

Nevada Advisory Commission on the Administration of Justice – Justice Reinvestment Initiative



Final Report

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Executive Summary

Over the past decade Nevada's prison population has grown significantly, resulting in higher spending on prisons and fewer resources available for recidivism reduction measures. Since 2009, Nevada's prison population has grown by seven percent, and the state's female prison population has grown at four times the pace of the overall prison population. The state currently has an imprisonment rate that is 15 percent higher than the national average.^{1,2} Over the same period Nevada's crime rate has fluctuated, with violent crime climbing from a 10-year low in 2011 to 2015 before experiencing a major drop in 2017. The state has the third highest murder rate and the third highest robbery rate in the nation. While many states across the nation have seen significant declines in both crime rates and prison populations, Nevada has not.

Moreover, the growing population of people with behavioral health problems continues to challenge the system. Nearly 30 percent of the state's inmate population require treatment or medication for a mental health need. Growing prison costs have burdened taxpayers while gaps remain in treatment and interventions that reduce recidivism, increase public safety, and address critical behavioral health challenges. Nevada is spending over \$347 million on corrections in fiscal year 2019, which has crowded out the state's ability to fund treatment and services.

The prison population is projected to continue to grow, and by 2028, will increase by 1,197 beds. Fifteen percent of this overall growth will be driven by an increase in the female prison population, which is projected to grow by 14 percent over the next 10 years. The projected prison population growth is estimated to cost the state an additional \$770 million in capital expenditures to build or lease new prisons and added operating costs over 10 years.

In May 2018, state leaders from all three branches of government joined to request technical assistance through the Justice Reinvestment Initiative (JRI). As part of the JRI effort, state leaders charged the Advisory Commission on the Administration of Justice (ACAJ) with conducting a review of the state's criminal justice system and "us[ing] criminological research and [Nevada's] own criminal justice data to inform and motivate the development of comprehensive crime- and recidivism-reduction strategies, while shifting resources toward more cost-effective public safety strategies."

Beginning in July 2018 and extending through the end of the calendar year, the ACAJ analyzed the state's sentencing, corrections, and community supervision data, and reviewed the latest research on reducing recidivism and improving public safety. The ACAJ found that, in Nevada:

- Sixty-six percent of people admitted to prison in 2017 were sentenced for nonviolent crimes and four out of 10 offenders had no prior felony convictions.
- Thirty-nine percent of prison admissions were the result of revocations³ of individuals on probation and parole supervision. Analysis of violation reports revealed that 34 percent of these violators were returned to prison for technical violations of supervision, meaning they failed to comply with a condition of supervision such as failing a drug test or not going to treatment.⁴
- The amount of time individuals spend incarcerated has increased 20 percent since 2008, and recidivism rates have increased for nearly all offense types.

- The number of women admitted to prison increased 39 percent between 2008 and 2017 and the female imprisonment rate per 100,000 is now 43 percent higher than the national average.⁵
- The number of people admitted to prison with an identified mental health need has increased 35 percent over the last decade and the number of women entering prison with a mental health need has grown by 47 percent.

Based on this data analysis and the directive from state leadership, the ACAJ developed a comprehensive package of 25 policy recommendations supported by a majority of ACAJ members. The recommendations are specifically designed to improve public safety by holding offenders accountable, reducing recidivism, and increasing the resources available to combat the state's behavioral health crisis. These policies, if signed into law, would avert 89 percent of the projected prison population growth, and ultimately reduce the projected 2028 prison population by more than 1,000 beds, averting \$640 million in additional prison costs over the next 10 years. The money that would have been spent on new prison beds can be redirected to effective policies and practices that reduce recidivism and increase public safety including interventions to address a growing population with behavioral health needs.

ACAJ Justice Reinvestment Process

In May 2018, state leaders from all three branches of government, including Governor Sandoval, Senate Majority Leader Ford, Speaker Frierson, and Chief Justice Douglas, requested technical assistance through JRI. These leaders charged the ACAJ with conducting a review of the state's criminal justice system and "us[ing] criminological research and [Nevada's] own criminal justice data to inform and motivate the development of comprehensive crime- and recidivism-reduction strategies, while shifting resources toward more cost-effective public safety strategies."⁶

The ACAJ, a statutorily-established commission comprised of 18 members, is a diverse group of criminal justice stakeholders, including representatives from corrections, law enforcement, the legislature, the judiciary, the prosecutorial and defense bars, and victim advocates.

From July through December 2018, the ACAJ conducted a rigorous review of Nevada's sentencing and corrections data, evaluated current policies and programs across the state, discussed best practices and models in sentencing and corrections from other states, and engaged in in-depth policy discussions.

To provide the opportunity for detailed analysis and discussion of specific issue areas, ACAJ members split into two subcommittees focusing on: (1) sentencing and pretrial diversion and (2) release, reentry, and community supervision. Each subcommittee crafted recommendations within their policy area to meet the state leaders' charge to the ACAJ.

Throughout the process, the ACAJ received input from a wide range of stakeholders, including prosecutors, defense attorneys, judges, law enforcement agencies, treatment providers, behavioral health experts, and formerly incarcerated individuals. As part of the JRI process, the ACAJ held two roundtable discussions with victims, survivors, and victim advocates to identify priorities of these key stakeholder groups. These roundtables were conducted in Reno and Las Vegas, and included victims' representatives from across the state.

The ACAJ received technical assistance from the Crime and Justice Institute as part of the Justice Reinvestment Initiative, a public-private partnership between the U.S. Department of Justice, Bureau of Justice Assistance, and The Pew Charitable Trusts.

National Picture

Many states across the country have experienced challenges similar to the long-term prison growth that Nevada is currently facing. Starting in the early 1970s, state prison populations across the country expanded rapidly and state officials have spent an increasing share of taxpayer dollars to keep pace with soaring prison costs. From the mid-1980s to the mid-2000s, spending on corrections was the second-fastest growing state budget category, behind only Medicaid.⁷

As prison systems and associated costs have swelled, many states have also increasingly faced behavioral health crises. Over 44 million individuals in the U.S. experience a mental illness annually.⁸ Among the 20.2 million adults in the U.S. who experienced a substance use disorder, 7.9 million adults, 39.1 percent, had a co-occurring mental illness.⁹ Of these individuals experiencing a mental illness, large numbers are not receiving the care they need; studies show that 57 percent of those with a mental illness did not receive mental health services within the previous year.¹⁰ These percentages pale in comparison to those incarcerated who have mental health needs. The Bureau of Justice Statistics estimates that one in seven individuals in our nation's prisons and one in four in our nation's jails experience serious psychological distress.¹¹

States across the country are recognizing the value of using research and their own data to change policies that have for too long used incarceration as a primary response to criminal behavior, despite evidence that such a response does not necessarily improve public safety outcomes. These states instead focused on implementing practices proven to reduce recidivism and reinvested corrections dollars into resources designed to improve public safety. From 2008 to 2016, 35 states reduced both their imprisonment and crime rates.¹² The national crime rate has been falling since the early 1990s and is now at its lowest level since 1967.¹³ Research credits prison growth with at most one-quarter to one-third of the crime drop since its peak in the early 1990s.¹⁴ These studies identified the primary factors behind the crime decline as better policing, changing demographics, increased private security, and improved theft prevention technologies.¹⁵ In short, the increased use of incarceration had an important but minor role in improved public safety.

Policy and practice changes in states like Texas, South Carolina, Georgia, and Louisiana and increasing national public support, combined with budget pressures across the nation, have resulted in a growing conversation that puts prison spending under greater scrutiny than ever before. For the better part of the past four decades, the most common question that policymakers were asked about their state corrections budgets was, "How many more prisons do we need?" Today, state and national leaders from both sides of the aisle are asking a more productive and complicated question: "How do we get taxpayers a better public safety return on their corrections dollars?"

Since that shift, many states have adopted policies that reduce recidivism through a "justice reinvestment" strategy, including Georgia, Mississippi, North Carolina, Oregon, Texas, and Utah. These states have revised sentencing and corrections policies to focus state prison beds on violent and career offenders, and invested in more effective and less costly strategies to reduce recidivism, address gaps in victims' services, and improve public safety.

In 2014, policymakers in Utah faced a prison population that was growing six times faster than the national average and a projected taxpayer cost of \$500 million for new prison beds.¹⁶ Through the JRI process, Utah learned that its prison population growth was partly driven by a behavioral health

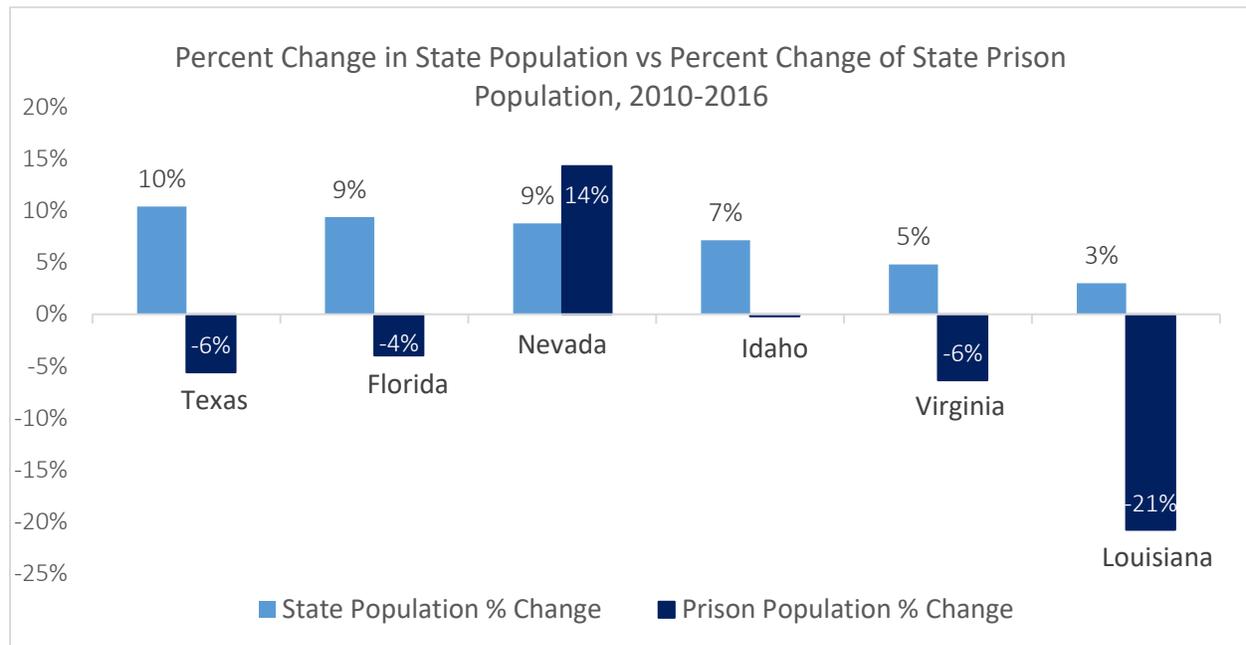
crisis that resulted in large numbers of nonviolent offenders going to prison. Rather than spend additional taxpayer dollars on new prisons, Utah's leaders looked for more cost-effective solutions. In 2015, the state legislature passed a set of reforms that controlled prison growth and created opportunities for reinvestment in treatment.¹⁷ In the years following the reforms, Utah's prison population declined, the number of participants in residential and outpatient treatment programs increased, and the state's capacity to treat offenders with an underlying substance use problem increased by nearly 13 percent.¹⁸

In Utah and in other states, this data-driven, collaborative process has resulted in wide-ranging innovations to the laws, policies, and practices that focus costly prison beds on the most serious and violent offenders and shift resources to policies and practices that reduce recidivism and increase the state's treatment capacity.

Key Findings

From 1980 to 2016, Nevada’s prison population grew by 648 percent, from just under 2,000 to nearly 14,000, pushing Nevada’s imprisonment rate to 15 percent higher than the national average.¹⁹ As with a number of states, Nevada’s state population also grew over this time period. The state experienced overall population growth of 255 percent, far less than the growth of the prison population. During this time the state’s imprisonment rate, which is calculated relative to the state population, more than doubled, growing from 227 to 468 per 100,000 residents.²⁰ In recent years, many other high-growth states experienced a decline in their prison population despite growth in their general population.

Figure 1. Growing states across the country experience prison population decline



Source: Bureau of Justice Statistics, U.S. Census Bureau.

The ACAJ found that Nevada’s prison population had grown seven percent since 2009, bringing it to the 15th highest imprisonment rate in the country in 2016.²¹ This growth was the result of increasing numbers of admissions to prison and offenders serving longer periods of incarceration.

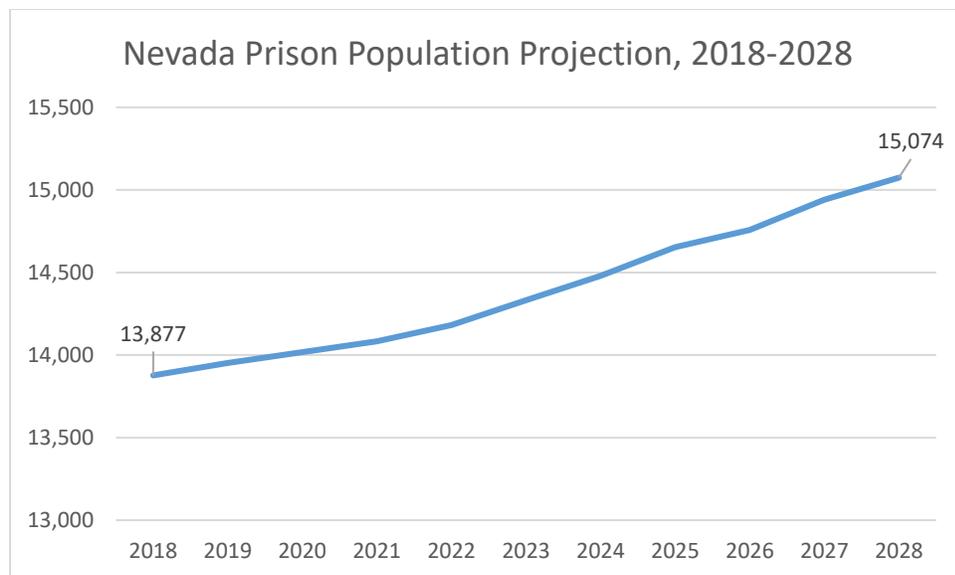
Between 2008 and 2017 overall admissions to prison grew by six percent, driven by an increase in the number of individuals failing community supervision, who constituted 39 percent of admissions in 2017. Over this 10-year period, the average time served in prison increased by 20 percent, largely due to growth in both the minimum and maximum sentences imposed by judges, as well as a fluctuating parole release rate.

These trends have left Nevada’s state prisons overcrowded and reduced the space available for treatment, education, and other rehabilitative services. State prisons are operating well beyond the capacity the facilities were constructed to house. Some facilities have resorted to using emergency overflow beds in areas within the facilities not intended to house inmates. As a result of this

pressure, in 2017 the state agreed to pay \$9.2 million to a private corrections company in Arizona to house 200 Nevada inmates for two years.²²

Over the last decade, Nevada Department of Corrections (NDOC) has seen its annual budget grow 14 percent, reaching \$347 million in fiscal year 2019. Nevada’s prison population is projected to grow nine percent in 10 years, adding nearly 1,200 beds at an additional cost of more than \$770 million to taxpayers.

Figure 2. Nevada prison population projected to grow by 8.6 percent in the next decade



Source: Nevada Department of Corrections Ten Year Prison Population Projections, 2018-2028, JFA Associates

Prison Admissions and Alternatives to Incarceration

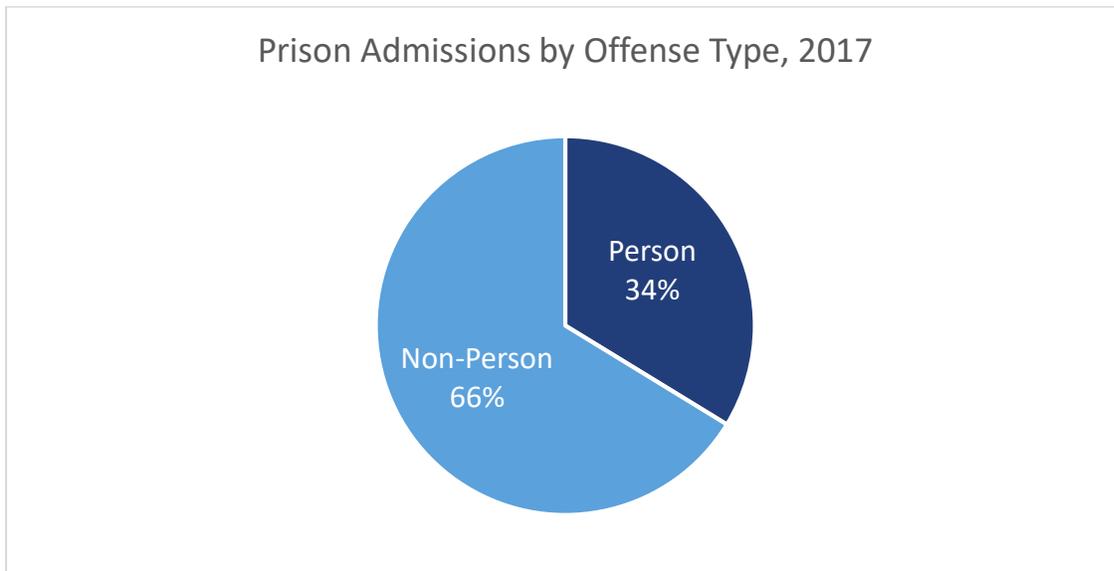
The ACAJ examined the effectiveness of prison sentences compared to non-custodial sanctions (such as drug court or probation) in reducing recidivism. Researchers study this question by matching samples of individuals sent to prison with those who received non-custodial sanctions and consistently find that prison either does not impact or, in some cases, increases, re-arrest or re-conviction rates, even when controlling for individuals’ education, employment, drug use, and current offense.²³

The crime-producing effect of prison seems to be concentrated among low-level and first-time offenders.²⁴ Research around the “schools of crime” theory suggests that for many types of nonviolent offenders, the negative impacts of incarceration outweigh the positive: that is, sending people to prison may cause them to commit more crimes upon release.²⁵ Specific studies of drug offenders, probation violators, and first-time offenders all show this negative impact.²⁶

Compared to other states, Nevada uses prison more frequently than community supervision: in Nevada, 52 percent of offenders were incarcerated and 48 percent were on probation and parole in 2016, compared to 31 percent in prison and 69 percent on community supervision in states nationwide.

In examining the use of incarceration, the ACAJ focused on the high number of individuals entering prison for non-person offenses, defined as any offense that the NDOC classifies as a drug, property, or other offense. In 2017, the majority of offenders admitted to prison (66 percent) were sentenced for non-person offenses. Eight of the top 10 offenses at admission in 2017 were for non-person offenses, the majority being property and drug crimes like simple possession of a controlled substance.

Figure 3. 66 percent of admissions sentenced for non-person offenses²⁷

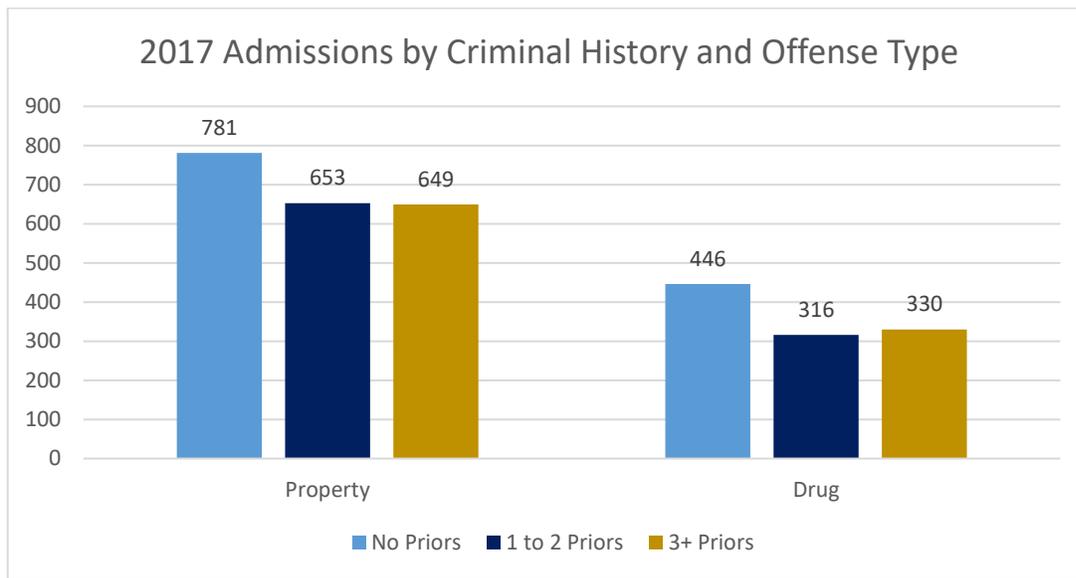


Source: Data from the Nevada Department of Corrections, Analysis by CJI

Note: Person offenses are all offenses defined by NDOC as a violent or sex offense, as well as those offenses involving harm or injury. Non-person offenses include drug and property offenses, and all other offenses not defined by NDOC as a violent or sex offense or involving harm or injury.

Moreover, when looking at offenders' criminal history, the ACAJ found that four out of 10 individuals entering prison in 2017 had no prior felony record. Looking into specific offense groups, 37 percent of property offenders and 41 percent of drug offenders had no prior felony conviction.

Figure 4. Most drug and property offenders have no prior felony conviction



Source: Data from the Nevada Department of Corrections, Analysis by CJI

To understand why Nevada sends so many non-violent first-time felony offenders to prison, the ACAJ examined the diversion options available to the state and found significant limitations. While Nevada affords a pre-prosecution diversion option for misdemeanor offenders, there is no similar pre-adjudicatory diversion opportunity for felony offenders. For misdemeanor offenses, a judge may assign an offender into a pre-prosecution diversion program by issuing a deferred sentence if the defendant is not convicted of an offense defined as violent²⁸ and has no previous convictions or previous participation in the program.²⁹ The pre-prosecution diversion program requires input from the district attorney, public defender, and judge to determine the appropriate conditions including: requiring programming participation, educational pursuits, curfews, community service, restitution, and any other appropriate sanction(s). Upon successful completion of the conditions by the individual, the judge may withdraw the deferred sentence and the individual can avoid a criminal conviction.

In contrast, the only sentencing alternatives available to felony offenders are through the state's Specialty Court programs or diversion through treatment for drug or alcohol users and those with a mental health issue or gambling problem.³⁰ These opportunities are limited to individuals with a behavioral health issue and have narrow eligibility criteria including prohibitions on the type of offenses, prior program participation, and criminal history. Through conversations with stakeholders and an examination of a sample of adult drug, mental health, and DUI Specialty Court participants, the ACAJ found that diversion through treatment with deferred sentence is used sparingly within the state as compared to treatment as a condition of probation on a suspended sentence. This is significant as a deferred sentence allows individuals to have their case dismissed upon completion of the program, while participation in Specialty Court programs as a condition of probation requires the imposition of a felony conviction regardless of success or failure in the program. This is the predominant practice across the state despite the fact that data show the use of deferred sentences to be more impactful in changing offender behavior. In 2017, 67 percent of

participants with a deferred sentence were successful in their Specialty Court program, compared to just 42 percent of participants who were successful without a deferral.

Although many first-time offenses are probation eligible in Nevada, the data show that Nevada is using incarceration more readily than community supervision. While presumptive probation is authorized in statute for certain felony offenses, it includes many criteria unrelated to public safety that make offenders ineligible, including factors that indicate a person may have a substance abuse issue requiring programming or treatment.

Prison Admissions and Community Supervision Failures

The ACAJ examined the growing number of people in Nevada entering prison after having their supervision revoked for a violation of their probation or parole conditions. Over the past decade, despite a seven percent decline in the state's probation population, admissions to prison for probation violators increased 15 percent. In 2017, one in four admissions to prison was due to a probation violation and one in eight admissions was due to a parole violation.

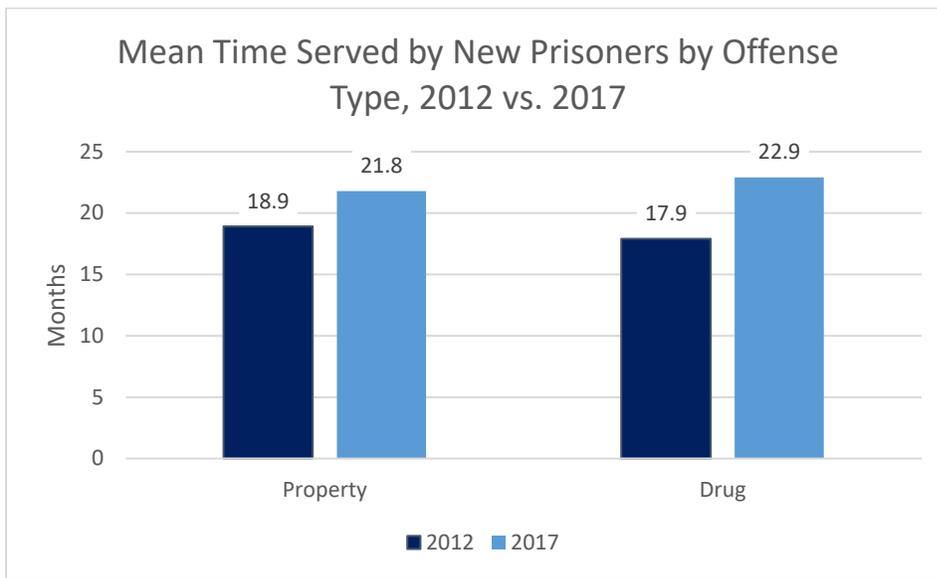
Analysis of violation reports revealed that 34 percent of community supervision violators who returned to prison in 2017 failed supervision due to a technical violation, defined as a violation of supervision conditions not rising to the level of new criminal conduct nor absconding.³¹ Technical violations include failing a drug test or missing a meeting with a supervision officer. Forty-four percent of community supervision violators reviewed had substance abuse as a predominant factor in their supervision failure, meaning violators were sent to prison for failing to complete treatment, failing drug tests, or a new charge related to drug abuse. The individual case-level review also found that 73 percent of community supervision violators indicated having a mental health and/or a substance abuse issue.

Length of Stay in Prison

The ACAJ also considered the relationship between the length of prison terms and recidivism. The best measurement for whether longer stays provide a greater deterrent effect is to compare whether similar offenders, when subjected to different terms of incarceration, recidivate at different levels. Rigorous research studies find no significant effect, positive or negative, of longer prison terms on recidivism rates.³²

While increasing lengths of stay have been a steady driver of Nevada's growing prison population, recidivism rates have not declined. Over the past 10 years, the ACAJ found that the average time offenders spend serving a prison sentence increased by 20 percent, or 4.2 months. When looking at the type of admission, the ACAJ found that offenders sentenced directly to prison who were released in 2017 served on average nearly seven months longer than those released in 2012, a 31 percent increase. This increase in time served applied to all types of offenders, for example, property offenders sentenced directly to prison served 15 percent longer than they did in 2012, and drug possession offenders spent 28 percent longer in custody. Over this same period, the amount of time served for individuals returning to prison on a parole violation increased 92 percent, or 4.7 months. For probationers revoked to prison, time served increased seven percent, or 1.3 months. Despite these longer periods of incarceration, recidivism remains a challenge in Nevada. Of those released from prison in 2014, over 1,500 had returned to prison by 2017. Nevada's recidivism rate, calculated as the percent of individuals released from prison who return to NDOC custody within thirty-six months, has increased for nearly all types of offenses and lingers at 29 percent.³³

Figure 5. Drug and property offenders spend longer in prison than six years ago



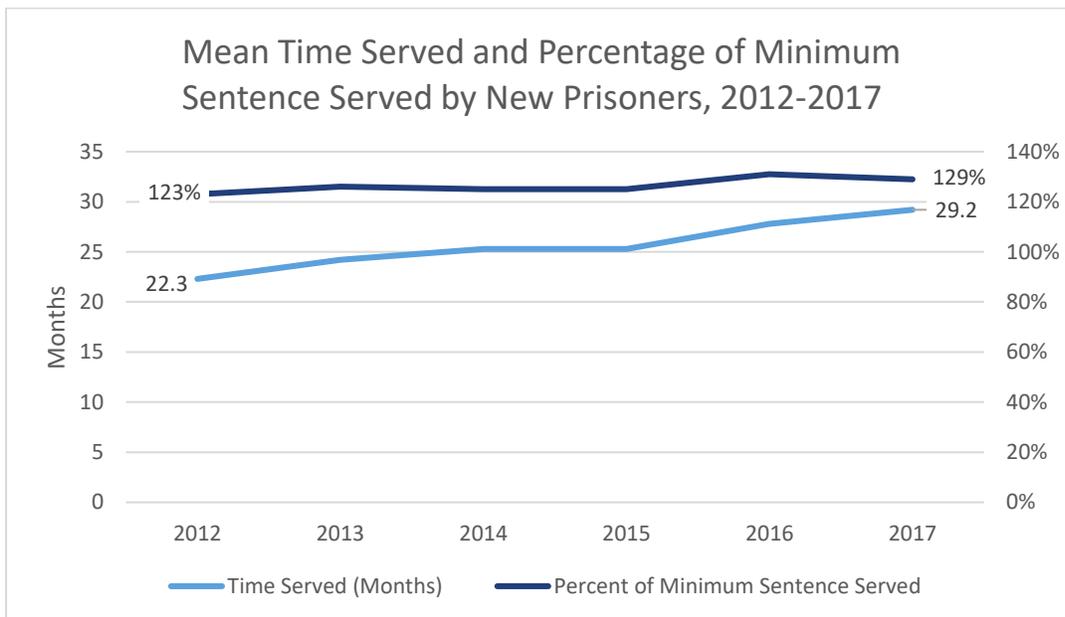
Source: Data from the Nevada Department of Corrections, Analysis by CJI

The amount of time an inmate serves is the result of the sentence length imposed, how many credits the inmate accrues while in custody, and when parole is granted. The ACAJ found that the increase in lengths of stay in prison was largely due to increases in sentence lengths. The analysis shows judges have imposed longer minimum sentences over the past decade, resulting in individuals remaining in custody longer awaiting parole. From 2008 to 2017, minimum sentences imposed by judges increased by 12 percent and maximum sentences imposed increased by seven percent. Minimum sentence increases occurred across all offense types, including property offenders, which increased eight percent and drug offenders, which increased 16 percent.

As sentences have increased, offenders are also serving a greater portion of their minimum sentence. In 2017, offenders sentenced directly to prison served 129 percent of their minimum sentence, compared to 123 percent in 2012. Moreover, the ACAJ found that the system has yet to experience the full effect of these recent increases in sentence length, as the majority of people sentenced in 2017 were likely still incarcerated at the time of analysis.

With respect to sentencing practices, the ACAJ found that Nevada is unique in that, firstly, its sentencing statutes are constructed with wide sentencing ranges that apply to a broad range of conduct and, secondly, that Nevada judges often rely on sentence recommendations from a Pre-Sentencing Investigation (PSI) report that considers subjective criteria unrelated to public safety. The ACAJ found that judges comply with these recommendations 75 percent of the time. In 2017, judges concurred with 63 percent of recommendations for a sentence to prison and 88 percent of recommendations for a probation sentence.

Figure 6. Length of stay increases as offenders serve larger portions of their sentences



Source: Data from the Nevada Department of Corrections, Analysis by CJI

Behavioral Health Needs of the Criminal Justice Population

When examining who enters the criminal justice system, the ACAJ found a large increase in those suffering from behavioral health needs. In Nevada, the number of offenders entering prison with an identified mental health need increased 35 percent over the last decade. Growth has been even greater for women, as the number of female offenders entering prison with a mental health need increased 47 percent over the same period of time. In 2017, over half of women who entered prison had an identified mental health need.

Studies demonstrate that individuals with behavioral health needs are overrepresented in the criminal justice system. Nationally, one in seven individuals in state and federal prisons and one in four in jails had experienced serious psychological distress.³⁴ Additionally, studies show that 63 percent of jail inmates and 58 percent of state prison inmates meet the criteria for drug dependence or abuse.³⁵ Research has found that individuals who suffer from behavioral health needs are more likely to stay incarcerated longer, to serve time in segregation, and to incur disciplinary problems at higher rates than others with similar charges and criminal history.³⁶ This entrenchment in the system is costly both to offenders, who could be better served in the community, and to the taxpayers, due to many expensive medical needs of this population.

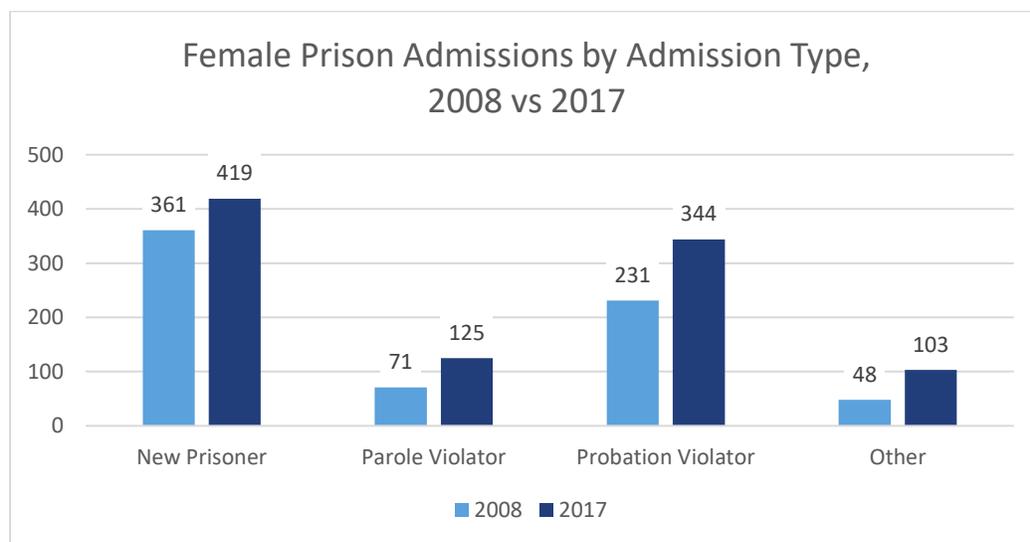
In Nevada, some jurisdictions have implemented programs to address this population with behavioral health needs and to provide vital treatment in the community. Several examples include training officers with crisis intervention skills to de-escalate a behavioral health crisis, establishing Mobile Outreach Safety Teams (MOST) and Forensic Assessment Services Triage Teams (FASTT), using triage centers, and creating community partnerships with behavioral health experts. While some jurisdictions require officers to receive Crisis Intervention Training (CIT), others do not have the resources and there is no state law requiring such training. MOST programs connect individuals with behavioral health issues to community services and supports in an effort to limit further

contact with the criminal justice system. FASTT programs similarly link individuals to community treatment options, but in a jail setting shortly after an arrest has been made. Finally, triage centers provide officers with an opportunity to take an individual in a crisis state to a center to be stabilized or detoxed instead of using jails the only option. However, due to resource limitations, MOST and FASTT programs exist sparingly across the state and the three largest triage centers in the state closed their doors this past year. The overall lack of resources creates significant regional variation in how individuals with behavioral health needs are treated across Nevada.

Females in Prison

In examining growing populations within Nevada’s prisons, the ACAJ found that Nevada’s female prison population has grown at four times the rate of the general population, and the state now has a female imprisonment rate that is 43 percent higher than the national average. Female admissions grew 39 percent between 2008 and 2017, compared to the six percent admissions growth for the overall population and just one percent growth for the male population. This steep increase in female admissions was driven by growth across all admission types, including a 76 percent growth in female parole violator admissions and a 49 percent increase in female probation violator admissions.

Figure 7: Female admissions growth driven by community supervision failures

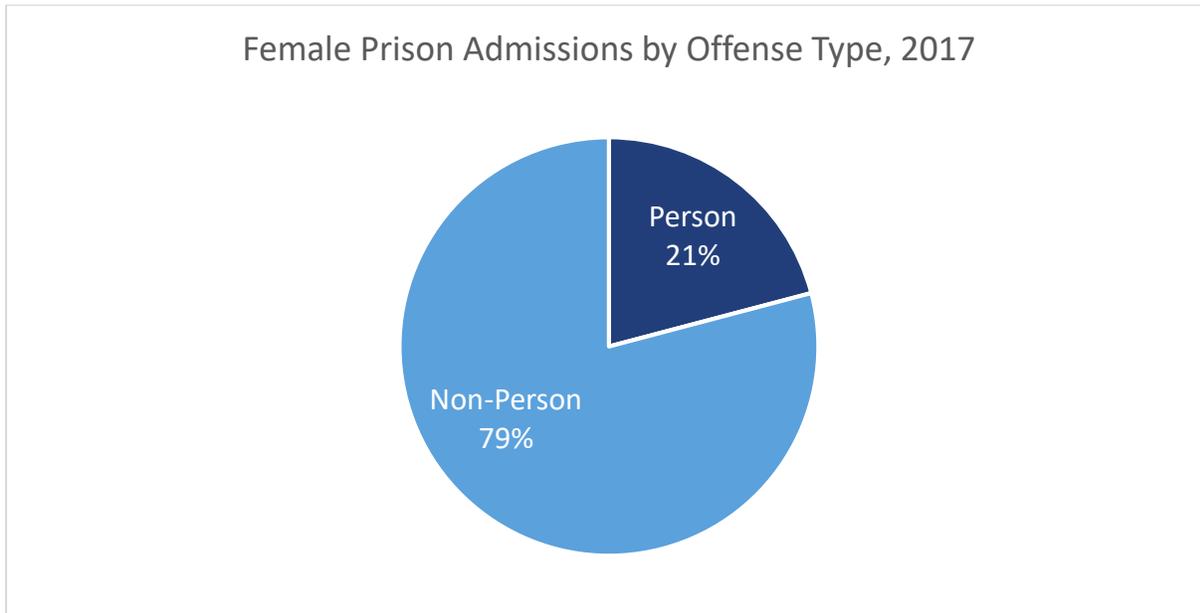


Source: Data from the Nevada Department of Corrections, Analysis by CJI

This admissions growth led to a 29 percent increase in the female prison population. Nevada has only one NDOC prison that houses women, the Florence McClure Women’s Correctional Center, which is currently operating well beyond the capacity it was built to house. The ACAJ also found that the female prison population consists disproportionately of lower level offenders, as nearly four in five female admissions were for non-person offenses. The vast majority of women going to prison are sentenced for property or drug crimes, with non-person offenses comprising all of the top 10 offenses at admission for women in 2017. In addition, over half of female admissions had no prior felony record. While the number of women incarcerated has grown, recidivism rates for women have also grown, increasing by five percentage points since 2009.

Moreover, women in Nevada’s prisons are much more likely to suffer from mental illness than men who are incarcerated. Over half of the women who entered prison in 2017 had a mental health issue compared to 25 percent of male admissions. Perhaps most significantly, Florence McClure, does not have a mental health unit on-site.

Figure 8. Most female admissions to prison are for a non-person offense



Source: Data from the Nevada Department of Corrections, Analysis by CJI

Note: Person offenses are all offenses defined by NDOC as a violent or sex offense, as well as those offenses involving harm or injury. Non-person offenses include drug and property offenses, and all other offenses not defined by NDOC as a violent or sex offense or involving harm or injury.

Community Supervision

The majority of inmates in Nevada’s prisons eventually return to the community, and many more individuals are placed directly on probation supervision at sentencing. For individuals on community supervision, a growing body of research supports several primary strategies for reducing recidivism. These strategies include: identifying and focusing resources on higher risk offenders; using swift, certain, and proportionate responses; incorporating rewards and incentives; frontloading resources in the first weeks and months following release from prison; and integrating treatment into supervision, rather than relying on surveillance alone. The research supporting each principle and how Nevada’s practices align will be discussed in detail below.

The ACAJ was able to examine data on offenders supervised by the Division of Parole and Probation (NPP), and found that the number of parolees under supervision grew by 84 percent, while the number of probationers declined by seven percent over the past 10 years.³⁷

Focus supervision and treatment resources on higher-risk offenders

Research consistently shows that an offender’s likelihood to reoffend can be accurately predicted with the use of a validated risk and needs assessment.³⁸ Many states adopted this actuarial tool to identify offenders’ likelihood to recidivate and to then allocate resources accordingly. Using a risk

assessment, parole and probation officers can focus their limited resources on those who pose the highest risk of reoffending.

In Nevada, a risk and needs assessment is not currently being used to determine individualized conditions for supervision. Current practice imposes a set of standard and special conditions for offenders, regardless of their risk level or criminogenic needs. As a result, conditions are not individualized and tailored to those offenders who are most likely to reoffend or those who have specific needs that must be addressed while on supervision. As a result, individuals are being ordered to comply with conditions that are not necessary to protect public safety and may increase their likelihood of reoffending. While NPP recently started using a risk and needs assessment to determine supervision levels, this assessment occurs after conditions are already set. Additionally, no current streamlined mechanism exists for NPP officers to go back and change supervision conditions after the assessment is completed and an individual's risk and needs are appropriately identified.

Use swift, certain, and proportionate sanctions

Research demonstrates that offenders are more responsive to sanctions that are swift, certain, and proportionate rather than those that are delayed, inconsistently applied, and severe.³⁹ In order to effectively change behavior, consequences for violations must be communicated in advance to create a clear deterrent for non-compliant behavior; responses to violations must occur as soon as the violation is identified so the individual can link the sanction to the behavior; all violations must receive a response, even if that response is an informal conversation with the individual, rather than waiting for the violations to pile up to address the behavior; and the response must be proportionate to the behavior.

Many states incorporate these principles by requiring parole and probation agencies to use administrative sanctions in the community to proactively change behavior. These include establishing time limits on how long a person can be incarcerated for a technical violation, allowing short-term jail sentences for certain conduct, and requiring an individual be seen for a revocation hearing in a timely manner.

In Nevada, NPP has begun to implement swift, certain, and proportionate sanctions through the use of graduated sanctions. While NPP has developed a graduated sanctions matrix, officers' use of the matrix is inconsistent across the state and individuals are being revoked for a wide range of conduct depending on their location.

Additionally, if an individual violates the conditions of their supervision, they may be revoked to serve their full sentence of the underlying offense. This is true for both technical violations, new charges, and absconding behavior. The same response for such a diverse range of conduct does not effectively change offenders' behaviors and make communities safer.

Incorporate rewards and incentives

Research shows that encouraging positive behavior change through the use of incentives and rewards can have an even greater effect on motivating and sustaining change than using sanctions alone. Research finds that to effectively change behavior, rewards and incentives for prosocial behavior should be utilized four to five times more often than sanctions.⁴⁰ At least 15 states have implemented earned discharge policies over the past decade that allow offenders to earn time off

their supervision term for good conduct, resulting in reduced caseloads while encouraging positive behavior.

In Nevada, prosocial behavior is incentivized through the use of earned credits. Probationers can earn credits for participation in treatment or educational programs. However, parolees are not eligible for these types of credits. Parolees receive credits only for payments of restitution and supervision fees.⁴¹ Additionally, the way that parolees receive credits does not function as an incentive. Parolees receive credits in advance of earning them on the assumption that the individual will comply with restitution and supervision fees. If the person is not in compliance with those conditions then credits are forfeited. This is in contrast to probationers who receive credit once they are in compliance with restitution, supervision fees, and now treatment or educational programs.

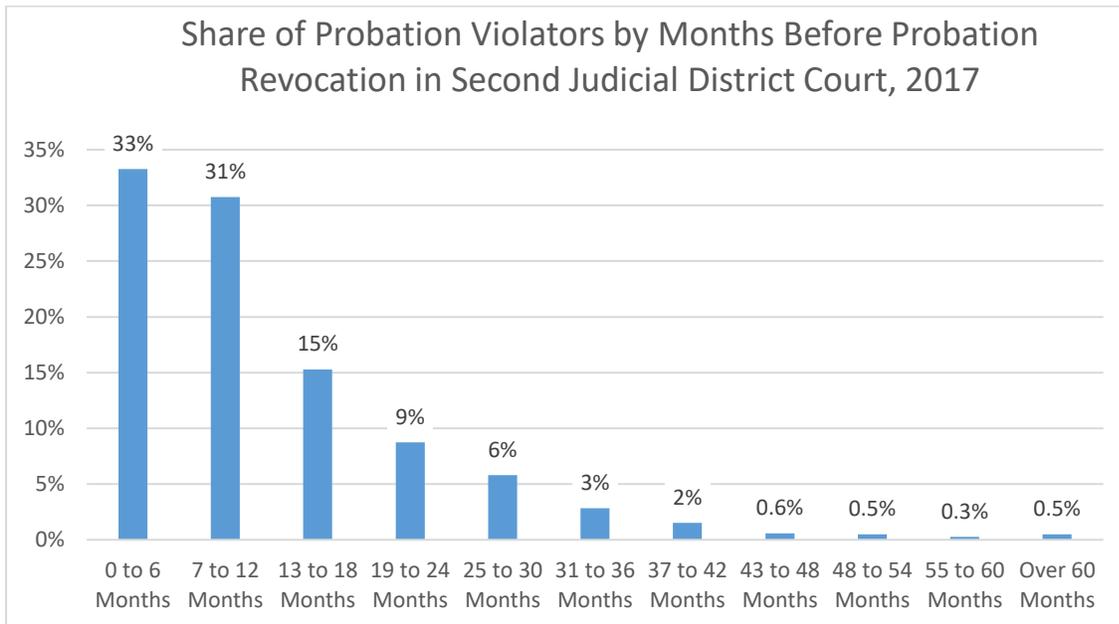
Lastly, early termination from supervision is an option only for probationers, but the decision is left entirely to the discretion of the supervising officer as there is not a formalized process in administrative regulations or in statute in Nevada.

Frontload resources in the first weeks and months following release

Long-term success for individuals returning home from prison is closely tied to accountability and support during the period immediately following release. Research shows that people placed on community supervision are most likely to reoffend or violate the terms of their release in the initial days, weeks, and months after release.⁴² The likelihood of violations and the value of ongoing supervision diminish as those under supervision gain stability and demonstrate longer-term success in the community.

In Washoe County, over half of probation violation reports are filed in the first six months of supervision, yet the vast majority of probation sentences imposed are between three and five years. The current system requires NPP to expend resources for multiple years of supervision despite the fact that most violations occur in the first year. There are no current step-down options within Nevada's system and interviews with stakeholders have indicated that early termination is rarely used.

Figure 9. One in three probation revocations in Washoe County occurred within six months



Source: Washoe County Second Judicial District Court, Analysis by CJI

Resources should likewise be concentrated at the front-end for parolees reentering the community. Nevada law requires that all parolees have an approved reentry plan before release.⁴³ However, the current reentry plan focuses exclusively on housing and does not address many other factors critical to a parolee’s success in the community. In September 2018, nearly 300 offenders in NDOC custody had been granted parole but did not have an approved reentry plan due to this housing requirement.

Integrate treatment into surveillance

Research shows that a combination of surveillance and treatment focused on an individual’s criminogenic needs, meaning the characteristics directly related to the individual’s likelihood to re-offend, is more effective at reducing recidivism than surveillance alone.⁴⁴ Officers should be trained to use cognitive behavioral techniques to support rehabilitation through prosocial reinforcement, rather than simply monitoring the individual until they fail.

While probation and parole officers in Nevada currently use a risk and needs assessment to determine offenders’ supervision levels, the results are not incorporated into the creation of individualized case plans. As a result, programming and treatment referrals are not based on the offenders’ specific needs but applied generally for offenders who have a certain offense type or criminal history. Additionally, the ACAJ heard from stakeholders across the state about the lack of treatment beds in their jurisdictions and found regional disparities in accessing community-based treatment and programming.

NPP has made progress toward providing programming with Day Reporting Centers, but, due to limited capacity, they can only serve a fraction of the community supervision population in need. However, admittance to Day Reporting Centers is discretionary without any criteria and is not based off of an individual’s risk or needs.

Policy Recommendations:

Based on the evaluation of Nevada’s current practices in the areas of sentencing, release, reentry, and supervision, the ACAJ developed 25 policy recommendations. Taken together the ACAJ recommendations are projected to avert 89 percent of the anticipated growth in the prison population through 2028. The recommendations provide an avenue for Nevada to avoid \$640 million in additional spending over the next decade, and the ability to invest a portion of what would have been spent on new prison beds on measures that strengthen public safety and address behavioral health issues across the state.

The following 25 policy recommendations will:

- Strengthen responses to behavioral health-involved offenders;
- Focus prison resources on serious and violent offenders;
- Improve the efficiency and effectiveness of community supervision;
- Minimize barriers to successful reentry; and
- Ensure the sustainability of criminal justice reforms.

The following recommendations reflect the policy options supported by the majority of the subcommittee members. In some cases, the recommendations below include an Alternative Policy Option for consideration by legislative leadership. An Alternative Policy Option is a recommendation suggested by members that generated sufficient discussion even though it did not end up garnering a majority of support from the full subcommittee.

Strengthen responses to behavioral health-involved offenders

Recommendation 1: Establish CIT training requirements for law enforcement officers

Many jurisdictions in Nevada provide crisis intervention training (CIT) to their law enforcement officers, but this training is not available statewide due to resource limitations. Several studies indicate that CIT improves safety outcomes. In addition, research shows CIT is associated with improvements in attitudes and knowledge about mental illness and increases officers’ confidence in identifying and responding to persons with mental illness.⁴⁵

The ACAJ recommends:

- a. Ensure new, full-time law enforcement officers receive CIT training.

Recommendation 2: Establish pre-prosecution diversion for first-time nonviolent felony offenders

In 2017, four out of 10 offenders were admitted to prison despite having no prior felony conviction and two thirds of the offenders admitted to prison were sentenced for a non-person offense.

Aside from its Specialty Court system and its limited use of diversion through a deferred sentence, Nevada does not have sufficient opportunities for first-time felony offenders to be entirely diverted from the criminal justice system. However, Nevada statute does afford this diversion opportunity to certain eligible misdemeanor offenders.

The ACAJ recommends:

- a. Creating a pre-prosecution program for first-time felony offenders who are convicted of a nonviolent offense, similar to the misdemeanor program.⁴⁶

Recommendation 3: Remove existing barriers to presumptive probation

Compared to other states, Nevada uses incarceration more often than community supervision. The presumption of probation is overcome when a person is arrested while on probation or parole, has previously been revoked from supervision, or fails to successfully complete a treatment program.⁴⁷ These restrictions disproportionately impact individuals struggling with a behavioral health issue and penalize offenders who relapse during the course of treatment.

The ACAJ recommends:

- a. Removing the presumptive probation restrictions for Category E offenders that prohibit presumptive probation when the defendant (1) is currently on supervision, (2) has previously been unsuccessful on a probation or parole term, or (3) has failed a treatment program.

Recommendation 4: Establish a presumption of sentence deferral for certain nonviolent offenders admitted to Specialty Court

The ACAJ examined data from the state's Specialty Court programs and found that individuals who received a deferred sentence were more successful in the programs than those who were convicted. A deferred sentence affords an individual the opportunity to successfully complete the program and avoid a felony conviction. The ACAJ examined the significant collateral consequences associated with a felony conviction and concluded that a person who successfully completes a Specialty Court program should not have their progress toward stability and rehabilitation limited by a felony conviction.

The ACAJ recommends:

- a. Creating a rebuttable presumption that every nonviolent offender entering a Specialty Court program receives a deferred sentence. The presumption may be overcome in cases where a deferral poses a threat to public safety.

Recommendation 5: Ensure Drug and Mental Health Court programs align with best practices

Currently in Nevada, there are no standard eligibility criteria for Drug Court or Mental Health Court programs. This lack of criteria has led to significant regional variation in which offenders participate in the programs. Research shows that the intense requirements of Specialty Court programs are most effective for higher-risk individuals with a significant behavioral health need.⁴⁸ Furthermore, studies show that when low-risk offenders are placed in such programs, they become further entrenched into the justice system.⁴⁹ The majority of Nevada jurisdictions use a referral system for entrance into Specialty Court programs, and do not select eligible participants based on best practices.

In comparison, eligibility criteria for DUI Courts is outlined in statute and standardized across Nevada and requires a clinical assessment by a licensed practitioner. In examining the data, the ACAJ found that participants in DUI Courts had overwhelmingly higher success rates than those in other Specialty Court programs.

The ACAJ recommends:

- a. Requiring Mental Health Courts and Drug Courts to use either an in-person clinical assessment or an in-person risk and needs assessment to determine eligibility for participation.

Focus prison resources on serious and violent offenders

Recommendation 6: Amend the burglary statute to correspond to different levels of conduct and create proportional penalties

In 2017, burglary and attempted burglary were the two most common offenses at admission to prison. Time served for burglary is up 16 percent since 2012 and burglary offenders are serving 4.2 months longer in prison.

The burglary statute in Nevada differs from other states in two significant ways: (1) it does not require that an offender enter a structure unlawfully; and (2) it makes no distinction between different types of structures. This means that stealing change from an open motor vehicle carries the same penalty as entering a home at night with the intent to commit a felony. While a majority of burglary convictions (63 percent in 2017) involve a non-residential structure, they are subject to the same penalty as residential burglaries.

Additionally, Nevada's home invasion statute differs from other states, in that it (1) has essentially the same elements as residential burglary; and (2) carries an identical penalty to residential burglary. In other states, home invasion commonly includes a burglary offense with additional violent or dangerous elements, like the presence of a victim, an armed offender, or commission of the offense at night. The ACAJ discussed the redundancy of the home invasion statute in its present form and determined that home invasion should be defined differently from other burglary offenses, and punished more severely.

The ACAJ recommends:

- a. Amending the burglary statute to include the element of unlawful entry, and to establish different penalties based on whether the structure is a motor vehicle, a non-residential structure, a commercial building, or a residence, as outlined in the chart below.
- b. Amending the home invasion statute to reflect the severity of the crime and make home invasion distinct from other types of burglary. This includes defining home invasion as an unlawful entry of an inhabited dwelling, by an offender armed with firearm or deadly weapon, with an additional requirement that: it occur at night, or a person other than the offender or any accomplice(s) is present during the offense.
- c. Increasing judicial discretion to probate first and second time burglary offenders if mitigating circumstances exist.

| Unlawful Entry of: | Penalty |
|---------------------------|---|
| Motor Vehicle | First or Second Offense: Gross Misdemeanor, Up to 1 year jail Third or Subsequent Offense: Category E Felony, 1 – 4 years prison |
| Other Building | Category D Felony, 1 – 4 years prison |
| Commercial Building | Category C Felony, 1 – 5 years prison |
| Residence | Category B Felony, 1 – 10 years prison |

| | |
|---------------|--|
| Home Invasion | Category B Felony, 2 – 18 years prison |
|---------------|--|

Alternative Policy Option:

- a. Reclassifying burglary of a motor vehicle to a Category C felony and keeping burglary of all other structures under the existing burglary statute with an increased penalty of 2-15 years. This option did not receive majority support from the Sentencing and Pretrial Diversion Subcommittee.

Recommendation 7: Increase the felony theft threshold, establish different sentencing tiers for high-level larcenies, and ensure theft threshold amounts are consistent across all related offenses

Since 2000, over 37 states have raised their felony theft thresholds. Nevada last raised its felony threshold in 2011, from \$250 to \$650.⁵⁰ Nevada currently has one of the lowest felony theft thresholds in the country at \$650; 43 states have a higher threshold. Research has found that raising the felony theft threshold has no impact on overall property crime or larceny rates.⁵¹

Felony thefts account for one of the most common offense categories at admission, behind only burglaries and attempted burglaries in 2017. The maximum penalty for larceny, a Category B felony, is punishable with a sentence of one to 10 years. Nevada also differs from other states in that it lacks penalty enhancements for large values; most states have an additional penalty for thefts over \$100,000 dollars.

The ACAJ recommends:

- a. Increasing the felony theft threshold from \$650 to \$2,000.
- b. Creating tiered theft offenses based on escalating property values with increasing penalties.
- c. Ensuring that threshold amounts are consistent across all theft offenses that currently utilize monetary thresholds, including but not limited to: larceny, general theft, possession of stolen property, and embezzlement.

| Property Value | Penalty |
|----------------------|--|
| \$1,000 and less | Misdemeanor, Up to 6 months jail |
| \$1,000 - \$1,999 | Gross Misdemeanor, Up to 1 year jail |
| \$2,000 - \$4,999 | Category D Felony, 1 – 4 years prison |
| \$5,000 - \$24,999 | Category C Felony, 1 – 5 years prison |
| \$25,000 - \$99,999 | Category B Felony, 1 – 10 years prison |
| \$100,000 or greater | Category B Felony, 1 – 20 years prison |

Alternative Policy Option:

- a. Raising the felony theft threshold to \$1,000; making theft between \$1,000 and \$5,000 a Category D felony (1-4 years); theft between \$5,000 and \$25,000 a Category C felony (1-5 years); theft between \$25,000 and \$100,000 a Category B (1-10 years) felony; and theft over \$100,000 a Category B felony (1-15 years). This option did not receive majority support from the Sentencing and Pretrial Diversion Subcommittee.

Recommendation 8: Reclassify simple possession of a controlled substance

Between 2008 and 2017, prison admissions for simple possession of a controlled substance (including heroin, cocaine, or methamphetamine) increased by 53 percent. In addition, simple possession offenders make up a disproportionate number of community supervision failures: in 2017, eight percent of people admitted to prison for probation violations were on probation for simple possession. In Nevada, simple possession is a Category E felony, with a sentence range of one to four years.

In some states—such as Tennessee, Utah, and Iowa—the first or second offense for simple possession of heroin, cocaine, or methamphetamine is a misdemeanor, not a felony. In others, including Oklahoma and West Virginia, simple possession is never a felony. Reclassifying possession offenses allows these states to impose an appropriate alternative sentence, including intensive supervision and treatment, while removing the adverse collateral consequences of a felony conviction.

The ACAJ recommends:

- a. Reclassifying simple possession of a controlled substance from a felony to a misdemeanor for the first and second offense.^{52,53}
- b. Retaining the Category E felony classification for a third and subsequent possession conviction.
- c. Expanding the presumption of probation for those convicted of simple possession of a controlled substance at the Category E level to include: those serving a term of supervision at the time they committed simple possession; those who had previously been revoked from supervision; those who had previously failed to complete a treatment program; and those with two or more past felony convictions.
- d. Prohibiting simple possession of a controlled substance from use as a qualifying offense for the habitual criminal statute.

| Simple Possession of a Schedule I-V Substance | Penalty |
|---|--|
| First Conviction | Misdemeanor 0 – 6 months jail |
| Second Conviction | Misdemeanor 0 – 6 months jail |
| Third or Subsequent Conviction | Category E Felony 1 – 4 years prison, with presumption of probation (removing existing exceptions to the presumption) |

Recommendation 9: Increase judicial discretion in sentencing for commercial drug offenses

Currently in Nevada, an offender convicted of a second or subsequent offense of sale, distribution, exchange, or transport of any quantity of a controlled substance must be sentenced to prison. The law does not permit a judge to sentence an offender to probation, even if mitigating circumstances are present.

The ACAJ recommends:

- a. Authorizing a judge to sentence an offender convicted of a second or subsequent offense of sale/distribution/exchange/transport-- or “possession for sale” -- to probation, if warranted by mitigating circumstances.^{54, 55}
- b. Reclassifying a first offense of sale/distribution/exchange/transport from a Category B felony (1-6 years) to a Category C felony (1-5 years).

Recommendation 10: Amend trafficking weights to distinguish drug sellers from drug traffickers, and require evidence of intent to sell or manufacture

In 2017, Category B level trafficking was the fourth most common offense at admission and time served for trafficking admissions grew by 32 percent between 2012 and 2017.

Nevada’s trafficking statute currently applies to any individual possessing four or more grams of a controlled substance. Moreover, there is no requirement that an individual arrested for trafficking exhibit conduct that they intend to sell or distribute the substance. This significantly differs from trafficking statutes in other states, which either have higher trafficking weights or require an indicia of sale.

A case-level review of trafficking admissions from 2017 found that 46 percent of cases contained no indication of active sale or intent to sell, and those convictions were based solely on the weight of the controlled substance seized. Moreover, 74 percent of trafficking convictions in the case-level file review contained an indication of substance abuse by the offender. Lastly, of the women sentenced to prison for trafficking in 2017, 60 percent had no prior felony record.

The ACAJ recommends:

- a. Increasing trafficking weights to distinguish drug sellers from drug traffickers.
- b. Adding the requirement to the trafficking statute of an indicia of intent to sell.

| Trafficking of Schedule I Substances | Penalty |
|--|---|
| 28 – 100 grams with indicia of intent to sell or manufacture | Category B Felony, 1 – 10 years prison |
| 100 – 400 grams with indicia of intent to sell or manufacture | Category B Felony, 2 – 20 years prison |
| 400 grams or more with indicia of intent to sell or manufacture | Category B Felony, 3 – 20 years prison Mandatory incarceration |

Alternative Policy Options:

- a. Authorizing judges to impose a probation sentence for the first trafficking conviction under the existing weight thresholds of 4-14 grams and 14-28 grams, with no other changes to the trafficking statute. This option did not receive majority support from the Sentencing and Pretrial Diversion Subcommittee.
- b. Referring the study of weight thresholds to the Sentencing Commission and revisiting changes to the law based on the Sentencing Commission’s recommendations. This

option did not receive majority support from the Sentencing and Pretrial Diversion Subcommittee.

Recommendation 11: Establish a lookback period for the habitual criminal statute⁵⁶

Nevada law currently allows for a significant sentencing increase upon a person’s third or fourth felony conviction, as defined by the habitual criminal statute. An individual with two prior distinct convictions can receive a five to 20 year sentence, and on a fourth conviction can receive a life sentence. Frequent criminal conduct is not uncommon for people battling addiction and untreated mental illness, and repeat convictions for lower level crimes such as drug activity, shoplifting, and car burglary is often the result. Admissions for habitual criminal with two prior offenses increased 10 percent since 2008. Forty percent of all habitual criminal admissions in 2017 had neither a current nor prior violent offense on their record. A case-level review found that 90 percent of individuals entering prison on a habitual criminal offense in 2017 presented behavioral health needs.

Unlike some states, Nevada’s current statute does not limit the time period in which the previous offenses occurred that can be used to enhance the sentence. This means that a conviction at any point in a person’s past from five to 50 years ago can be used to convict someone as a habitual criminal.

It is worth noting that this recommendation would not change Nevada’s existing habitual felon statute, which applies to repeat serious violent offenders.

The ACAJ recommends:

- a. Establishing a lookback period for the habitual criminal statute, based on Nevada’s record sealing statute.⁵⁷ A conviction could not be used as a qualifying offense if:
 - i. For a prior Category A felony or violent felony:⁵⁸
 - Ten years have elapsed between completion of the sentence on the prior conviction and commission of the current offense.
 - ii. For a prior Category B, C, or D felony:
 - Five years have elapsed between completion of the sentence on the prior conviction and commission of the current offense.
 - iii. For a prior Category E felony:
 - Two years have elapsed between completion the sentence on the prior conviction and commission of the current offense.

Recommendation 12: Remove the sentencing recommendation from the Pre-Sentence Investigation Report

Between 2012 and 2017, sentence lengths in Nevada increased for all offense types. Minimum sentences increased 12 percent and maximum sentences increased seven percent. This resulted in a 20 percent increase in the amount of time offenders, nonviolent and violent alike, spend incarcerated.

One of the tools used to make sentencing determinations in Nevada is a PSI report. Many other states similarly use PSI reports during the sentencing phase. What is unique in Nevada is the use of

the sentence recommendation included in the PSI report. This recommendation is based on a computed value derived from Probation Success Probability Score (PSP) and Sentencing Recommendation Selection Scale (SRSS), scored by an NPP Specialist III.

The factors that are used to create this score are largely subjective and unrelated to protecting public safety or criminal conduct. Moreover, the results of these scores have significant influence as judges concurred with the PSI sentence recommendation 75 percent of the time.

The ACAJ recommends:

- a. Removing the sentencing recommendation from the PSI report.⁵⁹
- b. Requiring judges to receive training on how to use the information included in the PSI report to make sentencing determinations.

Recommendation 13: Reclassify certain nonviolent Category B offenses to tailor criminal conduct more appropriately to the corresponding penalty

There are 212 Category B felony offenses in Nevada, and in 2017, these accounted for nearly half of all prison admissions. These offenses vary widely in severity, from larceny by false pretenses over \$650, to human trafficking, to battery with the intent to kill.

The amount of time served for Category B offenders is increasing, with individuals serving 10 months longer in prison in 2017 than they did six years ago. While the vast majority of these offenders will return to Nevada's communities, the Category B classification makes them ineligible for programming and work opportunities while incarcerated that assist in rehabilitation.

The ACAJ discussed reclassifying the following offenses:⁶⁰

- Theft, value of \$3,500 or more (NRS 205.0835)
- Grand larceny, value of \$3,500 or more (NRS 205.222)
- Grand larceny of motor vehicle, value proven to be \$3,500 or more (NRS 205.228)
- Maintaining drug house, first offense (NRS 453.316)
- Taking property not amounting to robbery, value \$3,500 or more (NRS 205.270)
- Receiving or possessing stolen goods, value \$3,500 or more (NRS 205.275)
- Theft from vending machine, value of \$3,500 or more (NRS 205.2707)
- Receiving or transporting stolen vehicle, value proven to be \$3,500 or more (NRS 205.273)
- Obtaining money, property, rent, or labor by false pretenses, value \$650 or more (NRS 205.380)
- Theft of fire prevention device, value of \$650 or more (NRS 475.105— Punished as grand larceny. See NRS 205.222)
- Unlawful use of scanning device or re-encoder with intent to defraud (NRS 205.605)
- Gaming crimes, first offense (includes certain track and sports wagering and attempts at or conspiracy to commit crimes) (NRS 465.088)
- Knowingly selling a motor vehicle whose odometer has been fraudulently altered (NRS 484D.335)
- Ex-felon in possession of a weapon (NRS 202.360)
- First Offense Sale/Exchange/Transfer/Transport of a controlled substance (NRS 453.321)

The ACAJ recommends:

- a. Reclassifying the above list from Category B offenses to Category C offenses.

Alternative Policy Options:

- a. Reclassifying DUI as a Category C felony. This recommendation did not get majority support from the Sentencing and Pretrial Diversion Subcommittee.
- b. Reclassifying the 13 offenses identified by the ACAJ in 2016 with the exception of ex-felon in possession of a weapon or sale/ exchange/ transfer/ transport of a controlled substance. This recommendation did not get majority support from the Sentencing and Pretrial Diversion Subcommittee.

Recommendation 14: Establish and codify a streamlined parole process

In 2016, 40 percent of inmates were released at the expiration of their sentence, rather than being released through mandatory or discretionary parole. Parole release rates have fluctuated over the last decade, declining from fiscal year 2011 to fiscal year 2016, with an increase in fiscal year 2017.

Parole supervision affords greater accountability than other forms of post-release supervision, however, the ACAJ found that parole is underutilized, due in part to the fact that some offenders choose to waive their participation in the parole process in the interest of leaving custody without supervision to follow.

The ACAJ recommends:

- a. Codifying the Board of Parole Commissioners' practice of holding hearings in absentia for certain types of offenders who are assessed as low-risk and receive an appropriate guideline recommendation.
- b. Enabling the Board of Parole Commissioners to make a mandatory parole determination without a hearing, using the Board Report and the results from the risk and needs assessment to identify an individual's likelihood to reoffend and public safety risk.

Recommendation 15: Implement a specialty parole option for long-term, geriatric inmates

The population of Nevada inmates aged 55-and-older increased 70 percent from 2009 to 2017. NDOC is authorized to release inmates to residential confinement who are physically incapacitated and pose no threat to public safety or are within 12 months of death. Inmates were admitted to the hospital 538 times in fiscal year 2018, for a total of 3,917 days of hospitalization, an 80 percent increase in the number of hospital admissions and a 93 percent increase in the number of days hospitalized since fiscal year 2014. As inmates age in custody, they develop medical issues at far higher rates than the general population.

Researchers have consistently found that age is one of the most significant predictors of criminality, with criminal activity decreasing as a person ages.⁶¹ Studies on parolee recidivism found that the probability of a parole violation also decreases with age, with older parolees the least likely to be re-incarcerated.⁶² Furthermore, older inmates have higher incidence of serious health conditions compared to their younger peers, leading to much greater medical costs. Due to these increased needs, prisons across the nation spend roughly two to three times more to incarcerate geriatric individuals than younger inmates.⁶³

The ACAJ recommends:

- a. Establishing a geriatric parole process that allows inmates who have reached a certain age and have served a minimum period of the sentence to be eligible for a parole hearing irrespective of their parole eligibility date.
- b. Broadening the current medical residential confinement release option to include individuals who are infirm and pose minimal risk to public safety without the requirement that they are within one year of death.

Improve the efficiency and effectiveness of community supervision

Recommendation 16: Reduce the maximum probation period that can be ordered

Currently, Nevada law authorizes up to a five year probation term for a felony offense and a three year probation term for a gross misdemeanor offense. While the law enables the court to terminate probation “at any time,” there are no further guidelines or criteria to guide that determination. The likelihood of violations and the value of ongoing supervision diminish as probationers gain stability and demonstrate longer-term success in the community. Research shows that the initial days, weeks, and months an individual is on supervision are when an individual is most likely to reoffend or violate the terms of their community supervision. Research has shown that supervision resources have the highest impact when they target this critical period. The ACAJ found that the average probation sentence for individuals sentenced by the Eighth Judicial District Court was 45 months – well beyond the period when probationers are most likely to reoffend. A review of data from the Second Judicial District Court found that over the last 10 years, 77 percent of violation reports for probationers who were ultimately revoked were filed within the first 12 months of supervision.

The ACAJ recommends:

- a. Reducing the maximum probation supervision period from five to three years and establishing a tiered system based on the offense category:
 - i. Category B felonies: 36 months
 - ii. Category C and D felonies: 24 months
 - iii. Category E felonies: 18 months
 - iv. Gross Misdemeanors: 12 months
- b. Allowing up to a one year extension for felony probation if necessary for completion of a Specialty Court program.
- c. Requiring NPP to recommend early termination if a probationer has not had any violation in 12 months, is current with supervision fees, and is in good standing with restitution payments.

Alternative Policy Option:

- a. Reduce probation length based on a tiered system but remove option to earn credits for probationers. This option did not receive majority support from the Release, Reentry, and Community Supervision Subcommittee.

Recommendation 17: Expand the use of swift, certain, and proportional sanctions

The ACAJ found that revocations of community supervision are one of the main drivers of the growth of the prison population. Thirty-nine percent of individuals admitted to prison in 2017 were sent to prison for violations of community supervision. From 2008 to 2017, the number of parole violators admitted to prison increased 43 percent and probation revocations admitted to prison increased 15 percent. Further review found that 34 percent of admissions to prison from community supervision were for technical violations, rather than for absconding or a new felony or misdemeanor charge.

Research on behavior change has found that responding to violations with immediacy, certainty, and proportionality interrupts negative behavior more effectively than delayed, random, and severe sanctions. In 2018, NPP began to implement graduated sanctions to respond to technical violations of community supervision. Several of the recommendation below reflect changes NPP has already begun incorporating into their supervision practices. However, opportunities exist to ensure Nevada's use of swift, certain, and proportional sanctions continues.

The ACAJ recommends:

- a. Requiring NPP to use graduated sanctions when responding to technical violations.
- b. Defining a "technical violation" as any alleged violation of supervision that is not a new felony offense, gross misdemeanor offense, or absconding, as NPP currently defines it.
- c. Defining "absconding" as non-reporting or no communication with NPP for a continuous period of at least 60 days, as NPP currently defines it.
- d. Focusing conditions of supervision on behavior most closely tied to public safety by removing consumption of any alcoholic beverages from the standard conditions list.
- e. Prohibiting the following conditions from being the sole grounds for revocation (multiple violations of such conditions may be used):
 - i. Consumption of any alcoholic beverages
 - ii. Positive results from a drug or alcohol test
 - iii. Failure to follow any directives of the supervisor related to mental health or substance abuse evaluations or participation in a treatment program
 - iv. Failure to seek and maintain employment
 - v. Association with an individual who has committed a felony offense
 - vi. Failure to pay fines and fees
 - vii. Failure to report changes in residence

Recommendation 18: Limit the period of incarceration resulting from a revocation for technical violations

In 2017, probation violators who were released from prison had served an average of almost 20 months in custody as a result of the revocation, up seven percent from 2012. Parole violators

released from prison in 2017 served an average of 9.8 months, up 92 percent since 2012. Additionally, the ACAJ found that 34 percent of community supervision returns to prison were sent to prison for technical violations of supervision in 2017. The median time spent in custody awaiting a probation revocation in Washoe County was 2.3 months after filing a violation report. Approximately 27 percent of probationers who were eventually revoked in Washoe County had to wait more than six months from the filing of a violation report, including approximately 11 percent who waited over a year.

The ACAJ recommends:

- a. Restricting the period of incarceration resulting from a technical violation of probation or parole rather than revocation to prison for the remainder of an offender’s sentence, as follows:

| Revocation Number | Limited Time Period of Incarceration |
|---|--------------------------------------|
| 1 st Technical Revocation | Up to 30 days |
| 2 nd Technical Revocation | Up to 60 days |
| 3 rd Technical Revocation | Up to 90 days |
| 4 th and Subsequent Technical Revocation | Up to remainder of sentence |

- b. Limiting the number of days a probationer can be held in custody awaiting resolution of a revocation due to a technical violation to 15 days following arrest.

Recommendation 19: Strengthen supervision decision-making

In Nevada, standard supervision conditions are imposed for all offenders. A validated risk and needs assessment tool is not used to establish conditions of supervision, to guide decision-making related to treatment or programming needs, or to develop an individualized case plan for those on supervision. NPP recently began using a risk and needs assessment to determine supervision level. However, this assessment is conducted after conditions of supervision are already set and is not currently used to determine what conditions are necessary for an individual’s specific risk level or to assist in determining the treatment or programming needed to address the factors driving an individual’s criminal behavior. Additionally, parole and probation officers cannot efficiently change conditions of supervision if the results of the assessment warrant it. They must go through a formal process to schedule a hearing in court or with the Board of Parole Commissioners to modify conditions.

The ACAJ recommends:

- a. Requiring NPP to use a validated risk and needs assessment tool to guide supervision decisions related to conditions, supervision intensity, and programming and treatment.
- b. Requiring NPP to conduct an assessment to identify a supervisee’s responsivity factors and develop a plan to help individuals address these factors.
- c. Creating a mechanism to streamline modification of conditions based on the results of the risk and needs assessment and any assessment of responsivity factors.
- d. Requiring NPP to develop individualized case plans for all supervisees, based on the results of a risk and needs assessment and an assessment of responsivity factors, prioritizing an

individual's needs and specific treatment domains as identified in the risk and needs assessment.

Minimize barriers to successful reentry

Recommendation 20: Expanding and systemizing reentry

Offenders returning to their communities after a period of incarceration often face substantial hurdles that hinder their ability to successfully transition back into society. The ACAJ recognizes the need to lessen barriers so that individuals returning to their communities who are making an effort to be productive are provided with the appropriate and necessary resources in their rehabilitation process. Currently the reentry plan focuses solely on finding appropriate housing for parolees and doesn't address any of the other reentry barriers facing parolees upon release including employment, treatment, medical care, and education.

While NPP is responsible for the development of the reentry plan, they currently have no involvement in coordinating programming (provided by NDOC) such as moral cognition therapy, skills training, or coordinating community partnerships that will provide parolees with the tools and support necessary to successfully transition into the community. The fact that two different agencies oversee this process has resulted in individuals not transitioning smoothly into the community. To try and address this, last year NPP specialists began working in NDOC facilities with NDOC reentry coordinators to facilitate communication and collaboration about reentry planning. Despite this progress, opportunities exist to remove barriers and ease inmate's reentry.

The ACAJ recommends:

- a. Expanding and systematizing reentry planning by requiring that it begin six months before an inmate's parole eligibility date.
- b. Ensure collaboration when developing a reentry plan.
- c. Requiring NDOC provide inmates with certain basic reentry resources, such as a 30 day supply of prescribed medication individuals were receiving while in custody, identification documentation, and transportation fare.
- d. Identifying and expanding transitional housing option for offenders who have not secured stable housing upon being approved for parole release.
- e. Requiring pre-release enrollment for eligible offenders for Medicaid and Medicare to assist individuals released from custody with medical and mental health conditions.

Recommendation 21: Establish policies and practices to guide decision-making that address gender specific needs

In 2016, Nevada's female imprisonment rate was 43 percent higher than the national average and rising. While overall admissions to the Nevada Department of Corrections grew six percent from 2008 to 2017, female admissions grew 39 percent. This steep increase was driven by low-level non-violent offenders, with 70 percent of all female admissions resulting from property or drug offenses. Fifty-five percent of female admissions had no prior felony conviction, and more than half of the females admitted to prison presented mental health needs. This admissions growth led to a 29 percent increase in the female prison population.

Research demonstrates that female offenders present certain responsivity factors that impact their ability to successfully participate in treatment programming and interventions that target their criminal behavior, including trauma, child abuse, dysfunctional relationships, and mental illness, as well as specific needs such as parenting, childcare, and self-concept that must be identified and addressed.⁶⁴ In spite of these gender-based characteristics, NDOC uses one risk and needs assessment tool to determine programming and treatment opportunities.

The ACAJ recommends:

- a. Ensuring that institutional programming determinations and supervision decisions are supported by the results of a validated gender-specific risk and needs assessment.
- b. Ensuring responsivity factors are assessed in order to provide specific programming and services that address identified barriers to successful rehabilitation.
- c. Ensuring corrections and community supervision staff receive trauma and domestic violence training.

Ensure the sustainability of criminal justice reforms

Recommendation 22: Ensure sustainability of policy changes and adherence to best practices

Any substantive changes to Nevada's corrections and criminal justice systems will require careful implementation and oversight. Moreover, additional legislative and administrative reforms may be needed after implementation to enable the state to realize the goals of justice reinvestment. Several states that have enacted similar comprehensive reform packages have mandated the collection of data to track key performance outcomes and have required oversight councils to oversee implementation, report on outcomes, and recommend additional reforms if necessary.

Research has shown that in order for evidence-based practices to be effective at changing offender behavior and reducing recidivism, they must rely on accurate data and be successfully implemented with ongoing oversight and tracking. Currently Nevada's criminal justice agencies operate with different data systems that do not communicate effectively with one another. Often this leads to gaps in the communication as there are limited ways to follow an offender through the system.

The ACAJ recommends:

- a. Requiring NDOC, NPP, the Board of Parole Commissioners, and other relevant agencies collect and report performance measures to evaluate the impact of the policy changes.
- b. Creating an oversight body or appointing an existing body to oversee the collection, organization and analysis of data relevant to implementation and outcomes.
- c. Requiring NPP conduct a gap analysis to determine what programming and treatment gaps exist for the community supervision population.
- d. Requiring ongoing validation of risk and needs assessment tools in accordance with each agency's definition of recidivism.
- e. Requiring agencies to establish quality assurance procedures to ensure proper and consistent scoring of the risk and needs assessment.

- f. Requiring NDOC and NPP to conduct an organizational assessment to determine the administrative changes that need to be made to successfully implement and sustain policies that adhere to evidence-based practices to reduce recidivism.
- g. Requiring corrections and community supervision staff to receive training on evidence-based practices including Principles of Effective Intervention, Effective Case Management and Effective Practices in Corrections Settings.

Reinvestment Priorities

The ACAJ strongly recommends that if the policy recommendations are adopted and reduce or eliminate the prison growth that the anticipated costs be reinvested into interventions that reduce recidivism and interrupt the flow of individual's with behavioral health needs into the criminal justice system. An appropriate statutory provision should be enacted to protect these averted prison costs. The ACAJ recognizes that a significant part of the Nevada corrections and crime problems is due to a lack of effective and accessible treatment and supportive services for individuals struggling with addiction, mental health needs or both. In order to effectively respond to these challenges, funding will be necessary to support many aspects of a data and research-driven approach to law enforcement, interventions, and sentencing and release practices.

Recommendation 23: Require a certain percentage of funds be dedicated to expanding the options available to law enforcement when responding to individuals with behavioral health needs

Nevada has seen increased success in some jurisdictions from investment in tools to manage individuals with behavioral health issues. This includes the use of the FAST, MOST, triage centers, and creating positions for psychologists and social workers within police departments. The jurisdictions that have incorporated such programs and interventions have experienced improved outcomes.

The ACAJ recommends:

- a. Requiring, as part of reinvestment, that a certain percentage of funds be dedicated to expanding the options available to law enforcement when responding to individuals with behavioral health needs.
- b. Requiring law enforcement agencies within the state to have an on-call behavioral health professional position.
- c. Requiring law enforcement agencies within the state develop and implement policies to improve law enforcement interactions with individual's affected by a behavioral health issue.
- d. Requiring the state to create a crisis response system within the Department of Health and Human Services that coordinates interjurisdictional services to develop efficient and effective response to individuals who have a behavioral health issue, including clinical intervention.

Recommendation 24: Reinvest in community supervision, treatment, and transitional housing

The ACAJ heard extensive testimony from stakeholders about the gap between the treatment needs and the treatment resources available statewide. Shortfalls in substance abuse treatment, mental

health treatment, and other proven interventions are identified as a barrier to successful community supervision.

The ACAJ also discussed at length the need for transitional housing opportunities for individuals being released on parole. Limits to adequate housing have resulted in nearly 300 individuals each month remaining incarcerated despite being granted parole.

The ACAJ recommends:

- a. Establishing a dedicated grant fund available for counties, local providers, and nonprofit organizations to improve outcomes, strengthen public safety, and reduce recidivism.
 - i. Establishing county-level justice reinvestment councils who will be responsible for identifying the county-level programming and treatment needs.
 - ii. Identifying an entity to oversee the awarding and distribution of grant funding.
- b. Requiring a portion of savings be allocated to targeted areas with identified needs such as treatment, evidence-based programming, transitional housing, and community supervision.

Recommendation 25: Reinvest in victims' services

Often those most affected by crime – victims and survivors – go underserved by the state system established to provide justice. The overuse of state resources to incarcerate non-violent offenders drains resources from violence prevention and victim protection. Currently there are gaps in the availability and the efficiency of victims' services in Nevada.

The ACAJ sought out the voices of crime victims, survivors and victim advocates in the assessment of Nevada's criminal justice system. To inform the process of developing recommendations for the legislative and budgetary changes, two Victim, Survivor and Advocate Roundtables were held, one in Las Vegas and one in Reno. The roundtables focused on addressing victims' needs in distinct communities in the state. Based on these discussions, the ACAJ has identified several areas of improvement in victims' services.

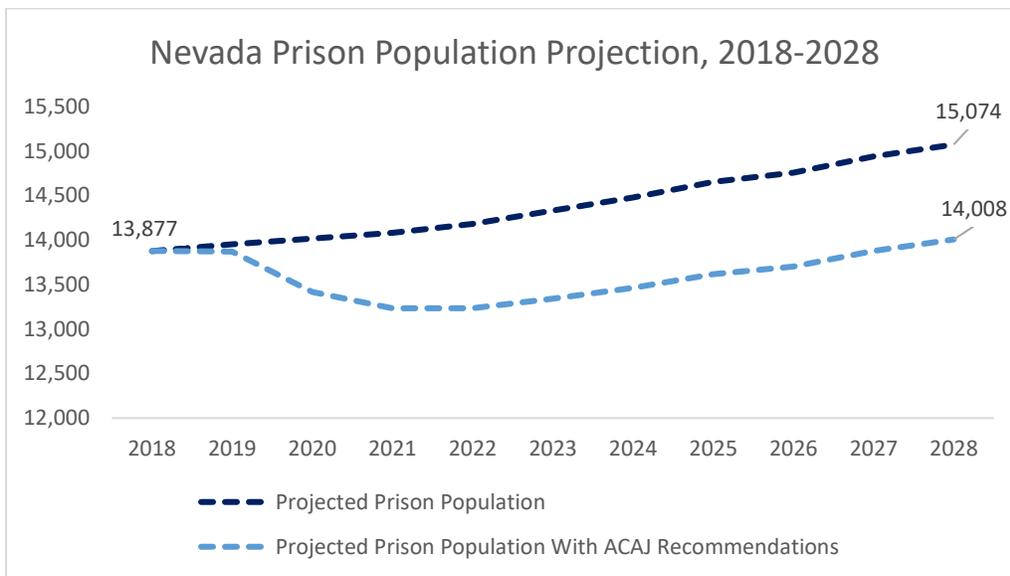
The ACAJ recommends:

- a. Strengthening Nevada's Victim Information Notification Everyday (VINE) system or creating a new unified statewide victim information and notification system that interfaces with the same data systems utilized by law enforcement, jails, courts, NDOC, the Board of Parole Commissioners, and NPP.
- b. Clarifying the existing definitions of "crime victim" in Nevada's criminal statutes.
- c. Improving the process of educating crime victims and survivors about their rights and services.
- d. Requiring misdemeanor domestic violence offenders to participate in treatment and services that can improve individual survivor safety.

Impact of the ACAJ's Policy Recommendations

Nevada’s prison population is projected to grow nine percent, or 1,197 beds, by 2028, and will require an additional \$770 million in correctional costs. The ACAJ’s package of policy recommendations is projected to reduce growth in the prison population by more than 1,000 beds, averting 89 percent of the projected growth in the next 10 years and avoiding \$640 million in additional corrections costs through 2028. This impact is contingent upon successful legislative and executive enactment of the ACAJ recommendations.

Figure 10. ACAJ recommendations projected to avert 89 percent of growth



Source: Nevada Department of Corrections Ten Year Prison Population Projections, 2018-2028, JFA Associates, Analysis by CJI

¹ Imprisonment rate as used here and throughout refers to the rate at which the state sends individuals to prison per 100,000 residents. Imprisonment rates retrieved from Department of Justice, Bureau of Justice Statistics, National Prisoner Statistics 2016.

² Over the period from 2009 to 2016, the Nevada imprisonment rate per 100,000 residents declined by just under 1 percent, while the national imprisonment rate declined by 11 percent. Data from the Department of Justice, Bureau of Justice Statistics, National Prisoner Statistics 2016.

³ The term revocations is used here and throughout to refer to those individuals who, while serving on probation or parole, have been booked into NDOC custody. For probationers, this nearly always indicates a formal revocation of their probation term and an invocation of their suspended prison sentence. For parolees, this may indicate an individual who has been subject to formal revocation, and may also include individuals who have been returned to custody pending a formal revocation hearing, which in certain cases may not occur prior to the expiration of their sentence.

⁴ CJI conducted a case-level file review of all violation reports concerning a randomized sample of 312 individuals who were admitted to prison from probation or parole during 2017. The review additionally determined that 41 percent were sent to prison for new criminal conduct, including 25 percent who were alleged to have committed new felony-level conduct.

⁵ From 2009 to 2016 the female imprisonment rate per 100,000 residents in Nevada climbed 18 percent, while the female imprisonment rate at the national level dropped by 6 percent. Data from the Department of Justice, Bureau of Justice Statistics, National Prisoner Statistics 2016.

⁶ JRI Invitation Letter Signed 5/30/18 by Governor Sandoval, Speaker Frierson, Senate Majority Leader Ford, and Chief Justice Douglas.

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- ⁷ https://www.pewtrusts.org/-/media/assets/2009/03/02/pspp_1in31_report_final_web_32609.pdf.
- ⁸ Any Mental Illness (AMI) Among Adults. (n.d.). Retrieved October 23, 2015, from <http://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-adults.shtml>.
- ⁹ Substance Abuse and Mental Health Services Administration, Results from the 2014 National Survey on Drug Use and Health: Mental Health Findings, NSDUH Series H-50, HHS Publication No. (SMA) 15-4927. Rockville, MD: Substance Abuse and Mental Health Services Administration. (2015). Retrieved October 27, 2015 from <http://www.samhsa.gov/data/sites/default/files/NSDUH-FRR1-2014/NSDUH-FRR1-2014.pdf>.
- ¹⁰ https://www.nimh.nih.gov/health/statistics/mental-illness.shtml#part_154787.
- ¹¹ Bureau of Justice Statistics, Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12, June 2017, accessed at <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf>.
- ¹² Department of Justice, Federal Bureau of Investigation and Bureau of Justice Statistics.
- ¹³ Federal Bureau of Investigation, Uniform Crime Reports, UCR Data Tool, accessed at <http://www.ucrdatatool.gov/Search/Crime/State/StateCrime.cfm>.
- ¹⁴ Pew Charitable Trusts (2014), "Factors Contributing to the Crime Decline," <http://www.pewtrusts.org/en/research-and-analysis/analysis/2014/09/11/factors-contributing-to-the-crime-decline>; William Spelman, "The Limited Importance of Prison Expansion," in *The Crime Drop in America*, eds. Alfred Blumstein and Joel Wallman (Cambridge University Press, 2000), 97-129; Steven D. Levitt, "Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six That Do Not," *Journal of Economic Perspectives* 18, no. 1 (Winter 2004): 163-190. <http://pricetheory.uchicago.edu/levitt/Papers/LevittUnderstandingWhyCrime2004.pdf>.
- ¹⁵ Ibid.
- ¹⁶ <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/06/utahs-2015-criminal-justice-reforms>.
- ¹⁷ Ibid.
- ¹⁸ Utah Commission on Criminal and Juvenile Justice, Current Criminal Justice Policies in Utah, 2018 Annual Report; https://justice.utah.gov/JRI/Documents/Justice%20Reinvestment%20Initiative/JRI_2018_Annual_Report.html; <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2018/05/data-trends-utah-criminal-justice-reform>.
- ¹⁹ U.S. Census Bureau, American Community Survey 2012-2016. Department of Justice, Bureau of Justice Statistics, National Prisoner Statistics 2016, <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=269>.
- ²⁰ Ibid.
- ²¹ Correctional Populations in the United States, 2016, Department of Justice, Bureau of Justice Statistics, <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6226>.
- ²² <https://www.reviewjournal.com/crime/nevada-officials-ok-9-2m-deal-to-ship-inmates-to-arizona/>.
- ²³ Campbell Collaboration (2015), "The Effects on Re-Offending of Custodial vs. Non-Custodial Sanctions: An Updated Systematic Review of the State of Knowledge," <https://www.campbellcollaboration.org/library/the-effects-on-re-offending-of-custodial-vs-non-custodial-sanctions-an-updated-systematic-review-of-the-state-of-knowledge.html>; Nagin, Cullen, & Lero Jonson (2009), "Imprisonment and Reoffending," from *Crime and Justice: A Review of the Research*, ed. Michael Tonry, vol. 38, pp 115-200.
- ²⁴ Villettaz, Gilleron, and Killian, Campbell Collaboration (2015), "The Effects on Re-Offending of Custodial vs. Non-Custodial Sanctions: An Updated Systematic Review of the State of Knowledge," <https://www.campbellcollaboration.org/library/the-effects-on-re-offending-of-custodial-vs-non-custodial-sanctions-an-updated-systematic-review-of-the-state-of-knowledge.html>; Nagin, Cullen, & Lero Jonson (2009), "Imprisonment and Reoffending," from *Crime and Justice: A Review of the Research*, ed. Michael Tonry, vol. 38, pp 115-200.
- ²⁵ Spohn & Holleran (2002), "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders," <http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.2002.tb00959.x/abstract>; Nieuwebeerta, Nagin, & Blokland (2009), "Assessing the Impact of First Time Imprisonment on Offender's Subsequent Criminal Career Development: A Matched Samples Comparison," <http://link.springer.com/article/10.1007%2Fs10940-009-9069-7>.
- ²⁶ Ibid.
- ²⁷ At the end of 2017, 43 percent of the population in NDOC custody had been sentenced for non-person offenses.
- ²⁸ NRS 208.400(b).
- ²⁹ NRS 174.031- 174.034.

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- ³⁰ NRS 453.3363; NRS 458.300-458.32; NRS 176A.250; NRS 176A.280; NRS 458A.200.
- ³¹ CJI conducted a case-level file review of all violation reports concerning a randomized sample of 312 individuals who were admitted to prison from probation or parole during 2017.
- ³² Nagin, Cullen, & Lero Jonson (2009), *Imprisonment and Reoffending*, *Crime and Justice: A Review of Research*, 38, 115-200.
- ³³ NDOC Recidivism Analysis for 2008, 2009, 2010, 2011, 2012, 2013 and 2014 Release Cohorts. Rates released annually from 2011 to 2018.
http://doc.nv.gov/About/Statistics/Articles_and_Newsletters/Recidivism_Newsletters_and_Memos/.
- ³⁴ Bureau of Justice Statistics, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12*, June 2017, accessed at <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf>.
- ³⁵ Bureau of Justice Statistics, *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, June 2017, accessed at <https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf>.
- ³⁶ Frazier, Sung, Gideon, and Alfaro. "The impact of prison deinstitutionalization on community treatment services", *Health & Justice*, December 2015.
- ³⁷ Populations exclude inmates granted parole yet still awaiting release in prison, as well as Nevada-based supervisees under the custody of other states.
- ³⁸ Bonta & Andrews (2007), *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation*, accessed at <https://www.pbpp.pa.gov/Information/Documents/Research/EBP7.pdf>.
- ³⁹ Nagin & Pogarsky (2001), *Integrating Celerity, Impulsivity, and Extralegal Sanction Threats Into a Model of General Deterrence: Theory and Evidence*, *Criminology*, 39 (4), 865-892.
- ⁴⁰ Petersilia (2007), *EMPLOY BEHAVIORAL CONTRACTING FOR "EARNED DISCHARGE" PAROLE*, *Criminology & Public Policy*, 4(6), , 807-814 ; Wodahl, Garland, Culhane & McCarty (2011), *Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-Based Corrections*, *Criminal Justice and Behavior*, 38 (4), 386-405.
- ⁴¹ NRS 209.4475.
- ⁴² Nagin & Pogarsky (2001), *Integrating Celerity, Impulsivity, and Extralegal Sanction Threats Into a Model of General Deterrence: Theory and Evidence*, *Criminology*, 39 (4), 865-892.
- ⁴³ NRS 213.140.
- ⁴⁴ Washington State Institute for Public Policy, 2012: *The Offender Reentry Community Safety (ORCS) program in Washington State*.
- ⁴⁵ Skeem & Bibeau (2008), *How does violence potential relate to crisis intervention team responses to emergencies?* *Psychiatry Services*; 59(2):201-4; Hanafi, Bahora, Demir & Compton (2008), *Incorporating Crisis Intervention Team (CIT) Knowledge and Skills into the Daily Work of Police Officers: A Focus Group Study*, *Community Mental Health Journal*, 44(6):427-32.
- ⁴⁶ NRS 174.031.
- ⁴⁷ NRS 176A.100.
- ⁴⁸ Deborah Koetzle Schaffer (2011), *Looking Inside the Black Box of Drug Courts: A Meta-Analytic Review*, *Justice Quarterly*, June 2011.
- ⁴⁹ *Ibid.*
- ⁵⁰ Gelb, Adam, and Philip Stevenson. "The Effects of Changing Felony Theft Thresholds." *The Pew Charitable Trusts, Public Safety Performance Project* (2017).
- ⁵¹ *Ibid.*
- ⁵² NRS 453.336(2).
- ⁵³ Members of the Sentencing and Pretrial Subcommittee had strong objections to this recommendation. However this recommendation received majority support from the members.
- ⁵⁴ NRS 453.321.
- ⁵⁵ NRS 453.337.
- ⁵⁶ Notably, this recommendation would not affect the habitual felon statute, which concerns repeat serious violent felony offenders.
- ⁵⁷ NRS 179.245.
- ⁵⁸ As defined in NRS 200.408.
- ⁵⁹ Requires amending NRS 176.145.
- ⁶⁰ The first 13 offenses on this list were previously discussed for reclassification by the ACAJ in 2016
- ⁶¹ Devers, Lindsey (2011). *Desistance and Developmental Life Course Theories: Research Summary*. Bureau of Justice Assistance, accessed at <https://www.bja.gov/Publications/DesistanceResearchSummary.pdf>.

⁶² https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf; United States Sentencing Commission (2014). Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment.

⁶³ Vera Institute for Justice. "It's About Time: Aging Prisons, Increasing Costs, and Geriatric Release" April 2010. <http://www.vera.org/download?file=2973/its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>.

⁶⁴ Wright, E. M., Salisbury, E. J., & Van Voorhis, P. (2007). Predicting the prison misconducts of women offenders: The importance of gender-responsive needs. *Journal of Contemporary Criminal Justice*, 23(4), 310-340. <http://dx.doi.org/10.1177/1043986207309595>.