

III Cicero Institute

Incentives in Probation and Parole Will Bring Tennessee the Results It Needs

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DECEMBER 2019

Tennessee is facing mounting costs and serious strains on its facilities as the state corrections population grows to record highs for the second consecutive year in 2019. The state corrections system is nearly at-capacity, and jails have become so overcrowded that U.S. News reported in 2018 that some inmates are sleeping on floors in a Madison County jail that is 33% over capacity.¹ Despite a small reduction in the incarceration rate, Tennessee still has one of the highest in the nation, ranking twelfth out of the fifty states. The Tennessee Department of Corrections (TDOC) spends more than \$1 billion to oversee the state's 107,000 justice-involved people. Researchers and politicians agree that Tennessee must reduce the number of people in its corrections system.

Reforming Tennessee's corrections system is a major priority of Governor Lee's administration. Polls of Tennessee voters show overwhelming support for sentencing reforms to contain the growth of the justice-involved population, but it will be difficult to reduce the total justice-involved population through changes to sentencing alone.² Re-incarcerations during supervised release (parole and probation) thwart meaningful reductions. At the same time, nearly half of people who exit the justice system end up back in prison within three years.³ Reform efforts must effectively target failures in community supervision, rehabilitation, and the re-entry process if they are to alleviate Tennessee's over-stressed corrections system.

One method that has effectively addressed community supervision failures in other states is performance incentive funding, which rewards probation and parole districts for successful reductions in supervision failures with a share of the cost savings from averted corrections expenses. Expanding incentive funding opportunities for probation and parole districts would foster

innovation on a localized basis by giving those regions a more direct stake in the success of their programs. Our performance incentive funding model is based off of programs that have been successful around the country. **If Tennessee adopts this model, we estimate that over 12,000 people could be kept out of prison over the next decade and the state could save nearly twelve million dollars annually.**

Reforming probation and parole in order to reduce the number of people on active supervision is also a critical part of the criminal justice system's response to the COVID-19 crisis. Especially in large, urban departments with thousands of supervisees, in-person reporting is a serious safety issue during a viral pandemic. This is true for both supervisees, who often spend hours in waiting rooms while reporting in-person, and officers, who meets dozens of supervisees every day. Moreover, the use of jail sanctions for technical violations puts supervisees at high risk, since jails (especially large jails in cities like Chicago and New York) have been shown to be vectors for the spread of coronavirus. Supervision offices have already responded to the danger: a survey by the American Probation and Parole Association, a professional group for supervision officers and executives, found that 92 percent of offices had suspended in-person visitation and 62 percent had suspended arrests for technical violations in response to the pandemic.

The reality is that coronavirus will be with us for many months or years to come, requiring adjustments to the operations of all of our institutions, including the criminal justice system. Reducing the number of supervisees overall will reduce the number of persons reporting every week to county and city probation offices and court houses, which will reduce the chance that these

¹ Sept. 2018. "Inmates at Overcrowded Tennessee Jail Outnumber Beds." *U.S. News & World Report*.

² https://cdn.baseplatform.io/files/base/scomm/nvs/document/2019/03/Tennessee_Poll_Results_2019.5c7ec8e76037c.pdf

³ [https://www.tn.gov/correction/news/2017/4/20/tdoc-tennessee-
recidivism-rate-shows-promising-decrease.html](https://www.tn.gov/correction/news/2017/4/20/tdoc-tennessee-recidivism-rate-shows-promising-decrease.html)

busy places will cause the virus to spread further. Reducing the number of supervisees revoked for technical violations will permit greater distancing in jails and reduce the number of people exposed to the virus in those institutions. Capping the length of supervision sentences, reducing the use of incarceration as a sanction, and using evidence-based practices to move people off the supervision rolls and into productive lives is not just smart public safety reform, but a vital public health measure.

BACKGROUND ON TENNESSEE CORRECTIONS

Tennessee’s prisons are running out of space and the condition of Tennessee’s corrections system is critical. Between 1981 and 2013, Tennessee’s incarceration rate increased dramatically by 256%, and in 2019 the state had the twelfth highest incarceration rate in the country.⁴ For the last two years, the total incarcerated population has grown to record highs, bringing the state system to 94% capacity as of 2019.⁵ The annual costs of holding people in prisons and jails are \$28,042 and \$14,235 per person, respectively. But there is more to this problem than just costs. Overcrowded prisons are a serious and imminent threat to public safety, as they strain the Department of Corrections’ ability to secure the incarcerated population and rehabilitate them effectively.

Over the past ten years, the felon inmate population in Tennessee has increased 12.3% from 27,414 to 30,799 (fig. 1). This has not made Tennessee safer, as the state’s crime rates have remained some of the highest in the nation, ranking among the bottom five states for public safety in a

2017 study by U.S. News & World Report based on FBI measurements.⁶ Recidivism is one of the greatest challenges in corrections, with nearly half of released offenders in Tennessee reconvicted within three years. Tennessee has made marginal progress in this regard—from a high of 50.5% in 2010, the recidivism rate has improved slightly to 47% in 2017—but the problem still remains pressing.⁷ Historically, recidivism among people who went through community supervision—parole, probation, or community corrections⁸—has been even higher. The most recent study available on recidivism by type of release is from more than a decade ago, but there are no indications that the situation has improved; rather, by most measures, it has gotten worse. The study by TDOC found the 3-year recidivism rates for parolees were 50%, probationers were 60%, and community corrections were 75%, all of which had risen or stayed consistent for releases over a five-year period.⁹

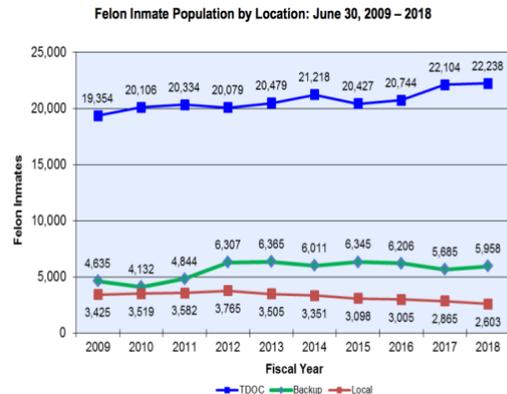


Figure 1: The incarcerated population steadily grew for the past decade.

Community supervision is supposed to be the path from jail or prison back to normal life for most people in the criminal justice system. But

⁴ <https://www.aclu-tn.org/wp-content/uploads/2016/10/Fall-2016-Vigil.pdf>

⁵ <https://www.tennessean.com/story/news/2019/08/15/tennessee-prison-population-second-consecutive-year-record-highs/1998929001/>

⁶ <https://www.usnews.com/news/best-states/rankings/crime-and-corrections/public-safety>

⁷ <https://www.tn.gov/correction/news/2017/4/20/tdoc-tennessee-recidivism-rate-shows-promising-decrease.html>

⁸ Parole is a type of supervision for incarcerated people who are released on specific terms for the remainder of their sentence. Probation is supervision of someone who was found guilty of a crime but was not sentenced to imprisonment. Probationers can also have a split sentence, where they spend some time in jail before being released to probation. Community corrections is a community-based alternative to incarceration, providing a variety of local supervision programs.

⁹ TDOC Department of Correction Recidivism Study 2001–2007.

prisoners exiting to community supervision face severe challenges as they attempt to re-enter society. People released from Tennessee prisons receive little assistance, typically a bus ticket, a pair of used clothes, and \$30 in “gate money.”¹⁰ Most struggle with drug abuse or alcoholism. Many have poor educational credentials. The unemployment rate for formerly incarcerated people is 27%, which is higher than national unemployment rates during the Great Depression.¹¹ Unfortunately, instead of helping individuals who committed crimes stay out of prison, probation and parole often send them back. Many others are “technically revoked” and sent back to prison for missing a meeting, making a mistake on paperwork, or staying out past curfew. Studies by the Vera Institute for Justice suggest that in many of technical violation cases, re-incarceration does not improve public safety.¹²

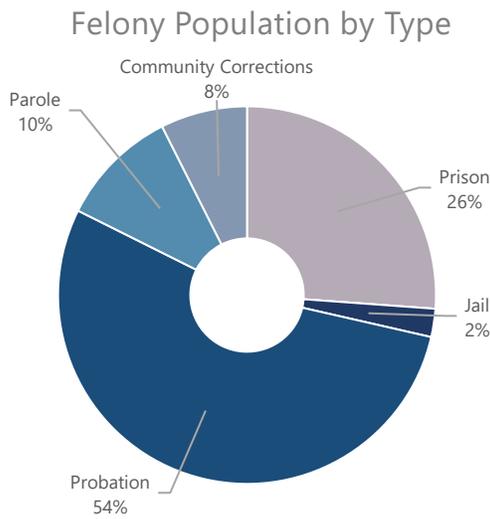


Figure 2: This is the breakdown of the Tennessee felony corrections population by type of justice-involvement.

¹⁰ <http://americanradioworks.publicradio.org/features/hardtme/gatemoney/>

¹¹ <https://www.prisonpolicy.org/reports/outofwork.html>

¹²

https://www.jstor.org/stable/pdf/10.1525/fsr.2013.26.2.128.pdf?ab_segments=0%252Fdefault-2%252Fcontrol&refreqid=excelsior%3A85d3a60ad7410881bc356207c2d7a279

¹³https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/parole_by_the_numbers_updated.pdf

In a 2016 study of corrections statistics across the fifty states, The Robina Institute found that Tennessee had the 11th highest percentage of prison admissions that were due to violations of conditional releases.¹³ Nearly one-third of probationers and 40% of parolees are revoked back to prison.^{14,15} Those revocations make up, on average, 39% of admissions to Tennessee state prisons (fig. 3).^{16, 17}

Around 40% of State Prisoner Entries Are People Who Violated Probation, Parole, or Other Community Supervision

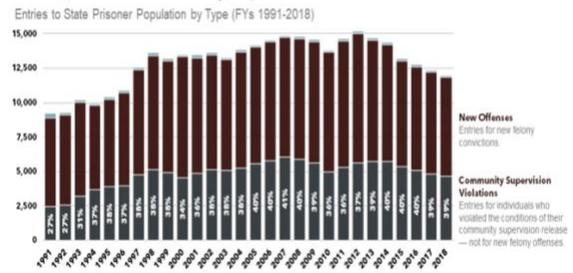


Figure 3: For decades, Tennessee has struggled to reduce the portion of prison admissions that are from supervision revocations.¹⁸

In 2018, roughly an equal number of probationers were revoked for technical violations as for new charges.¹⁹ About 12% of parolees are revoked for technical violations, compared to 20% for new charges, and substantially more people in community corrections were technically revoked than committed new crimes— 33.8% compared to 17.6%.²⁰ The estimated cost of incarcerating those people—many of whom pose no threat to the public—is \$157 million annually.²¹

¹⁴ TDOC Annual Report 2018.

¹⁵ <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>

¹⁶ <https://csgjusticecenter.org/confinedandcostly/?state=TN>

¹⁷ <https://www.sycamoreinstitute.org/probation-parole-release-recidivism/>

¹⁸ Ibid.

¹⁹ TDOC Annual Report 2018, revised.

²⁰ Ibid.

²¹ <https://csgjusticecenter.org/confinedandcostly/?state=TN>

Recidivism and revocations in community supervision continue to present steep challenges to Tennessee’s criminal justice goals. But TDOC can make the reductions that Tennessee needs. Recidivism rates have decreased slightly over the past ten years (fig. 4) and Tennessee has made marginal improvements in helping more supervised people fully complete their terms.²² TDOC has shown that it can improve rehabilitation. Parole and probation are also going in the right direction, but the improvements are still not enough to solve the growing corrections crisis in Tennessee.

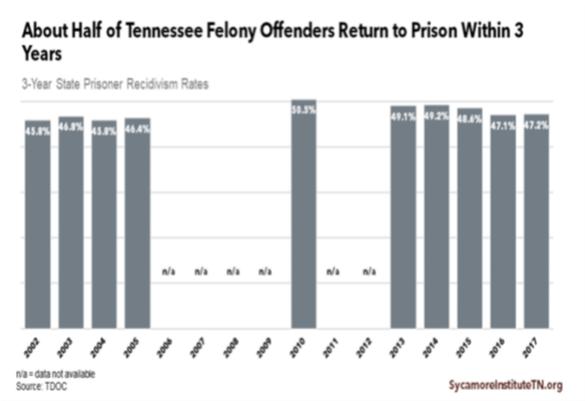


Figure 4: In the early 2000s, recidivism rates were lower than any recent year. Reductions in recidivism are possible.

Even with this progress, over and at capacity prisons and jails need more relief, as recidivism and community supervision failures are still contributing substantially to prison admissions. Previous reforms like competitive grants for local re-entry programs in rural counties and the Parole and Probation Technical Violators Diversion Programs are steps in the right direction, but there is more work that can be done.²³ In 2020, Tennessee legislators should prioritize policy reforms that target recidivism, rehabilitation, and community supervision in order to effectively reduce the justice-involved population.

²² TDOC Annual reports, 2014–2018.

²³ These diversion programs offer alternatives to incarceration for technical violators of probation and parole. Instead of regular incarceration, they go to a six-month community service program at Turney Center Industrial Complex Annex.

PROPOSAL—PERFORMANCE INCENTIVE FUNDING

We recommend rewarding probation and parole departments for successfully rehabilitating people on community supervision. Probation and parole offices would be entitled to additional funding if they reduce the percentage of probationers/parolees they return to prison for technical violations or re-offenses compared to the historical rate for that county. The additional funding would come from a percentage of the projected savings on each individual not returned, based on the estimated marginal cost of the time that person would have spent in prison. Those savings are then reinvested into rehabilitation programs and reducing caseloads, promoting a virtuous cycle in which the best methods scale and win. By realigning incentives so that the probation and parole divisions are rewarded for reducing return-to-incarceration rates, Tennessee can help thousands stay out of prison and start new lives.

HOW IT HAS WORKED IN OTHER STATES

Several states have demonstrated that PIF programs can shift the behavior of community supervision departments and achieve measurable outcomes. Since 2007, nine states have implemented Performance Incentive Funding programs (PIF) in their criminal justice systems. Notable examples include Illinois, Texas, and California. Illinois has implemented more than one incentive program, but the first one was focused on juvenile corrections—in the first three years, four pilot sites reduced the number of juveniles admitted to youth corrections facilities by 51%.²⁴ The adult version of the program offered incentives to counties that reduced recidivism by 25% and assessed penalties to those

²⁴ <http://www.icjia.state.il.us/redeploy/>

counties if they were unsuccessful. The program has expanded to 45 counties across Illinois, offering \$7 million in funding in 2018 alone.²⁵ In 2005, Texas pledged \$55 million in incentive-based funding to probation departments that used graduated sanctions to try to reduce technical revocations by 10%. Departments that participated reduced technical violations revocations by 13.4%, while those who did not opt-in increased such revocations by 5.9%.²⁶ In a recent meta-study, LaVigne et al found that 17 out of 17 performance based funding programs reduced prison populations or slowed prison population growth.²⁷

In 2009, California passed Senate Bill 678, which created a shared-savings incentive reward of up to 45% for county probation departments that reduced re-incarceration rates for felony probationers. The incentive encouraged probation departments to innovate their rehabilitation and supervision strategies. Counties experimented with hiring social workers, partnered with universities, and became more selective about which providers they used for substance abuse treatment, cognitive behavioral therapy, and transitional housing.

The results of SB 678 were impressive: in 2010, 23% fewer probationers had their supervision revoked, 53 out of 58 counties reduced their revocation rates, and statewide violent crime dropped more quickly than in any year in the previous decade. These reductions kept 27,000 people out of prison between 2010 and 2013. Additionally, in 2011 alone, county probation departments were awarded almost \$90 million for their performance enhancements, and the state saved twice that amount.²⁸ Between 2009 and 2017, SB 678 saved over one billion dollars in estimated savings to California taxpayers.²⁹

²⁵<http://www.icjia.state.il.us/redeploy/pdf/ARI%20SFY%202018%20Annual%20Report%20to%20the%20Governor%20and%20General%20Assembly%20-%20FINAL%20.pdf>

²⁶ https://files.texaspolicy.com/uploads/2018/08/1610323_1/2016-11-PP27-IncentivizingResults-CEJ-GregGlad.pdf

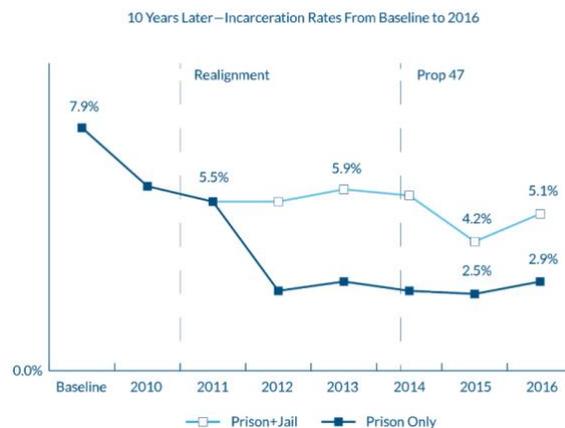


Figure 5: SB 678 effectively reduced incarceration rates in California, even when considering other factors like “realignment” and Proposition 47 (both had substantial impacts on corrections).

Surprisingly, the risk levels of supervision caseloads increased during this same period, but re-incarceration rates still declined, suggesting that rehabilitation efforts were actually working.

HOW IT WOULD WORK IN TENNESSEE

In Tennessee, community supervision is administered by TDOC. There are three probation and parole regions: East, Middle, and West Tennessee (fig. 6). Within those regions are 17 districts, containing a total of 45 district and field offices. Each region is headed by a Probation and Parole Correctional Administrator and a Specialized Caseloads Administrator. The Probation and Parole Correctional Administrator oversee 2–4 of the 17 districts. Districts are made up of anywhere between 1–12 counties, but there are field offices covering smaller groups of counties.

²⁷ LaVigne, Nancy. “Justice Reinvestment Initiative State Assessment Report.” *Urban Institute*, 2014.

²⁸ <https://www.governing.com/columns/mgmt-insights/col-performance-incentive-funding-corrections-probationers.html>

²⁹ <https://www.courts.ca.gov/documents/lr-2017-JC-SB-678-CCC-performance-incentives-act.pdf>

rehabilitation. The other 50% will go towards hiring new personnel and reducing caseloads.

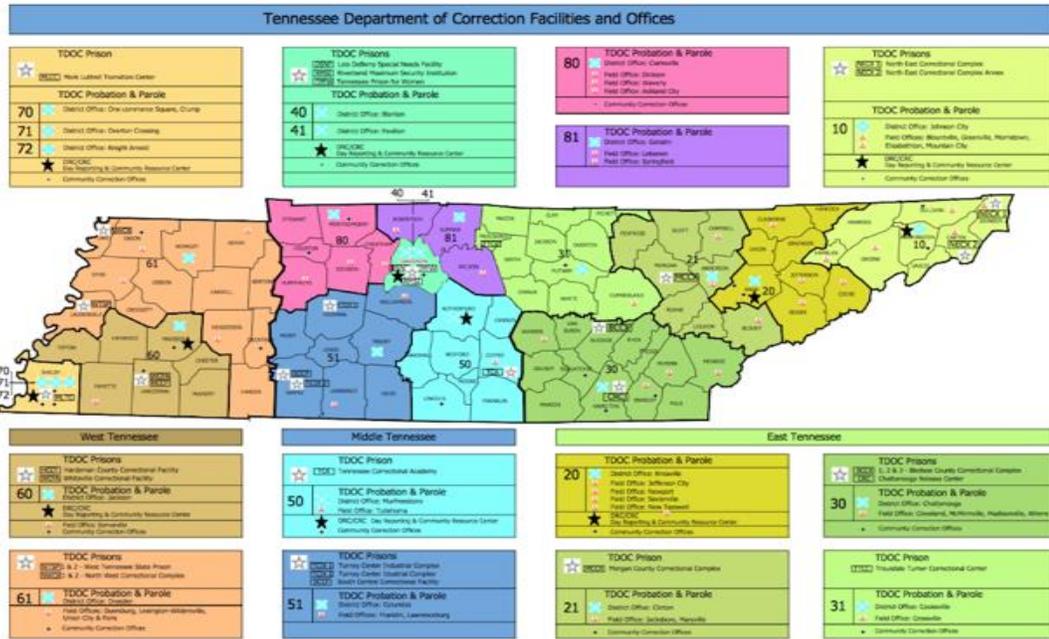


Figure 6: This is a map of TDOC regions, districts, and field offices.

We propose a model that offers localized incentives to the district and field offices working directly with parole and probationers. Our basic funding model looks like this:

- Calculate the baseline return-to-incarceration rate for each of the 45 parole and probation district and field offices in the state. Alternatively, calculate for each of the broader 17 districts.
- If an office/district reduces the return-to-incarceration rate below the baseline in a subsequent year, that office/district is entitled to 45% of the annual savings based on the projected marginal cost of incarceration.
- Of the savings allocated to successful offices, 50% will go towards evidence-based

We estimate that adopting this model will avert over 12,000 people from being re-incarcerated over the next decade and save the state nearly twelve million dollars annually.³⁰

Because of Tennessee’s employment regulations for corrections and supervision officers, it might also be possible to offer part of the incentive funding as bonuses to the highest performing officers. In addition to increased individual effectiveness, adopting incentive bonuses could relieve some of Tennessee’s challenges in hiring and retaining parole and probation officers. The hiring situation is getting worse, which is increasing caseloads and straining an already critical system (fig. 7).

³⁰ This estimate is based on a 20% reduction in the TDOC’s reported annual number of revocations based on new crimes, new crimes pending, and technical violations.

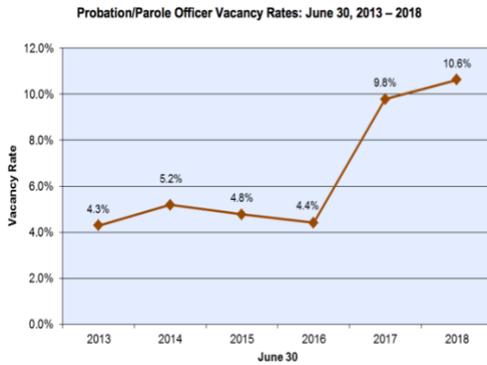


Figure 7: In the last two years, vacancy rates for parole and probation officers have doubled. Our reform could help Tennessee hire and keep officers while giving both new and existing officers an incentive to improve their effectiveness.

Effective incentive structures like those in Illinois, Texas, and California could help Tennessee meet its corrections reduction goals. Rather than use an administrative edict to cudgel probation and parole officers into using these policies like California’s 2010 policy experiment, Tennessee should use incentive funding to foster the natural adoption of more effective strategies. This would encourage better performance without stifling the creation of locally tailored practices. The momentum in successful districts would then be maintained by making more pecuniary resources available to those districts through commensurate rewards that are based off of the cost savings from declining re-incarceration and revocation rates. If the incentive funding works as it did in other states, it would alleviate the areas that are significantly contributing to the state’s prison population and straining the corrections system.

CONCLUSION

A performance-based funding program in Tennessee could have a massive impact on the lives of thousands of people in the criminal justice system while improving the safety of communities across the state and saving hundreds of millions for the Department of Corrections. In 2017, 4,835 people

were sent to prison because of supervision failures at an annual cost of \$157 million.³¹ Thousands more were re-incarcerated because they were unable to regain their footing outside the system and instead resorted to familiar patterns of crime. Probation and parole failures are a growing contributor to prison population, and they have made it even more challenging for Tennessee to reduce its corrections population. The impacts of other policy reforms attempted by the state have undoubtedly been stifled by the cycle of release and re-incarceration created by current probation and parole practices. Adopting incentive funding for probation and parole will foster system-wide change and bring much needed results: an estimated 12,000 people averted from re-incarceration over the next decade, and nearly twelve million dollars in savings for Tennessee’s taxpayers. At the same time, reinvesting a portion of the savings that result from reduced incarceration and recidivism doubles down on effective ideas. Expanded funding for community supervision programs with proven results can do more than just avert the overcrowding crisis in Tennessee’s corrections system—helping residents in the criminal justice system peacefully return to their homes and families will make all of our communities safer.

³¹ <https://csjusticecenter.org/confinedandcostly/?state=TN>