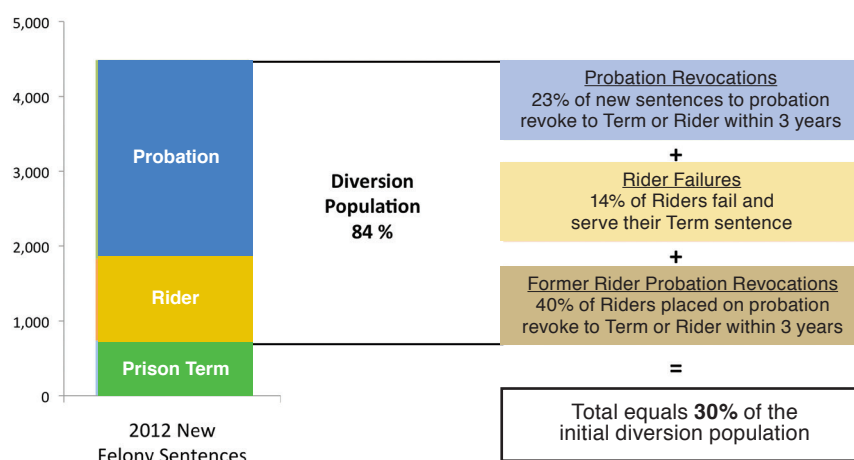
70. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

## A large percentage of Idaho's prison beds are occupied by people whose probation and parole supervision was revoked.

- More than 40 percent of people in the on-hand prison population in Idaho have been revoked from their probation or parole supervision. Revocations take up a much larger proportion of prison beds in Idaho than in other states such as Kansas (33 percent),

West Virginia (27 percent), New Hampshire (23 percent), and North Carolina (21 percent) (see Figure 10).<sup>71</sup>

**FIGURE 9: THE PROPORTION OF INDIVIDUALS SENTENCED TO PROBATION AND RIDER THAT FAIL TO COMPLETE THOSE DIVERSION OPPORTUNITIES AND SERVE PRISON TIME** <sup>72</sup>



## The Unified Sentencing Act

In 1986, Idaho passed the Unified Sentencing Act, a law that eliminated credit for good behavior in prison and created a two-part sentencing structure.<sup>73</sup> In this structure, every sentence is made up of two distinct parts—the “fixed” and the “indeterminate” parts—the sum of which must equal the “unified” sentence. The fixed portion ensures that an individual serves a set period of time in prison without eligibility for parole. During the indeterminate portion, the individual is eligible for parole. The Parole Commission has full discretion regarding parole release decisions.

Idaho's criminal statutes typically provide a penalty for each individual crime. This includes a minimum and a maximum term (i.e., not less than 1 year or more than 20). The judge has full discretion to set the minimum—or “fixed”—portion of the sentence. The indeterminate period is dictated only by the maximum term listed in the statute.

There are about a dozen crimes—primarily violent offenses, drug trafficking, and sexual abuse of children—for which the legislature has set mandatory minimum prison terms. This means the sentencing judge cannot give a fixed term below the mandatory minimum set in statute for these offenses.

71. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data; CSG Justice Center data from past Justice Reinvestment states; the Idaho snapshot prison population data used for this analysis was gathered in 2013. Data for Kansas was gathered in 2013, West Virginia 2011, New Hampshire 2009, North Carolina 2013.

72. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data; this analysis assumes that most of the people on probation through the problem-solving courts are captured in the probation data.

73. For more information on the Unified Sentencing Act, see statute at [legislature.idaho.gov/idstat/Title19/T19CH25SECT19-2513.htm](http://legislature.idaho.gov/idstat/Title19/T19CH25SECT19-2513.htm).

## People whose probation and parole supervision are revoked are then sentenced to a long prison term.

- The average length of stay in prison for people revoked from probation is 1.8 years (after accounting for jail credits and other time served prior to revocation).<sup>74</sup>
- The average length of stay among people revoked from parole is 1.6 years.<sup>75</sup>
- In 2012, based on the average length of stay and cost per day of prison, the 675 probationers and 595 parolees who were revoked to prison are expected to cost an estimated \$41 million.<sup>76</sup>

## Disposition trends shifted slightly after 2010, the year the Rider program expanded.

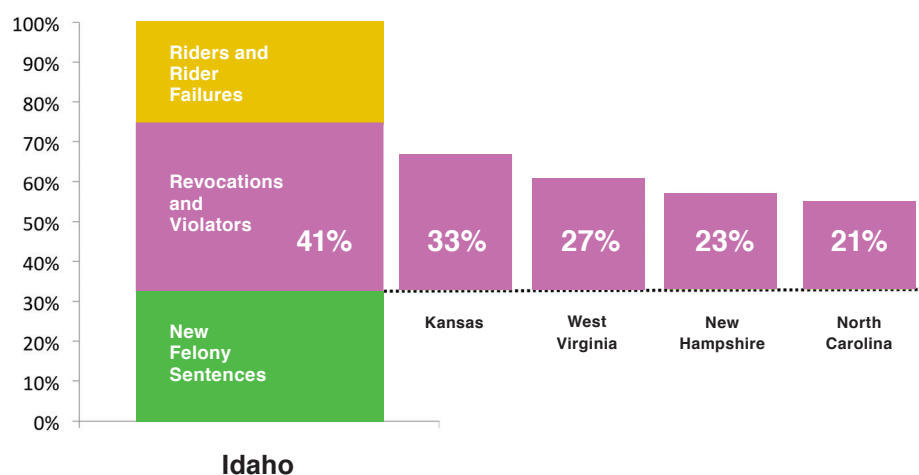
- Before the expansion of the Rider program, probation was the disposition for nearly two-thirds of new felony court commitments. After the Rider program expanded in 2010, the proportion of people convicted of felony offenses and sentenced to a Rider increased 5 percent, while the proportion of people sentenced to probation declined 6 percent. The proportion of individuals sentenced to a prison term remained relatively unchanged during this time.<sup>77</sup>

- The disposition trends suggest that the Rider expansion shifted people away from probation and into Rider, which is a more expensive sentencing option that does not yield a clear benefit in terms of recidivism reduction (see Figure 8).<sup>78</sup>

## Revocations from probation supervision to Rider increased considerably following the 2010 Rider expansion.

- Between 2008 and 2012, the number of people failing on probation and subsequently sentenced to the Rider program increased 39 percent, from 836 people to 1,162 people. During this period, both the probation population and the number of people revoked from probation to prison decreased slightly.<sup>79</sup>
- Of those sentenced to the Rider program, about half are probationers sentenced to Rider in lieu of revocation to prison.<sup>80</sup>

**FIGURE 10: IDAHO'S FY2013 YEAR-END PRISON POPULATION BREAKDOWN COMPARED TO STATES WITH SIMILARLY STRUCTURED SUPERVISION SYSTEMS**<sup>81</sup>



74. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

75. *Ibid.*

76. *Ibid.*; this was calculated using the IDOC daily rate of \$53 per day.

77. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

78. *Ibid.*

79. *Ibid.*

80. *Ibid.*

81. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data; CSG Justice Center data from past Justice Reinvestment states; the Idaho snapshot prison population data used for this analysis was gathered in 2013. Data for Kansas was gathered in 2013, West Virginia 2011, New Hampshire 2009, North Carolina 2013.

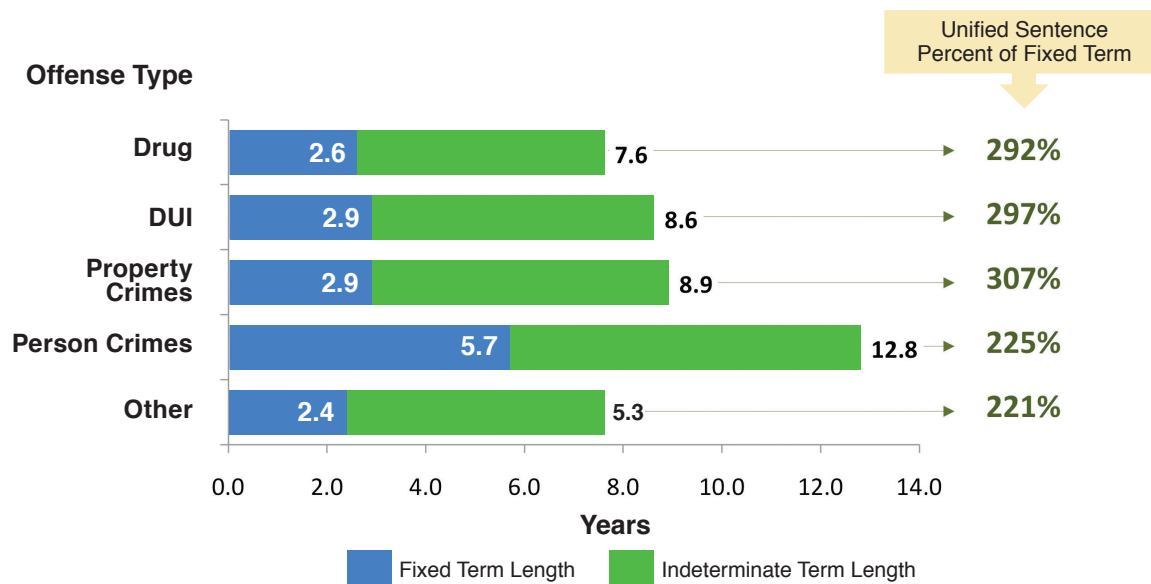


**The average length of the indeterminate term tends to be considerably longer than the average length of the fixed term.**

- For FY2012 sentences to prison, the average indeterminate term was more than twice as long

as the fixed term of the unified sentence, creating a lengthy discretionary period for parole consideration. For example, the average fixed term for individuals convicted of property offenses was 2.9 years and the average indeterminate term was 6 years (see Figure 11).<sup>82</sup>

**FIGURE 11: LENGTH OF NEW FELONY SENTENCES TO PRISON BY OFFENSE TYPE**<sup>83</sup>



**People stay in prison well beyond their fixed term, with little variation based on assessed risk level or type of offense.**

- In 2012, people released from prison to parole for the first time had served 207 percent of the fixed portion of their sentence.<sup>84</sup>
- Time served in prison is not correlated with assessed risk level: in 2012, people assessed as being at low risk to reoffend were released at 215 percent of their fixed term; moderate risk at 233 percent; and high risk at 178 percent.<sup>85</sup>
- The percent of fixed term served in prison does not vary considerably by offense type. Of releases in 2012, those convicted of a property crime spent 200 percent of their fixed sentence in prison; drug 219 percent; offenses against persons 225 percent; and DUI 231 percent.<sup>86</sup>

**Time served in prison for property and drug offenses is close to double the national average.**

- Nationally, the average time served in prison for property offenses is 2.3 years, whereas the average time served in Idaho is 3.9 years. The national average time served for drug offenses is 2.2 years, compared to 4.1 years served in Idaho (see Figure 12).<sup>87</sup>
- The average Idaho fixed term for property and drug offenses is roughly equivalent to the national average length of stay, but lengthy indeterminate periods and the parole decision-making process have resulted in individuals staying in prison for much longer than the national average.

82. *Ibid.*

83. *Ibid.*; Figure 11 represents average sentence lengths for those sentenced directly to a prison term.

84. CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

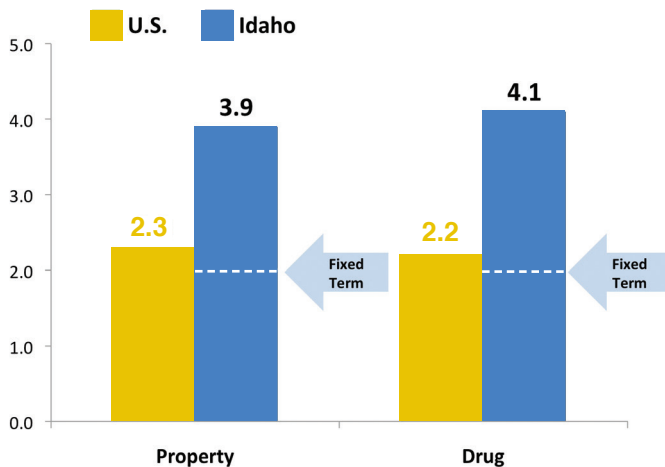
85. *Ibid.*

86. *Ibid.*

87. The Pew Charitable Trusts, *Time Served: The High Cost, Low Return of Longer Prison Terms*, (Washington, DC: The Pew Charitable Trusts, 2012); National average based on data from 34 states; CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.



**FIGURE 12: U.S. AVERAGE TIME SERVED AND IDAHO AVERAGE TIME SERVED AT FIRST PAROLE FOR PROPERTY AND DRUG OFFENSES (IN YEARS)** <sup>88</sup>



- The national average time served in prison for a violent crime is 5 years, whereas the average time served in Idaho for a violent crime is 6.5 years. People convicted of violent crimes in Idaho serve 30 percent more time in prison than people convicted of similar crimes nationwide, whereas Idahoans convicted of drug crimes spend 86 percent more time in prison and Idaho's property crime offenders spend 70 percent more time in prison than the U.S. as a whole.<sup>89</sup>

- Idaho's prison population contains a smaller portion of people convicted of violent offenses and a greater portion of people convicted of property and drug offenses than the total U.S. prison population (see Figure 13).<sup>90</sup>

### More than half of people approved for tentative parole release remain in prison largely due to delays in institutional program completion.

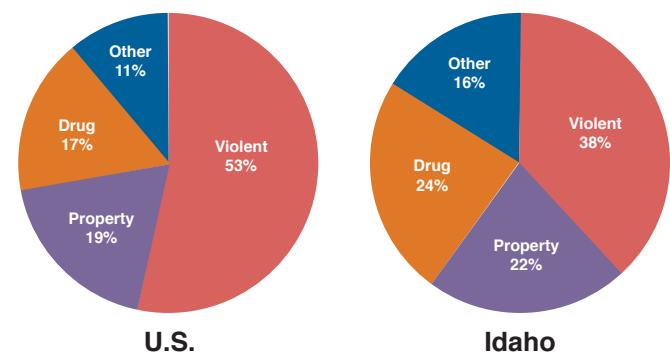
- The Parole Commission often provides individuals with a tentative parole date (TPD). Release at TPD is contingent upon individuals finishing designated requirements set by the commission related to their parole plan and/or institutional program.

- Between January and June 2013, 389 of the 673 people (57 percent) paroled from prison experienced delays beyond the TPD. Delay in program entry or completion accounted for 64 percent of these parole delays.<sup>91</sup>
- People delayed beyond their TPD spent an average of 74 additional days in prison. In this six-month period alone, the approximate cost of holding these individuals beyond their TPD was \$2.6 million.<sup>92</sup>

### Current risk assessment information is not mandated as a key criterion in the parole decision-making process.

- Prior to an individual's parole hearing, hearing officers prepare a packet of information for parole commissioners that includes a thorough review of the individuals' criminal history, program participation, the results of a standardized risk assessment, and a parole plan.
- Neither statute nor administrative policy, however, require the parole commissioners to prioritize the use of risk assessment information in their decisions regarding releases and responses to parole supervision violations.

**FIGURE 13: U.S. (FY2011) AND IDAHO (FY2013) PRISON POPULATION SNAPSHOTS FOR MOST SERIOUS OFFENSE OF CONVICTION** <sup>93</sup>



88. *Ibid.*; Figure 12 represents actual time served for all 2012 first parole releases.

89. The Pew Charitable Trusts, *Time Served: The High Cost, Low Return of Longer Prison Terms*. National average based on data from 34 states; CSG Justice Center analysis of IDOC FY2008-2012 prison admissions and releases data.

90. U.S. Department of Justice, Bureau of Justice Statistics, "Prisoners in 2012."

91. Idaho Commission of Pardons and Parole release delay data between January and June of 2013.

92. *Ibid.*; CSG Justice Center analysis of Idaho Commission of Pardons and Parole release delay data.

93. U.S. Department of Justice, Bureau of Justice Statistics, "Prisoners in 2012."

## STRATEGY 2: *Tailor sanctions for supervision violations, provide recidivism outcomes at sentencing, and structure parole to make more productive use of prison space.*

### Policy Options

#### 2(A): Tailor confinement responses for probation and parole violations

##### *For probation violators*

- Ensure that community-based sanctions and treatment options have first been pursued when responding to probation violations with a revocation to a Rider or prison term.

##### *For parole violators*

- Respond to significant or repeat violations of the conditions of parole with a sanction of confinement in lieu of revocation. Allow confinement for 90 days in lieu of revocation as the initial response, up to 180 days for the second response, and an indeterminate period subject to the discretion of the Parole Commission for any subsequent responses.
- Require parole violators charged with absconding to serve 90 days in confinement.
- Mandate the continuation of remaining parole term upon release from confinement.
- Permit extension of confinement by up to one month as a response to institutional misconduct for individuals confined in prison for violations of supervision.

**RATIONALE:** Sanctioning with a set period of confinement followed by a return to supervision in the community increases accountability among people who otherwise would have been released from prison to the community without any supervision. It is also a more efficient use of state resources because it shortens the average length of stay for people returned to prison for a violation of a condition of probation or parole. Predetermined sanctions such as tailored confinement responses for parole violators will reduce the number of in-custody administrative hearings, as the majority of hearings will be waived when the individual accepts the sanction.

#### 2(B): Provide judges with recidivism outcome data for various sentencing options

- Include in the PSI report recidivism outcomes for the following sentencing options: those who were in the Rider program and then served a term of probation; those sentenced directly to probation without first going to Rider; and those sentenced to prison and subsequently paroled.
- Differentiate the reported recidivism rates based on individual risk level.

**RATIONALE:** Rider beds are resource-intensive and should be reserved for individuals who would otherwise be prison bound and would benefit from the interventions associated with the program. Probationers who have committed condition violations should be sanctioned in accordance with the “Violation Sanction Grid,” which is a more proportionate response to lower-level probation violations.

Additionally, including current recidivism and risk information in each offender’s PSI report will provide judges with statistical outcomes to help inform decision making about which sentencing option is appropriate.

#### 2(C): Use risk assessment to inform the parole decision-making process

- Require that the results of a standardized risk assessment instrument be central among the criteria used by the Parole Commission for release decision-making.

**RATIONALE:** Parole boards are increasingly using risk assessment to inform both release decision making and responses to parole supervision violations. Doing so enables states to use a set of criteria to prioritize prison space for those who pose the greatest risk of recidivism.<sup>94</sup>

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94. The Council of State Governments Justice Center, *National Summit on Justice Reinvestment and Public Safety*.

## The Use of Assessments in Idaho

Risk assessment information is available at various points in the decision-making process in Idaho's criminal justice system. IDOC staff administer two assessments that judges review in the PSI report. These assessments include the Level of Service Inventory-Revised (LSI-R) and the Global Appraisal of Individual Needs (GAIN) Core.

- The LSI-R is a 54-question tool administered in a semi-structured interview setting that is used to assess risk and needs related to reoffense. The results of this assessment inform supervision intensity, program needs, and treatment needs.
- The GAIN Core is a comprehensive biopsychosocial assessment tool. The results of this assessment inform behavioral health diagnosis and treatment recommendations. While used to inform sentencing decisions, the GAIN results do not drive institutional programming decisions.

LSI-R results are used throughout the period of an individual's involvement with the criminal justice system. The assessment information gathered presentence and verified during prison intake are provided to the Parole Commission for use in release decision making. The LSI-R is re-administered by a PPO within 90 days of an individual's return to the community.

### 2(D): Reserve prison space for individuals convicted of violent offenses by regulating the percent of time above the minimum sentence that people convicted of nonviolent offenses may serve

- Require that people sentenced to prison for nonviolent offenses be paroled at a point between 100 and 150 percent of the fixed term and then be placed under parole supervision.
- Within two years of legislative enactment, establish and phase-in goals for paroling individuals convicted of nonviolent offenses at between 100 and 150 percent of the fixed term. IDOC and the Parole Commission will begin phasing in this policy, first in 2015, by setting a goal at paroling 66 percent of people sentenced for nonviolent offenses within 150 percent of the fixed term and then increasing to 75 percent in 2016.

**RATIONALE:** Fixed term lengths for property and drug offenses are on par with the national average, but due to stays in prison longer than the fixed term for these categories of offenses, time served is significantly longer in Idaho than nationally (see Figure 12). Moreover, people sentenced to prison for property and drug offenses comprise a larger share of the Idaho prison population (46 percent) than nationally, where the average is 36 percent (see Figure 13).

Keeping individuals in prison beyond their fixed term consumes significant correction resources, which limits the state's capacity to fund other criminal justice priorities sufficiently, such as supervision following release from prison and risk-reduction programs in the community. The combination of effective community-based supervision and programs is shown to have an impact of as much as a 30-percent reduction in recidivism, which is significantly higher than the impact of prison-based programs (see Figure 7). These investments would help the state to reduce recidivism below the current rate of 53 percent of people released to parole who return to prison within three years of release (see Figure 8).<sup>95</sup>

95. Lee, Aos, Drake, Pennucci, Miller, and Anderson, "Return on Investment: Evidence-Based Options to Improve Statewide Outcomes."

**CHALLENGE 3: INSUFFICIENT OVERSIGHT.** *Idaho lacks a system to track outcomes, measure quality, and assure reliability of recidivism-reduction strategies, so policymakers are unsure whether their investments are yielding intended outcomes.*

## Findings and Analysis

### **The Interim Legislative Committee guiding justice reinvestment will soon expire.**

- Idaho Senate Concurrent Resolution 128 created an Interim Legislative Committee to “guide the analysis and policy development” of Idaho’s justice reinvestment effort. The committee was tasked with detailing its findings and recommendations to the legislature in 2014.<sup>96</sup> After that time, the interim committee will expire.
- Without a committee to oversee the execution of policy changes, the state may encounter difficulties in maintaining implementation efforts and addressing barriers in a timely fashion. Having all the agencies and departments responsible for implementing justice reinvestment legislation report to a single body improves accountability, helps to promote inter-agency collaboration, and facilitates timely decision-making.

### **There is insufficient emphasis on risk assessment validation.**

- Idaho uses the LSI-R risk and needs assessment instrument to estimate an individual’s likelihood of reoffending for sentencing and supervision purposes.
- The last time a validation report on the LSI-R was issued in Idaho was in 2002. IDOC officials and stakeholders from across the criminal justice system have expressed interest in examining the validity of their risk instrument on a more regular basis.
- In various meetings, stakeholders expressed concerns about the LSI-R. These concerns could be addressed by using a validation and quality assurance approach that focuses on the instruments: 1) ability to identify groups of individuals with different probabilities of reoffending; 2) inter-rater and intra-rater reliability;<sup>97</sup> 3) fairness across all populations, and 4) practicality and efficiency of use.

### **State agencies lack sufficient staff and data systems to measure and report on key indicators.**

- The Parole Commission does not have a dedicated data system or IT staff to analyze data and instead must rely

on IDOC staff to perform research on its behalf. As a result, Idaho currently collects limited data to inform the parole process and decision making.

- IDOC collects data about the probation, prison, and parole populations. The agency is transitioning to a new data system that will increase the amount and type of data that can be collected and analyzed and expand the breadth of analyses that can be conducted. The capacity of IDOC data and IT staff to perform necessary analyses, both for themselves and the Parole Commission, is limited.

### **Whereas IDOC routinely evaluates the programs it administers, treatment outsourced to private providers is evaluated less frequently.**

- IDOC conducts annual evaluations of programming in each of its facilities. An independent audit committee composed of IDOC staff who do not work at the facility under evaluation performs the audits. Once the audit is complete, the committee provides the facility with a set of remedial steps. This process formally began in 2005. IDOC probation and parole district offices will begin the same evaluation process in calendar year 2014.
- The program evaluation tool used by IDOC is based on research-based principles of effective interventions. However, the evaluation could be improved by consistently tailoring recommendations and providing an overall score of the programs. Finally, the program evaluations should include direct observations of staff-offender interactions.
- Business Psychology Associates, the managed service contractor for the state’s network of private substance use treatment providers, monitors its providers for auditing and quality assurance purposes. However, in meetings across the state, stakeholders requested that additional qualitative and quantitative evaluations of the programming be provided. Specifically, they believed that substance use treatment providers should be evaluated based on the principles of effective interventions with individuals involved in the criminal justice system.

96. For more information on Senate Concurrent Resolution 128, see resolution at [legislature.idaho.gov/legislation/2013/SCR128.htm](http://legislature.idaho.gov/legislation/2013/SCR128.htm).

97. Inter-rater reliability means that two different staff members would score the same individual the same way on the risk instrument. Intra-rater reliability means the same staff person would score the same individual the same way repeatedly with no change in circumstances.

## STRATEGY 3: *Assess, track, and ensure impact of recidivism-reduction strategies.*

### Policy Options

#### **3(A): Establish an oversight committee to measure and assess policy impacts**

- Designate an interbranch committee to monitor and evaluate the policies and budgetary implications of enacted justice reinvestment policies.

**RATIONALE:** This committee will ensure that the legislation achieves the anticipated impacts by requiring development of performance and outcome measures and regular reporting requirements from all branches, agencies, and stakeholders involved.

#### **3(B): Require that risk and needs assessments be routinely reviewed for quality**

- Engage an independent entity with expertise in risk assessment evaluation to assess the predictive validity of the state's risk and needs instrument, reliability of the assessors, and standards for certification every five years.
- Present the results to key criminal justice system stakeholders, including the courts, IDOC, and the Parole Commission.

**RATIONALE:** Effective implementation of a risk and needs assessment is critical to successful recidivism reduction. In Idaho, a risk and needs assessment is used throughout the criminal justice system. The instrument must be validated to ensure that risk classifications accurately represent the likelihood of reoffending among the group of individuals for which it will be used. The state should ensure that the tool is standardized and consistently used to inform decisions affecting case planning. Staff should have ongoing access to training opportunities, and officials should regularly assess whether supervising officers are helping their clients succeed.<sup>98</sup>

#### **3(C): Increase the capacity of state agencies to collect and analyze data in order to reduce inefficiencies and cut costs**

- Increase the capacity of data and information technology staff at IDOC and the Parole Commission to analyze and report on key indicators, including factors contributing to delays in corrections and parole

processes; prison admissions, snapshots, and releases for all types of offenses; gap analyses of community-based program needs; and recidivism.

- Improve communication between IDOC and the Parole Commission by convening periodic joint meetings and trainings to problem-solve and learn cooperatively.
- Require that a state identification number be established and assigned to each individual convicted of a crime for the purpose of tracking rearrest rates across the criminal justice system.

**RATIONALE:** Without sufficient staff capacity and data system upgrades, IDOC and the Parole Commission will not be able to take on the additional monitoring and tracking that will be imperative to evaluate its justice reinvestment policies effectively.

Increased communication and collaboration between IDOC and the Parole Commission will improve case processing, decision making, and the consistency of case evaluation. Training opportunities that include both entities will be cost effective and enhance communication and awareness of system practices.

#### **3(D): Evaluate the quality of programs and use results to improve outcomes**

- Require routine assessments of all state-funded institution- and community-based programs that serve individuals convicted of felony offenses to assess fidelity to models of effective interventions.
- Conduct random program quality audits on contracted and state-run recidivism-reduction programs every two years.

**RATIONALE:** Independent evaluations of institution- and community-based programs are necessary to ensure fidelity to quality assurance. Evaluations can be used to assess correctional intervention programs and ascertain how closely they meet known principles of effective intervention. They are designed to improve program effectiveness and the integrity of treatment.

98. The Pew Charitable Trusts, *Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders* (Washington, DC: The Pew Charitable Trusts, 2011).

To learn more about the justice reinvestment strategy  
in Idaho and other states, please visit: [csgjusticecenter.org/jr](http://csgjusticecenter.org/jr)



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