

**Criminal Justice Investment Task Force**



# Acknowledgements

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# The Criminal Justice Investment Task Force

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## Executive Summary

Over the past 10 years, Tennessee’s incarceration rate has risen to 10 percent above the national average, and its communities are no safer for it. Despite incarcerating more people and spending over \$1 billion annually on corrections in the state budget, Tennessee has the fourth highest violent crime rate in the nation and a high recidivism rate, with nearly half of individuals rearrested within three years of their release from custody. These trends are especially noteworthy in light of 34 states reducing both their imprisonment and crime rates during the same period from 2008 to 2017.<sup>1</sup>

Seeking to maximize public safety and reduce recidivism, in March of 2019, Governor Bill Lee established the Criminal Justice Investment Task Force (CJITF) through Executive Order 6. The Governor charged this group, comprised of a diverse body of criminal justice stakeholders, with reviewing all aspects of Tennessee’s criminal justice system. As part of this charge, in July 2019, state leaders from all three branches of government joined together to request technical assistance through the Justice Reinvestment Initiative (JRI) to engage in a comprehensive review of Tennessee’s criminal justice system.

Over a six month period, subcommittees of the CJITF analyzed data from the state’s criminal justice stakeholders, reviewed research on sentencing and corrections practices, and developed policy recommendations for submission to state leaders. The analysis concluded that:

- Tennessee’s prison population grew 12 percent over the past decade, driven by a growth in time served due to increasing sentence lengths and decreasing parole releases.
- Despite a growing prison population and increasing corrections budget, Tennessee’s recidivism rate remains high.
- While admissions decreased over the past decade, Tennessee still sentences a large number of individuals convicted of non-violent offenses to the state’s prisons and jails, with 74 percent of felony admissions in FY2018 being for non-person offenses.<sup>i</sup>
- Tennessee’s female incarceration rate ranks 11<sup>th</sup>-highest in the nation, with female felony admissions increasing 12 percent over the past decade.
- While the overall number of community supervision revocations has decreased in recent years, the share of revocations for non-criminal conduct is growing, and the state saw more than 4,200 revocations from community supervision in FY2018 for a non-criminal violation (often referred to as a “technical violation”).
- Local county jails housed over 8,500 individuals sentenced for felony offenses at the end of FY2018, and at least half of these jail facilities are overcrowded.

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<sup>i</sup> The Tennessee Department of Correction classifies offenses as “person,” “property,” “societal” and “other” offenses. This classification in reference to “non-person” will remain consistent throughout the report.

## Background

In March 2019, Governor Lee issued Executive Order 6, establishing the CJITF to develop policies aimed at reducing recidivism and improving public safety through policy development. The CJITF, comprised of over 100 members, includes representatives from corrections, law enforcement, the legislature, the judiciary, the prosecutorial and defense bars, victim advocates, educators, behavioral health specialists, and formerly incarcerated individuals. The diversity of stakeholders ensures a comprehensive examination of Tennessee's system with a shared goal of improving outcomes for all Tennesseans.

In July 2019, state leaders from all three branches of government, including Governor Bill Lee, Chief Justice Jeffrey Bivins, Lieutenant Governor Randy McNally, and Speaker-Designate Cameron Sexton, requested technical assistance. Through this effort, the CJITF was tasked with conducting a review of the state's criminal justice system, using data and research, to move towards a criminal justice system that focuses resources on recidivism reduction and crime prevention strategies.

From August through December 2019, with technical assistance from the Crime and Justice Institute (CJI), several subcommittees of the CJITF conducted a rigorous review of Tennessee's sentencing and corrections data, examined current policies, practices, and programs across the state, reviewed models from other states, and engaged in comprehensive policy discussions. The technical assistance provided by CJI as part of JRI is funded by the U.S. Department of Justice.

The CJITF was formed with subcommittees focused on specific issue areas. This report focuses on the work of four of those subcommittees: (1) the Sentencing and Criminal Code Subcommittee; (2) the Parole and Probation Subcommittee; (3) the Mental Health and Substance Use Subcommittee; and (4) the Education, Workforce Development and Re-entry Subcommittee. Each of these four subcommittees developed recommendations within their policy area to meet the Governor's charge to the CJITF. A discussion of these recommendations concludes this report.

Throughout the process, the subcommittees reviewed data from state agencies including the Department of Correction, the Administrative Office of the Courts, and the Board of Parole. In addition, the subcommittees engaged in a comprehensive assessment of the state's criminal justice system, including receiving valuable feedback from prosecutors, defense attorneys, judges, members of the parole board, law enforcement agencies, parole and probation officers, treatment providers, behavioral health experts, and formerly incarcerated individuals. Input from victims, survivors, and victims' representatives was also included in the form of three roundtable discussions in Jackson, Nashville and Knoxville held to identify key priorities for policy and budgetary consideration from the victim perspective.

## National Context

Starting in the early 1970s, states across the country began to use incarceration as their primary policy response to rising crime rates. As states sentenced more individuals to prison and for longer periods, state prison populations drastically expanded. In the 1990s and 2000s, despite a dramatic decline in the nation's crime rate, state prison populations and corrections budgets continued to grow. By 2008, with the nation's crime rate at its lowest point since 1968, there were over 7 million individuals under correctional control -- with 2.3 million incarcerated and 5 million on community supervision.<sup>2</sup>

Tennessee's justice involved population largely mirrored these nationwide trends. From 1978 to 2008, the state's prison population grew 367 percent from just under 6,000 incarcerated individuals to over 27,000. Similarly, from 1994 to 2008, Tennessee's community supervision population grew by 49 percent or over 22,000 individuals.

Since the early 2000s, using the latest criminological research and their own criminal justice data, many states across the country determined that using incarceration as the primary response to criminal behavior did not improve public safety outcomes. Moreover, growing corrections budgets reduced available funding for effective treatment and supervision practices, leaving significant gaps in recidivism reduction services. These states instead developed policies that focused on implementing evidence-based practices proven to change individuals' behavior and invested corrections dollars into resources designed to promote public safety.

In conjunction with increasing public support and growing budget pressures nationwide, changes to both policy and practice in states such as Texas, South Carolina, Georgia, and Louisiana have opened the door for other states to reconsider the policies and practices that led to massive growth in prison spending with limited public safety results. Since the 1970s, the most common question that policymakers asked about their state corrections budget was a simple one: "How many more prisons do we need to build?" Today, amid a growing national dialogue that questions unabated prison spending, leaders from both sides of the aisle are asking a more nuanced question: "How can we ensure that taxpayers receive a better public safety return on their corrections dollars?"

Since that shift in the national landscape, many states have adopted policies that reduce recidivism through strategies similar to JRI. Through legislative changes, these states have altered sentencing, corrections, and community supervision policies to focus state prison beds on violent and dangerous individuals. Meanwhile, these states have invested in more effective and less costly evidence-based strategies to reduce recidivism, address gaps in victims' services, and improve public safety.

From 2008 to 2017, 34 states reduced both their imprisonment and crime rates.<sup>3</sup> Over this period, the United States prison population declined by over 118,000 individuals or 7 percent, while Tennessee's prison population increased by over 1,700 individuals or 6 percent.<sup>4</sup> In 2017, Tennessee's imprisonment rate was 10 percent higher than the national state average, with Tennessee's rate hitting 429 per 100,000 residents, compared to a national state average of 390 per 100,000 residents incarcerated.<sup>5</sup> Similar trends are evident for the female prison population. While the nation's female incarceration rate declined 9 percent over this period, Tennessee's female incarceration rate grew by 30 percent. The state's female prison population added nearly 1,000 individuals, pushing the state's female incarceration rate 53 percent above the national average.

As Tennessee's prison population has grown, so has the budget for the Tennessee Department of Correction (TDOC). In FY2018, the state spent over \$1 billion on corrections, up \$250 million or 33 percent from FY2009.<sup>6</sup> Despite this sizeable investment in an expanding prison population, there is little evidence that indicates Tennessee has experienced improvements to public safety as a result. In the last decade, the property crime rate in Tennessee dropped by 25 percent, yet the violent crime rate fluctuated, declining 6 percent from 2009 to 2018 against several years of growth from 2013 to 2018. Despite this decline, Tennessee had the nation's fourth-highest violent crime rate and the seventh-highest homicide rate in 2018.<sup>7</sup>

Similarly, Tennessee's increased reliance on incarceration has not improved the state's recidivism rate. Of all individuals released from TDOC custody in 2006, 51 percent were arrested within three years of release. For individuals released in 2014, 47 percent were arrested again within three years. This is consistent with research finding that incarceration is not more effective than non-custodial sanctions at reducing recidivism.<sup>8</sup>



## Key Findings

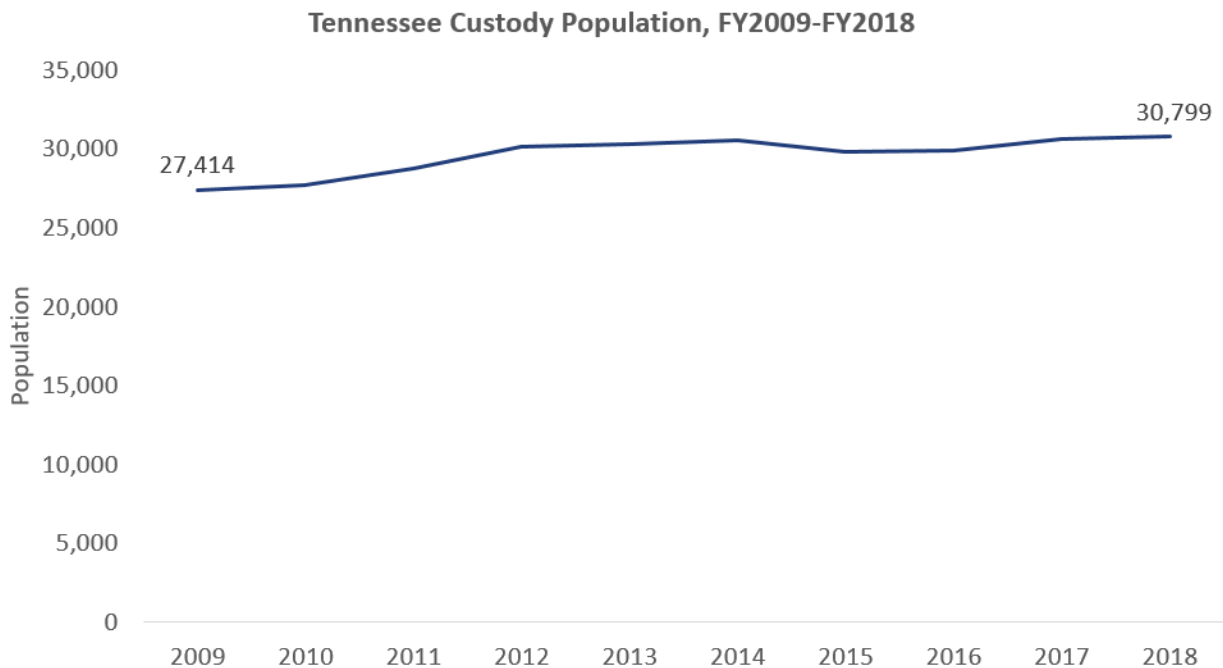
Over the last decade, Tennessee’s recidivism and violent crime rates have remained high despite an increase in the number of incarcerated individuals. Focusing on the most recent decade of data, the CJITF identified the key characteristics of Tennessee’s prison population and recent growth. These include:

- A dramatic increase in the length of time spent incarcerated;
- An overreliance on incarceration for non-violent individuals and technical violators of community supervision;
- A stark increase in the number of women in prison;
- A steady growth in the mental health caseloads at TDOC facilities; and
- A deficit of treatment and re-entry supports necessary for individuals to succeed when returning to their community from a custodial sentence.

### Time Served

Tennessee’s prison population grew 12 percent from FY2009 to FY2018, with 30,799 individuals in state custody at the end of FY2018. This growth is primarily the result of the increasing length of time individuals spent incarcerated.

**Figure 1. Incarcerated population grew 12 percent in 10 years, adding 3,385 people**

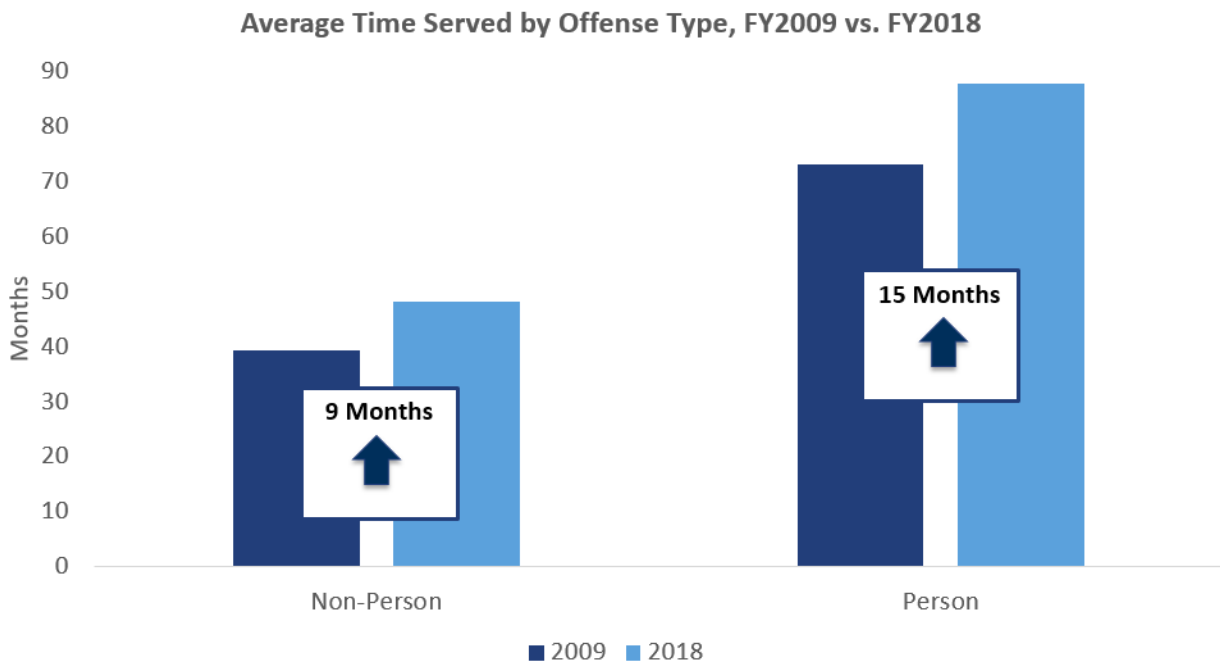


Source: Data from the Tennessee Department of Correction, Analysis by CJI

Individuals in custody spent 23 percent longer, or an average of 11 months more time incarcerated in FY2018 than they did in FY2009, driven by steadily increasing sentence terms and a decline in the number and rate of releases to parole. This increasing length of time spent incarcerated was consistent among all major types of offenses and includes a nine-month growth in time served on

crimes categorized by TDOC as non-person offenses. This nine-month increase impacted 9,951 individuals, meaning the FY2018 release cohort spent a combined 7,355 years more in prison than the FY2009 cohort. This trend is even more striking given that the FY2018 release cohort had 1,475 fewer individuals than in FY2009.

**Figure 2. Time served increased for all offense types**



*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

Individuals serving drug sentences experienced the largest relative growth in time spent incarcerated over this period, with average lengths of stay increasing by 32 percent, or 14 months, between FY2009 and FY2018. Cocaine-related drug offenses drove this trend, with individuals released on cocaine-related convictions in FY2018 having served nearly three years longer than their counterparts released a decade earlier.

Tennessee’s increasing lengths of stay are the result of two key occurrences: individuals receiving longer sentences and the state’s Board of Parole releasing fewer individuals to parole.

*The Sentencing Effect*

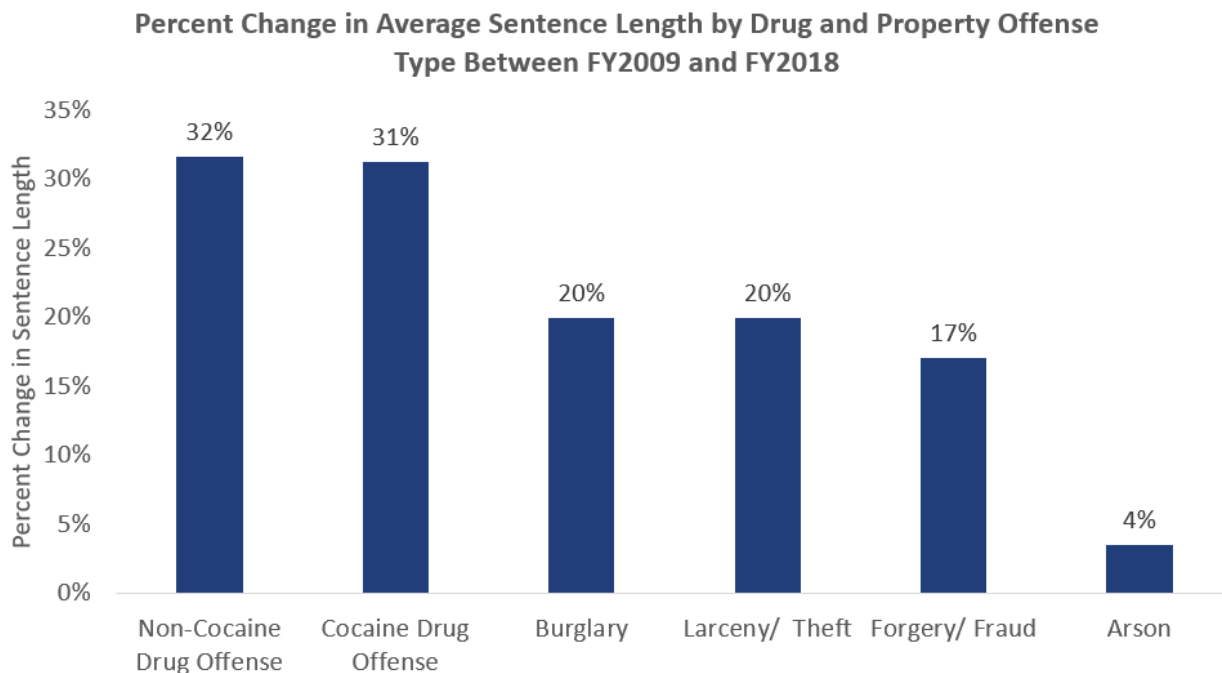
Tennessee’s sentencing structure is a grid that matches up the felony class of an offense with an individual’s criminal history. The grid relies heavily on prior criminal history with large increases in sentence ranges based on the number of prior offenses. The grid does not differentiate between violent and non-violent prior offenses and includes convictions from any period of time within an individual’s adult life. This contributes to long sentences evident in the data, as sentence lengths grow based on history and not the seriousness of the current offense.

Over the 10-year period evaluated, sentence lengths for individuals admitted to prison increased in nearly every offense category. Sentences to prison in FY2018 averaged 79 months, which is six months longer than in FY2009.<sup>9</sup> Sentences for property offenses involving fraud, forgery, larceny,

and theft all increased by nearly 20 percent, while sentence lengths for drug offenses grew by over 30 percent during this period. Additionally, recent legislative changes have expanded the number of categories of offenses requiring individuals to serve 85 percent of their sentence prior to becoming eligible for parole.

The impacts of the observed growth in sentence length have just begun to take shape and will continue to contribute to the growth of the prison population for years to come.

**Figure 3. Sentence lengths for drug offenses grew more than 30 percent**



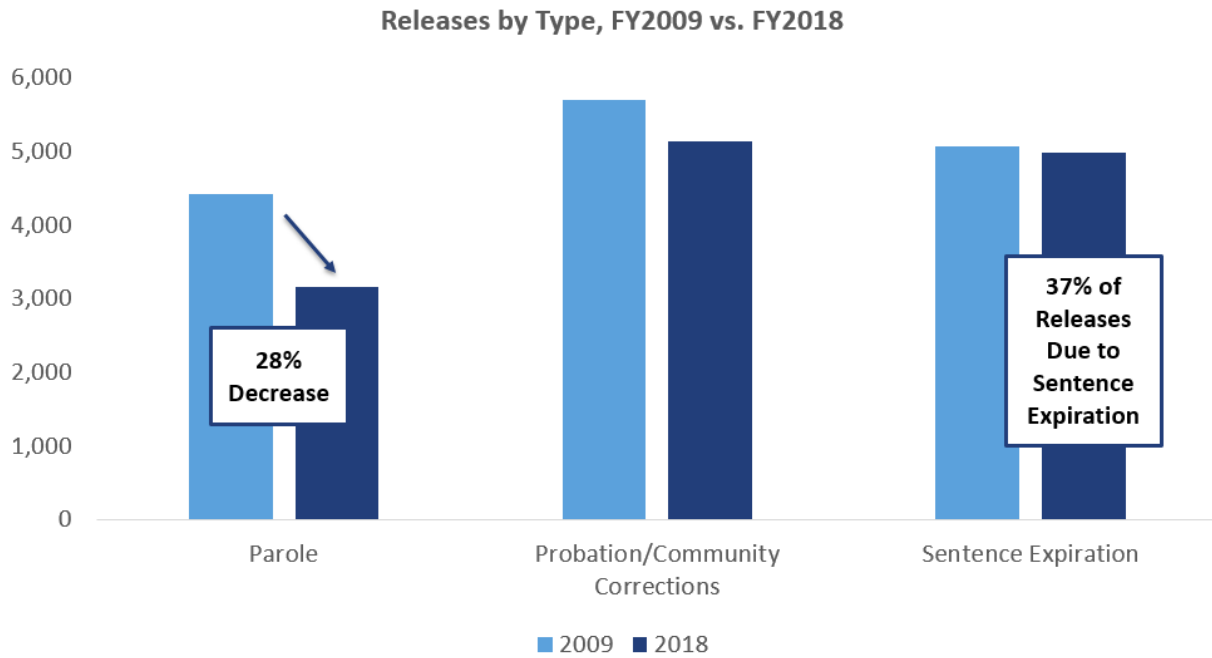
*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

### *The Parole Effect*

As sentence lengths increased on the front-end of the criminal justice system, releases declined on the back-end, further exacerbating the growth in time served. The data showed that in FY2018, 1,245 fewer individuals were released to parole than in FY2009, a decline of 28 percent. This drop-off in parole releases, which was most dramatic in the period from FY2014 to FY2017, accounted for two-thirds of the total decline in releases from incarceration.

Average time served has a significant impact on parole eligibility because it is a primary factor in determining the timing of parole release. The Board Guidelines require that in order to grant parole, an individual must be within a certain number of months of the average time served for that offense. Therefore, when the average time served increases, the amount of time a person must serve before parole approval also increases, lengthening the amount of time in prison. For sentences under 10 years, the individual must be within six months of the average time served for that particular offense, and for sentences greater than 10 years, the individual must be within 12 months.

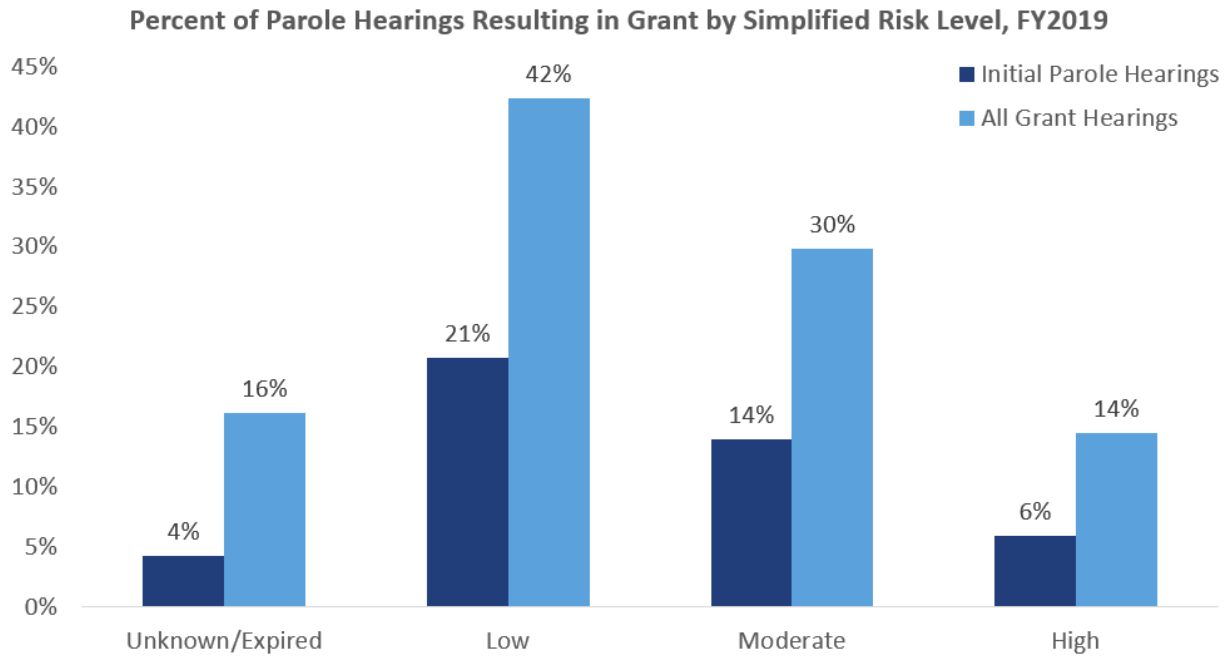
**Figure 4. Releases to parole dropped by more than 1,200**



*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

Tennessee’s declining parole grant rate and increasing use of pre-release contingencies are largely responsible for the decrease in the number of releases to parole. The Board of Parole and its hearing officers conducted more than 14,000 hearings for the consideration of parole in FY2019. Of those, the Board granted parole for only 24 percent of the applications, down from a grant rate of 40 percent in FY2011. The grant rate at an individual’s initial parole hearing likewise decreased, from a grant rate of 25 percent in FY2015 to 10 percent, or 772 of 7,733 hearings, in the FY2019. The primary reasons cited for denial were risk level and the seriousness of the offense. While denials were more common for individuals assessed as high risk to recidivate, the data indicated low-and moderate- risk individuals faced similarly low parole grant rates. Just 21 percent of initial hearings involving low-risk individuals and 14 percent of initial hearings involving moderate-risk individuals resulted in a parole grant in FY2019.

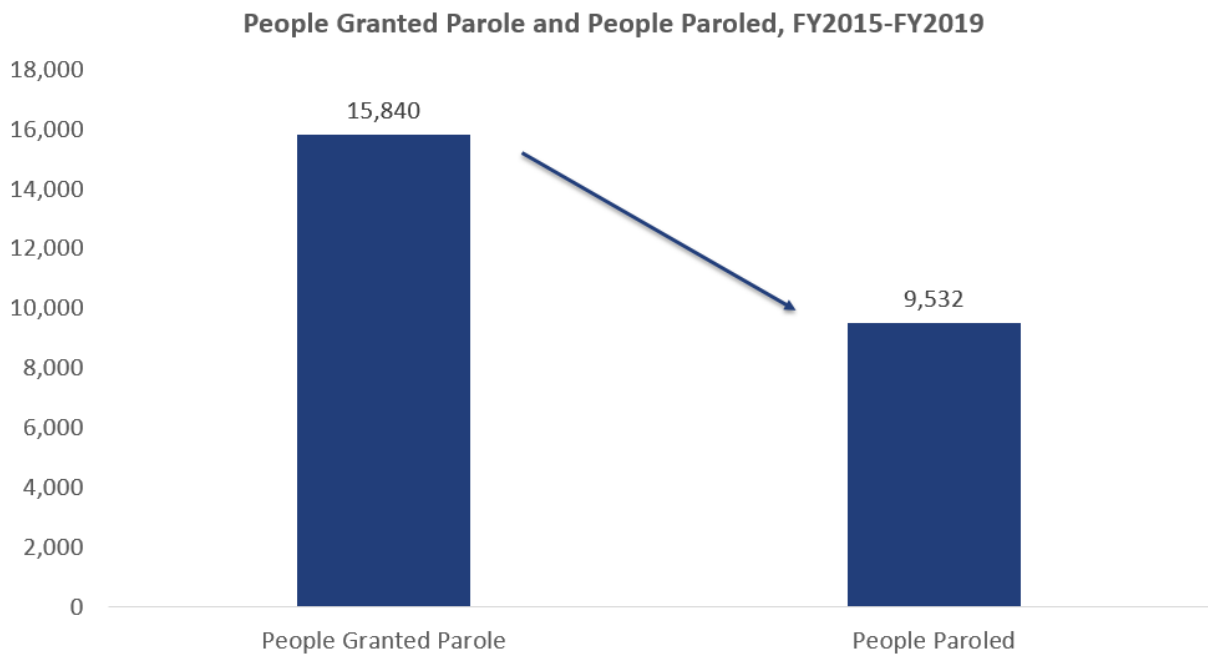
**Figure 5. Just 21 percent of initial parole hearings result in grant for low-risk individuals**



*Source: Data from the Tennessee Department of Correction and Tennessee Parole Board, Analysis by CJI*

In comparing the number of individuals granted parole with the number of individuals eventually released on parole, there was a notable gap. Between FY2015 and FY2019, data from the Board of Parole revealed that 40 percent of the 15,840 individuals granted parole – or 6,308 people – did not in fact leave custody on parole. Meaning that despite the Board of Parole issuing a decision to grant a release on parole after their hearing, they were not actually released from TDOC custody prior to the expiration of their sentence.

**Figure 6. Over 6,000 individuals granted parole were not paroled**

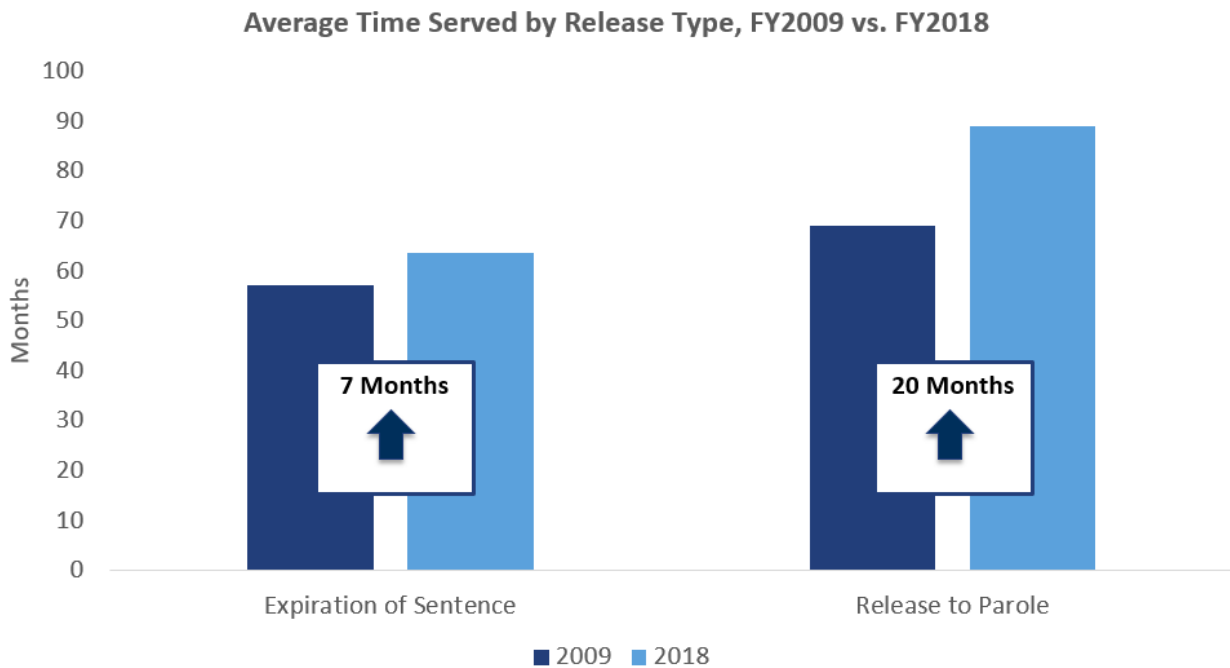


*Source: Data from the Tennessee Parole Board, Analysis by CJI*

One cause of this discrepancy between the number of individuals granted parole and the number subsequently released on parole is that the Board of Parole has increasingly placed conditions on parole grants requiring a treatment or other program to be completed while in custody in order to secure final release. Between FY2015 and FY2019, nearly 8,500 hearings resulting in a grant of parole had such “pre-parole conditions” issued as part of the decision. As decisions to grant parole declined, the imposition of pre-release conditions has increased. In FY2015, 39 percent of cases granted parole required pre-release conditions. By the close of FY2019, that figure had risen to 57 percent. The most common pre-parole condition required is treatment in custody for substance use disorders. The fact that there is not treatment available in every community across the state may influence this increase in use of pre-release conditions.

The combination of increasing sentence lengths and reductions in parole grant rates has significantly impacted time served. The data showed that the increasing sentence lengths and decreasing numbers of grants and releases on parole resulted in significantly longer periods of incarceration. Specifically, individuals released at the expiration of their sentence in FY2018 had served seven months longer than their counterparts released in FY2009. Even more striking, individuals released to parole supervision in FY2018 served 20 months longer on average than those paroled in FY2009.

**Figure 7. Time served prior to release on parole up by 20 months**



*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

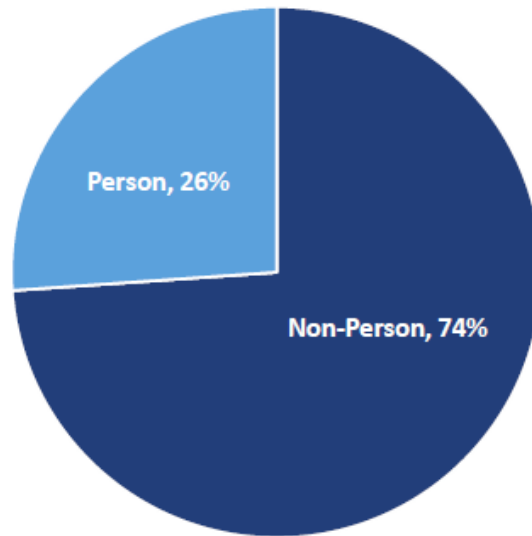
### **Non-Violent Admissions**

In addition to the central role that time served has played in driving the growth of Tennessee’s prison population over the last 10 years, the subcommittees also examined trends within prison admissions.

Admissions to Tennessee prisons declined by 14 percent between FY2009 and FY2018, due in part to a shift toward greater use of probation. Given Tennessee’s high rates of violent crime relative to national trends, one might expect violent offenses to dominate annual admissions to prison. Yet, the data showed 74 percent of individuals admitted to custody on a felony offense in FY2018 were sentenced for non-person offenses. A total of 33 percent of prison admissions were for non-violent property offenses while another 27 percent were the result of non-violent drug offenses. One reason these cases continue to dominate prison admissions is the limited availability of options that divert a person from the system and the few alternatives to incarceration available to criminal defendants. For example, judicial diversion is only available for individuals with no prior criminal convictions and a number of offenses are prohibited from probation eligibility, including Class B drug offenses despite the fact that most other types of Class B offenses are eligible.

**Figure 8. 74 percent of felony admissions for non-person offenses**

**Felony Admissions by Offense Type, FY2018**



*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

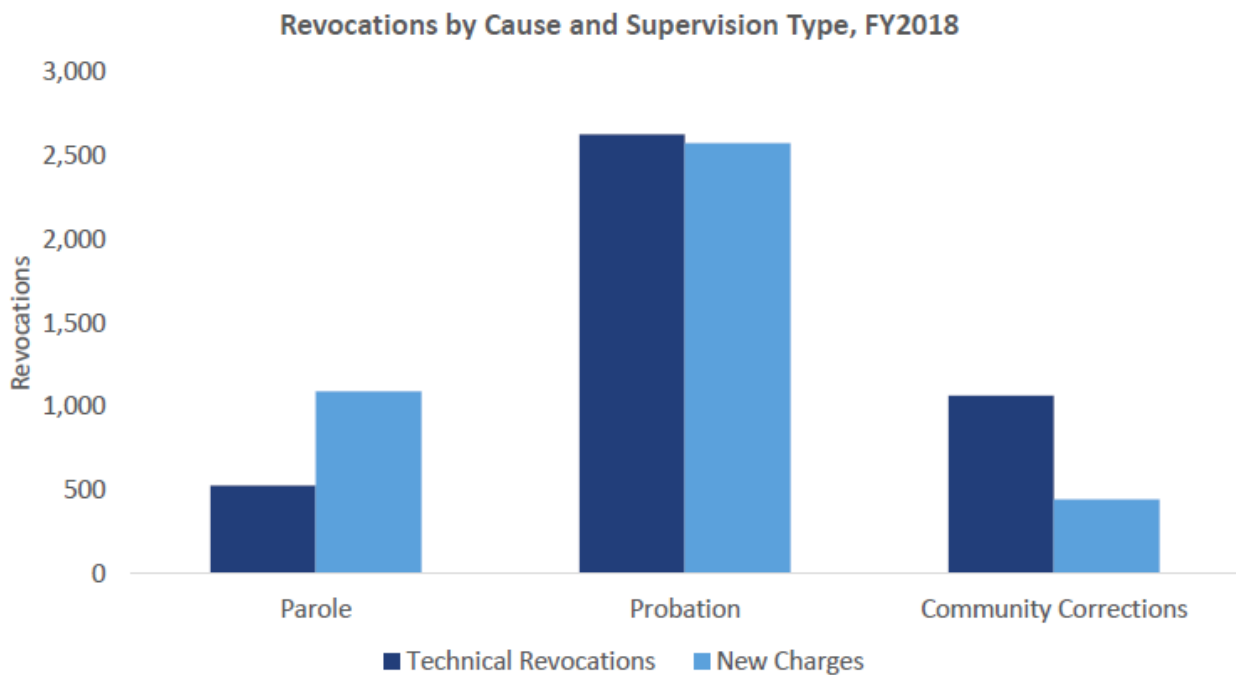
Moreover, an analysis of sentencing statistics found that convictions for a Class E felony offense – the lowest felony ranking in Tennessee – comprised the largest group of sentences to prison in FY2018. The most common Class E felony offenses represented in the current prison population include possession of a Schedule VI drug (marijuana, THC, or synthetic), auto burglary, failure to appear, habitual traffic offender, property theft, and violation of the Sex Offender Registry Act.<sup>10</sup> The frequent incarceration of this group is significant as researchers have found that compared to non-custodial alternatives, imprisonment has not been shown to reduce recidivism. In fact, some researchers have concluded that imprisonment of this type of individual can lead to higher recidivism rates.<sup>11</sup>

### **Community Supervision**

The data indicated that a large number of individuals are entering prison after a failure on community supervision, often because of technical violations. Nearly 5,000 individuals entered prison from parole, probation, or community corrections in FY2018, representing 39 percent of all admissions for that fiscal year. Between FY2010 and FY2019, the number of revocations for a technical violation increased by 53 percent, while the number of revocations for a new charge decreased by 8 percent. Just over 50 percent of all community supervision revocations in FY2018 were due to a technical violation as defined by the TDOC, up from 38 percent in FY2010. As Tennessee increases the use of community supervision as an alternative to incarceration, consistent and standardized evidenced-based supervision practices are necessary.



**Figure 9. More than 50 percent of revocations for technical violations**



*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

Researchers have concluded that tailoring supervision conditions to an individual’s criminogenic needs and responsivity factors is critical to changing behavior and reducing reoffending. In Tennessee, statutorily, standard supervision conditions are imposed for all individuals. While the sentencing judge or the parole board may order special conditions, there is no statutory requirement to ground conditions with the results of the risk and needs assessment. As a result, inconsistent treatment requirements and gaps in services available across the state often lead to technical violations and revocations to prison.<sup>12</sup>

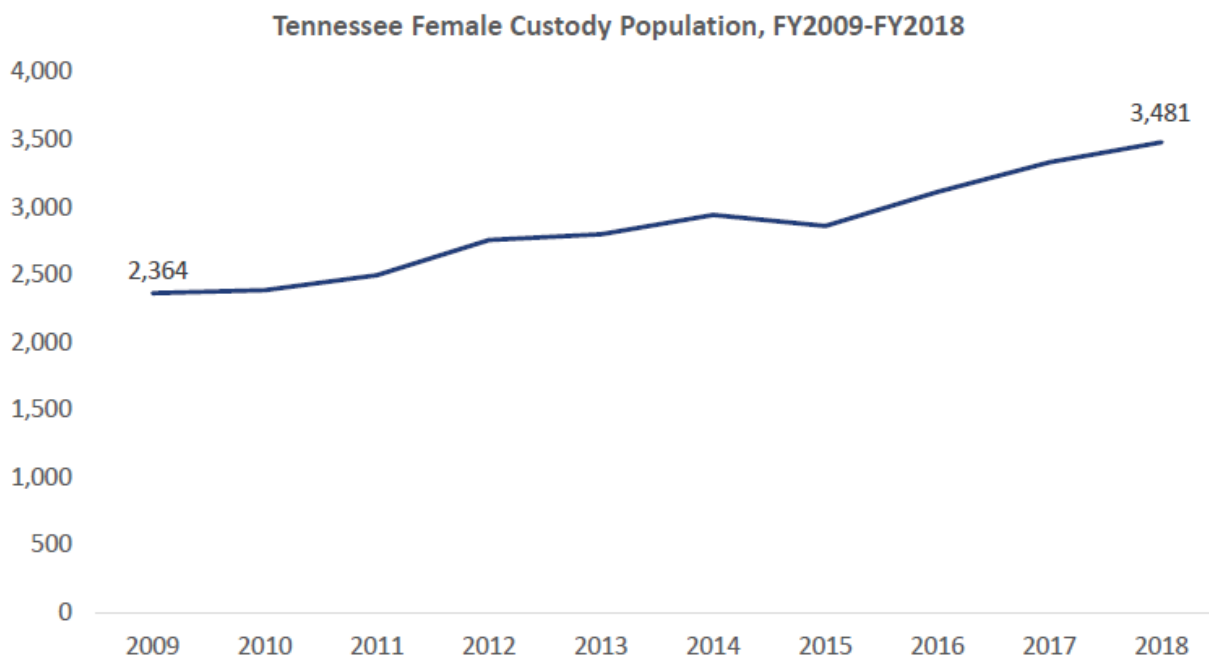
In 2016, in part seeking to address the growing number of technical violations, Tennessee enacted the Public Safety Act, establishing the use of a graduated sanctions matrix to respond to non-compliant behavior in a swift, certain, and proportional way. However, the data examined demonstrated that graduated sanctions are currently being used inconsistently across the state. Furthermore, the matrix establishes several zero tolerance policies that disproportionately affect individuals with substance use disorders. This zero tolerance conduct, which results in immediate revocation, includes refusing to submit to a drug screen, testing positive for methamphetamine, or testing positive multiple times for any other type of drug use.

Subcommittees of the CJITF also studied Tennessee’s lengthy probation terms and examined current supervision practices, finding that the lack of a formal mechanism to reduce probation sentences drained resources from the most critical stages of supervision. Research demonstrates 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. Studies have found that supervision resources have the highest impact when they target this critical period of supervision.<sup>13</sup> Yet, while the research shows revocations are most likely during the first few months of supervision, an individual in Tennessee can be on supervision for up to 10 years.

The data indicated that over the last decade probation sentence lengths and time served on probation both increased. Probation sentences grew six percent across felony classes from FY2011 to FY2018, with average sentences ranging from 24 months for Class E felonies to 103 months for Class B felonies. Average time spent on probation likewise grew from FY2010 to FY2019, increasing 22 percent for those individuals who successfully completed their supervision and 23 percent for those who were eventually revoked. Probationers successfully completing a Felony E sentence in FY2019 had served 32 months on average, and probationers successfully completing a Felony B sentence had served 86 months, or over seven years, on supervision.

## **Female Population**

**Figure 10. Female incarcerated population grew 47%**



*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

While Tennessee’s overall incarceration rate is 10 percent higher than the national average, the growth has been even more dramatic for incarcerated women. The state now ranks 11<sup>th</sup> in the nation for its female incarceration rate,<sup>14</sup> which sits 53 percent higher than the national average.

Tennessee’s female prison population grew 47 percent in the decade between FY2009 and FY2018, adding over 1,100 women to the prison population. While women made up 11 percent of the total felony population in custody at the end of FY2018, they were responsible for 33 percent of the overall ten-year prison population growth. This disproportionate growth among the female prison population is in part due to distinct trends at admission. As Tennessee’s admissions to prison overall declined during this period, female admissions went in the opposite direction, growing 12 percent between FY2009 and FY2018, with the sharpest growth, 22 percent, from FY2009 to FY2014. This growth in female admissions reflects Tennessee’s reliance on incarceration in response to non-violent criminal conduct. This trend also correlates with the increasing presence of individuals with behavioral health needs in the criminal justice system, as studies show higher

incidence of a mental health need or substance use disorder among the female justice-involved population.<sup>15</sup>

Taking a closer look at the women currently serving prison sentences, the data showed that women incarcerated in Tennessee were more likely to be serving time for low-level, non-person offenses compared to the overall population. Two-thirds of women in prison are serving time for these non-person offenses. In focusing on Class B, C, D and E felony offenses, the share of women in custody for non-person offenses rises to 77 percent.

The data revealed several trends among the female segment of Tennessee's prison population that highlight two other key challenges for the state justice system: regional variation and a dependence on local jail capacity to compensate for a growing population. At the end of FY2018, the female felony population in custody totaled 3,481 women, with 59 percent serving in TDOC facilities and the remaining 41 percent serving in local jails.

### **Behavioral Health Needs**

Data show that people 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 local jails have experienced serious psychological distress.<sup>16</sup> Additionally, studies show that 63 percent of individuals in jail and 58 percent of those in prison meet the criteria for drug dependence or abuse.<sup>17</sup> Research has found that those who suffer from behavioral health needs are more likely to be incarcerated longer, to serve time in segregation, and to incur disciplinary infractions at higher rates than others with similar charges and criminal history.<sup>18</sup> This entrenchment in the system is costly both to individuals, who could be better served in the community, and to the taxpayers, due to the expensive medical needs of this population.

Looking further into the composition of Tennessee's prison population, the data showed a significant population with a behavioral health need. In Tennessee, the number of individuals on TDOC's mental health caseload increased 26 percent over the last four years to 7,890 individuals. As of FY2019, 36 percent of the population serving in state prison was being treated for a behavioral health need. Similar data from FY2018 show that over half of these individuals, or 4,334 people held in TDOC prisons, had a serious persistent mental illness, comprising 19 percent of all individuals held in Tennessee's state prison facilities.<sup>19</sup>

In Tennessee, the state has made great strides in creating and expanding programs to treat individuals with behavioral health needs within the community. This includes training officers with crisis intervention skills to de-escalate a behavioral health crisis, establishing criminal justice liaisons in jails, creating recovery courts to address a variety of different needs, using pre-arrest diversion centers, and building community partnerships with behavioral health experts. Specific examples of these initiatives include the establishment of Crisis Stabilization Units with walk-in centers that served more than 9,000 Tennesseans last year and the investment in Oxford Houses that service those with substance use disorders, approximately 80 percent of which are involved in the criminal justice system. Additionally, the state has developed a Behavioral Health Safety Net providing mental health treatment to individuals who have no access to health care due to lack of health insurance, which served more than 35,000 Tennesseans in FY2019.

Yet access to these resources is not equal across the state. While some jurisdictions require law enforcement officers to receive Crisis Intervention Team (CIT) Training, others do not have the resources to fund the training costs. Criminal justice liaisons connect individuals in jail who have

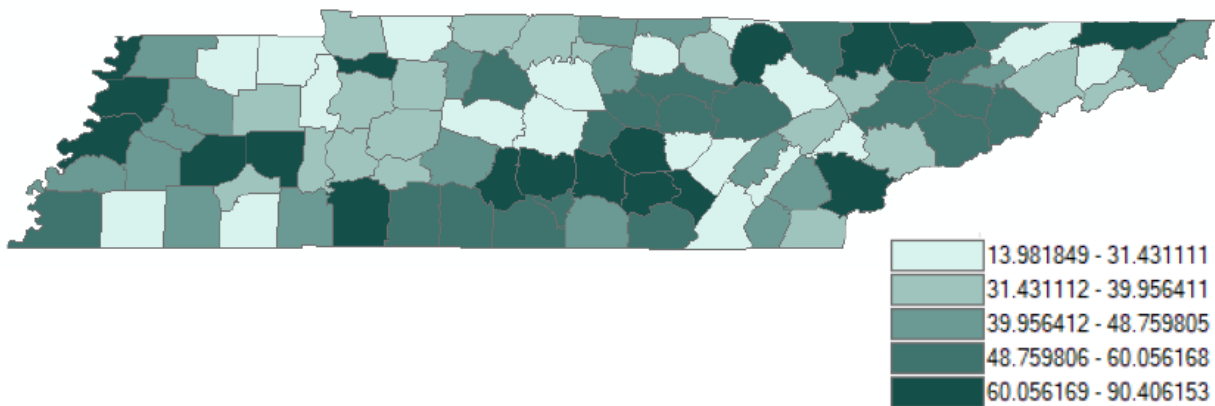
been diagnosed with a behavioral health issue to community services upon release, but these liaisons are not available in every jail across the state. Tennessee has 75 Recovery Court programs; however, eligibility criteria vary by jurisdiction and often exclude individuals who may benefit greatly from that type of specified care. Finally, pre-arrest diversion centers provide an alternative for officers to take an individual experiencing a crisis state to stabilize or detox among medical professionals, instead of using jails as the primary option. However, only seven pre-arrest diversion centers exist, and access is largely limited to those accused of committing misdemeanor offenses. Disparate resources create significant regional variation in how individuals with behavioral health needs access treatment across Tennessee.

**Regional Variation**

A county-level analysis of the state’s prison population found that rates of prison admission by county of conviction were highest outside major metropolitan areas. Similarly, felony incarceration rates at the county level varied widely throughout the state.

**Figure 11. County incarceration rates vary widely**

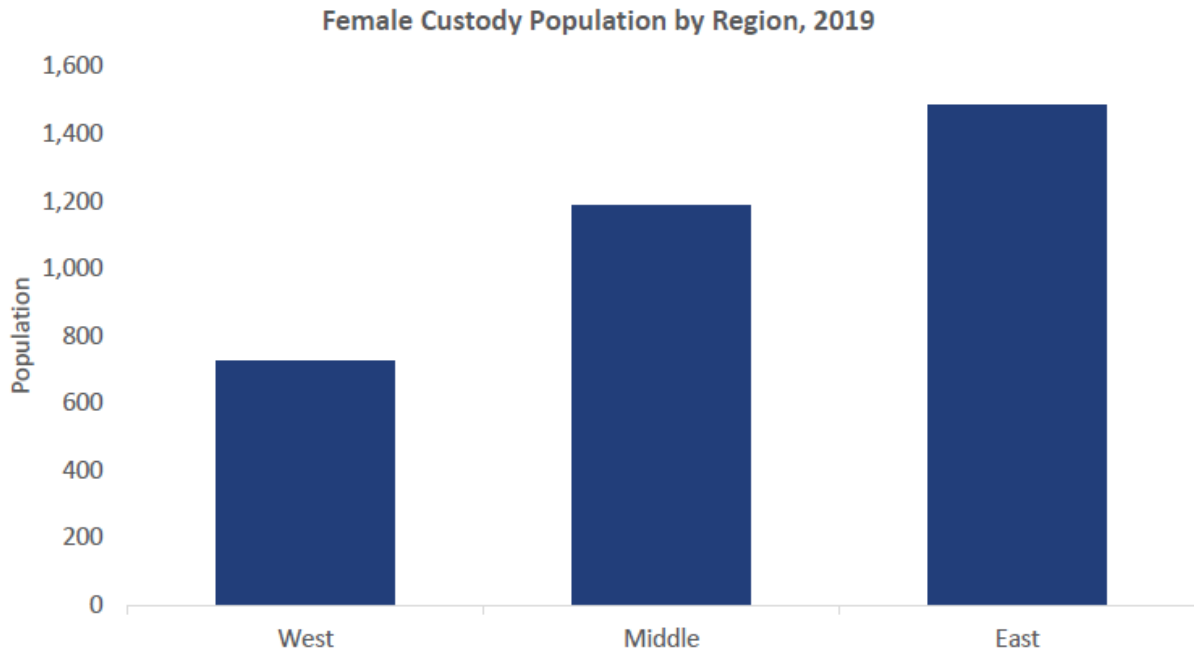
**Felony Incarceration Rate per 10,000 Residents by County of Conviction, FY2018**



*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

Examining the currently incarcerated felony population by region, the data showed that different regions of the state use incarceration for different types of offenses. Fewer than half of the individuals convicted in East Tennessee were sentenced for crimes against a person, compared to 61 percent of individuals sentenced from West Tennessee. Individuals with convictions from Middle Tennessee are evenly split between these person and non-person offenses. The Eastern region is responsible for the highest number of individuals incarcerated for property crimes, while Middle Tennessee leads the state in individuals incarcerated for drug crimes.

**Figure 12. Twice as many women from East than West**



*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

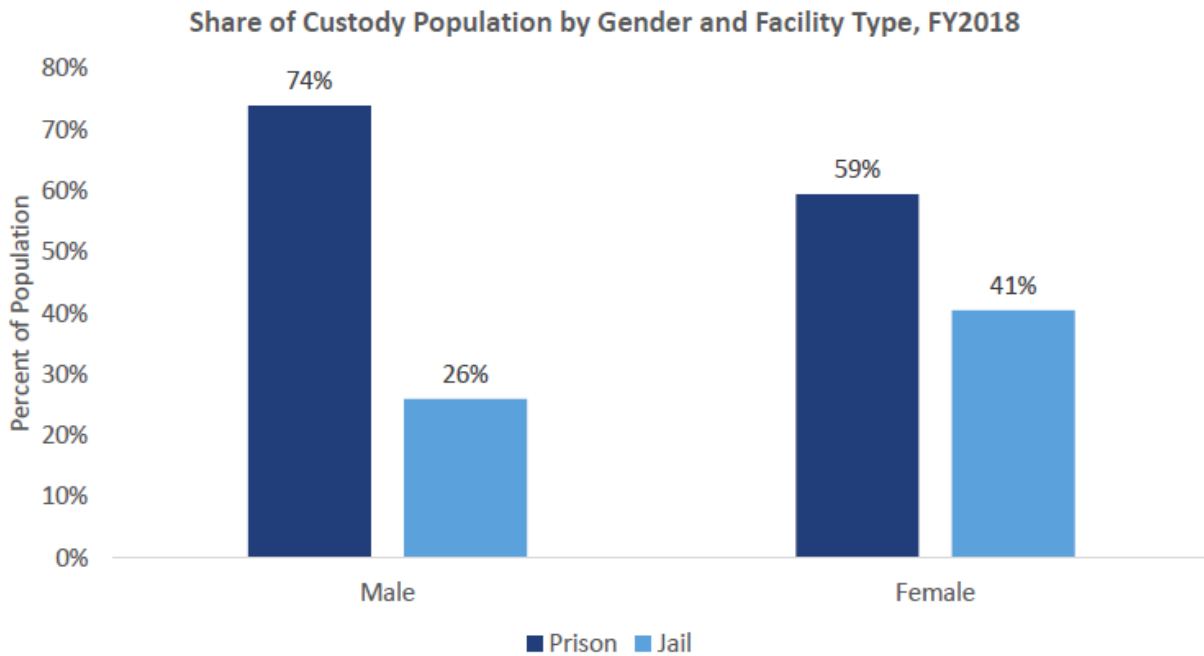
When limiting this analysis to the female prison population, the data indicate that there are twice as many incarcerated women from the Eastern counties as from the Western part of the state. Two thirds of the women in custody were sentenced for non-person crimes, including 54 percent of women sentenced from West Tennessee, 69 percent of women sentenced from Middle Tennessee, and 72 percent of women sentenced from East Tennessee. In the Middle and East regions, more women are serving sentences for non-person drug offenses than for person offenses. These findings may highlight the challenge that many rural areas, especially in East Tennessee, have found in developing viable alternatives to incarceration for individuals whose criminal activity is driven by behavioral health needs.

### **Local Facilities**

The continued growth of Tennessee’s prison population in recent years has put a strain on the state’s prison facilities. As of the end of FY2018, TDOC had an operating capacity of 23,234 beds but a population of 30,799, leading to a more than 7,000-bed deficit. The state has responded to the constraints on its capacity by entering into agreements with counties to house certain felony-level individuals in their facilities.

Looking at Tennessee’s felony population, at the end of FY2018, 8,561 individuals or 28 percent of individuals convicted of a felony offense were serving their sentences in local county jails rather than in state facilities. An even higher proportion of the female felony population – 41 percent of women in custody – were serving their sentences in county jail facilities rather than in state prisons.

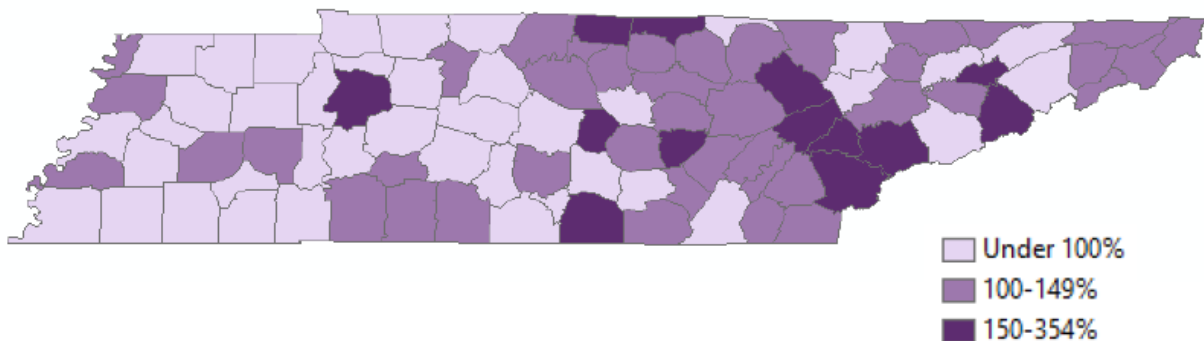
**Figure 13. 41 percent of female population are in local jails**



*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

The placement and long-term incarceration of individuals in local facilities rather than state prisons presents challenges for a number of reasons. First, growing reliance on jail beds alleviates some but not all of the capacity constraints faced by the state while also aggravating the capacity issues faced by many localities. At the end of FY2018, at least half of the state’s 120 jail facilities were over their operating capacity, and more than a dozen had surpassed 150 percent capacity. Second, jail facilities often lack the resources for programming and treatment proven to reduce recidivism after release. Third, local jail facilities experience much higher rates of population turnover, which severely limits the ability of those facilities to offer immersive and effective programming to their populations. For example, the majority of individuals incarcerated in jails are awaiting release on bond, completion of their trial or a final disposition. These individuals have shorter and less predictable lengths of stay, and different priorities for the time they spend incarcerated as they work to mount a defense in court and address more immediate family needs. The shorter and less predictable nature of their jail stays creates challenges for programming and treatment that stem from conflicting goals and unpredictable schedules. For this reason, the primary programs available in many local jails take the form of drop-in services and support groups like Alcoholics Anonymous.

**Figure 14. Jail capacity issues concentrated in Middle and East Tennessee**  
**Jail Population as Percent of County Jail Capacity, FY2018**



*Source: Data from the Tennessee Department of Correction, Analysis by CJI*

Due in part to limited access to programming and treatment resources, the populations released from jail experience higher recidivism rates. While 41 percent of individuals released from state prison facilities were arrested again within three years, that figure jumps 10 percentage points to 51 percent for those released from a jail facility after serving a felony sentence. Statewide, for all individuals released from custody for felony sentences, 47 percent were arrested again within three years.

**Summary of Key Findings**

As previously stated, analysis of the last decade of data from the TDOC revealed that despite declining admissions, Tennessee’s prison population continues to grow, as longer sentences and fewer parole releases drive up the length of time the average individual spends incarcerated. Moreover, the state continues to rely on incarceration to respond to non-violent criminal offenses and technical violations of community supervision, with three-quarters of prison admissions stemming from non-person offenses. Recent years have also witnessed a surging number of women and individuals with behavioral health needs in TDOC custody. Figures show that one in three individuals in a TDOC facility is on the mental health caseload. Meanwhile, the data identified unequal access to treatment and re-entry supports necessary for individuals to succeed when returning to their community by geography.

The data trends also underline the need to address Tennessee’s high rates of reoffending. Within three years of release, 47 percent of individuals released from felony incarceration in Tennessee are arrested again. High recidivism continues to affect the state’s ability to ensure public safety and to facilitate a safe and stable transition home for the individuals released from incarceration. With these findings in mind, the four subcommittees identified in the Executive Summary of this report, developed the following recommendations.

## Policy Recommendations

Focusing on the Governor's objectives and based on the evaluation of Tennessee's current practices in the areas of sentencing, release, re-entry, and supervision, the four subcommittees developed and agreed upon a total of 23 policy recommendations. These recommendations provide an avenue for Tennessee to reduce recidivism and improve public safety.

The following 23 policy recommendations will:

- Strengthen responses to individuals with behavioral health needs;
- Ensure equal opportunities to state individuals housed in local jails;
- Focus state resources on violent and high-risk individuals
- Improve the efficiency and effectiveness of community supervision;
- Minimize barriers to successful re-entry; and
- Ensure the sustainability of criminal justice reforms.

### *Strengthen responses to individuals with behavioral health needs*

#### **Recommendation 1: Expand access to sentencing alternatives for low-level individuals and those with behavioral health needs**

While overall admissions have declined, the majority of individuals admitted to prison in FY2018 were convicted of non-person offenses. Not only were those coming into prison convicted predominantly for drug and property offenses, but the largest class of sentences to incarceration were for individuals convicted of Class E offenses. Despite research showing that non-custodial sanctions can be more effective for low-level non-violent individuals, Tennessee is sending a large number of these individuals to jail and prison.<sup>20</sup>

Although Tennessee has a number of alternatives to incarceration (including probation, judicial diversion, community corrections, and recovery courts), judges and practitioners often lack clarity on the alternatives available in their community. Moreover, these alternatives have numerous and varied eligibility restrictions. These prohibitions serve as barriers to services for those with behavioral health needs. The data identified that over 4,000 individuals in TDOC custody in FY2018 presently had been diagnosed with a serious persistent mental illness and the Department's mental health caseload had increased 26 percent from FY2016 to FY2019. Increasing access to treatment opportunities in the community would align with research indicating such treatment is more effective at changing individuals' behavior.<sup>21</sup>

*The CJITF recommends:*

- a. Requiring post-plea assessments to match individuals with appropriate treatment and services and to tailor conditions of supervision to individuals' specific needs
- b. Establishing a services clearinghouse or system-wide dashboard of the treatment and programming services available in the community
- c. Expanding eligibility for and use of existing sentencing alternatives including:
  - i. Day Reporting Centers



- ii. Tennessee Recovery Oriented Compliance Strategy (TN-ROCS)
  - iii. Recovery Courts, including Drug Courts, Mental Health Courts, and Veterans' Courts
  - iv. Probation
  - v. Judicial Diversion
- d. Exploring the creation of sentencing alternative sites in the community
    - i. Funding associated with each individual otherwise incarcerated would follow the individual to allow for more diverse sentencing options including treatment and recovery programs beyond what is available in recovery courts
  - e. Evaluating the effectiveness of the Community Corrections Grant Program
  - f. Increasing resources for TDOC to support community supervision practices and hire more probation and parole officers
  - g. Establishing a line-item in the budget for recovery courts and personnel

**Recommendation 2: Expand treatment opportunities in the community to prevent jails and prisons from being the primary provider of behavioral health care**

Research shows that access to treatment and effective programming play a significant role in reducing recidivism both by preventing individuals from entering the system who could be better served in the community and by addressing the needs of individuals while they are in custody.<sup>22</sup> In Tennessee, the incarcerated population with a mental health diagnosis has grown sharply in the last decade, with 36 percent of the individuals incarcerated in state prisons on the mental health caseload in FY2019. Facilitating access to high quality, recovery-oriented, and walk-in-friendly mental health and substance use services would allow more individuals to be treated in the community instead of in the state's prisons and jails.

*The CJITF recommends:*

- a. Securing additional funding to expand access to clinical treatment services and recovery wrap-around services throughout the state
  - i. Dedicating added resources to the Tennessee Recovery Navigators program to ensure that an additional 80 Emergency Departments can receive services
  - ii. Creating state funding for residential treatment programs focusing on women and families
  - iii. Expanding access to recovery residences through additional funding to the Creating Homes Initiative

**Recommendation 3: Increase the use of methods for early identification of behavioral health needs to divert those who could be better served in the community**

Research shows that behavioral health treatment in a community-based setting is more successful than in custody.<sup>23</sup> The effectiveness of diverting justice-involved individuals to community-based treatment methods is contingent upon using the proper screening methods to identify individuals with behavioral health needs. Currently in Tennessee, jails are not required to have screening measures in place, and there is no uniformity or consistency in practices among jails that do utilize such measures. A more standardized practice across the state would ensure these individuals are identified early on in order to get the treatment and services they need.

*The CJITF recommends:*

- a. Adopting and implementing a consistent screening tool to identify behavioral health needs
  - i. Establishing, implementing and administering a screening to all individuals who interact with TDOC, jail or Department of Children’s Services (DCS), either through rule or law
  - ii. Creating a workgroup with representatives from various behavioral health providers to identify a specific tool or pool of assessment tools, develop associated trainings, establish an implementation timeline and set standards for universal application

**Recommendation 4: Invest in training on behavioral health needs for criminal justice stakeholders**

As the number of justice-involved persons with a behavioral health need increases, there is a growing need for practitioners to understand the symptoms of and the best practices associated with behavioral health needs. Regular training on these factors ensures that criminal justice practitioners are using the most current research in the field on what works best to reduce recidivism and treat criminogenic needs associated with this population.

*The CJITF recommends:*

- a. Expanding training and education efforts for those that interact with the justice-involved population that focus on community resources, the brain science of addiction, SAMHSA best practices, and other issues related to an individual’s behavioral health
  - iii. Stakeholders should include public defenders, District Attorneys General, Association of County Mayors, judges, school administrators, law enforcement, and probation and parole officers
- b. Expanding access to Crisis Intervention Team (CIT) Training so that all 95 counties have at least one crisis intervention certified individual

**Recommendation 5: Build partnerships between service providers across the state to address regional barriers to treatment and deliver consistent services to individuals in need**

While admissions across the state decreased, admissions of the female population and of individuals from Eastern Tennessee increased. One explanation for these disparities is the lack of resources and gender-specific treatment options available in the East.

*The CJITF recommends:*

- a. Establishing an Announcement of Funding from Tennessee’s Department of Mental Health and Substance Abuse Services that would require a collaborative partnership between behavioral health care providers in rural areas to increase the capacity of walk-in centers to offer primary substance use services – e.g. detox, residential. These partnerships would address co-occurring conditions and aim to provide mental health and substance abuse services in a collaborative and integrated system

- b. Conducting a gap analysis to evaluate the current system and understand barriers to creating a seamless transfer of information for individuals with behavior health needs between supervising officers, behavioral health and medical providers, and other stakeholders

### *Ensure equal opportunities to state individuals housed in local jails*

#### **Recommendation 6: Expand access to behavioral health services and programming in county jails**

Currently one in four individuals sentenced to incarceration for a felony offense in Tennessee are held in local jails, many of which are over capacity and lack the necessary resources to provide individuals with needed access to programming and treatment services. Recidivism rates for individuals serving a felony sentence released from jails are 10 percentage points higher than those released from state prisons. Given the high rate of behavioral health needs present in this population, the ability to identify these individuals and connect them with the appropriate support services in custody is critical to successful community reintegration.

*The CJITF recommends:*

- a. Dedicating more funding to expand Criminal Justice Liaison programs, case manager services, TN-Recovery Oriented Compliance Court Strategy Liaisons and forensic social workers in jails
- b. Establishing collaborative agreements between county jails and community mental health and substance abuse providers to serve individuals who will be housed in county jails for a minimum of one month
- c. Coordinating with the Tennessee Sheriffs' Association to understand what limitations currently exist that prevent individuals in jails from having medication administered to them in jails and assist local facilities to overcome those barriers
- d. Implementing a "sentence reduction credit" policy for those in jails who successfully complete treatment/recovery programming while in custody
- e. Ensuring that jail certification standards through the National Institute of Corrections require compliance with standards and policies of TDOC and SAMHSA

#### **Recommendation 7: Require parity in re-entry services offered at local jails and state prisons**

Currently in Tennessee, state prisons have institutional officers whose role is to assist individuals who become eligible for parole in establishing their re-entry plans and preparing to transition back into the community. Jails however, often do not have equivalent personnel and as such, those serving a state sentence in jails do not have the same level of re-entry support and services.

*The CJITF recommends:*

- a. Requiring state contracts with local jails include a provision to put in place personnel, comparable to current institutional officers in state prisons, to provide re-entry services in local jails to ensure that individuals serving in local jails receive the same re-entry planning and support as individuals in state prison while incarcerated and upon release

### *Focus state resources on violent and high-risk individuals*

#### **Recommendation 8: Rewrite the Tennessee Sentencing Code for the 2021 Legislative Session**

A significant driver of Tennessee's prison population growth is the increase in sentence lengths over the past 10 years. This increase occurred for all offense types and was most striking for drug offenses, which grew more than 30 percent since FY2009. This is important to note considering that Tennessee has lower drug weight thresholds and higher penalty ranges compared to other states and the federal government. Coupled with declining parole rates, the increase in sentences is responsible for the growth in time served among individuals incarcerated in Tennessee.

Tennessee's existing sentencing structure was established in 1989 with Tennessee's Criminal Sentencing Reform Act. Under current practice, Tennessee has five felony classes based on the seriousness of the offense, with Class A being the most serious and Class E being the least serious. Tennessee also has four categories based on the individual's criminal history starting at Range 1 with zero to one prior felony offense extending to a Career Offender who has six or more prior felony offenses. A sentence range is decided upon by matching up the felony class with the prior offense category. Based on mitigating or aggravating circumstances, a sentence will be imposed in the lower or upper part of the range. As research concerning effective practices to reduce recidivism has grown significantly since 1989, it is necessary to review and evaluate Tennessee's criminal code and sentencing structure.

*The CJITF recommends:*

- a. A working group take a comprehensive look at Tennessee's sentencing code focusing on addressing the data trends related to increasing sentence lengths and time served in prison as well as establishing certainty in sentence lengths

#### **Recommendation 9: Reduce the maximum probation term that can be ordered**

Currently, Tennessee law authorizes a probation term of up to 10 years for a felony offense. 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 and that supervision resources have the highest impact when they target this critical period.<sup>24</sup> In the last decade, probation sentence lengths have increased by 6 percent, and the average probation sentence was 42 months – well beyond the period when probationers are most likely to reoffend.

*The CJITF recommends:*

- a. Reducing the maximum probation supervision period from 10 years

**Recommendation 10: Expand Tennessee’s medical furlough and establish a geriatric parole mechanism**

TDOC is authorized to release individuals to supervision through medical furlough. Individuals are eligible for medical furlough if they are in imminent peril of death and have a severe physical or psychological deterioration to the extent that they are no longer able to take care of themselves in the prison environment.<sup>25</sup> In 2018, four individuals were released on medical furlough, and in 2017 one individual was released through this mechanism. In the last 10 years, the incarcerated population aged 50 and older in Tennessee has increased 51 percent. Moreover, in 2018 there were 1,776 individuals aged 60 and over in TDOC custody. As individuals 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.<sup>26</sup> 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.<sup>27</sup> Furthermore, older individuals 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 individuals.<sup>28</sup>

*The CJITF recommends:*

- a. Expanding the existing medical furlough option to allow for the release to supervision of individuals who are chronically debilitated or incapacitated as to be physically incapable of presenting a danger to society as determined by TDOC medical staff
- b. Creating a geriatric parole option to allow an individual to be heard by the parole board before the individual’s parole eligibility date, if the individual is over 65 and has served 10 years or is over the age of 70 and has served five years, excluding those convicted of sex offenses

**Recommendation 11: Establish a streamlined parole process and ensure individuals who are granted parole are released**

In FY2018, 37 percent of individuals leaving custody were released at the expiration of their sentence, rather than being released through parole or other mechanisms. Parole releases have dropped by 28 percent over the past decade and currently 10 percent of initial parole hearings result in a grant. In the last five years, decisions at initial parole hearings to deny parole increased 17 percent and to continue parole increased 38 percent. When an individual is denied parole, the next parole hearing must be heard any time within 10 years and there is no requirement in statute for the Board of Parole to provide reasons for the denial on the record.

Significantly, as release rates drop, the number of grants with pre-release conditions have increased. If the Board of Parole imposes pre-release conditions, an individual will not be released from custody until they have successfully completed these conditions, which may include treatment or programming that is not available in all facilities. Between FY2015 and FY2019, nearly 8,500

hearings resulting in a grant of parole had such “pre-parole conditions” issued as part of the decision. As decisions to grant parole declined, the imposition of pre-parole conditions has increased. In FY2015, 39 percent of cases granted parole required pre-parole conditions. By the close of FY2019, that figure had risen to 57 percent. Tennessee is an outlier when compared to other states in having releases conditioned upon certain programming completion. The majority of states impose conditions on parolees, however these conditions are satisfied in the community.<sup>29</sup>

*The CJITF recommends:*

- a. Establishing a streamlined parole process for non-violent individuals who are compliant with their re-entry plan and have not had an institutional violation, allowing them to be released at their parole eligibility date without a hearing, unless a hearing is requested by a victim, law enforcement, or the Board of Parole
- b. Restricting the Board of Parole from making release on a parole grant contingent upon institutional treatment and programming prior to release, if appropriate treatment and programming can be ordered and obtained in the community through a parole condition
- c. Codifying current practice requiring the Board of Parole to provide individuals to whom parole has been denied with specific steps that the individual can take in order to be granted parole at a subsequent parole hearing
- d. Codifying the current practice requiring a subsequent parole hearing be scheduled no later than five or six years after a parole hearing decision of denial or continuance

**Recommendation 12: Require all individuals exiting prison and jail to have a period of supervision for transition into the community when they are released**

In FY2018, 37 percent of releases from custody were the result of an individual’s sentence expiring, rather than being released through discretionary parole, meaning the individual received no supervision following their release. Research has shown that individuals who have supervision following release are less likely to be convicted of new criminal offenses upon release.<sup>30</sup>In order to apply best practices, individuals being released from custody should receive some form of supervision to assist in the transition back into the community.

*The CJITF recommends:*

- a. Requiring all individuals to be placed on community supervision one year before their expiration date

***Improve efficiency and effectiveness of community supervision practices***

**Recommendation 13: Expand the use of swift, certain, and proportional sanctions**

Thirty-nine percent of admissions in FY2018, nearly 5,000 people, were incarcerated for violations of community supervision. Just over half of these admissions were for non-criminal conduct such as

failure of a drug test or noncompliance with treatment program. Since 2010, the number of these revocations due to technical violations has increased by 53 percent.

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.<sup>31</sup> In 2017, after passage of the Public Safety Act, TDOC began to implement graduated sanctions to respond to technical violations, however, their use varies across the state. Opportunities exist to ensure Tennessee continues and expands its use of swift, certain, and proportional sanctions.

*The CJITF recommends:*

- a. Requiring in statute the use of graduated sanctions by TDOC when responding to technical violations
- b. Requiring the use of graduated sanctions by community corrections grant recipients
- c. Defining a “technical violation” as “all acts of non-compliance with conditions of supervision excluding acts that result in a criminal charge”
- d. Focusing conditions of supervision on behavior most closely tied to public safety by prohibiting revocation solely for positive results from a drug or alcohol test

**Recommendation 14: Limit the period of incarceration resulting from a revocation for technical violations**

Nearly 5,000 individuals were admitted to prison in FY2018 for a violation of community supervision. Just over 50 percent of these admissions were for technical violations. Under current law, when a person’s supervision is revoked, he or she will serve the full remainder of their sentence in prison or jail. To effectively use swift, certain, and proportional responses, it is necessary to apply different approaches to individuals who engage in non-criminal behaviors while on supervision.

*The CJITF recommends:*

- a. Restricting the period of incarceration resulting from a technical violation of probation, parole or community corrections, except for absconding, as follows:

Technical Revocation Number	Limited Time Period of Incarceration
1 <sup>st</sup> Technical Revocation	Up to 30 days
2 <sup>nd</sup> Technical Revocation	Up to 60 days
3 <sup>rd</sup> Technical Revocation	Up to 90 days
4 <sup>th</sup> and Subsequent Technical Revocation	No more than 1 year or the remainder of the sentence, whichever is shorter

**Recommendation 15: Tailor supervision to individuals’ risks and needs**

In Tennessee, standard supervision conditions are imposed for all individuals, without incorporating the results of a validated risk and needs assessment tool to establish and tailor the conditions. TDOC uses a risk and needs assessment to determine supervision level and to guide

decision-making related to treatment and programming needs. However, the results of this assessment are not used to determine what conditions of supervision are necessary for an individual's specific risk level or needs.

Research has consistently shown that states can have the greatest impact on reducing recidivism when they focus supervision, treatment, and program resources on those who pose the highest risk to reoffend. Conversely, low-risk individuals who engage in intensive supervision or treatment programs may be made worse by over-engagement with the criminal justice system.<sup>32</sup>

TDOC administers a risk and needs assessment for each individual on supervision at a minimum of once per year to determine supervision level. Individuals assessed as low risk can be placed on administrative supervision. However, the practice of transferring individuals assessed as low risk to minimum and compliant reporting supervision is not consistent statewide and there are a limited number of individuals on the compliant reporting supervision level.

*The CJITF recommends:*

- a. Codifying the current TDOC policy of requiring Parole and Probation Officers (PPOs) to modify conditions of supervision as necessary based on an individual's risk and needs assessment results
- b. Requiring responsivity factors be considered when establishing conditions and enabling PPOs to modify conditions to address responsivity barriers
- c. Creating a statewide step-down policy for levels of supervision, by requiring an individual be placed on a minimum or compliant reporting supervision level if they are assessed as low risk by a validated risk and needs assessment tool and have not committed a violation of the conditions of their supervision for a determined amount of time

### **Recommendation 16: Establish a system of earned compliance credits for community supervision**

Earned compliance credits can provide a powerful incentive for individuals to participate in programs, obtain and retain a job, and remain drug- and alcohol-free. As compliant and low-risk individuals earn their way off supervision, earned compliance credits also work to focus limited supervision resources on the higher risk individuals who most require attention. In Tennessee, the length of sentences to probation has increased six percent, and the average time on probation for those who are successfully discharged has increased 22 percent since FY2010, increasing for all felony classes during this period. While Tennessee has incorporated the use of rewards and incentives to effectively change individuals' behavior in prison, there is no such equivalent practice for those on probation and parole.

*The CJITF recommends:*

- a. Establishing a system of earned compliance credits for those on parole and probation to incentivize behavior changes through programming credit and good time credit



## *Minimize barriers to successful re-entry*

### **Recommendation 17: Reduce financial barriers to successful completion of community supervision and transition into the community**

In Tennessee, judges are authorized to extend probation terms for unpaid restitution. Aside from serving as a reason for extending community supervision, legal financial obligations such as fines, fees, court costs, and restitution payments can often be a substantial hurdle for individuals upon release from prison. There is a need to lessen financial barriers so that citizens returning to their communities are able to repay their debt to society while not being hampered in their rehabilitation process.

*The CJITF recommends:*

- a. Shifting unpaid restitution to civil judgments instead of extending or continuing unnecessary probation supervision
- b. Prohibiting the extension of supervision solely for financial obligations

### **Recommendation 18: Require TDOC to provide a re-entry packet and services on a timeline**

Individuals returning to the community from prisons and jails often face barriers to a successful transition back into society. Lessening those barriers is critical for individuals to have the opportunity and sufficient resources to be able to become a productive member of society and avoid criminal activity. Under current law, TDOC and the trial courts must coordinate efforts to prepare individuals for re-entry into society.<sup>33</sup> However, details of this coordinated effort are not outlined in statute. TDOC is required, at the discretion of the commissioner, to provide appropriate clothing, financial support of up to \$75, and transportation to individuals upon release.<sup>34</sup> However, these items are only required for individuals being released from state facilities and not for those serving state sentences at local facilities.

*The CJITF recommends:*

- a. Requiring in statute that TDOC provide a “re-entry packet” upon discharge that shall include the following, when available:
  - o Record of job training and employment while incarcerated
  - o Resume, including trades learned and proficiency levels
  - o Documentation of completion of job interview practice
  - o Certified copy of birth certificate
  - o Social Security card
  - o Driver’s License or State ID
  - o Completed SNAP/benefits application and child support documentation
  - o Proof of income document
  - o HiSet Score, HS transcript, any other educational transcript
  - o Selective Service registration
  - o Any certifications earned while incarcerated

- b. Requiring in state statute that TDOC create a re-entry plan 30 days prior to an individual's parole eligibility date that addresses necessary housing, education, employment, and behavioral health needs
- c. Requiring that information gathering for the re-entry plan begin two years prior to release eligibility date

**Recommendation 19: Establish funding and oversight for re-entry centers and grants**

Tennessee has had success with partnerships between community service providers and state or local agencies. However, opportunities for partnerships, particularly in the rural areas of the state, are limited. In 2018, the state established four grants to fund rural re-entry centers pursuant to Tenn. Code Ann. § 40-35-323. Oversight for rural re-entry grants and programs is necessary to ensure that the funds are used efficiently and appropriately to provide evidence-based services for individuals released from prisons and jails back into the community.

*The CJITF recommends:*

- a. Establishing funding mechanisms for the state to partner with community service providers and local agencies to set up re-entry centers with the goal of providing resource referrals and mentoring to those who are returning to the community from prisons and jails, including those on parole or probation as well as those whose sentence has expired
- b. Establishing oversight for rural re-entry grants and expanding existing re-entry grant model to include non-profits or local agencies as well as programs that provide services in the community upon release

**Recommendation 20: Expand probation and parole services to be more accessible**

Research has found one of the strongest predictors of successful re-entry is employment. Individuals on community supervision are required to check in with their supervising PPOs on a regular basis. Individuals trying to maintain gainful employment in their communities often struggle to make the appointments with their PPOs because of their work schedules. This conduct could be deemed a failure to report, which is a violation of supervision and could result in a sanction or revocation. While policy requires PPOs accommodate supervisees' work schedules, this does not always happen in practice.

*The CJITF recommends:*

- a. Offering video conferencing or kiosk options for probationers and parolees at qualified transitional programs and facilities that serve 10 residents or more
- b. Creating a grievance process through which probationers can report their PPO for failing to accommodate their work schedule

**Recommendation 21: Expand availability of Certificates of Employability**

Tennessee law currently establishes certificates of employability to assist individuals with a felony record in obtaining employment or licensing needed for certain occupations.<sup>35</sup> The court may grant

one if the certificate would materially assist the individual, the individual has upstanding character, and it poses no unreasonable risk to public safety. However, the process to obtain a certificate can be burdensome and costly. Additionally, Tennessee's certificate is limited to employment opportunities. Several other states have specific certificates for those with a criminal record to provide landlords to assist in finding suitable housing. Making such certificates more accessible would assist in overcoming barriers to employment.

*The CJITF recommends:*

- a. Requiring TDOC and its vocational partners to provide information about obtaining certificates of employability upon release
- b. Creating a streamlined process to obtain the certificate that does not involve petitioning the court
- c. Amending the eligibility criteria to allow individuals to begin their application for the certificate in the last months of supervision with the assistance of their probation or parole officer
- d. Establishing a waiting period post-release for individuals convicted of violent offenses before they can apply for a certificate
- e. Waiving fees associated with acquiring the certificate if an individual's annual income is below 138 percent of the federal poverty guideline and allow a payment plan process for those who do not qualify for a waiver but are unable to pay at initial application
- f. Allowing a Certificate of Employability to serve as a presumption of fitness for housing opportunities

## **Recommendation 22: Expand pathways to education for individuals**

Studies show that education is another strong predictor of successful re-entry and recidivism reduction. Research further indicates that correctional education improves the chances that a formerly incarcerated individual will be able to obtain employment post-release and not return to prison.<sup>36</sup> Expanding existing educational opportunities is necessary to encourage on-going pursuit of education upon release.

*The CJITF recommends:*

- a. Increasing access to post-secondary education and training by:
  - i. Creating and providing a common MOU/articulation agreement that can be used for each college/prison partnership
  - ii. Sharing common faculty training across institutions of higher education and Reconnect Navigators
  - iii. Creating a statewide resource guide for approved suppliers of secondary education access
  - iv. Establishing apprenticeship programs
- b. Creating a pathway from secondary to post-secondary education programs inside prisons by:

- i. Identifying prep programs that will better align HiSET/ABE with post-secondary opportunities, including the use of dual enrollment, dual credit, and SAILS to promote seamless transition
  - ii. Creating additional incentives for completing HiSET and post-secondary programs by allowing the current 60 day credit for educational programs not to be limited to one program
  - iii. Providing stackable, credit-bearing opportunities to individuals with shorter stays for involvement in such programs including competency-based education and prior learning assessment
- c. Ensuring all criminal justice and state-funded educational stakeholders have access to student success data and metrics through data sharing agreements between state agencies and non-profits
- d. Investing in a culture of higher education inside prisons and creating opportunity for different kinds of students by:
  - i. Increasing options for correctional staff to attend courses by spreading awareness, job mobility, and accessibility
  - ii. Providing state-funded scholarships to apply for upon release if an individual wishes to continue their education after incarceration

### *Ensure sustainability of criminal justice laws*

#### **Recommendation 23: Establish an implementation committee**

An implementation body is essential to ensure proper implementation as well as evaluation of any substantive effort to change the criminal justice system. Several states throughout the country have established mechanisms to examine performance data, problem-solve issues that come up during implementation, and identify changes needed to improve or strengthen reforms that have been recommended. Research has shown that in order to evaluate the effectiveness of evidence-based practices at changing individual behavior and reducing recidivism, accurate data must be collected and analyzed and programs must be implemented with ongoing support.

*The CJITF recommends:*

- a. Establishing an implementation committee charged with overseeing the implementation and sustainability of reforms to the criminal justice system
  - a. The implementation committee should include representation from key criminal justice stakeholders throughout the system, including staff in the field responsible for the implementation of reforms as well as persons directly impacted such as formerly incarcerated individuals, victims, families, and community members

## Conclusion

While Tennessee is sentencing individuals to prison for longer periods of time and reducing the number of those it releases on parole, the state's recidivism and violent crime rates remain high. The four CJITF subcommittees engaged in the JRI effort spent countless hours reviewing the data, current practices, research findings, and examples from other states. Their work culminated in the 23 recommendations enclosed in this report. The recommendations are tailored to these specific data findings present in Tennessee's system and were developed to protect public safety and improve outcomes from all Tennesseans.

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<sup>1</sup> Gelb, A. & Denney, J. (2018) National Prison Rate Continues to Decline Amid Sentencing, Re-Entry Reforms. The Pew Charitable Trusts, accessed at <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/16/national-prison-rate-continues-to-decline-amid-sentencing-re-entry-reforms>.

<sup>2</sup> United States Department of Justice, Federal Bureau of Investigation. (September 2018). *Crime in the United States, 2017*; Bureau of Justice Statistics, Annual Probation Survey, Annual Parole Survey, Annual Survey of Jails, Census of Jail Inmates, and National Prisoner Statistics Program, 1980-2016.

<sup>3</sup> Bureau of Justice Statistics, National Prisoner Statistics, 2007-2017. United States Department of Justice, Federal Bureau of Investigation. (September 2018). *Crime in the United States, 2017*.

<sup>4</sup> Bureau of Justice Statistics, Prisoners in 2017, Table 1. Prisoners under jurisdiction of state or federal correctional authorities, by jurisdiction and sex, 2007-2017.

<sup>5</sup> Bureau of Justice Statistics, National Prisoner Statistics, 2016 and 2017; and U.S. Census Bureau, Resident Population Estimates.

<sup>6</sup> In 2012, Tennessee Department of Correction assumed responsibility for the supervision of individuals on probation and parole, previously under the jurisdiction of the Board of Probation and Parole. Nevertheless, the corrections budget began growing in the years prior to this assumption of responsibility and continued to grow subsequent to assumption of jurisdiction.

<sup>7</sup> United States Department of Justice, Federal Bureau of Investigation. (September 2019). *Crime in the United States, 2018*.

<sup>8</sup> Spohn C. & Holleran, D. (2002). The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders. *Criminology*, 40(2), 329-357; Bales, W.D., & Piquero, A.R. (2012). Assessing the Impact of Imprisonment on Recidivism. *Journal of Experimental Criminology*, 8(1), 71-101.

<sup>9</sup> Calculations of average sentence lengths exclude sentences to life imprisonment or death.

<sup>10</sup> Legislation signed into law during the 2019 session reclassified several offenses, including felony "Failure to Appear" and "Habitual Traffic Offender," as misdemeanors. Individuals sentenced prior to the passage of this legislation continue to serve prison terms.

<sup>11</sup> Spohn & Holleran (2002); Bales & Piquero (2012).

<sup>12</sup> While the Department's technical violator program allows some individuals who are revoked for a technical violation to serve six months and then be released to back to supervision, most individuals who get revoked for technical conduct serve the remaining balance of their sentence for parolees or the entire term of their suspended sentence for probationers.

<sup>13</sup> National Research Council (2007); Nagin, D.S. & Pogarsky, G. (2001). Integrating Celerity, Impulsivity, and Extralegal Sanction Threats Into a Model of General Deterrence: Theory and Evidence. *Journal of Criminology*, 39(4).

<sup>14</sup> Bureau of Justice Statistics, Prisoners in 2017, Table 6. Imprisonment rates of sentenced prisoners under jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, by jurisdiction and sex, 2016 and 2017.

<sup>15</sup> Bureau of Justice Statistics, Indicators of Mental Health Problems Reported by Prisoners and Jail Individuals, 2011-12, June 2017, accessed at <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf>.

<sup>16</sup> Bureau of Justice Statistics, Indicators of Mental Health Problems Reported by Prisoners and Jail Individuals, 2011-12, June 2017, accessed at <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf>.

<sup>17</sup> Bureau of Justice Statistics, Drug Use, Dependence, and Abuse Among State Prisoners and Jail Individuals, 2007-2009, June 2017, accessed at <https://www.bjs.gov/content/pub/pdf/dudasppi0709.pdf>.

<sup>18</sup> Frazier, B.D., Sung, H. Gideon, L. and Alfaro (2015). The Impact of Prison Deinstitutionalization on Community Treatment Services. *Health & Justice*. 3(9).

<sup>19</sup> TDOC reporting defines this category to include major depressive disorders, trauma- and stressor-related disorders like PTSD, bipolar and related disorders, schizophrenia and neurocognitive disorders. This figure does not include any individuals with a serious persistent mental illness serving a felony sentence in a local jail facility.

<sup>20</sup> Bales & Piquero (2012); Spohn & Holleran (2002); Drake, E. (2012). Confinement for Technical Violations of Community Supervision: Is There an Effect on Felony Recidivism? Washington State Institute for Policy.

<sup>21</sup> McVay, D., Schiraldi, V., & Ziedenberg, J. (2004). Treatment of Incarceration: National and State findings on the Efficacy and Cost Savings of Drug Treatment Versus Imprisonment. Justice Policy Institute, accessed at [http://www.justicepolicy.org/uploads/justicepolicy/documents/04-01\\_rep\\_mdtreatmentorincarceration\\_ac-dp.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/04-01_rep_mdtreatmentorincarceration_ac-dp.pdf).

<sup>22</sup> Duwe, G. (2017). The Use and Impact of Correctional Programming for Inmates on Pre-and Post-Release Outcomes. The National Institute of Justice, accessed at <https://www.ncjrs.gov/pdffiles1/nij/250476.pdf>.

<sup>23</sup> Arlotta, C.J. (2015). The Best Treatment for Drug Addicts is Community. *Forbes*, accessed at <https://www.forbes.com/sites/cjarlotta/2015/09/25/community-based-recovery-programs-work-wonders-for-drug-addicts/#44421c0b6a4d>.

<sup>24</sup> National Research Council (2007); Nagin & Pogarsky (2001).

<sup>25</sup> Tennessee Department of Corrections Administrative Policies and Procedures #511.01.1.

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- <sup>26</sup> Devers, L. (2011). Desistance and Developmental Life Course Theories: Research Summary. Bureau of Justice Assistance, accessed at <https://www.bja.gov/Publications/DesistanceResearchSummary.pdf>.
- <sup>27</sup> United States Sentencing Commission (2014). Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment, accessed at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207\\_Recidivism-Age.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf).
- <sup>28</sup> Chiu, T. (2010). "It's About Time: Aging Prisons, Increasing Costs, and Geriatric Release". Vera Institute of Justice, accessed at <http://www.vera.org/download?file=2973/its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>
- <sup>29</sup> Renaud, J. (2019). Grading the Parole Release Systems of All 50 States. The Prison Policy Initiative, accessed at [https://www.prisonpolicy.org/reports/grading\\_parole.html](https://www.prisonpolicy.org/reports/grading_parole.html).
- <sup>30</sup> Vito, G.F., Higgins, G.E., & Tewksbury, R. (2017). The Effectiveness of Parole Supervision: Use of Propensity Score Matching to Analyze Re-incarceration Rates in Kentucky. *Criminal Justice Policy Review*, 28(7) 627–640.
- <sup>31</sup> Nagin & Pogarsky (2001)
- <sup>32</sup> American Probation and Parole Association, "Administrative Responses in Probation and Parole Supervision: A Research Memo," March 2014, <http://www.appa-net.org/eWeb/Resources/SPSP/Research-Memo.pdf>.
- <sup>33</sup> Tenn. Code Ann. § 41-1-412.
- <sup>34</sup> Tenn. Code Ann. § 41-21-219.
- <sup>35</sup> Tenn. Code Ann. § 40-29-107.
- <sup>36</sup> Davis, L.M., Bozick, R., Steele, J.L., Saunders, J., & Miles, J. (2013). Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs that Provide Education to Incarcerated Adults. The Rand Corporation, accessed at [https://www.rand.org/pubs/research\\_reports/RR266.html](https://www.rand.org/pubs/research_reports/RR266.html).