Impact & Influence

The Role of Local Jurisdictions in Managing Prison Population Size

The Urban Institute

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Executive Summary

Budgetary pressures, court mandates on crowding, and social justice concerns have prompted many states throughout the country to develop laws and administrative policies intended to control the size of the prison population. While long-term strategies often look to offender rehabilitation and reductions in new criminal activity to achieve this goal, the most common short-term strategies focus on requiring, encouraging, and permitting decision makers to use local options in lieu of prison at the time of sentencing, inmate release and transfer, and supervision violation response. By modifying decision making at the system points that influence prison population size, legislatures and other state-level policy makers hope to avert projected growth in prison populations, control corrections spending, and potentially reinvest in strategies that have been shown to improve public safety.

Although many strategies to control the size of the prison population are developed in consultation with local stakeholders, a number of states create policy that relies on local jurisdictions to assume responsibility for the offender population without fully considering how this shift might impact the resources and capacity of jails, supervision offices, and community service and treatment providers. Further, they often do not account for how the policies and practices of those local agencies, which are largely responsible for the day-to-day operation of the criminal justice system, can influence the success of state prison population control efforts. Incarceration is not a problem limited to state government, nor can its solutions be conceived and executed solely by state governments. In designing strategies to manage the size of the prison population, states must consider the effect that these changes will have on local jurisdictions and the important role of local policy and support in the success of their efforts.

The purpose of this white paper is to explore the role of local jurisdictions in state prison population management strategies by examining the three policy levers in the criminal justice system that can most directly and immediately influence the number of people in prison.

State Prison Population Management Strategies

Sentencing

State efforts to influence sentencing decisions have focused on eliminating and modifying legislation that has previously led to increased prison admissions and lengthy sentences, and on promoting the use of local options, such as jail and community-based treatment and supervision, in lieu of a prison term. If not properly planned, these strategies to keep sentenced offenders under local control will likely impact the resources and capacity of jails and community-based agencies and service providers.

- Jails may experience crowding, which can sometimes prompt emergency population releases, and a greater (and largely unmet) demand for in-custody programs and reentry assistance.
The new offender population may strain the resources and capacity of probation agencies and community programs, some of which will need to reprioritize services or stretch already limited resources over an even larger client base. The result of these choices may mean a greater portion of unsupervised offenders in the community and an increased demand for treatment and services from emergency medical, mental health, and housing services.

Judges and prosecutors, who may already be resistant to state changes to sentencing laws, exert a tremendous influence over sentencing decisions and will respond to these changes in local resources and capacity with their own policies and practices that may not align with state prison population control efforts. When adequately resourced and planned, a policy that increases sentences to jail or community-based supervision and treatment can benefit public safety by helping offenders maintain ties to the community and addressing the underlying causes of criminality through treatment and other interventions that help prevent future criminal behavior.

**Inmate Release & Transfer**

Laws and policies to broaden the range of prison population management options available to correctional departments have focused on the development of prisoner release mechanisms – either determined by a board of parole or set by the state through a system of automatic and earned credits – and transfers to other facilities. If not properly planned, these policies will also impact the resources and capacity of jails and community-based agencies.

- Jails can benefit from state prison transfers when funding is provided, but they may also experience crowding if they are obligated to receive state inmates. Many jail systems do not receive adequate funding to support state-sentenced inmates.

- When they are first implemented, release policies may result in a substantial increase in the number of people supervised in the community by parole officers. Community service and treatment providers will need both funding and time to plan for the potential increase in parolees, many of whom will need a variety of services at the moment of release from custody.

The limited ability of local actors to exert an influence over release and transfer decisions makes it all the more important for parole boards and corrections departments to assess and prepare inmates for transfer and release. When adequately resourced and planned, prisoner release and transfer policies can benefit the jail (by providing additional resources), the community (by increasing the supervision of offenders), and the offender (by connecting him or her to social supports and programs).

**Supervision Violation Response**

In lieu of a revocation to prison in response to a supervision violation, many states have empowered probation and parole officers to use graduated sanctions that involve jail and community-based alternatives; some jurisdictions even receive incentives to reduce the number of individuals revoked for a parole or probation violation. The success of these strategies will depend heavily on the capacity of the local jail, the resources available in the community, and the ability of local agencies to effectively use those resources to serve the highest risk, highest need offenders.
Supervising officers typically have the ability to sanction violators with a term of local incarceration, but because supervision functions are rarely controlled by sheriffs or jail administrators, these officers have little financial incentive to moderate their use of jail beds. As a result, a state’s efforts to promote graduated sanctions may place added pressure on jails whose current capacity levels preclude housing additional inmates.

The decision to sanction locally may also increase the workload of probation and parole officers; by retaining violators in the community, supervising officers become responsible for sanctions and continued supervision. Because these offenders have violated supervision before, additional resources may need to be shifted toward monitoring them, leading to reduced supervision for other clients and an overall decreased ability for officers to detect violations. Communities must also have the range of programs needed for parole and probation officers to offer an alternative sanction to violation behavior.

Coordination among local agencies is crucial to the success of these policies. Parole and probation officers who control the response to technical violations and link offenders to services and treatment, the sheriffs and jail administrators who control detention beds, and the prosecutors who control charging decisions all must work together to ensure support and buy-in from all groups. When adequately resourced and planned, the use of graduated sanctions can provide a swift and certain response to problematic behavior in a way that makes effective use of state (and local) resources and does not compromise – and may even enhance – public safety.

Policy Implications

The discussion of the role of local jurisdictions in state prison population management efforts yields a number of important implications for future policy:

1. **Many jail and prison inmates need reentry assistance in order to be successful upon release.** Prisons and jails should offer inmates access to programs that prepare them for release and reentry. Because jail reentry assistance is less consistently available, jails may require additional funding to develop and expand programs. State corrections departments could coordinate with jails to share risk assessment information and lessons learned from preparing inmates for release. Jails could also be included as part of a prison “step down” process in which inmates are transferred to local jails near the community to which they will be released. Jail release planning need not be confined to the sentenced population; the development of a strong pretrial supervision system and emergency release procedures can help reduce the likelihood of jail overcrowding and ultimately improve public safety by ensuring that the highest risk inmates remain in custody.
2. **Community agencies and providers need more than just funding – they also need time to prepare for new clients.**

   For many jurisdictions, state and local budget cuts have already reduced the capacity of supervision offices and service providers. In order to take on a new population of offenders, community agencies will likely require additional funds and adequate prep time to hire and train staff, expand a facility if necessary, secure new technology, and make other changes in infrastructure.

   Even with adequate resources, local agencies must also have access to validated risk assessments and staff trained in the principles of evidence-based practices in order to target services at those offenders with the highest risks and needs. If those agencies lack the capacity to conduct their own risk assessments, this information might be available through other criminal justice partners. Risk assessments may also help state and local agencies forecast offenders’ demand for services in the community and monitor that the right offenders are assigned the right type (and dosage) of treatment.

3. **Incentive programs can be very successful in influencing decisions to use prison or local options and can be expanded to include other decision makers.**

   Many state prison population management strategies provide incentives for actors to use local options in lieu of prison. These incentives are typically targeted at judges, probation officers, and others considered “direct” decision makers, and could be expanded to other states and/or targeted at other stakeholders, such as prosecutors who influence sentencing through decisions made during charging and plea negotiations. Any unintended consequences of incentive programs should also be addressed within the written policies.

4. **States should consider the short-term and long-term fiscal impact of legislation on local and state agencies.**

   In designing strategies to reduce the size of the prison population through changes in sentencing, states should consider both the long- and short-term fiscal impact of legislation on local and state governments. Although state efforts to manage the growth of the prison population may temporarily strain local resources, shifting some inmates from prison into the local community can lead to long-term reductions in corrections spending and improvements in public safety that benefit state and local agencies, the community, and the offender.

5. **Local resources and capacity can be incorporated into criminal justice decision-making.**

   In developing legislation and policies that promote the use of local options in lieu of prison, states must also consider the impact that these strategies can have on jails and on community-based agencies and service providers. Several states have addressed this problem in dealing with responses to technical violations by placing limits on the use of jail as an intermediate sanction and by incorporating resource considerations into sanctions grids. Similar strategies could be developed at sentencing and at inmate release and transfer.
6. **State and local coordination is crucial to the success of these efforts.**

In designing strategies to control the size of the prison population, states must consider the impact that these changes will have on local jurisdictions. They must also consider the important role that local criminal justice policy makers, particularly those who serve in an elected office, play in the successful passage and implementation of state laws and administrative policies. The development of positive, trusting partnerships between state and local policy makers will also be crucial for securing local buy-in and support for prison population management strategies.

7. **Coordination among local criminal justice agencies is crucial to the success of these efforts.**

Parole and probation officers who control the response to technical violations, sheriffs and jail administrators who control detention, judges who control sentencing, and prosecutors who control charging and plea negotiations all must work together to ensure support and buy-in from all groups. A number of jurisdictions participate in strategic collaboration through state-mandated criminal justice coordinating councils and participation in national initiatives.
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Problem Statement

The rapid increase in the prison population seen in the 1980s and 1990s has been replaced in many states by slowed growth and stabilization, due in part to state-level laws and policies designed to immediately control the size of the prison population. These strategies, whether motivated by budgetary pressures, court mandates, or social justice concerns, typically focus on the three decision points that most directly impact prison admissions and length of stay: sentencing, inmate transfer and release, and supervision violation response. The goal? To reduce sentences to prison, time spent in prison, and returns to prison while preserving public safety. This goal is pursued by permitting, encouraging, and in some instances requiring decision makers at each of these stages to choose local custody, supervision, and treatment options.

But what is the impact of prison population management strategies on the communities responsible for these local options? As jails, parole and probation agencies, and service providers face their own budget constraints in the midst of an increased demand for services, policies that shift or keep the prison population in the community may further strain resource-strapped agencies. Jails will take on new inmates for whom they may not have space or resources to provide in-custody treatment and release preparation. An increase in offenders placed in community-based treatment and supervision will likely impact both the workload of parole and probation officers as well as the demand placed on service providers and government agencies for already scarce resources.

Local actors are not powerless in responding to these potential changes in local resources and capacity. Although states plan and implement prison population control efforts, the day-to-day operation of the criminal justice system is largely the responsibility of local agencies. In fact, the majority of prison population drivers are influenced by decisions made by city and county agencies that control, for example, arrest (police), charging (prosecutors), sentencing (judges), detention (sheriffs), and violations of supervision (probation officers). In response to state policies that affect local resources and capacity, these agencies develop their own sets of policies and practices that may or may not align with the state’s goal of managing growth in the prison population. If states hope to make lasting reductions to the size of the prison population without compromising public safety, they must consider how their policies impact – and are influenced by – local resources and decision making.

The purpose of this white paper is to explore how state policies that reduce prison admissions and lengths of stay impact and are influenced by the resources and policies of local governments. Specifically, it will examine how changes made to laws and policies concerning (1) sentencing, (2) inmate release and transfer, and (3) supervision violation response impact the capacity and resources of local jurisdictions, and are influenced by the policies, practices, and responses of local actors. The paper concludes with a review of findings and a discussion of implications for future policy.
Strategies in State Prison Population Management

While incarceration can benefit public safety by preventing potential crimes in the community, states have begun to question the necessity of locking up individuals who pose little risk to the public; whose absence is detrimental to children, families, and the community; and whose risks and needs can be addressed by local program and treatment options. The hefty price tag for keeping a person behind prison bars – on average, about $24,000 per year, or $37 billion in annual state funds – and overcrowded, at times dangerous, conditions add pressure on policy makers to explore ways to save state funds and respond to judicial orders to reduce the prison population. Concerns about the need for future prison space and limited funds to construct new facilities provide additional urgency for measures that produce an immediate effect.

Over the last ten years, many states have responded proactively to these challenges by engaging in meticulous planning and analysis that produces legislation and administrative policies that seek to manage the growth of the prison population by focusing on drivers of inmate admissions and length of stay. Other states, faced with inmate riots, court mandates, and other legal pressures, have responded reactively with policies that provide a “quick fix” to reducing prison occupancy. Regardless of the impetus, these strategies appear to have curtailed national prison population growth, which began slowing over a decade ago and for the first time in years declined between 2008 and 2009.

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1 See La Vigne, Davies & Brazzell 2008; Lynch & Sabol 2004; Wildeman & Western 2010.
2 Pew 2008c
3 Author’s calculations of state prison spending based on the estimate that 75 percent of corrections spending goes to prisons (see Stephan 2004). In 2007, states spent $55 billion on corrections (Pew 2008c).
4 The Supreme Court ruled on May 23, 2011, that the inability of California’s overcrowded prison system to provide inmate medical care violated the Eighth Amendment’s ban on cruel and unusual punishment. The state has been ordered to reduce its prison population by 30,000 in the next two years. Liptak 2011.
5 Both population drivers are important and must work in tandem if a state expects to see its daily population decrease. See Clear & Austin 2009.
6 Note that many states experienced an increase in population during this time. West, Sabol & Greenman 2010.
Some of the most common strategies employed by states to effect short-term reductions in prison population size include requirements and incentives for decision makers to use local options in lieu of prison at the time of sentencing, inmate release and transfer, and supervision violation response. These strategies focus on the policy levers that most directly and immediately impact the number of people in prison.

1. **Sentencing**: Decisions made at sentencing dictate where a person will go to complete the sentence and the amount of time s/he will spend there. Although prison is a common option for sentenced felons, about 60 percent will not receive a prison sentence and will instead be sent to a local jail or receive a mixture of probation, treatment, sanctions, and fines.

2. **Inmate Release & Transfer**: The majority of prisoners (about 80 percent) will be released prior to the expiration of their sentence, either as determined by a board of parole (discretionary) or set by the state through a system of credits (mandatory). States also transfer about one in eight state prisoners into the custody of a local jail or private facility.

3. **Supervision Violation**: When an individual violates a term of his or her supervision – either by committing a new offense or by not complying with the conditions of parole or probation – agencies have the option to sanction the individual through a term in jail or community-based programs, or to revoke supervision and send the individual to prison.

The following sections explore how state laws and policies designed to reduce the size of the prison population impact the resources and capacity of jails and community-based agencies (“Local Impact”) and how local actors can influence the success of these strategies (“Local Influence”).
**Sentencing**

When a person is found guilty of a crime, s/he will face a judge for sentencing. The severity of the conviction offense and the person’s criminal history – coupled with laws that guide or mandate a specific sentence, any agreements reached during plea bargaining, and circumstances surrounding the crime – are taken into account by the judge who determines sentence conditions and length. The range of options available at sentencing varies by jurisdiction, but generally can include a mix of incarceration, supervision, treatment, restitution, and/or fines. The resulting decision dictates not only where a person will go to complete the sentence (prison, jail, or community), but also the amount of time s/he will spend there. In this way, choices made at sentencing affect both the number of people admitted to prison and their expected length of stay.

**State Strategies**

Over the last thirty years, sentencing decisions have been influenced by the development of laws that require a prison sentence and a minimum length of stay for specific types of offenders.

- **Mandatory minimums** typically apply to individuals convicted of violent, sexual, and drug-related offenses. The proliferation of these laws has increased the number of prisoners who are admitted for a new criminal offense and their expected length of stay.

- **Sentence enhancements** that increase the severity of a person’s sentence if aggravating factors are present have also increased the prison population. Common enhancements include increased prison terms for individuals convicted of weapons and gang-related offenses and for individuals after repeat convictions for certain types of offenses (e.g., “three strike” laws).

- **Sentencing guidelines** that require or recommend sentences for certain types of offenses have in some states created “harsher penalties than would [have occurred] under judicial discretion.” Mandatory guideline systems involve stricter policies for judicial departures, tighter sentencing ranges, and more rigorous appellate reviews than do voluntary systems, which offer recommendations that judges can choose not to follow. Mandatory systems typically generate more consistent sentences, particularly in terms of sentence length, but in many states also restrict the use of alternatives to a prison term.

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7 Reinganum 2000, p. 64. Also see Oregon Criminal Justice Commission n.d.; Cohen & Kyckelhahn 2010.
8 For example, in Virginia (a voluntary guideline state), the sentencing guidelines predicted 78 percent of the prison custody decisions, but predicted only half of actual sentence lengths. By comparison, Minnesota (a mandatory guideline state) predicted 87 percent of prison custody decisions and 86 percent of actual sentence lengths. See Ostrom, Ostrom, Hanson & Kleiman 2008.
In recognition of the impact that these changes to sentencing law have had on the size of the prison population, several states – most recently Ohio, Delaware, South Carolina, and New York – have eliminated mandatory minimums for certain categories of non-violent offenders, typically those who have committed a drug-related offense and/or who are first-time offenders. Indiana, New Mexico, Nevada, South Carolina, and Texas have all recently eased their states’ sentencing enhancements for repeat offenders. Other states have opted to temporarily suspend mandatory minimums; for example, a budget shortfall prompted the Oregon legislature to suspend (until 2012) implementation of a ballot-initiated law that increased penalties for certain drug and property offenders. These strategies can help reduce the size of the prison population by decreasing the number of admissions for less-serious offenses and by decreasing the required length of stay for those who must serve a prison sentence.

When prison sentences are reduced enough, jurisdiction of the sentenced offender could shift to county jails, which typically house prisoners serving terms of one year or less. Several states are also exploring opportunities to amend legislation to transfer jurisdiction of prisoners into county jails. Hence, changes to sentencing laws have also helped reduce the size of the prison population by shifting formerly prison-bound individuals into the custody of local jails.

Legislation has also encouraged judges to use community-based alternatives to incarceration – such as problem-solving courts, intensive treatment programs, and enhanced supervision – for certain categories of offenders (see Exhibit A). Ohio and Kentucky passed legislation in 2011 that requires (OH) and encourages (KY) the use of treatment and community programs for various low-level offenders. Oregon provided funding to counties to support the treatment of individuals eligible under its (suspended) repeat drug and property offender law. The Adult Redeploy Program, created out of the Illinois Crime Reduction Act of 2009, seeks to reduce prison expenses by 25 percent by providing funding to counties to develop community-based treatment options for certain low-level offenders who otherwise would have gone to prison. The same year, New York enacted legislation that allows certain drug offenders to enter treatment under close supervision by drug court personnel instead of being sent to prison. In this fashion, states have also sought to reduce the size of their prison population by promoting the use of community-based treatment and supervision options.

These prison population size management strategies – decreasing prison sentences, shifting custody to local jails, and encouraging use of community-based treatment and supervision options – have helped states control the size of the prison population and save money. Strategies that emphasize treatment and rehabilitation of low-level offenders may also benefit the state in the long-run by addressing offenders’ risks/needs and thereby preventing future criminality. However, in the short-run, the burden of this population will be shifted to local agencies and service providers that must have the resources to support these new inmates and clients.

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9 Also see American Civil Liberties Union 2011.
10 Many states are allowing individuals with a sentence of two (or more) years to serve time in jail.
11 For example, there are now about 2200 active drug courts and 240 court-based mental health interventions in the United States. See Bureau of Justice Assistance 2011; Rossman et al. 2011 (forthcoming).
Exhibit A
Community-Based Alternatives to Incarceration

Offenders who are diverted from prison into a community-based alternative typically receive treatment and/or supervision. If properly funded, these options can provide a cost-effective alternative to prison that can reduce corrections spending without compromising public safety.

- **Treatment options**, including problem-solving courts (such as Drug Courts and Mental Health Courts), typically include intensive treatment for the individual’s identified problem, regular meetings with case managers, and check-ins with a probation officer or regular court appearances. Missed appointments, failed drug tests, and other instances of non-compliance may result in intermediate sanctions, failure or revocation depending on the nature of the offense, progress of the individual, and structure of the program.

These options, when adequately resourced, appear successful in reducing the size of the incarcerated population. Drug courts can significantly decrease drug use and criminal behavior, and as a result, reduce prison bed consumption for drug court graduates (Rossman et al. 2011). Mental health court participation also appears to reduce the likelihood of criminal justice system involvement, including re-arrest, conviction, and incarceration; preliminary results from a comprehensive, multi-site evaluation of mental health courts conducted by the Urban Institute (Rossman et al. forthcoming) indicate that participation in mental health court reduces the likelihood of both re-arrest and re-conviction after entry into the court (also see Sarteschi et al. 2011). A cost-benefit analysis of Proposition 36, which allows first- and second-time nonviolent, simple drug possession offenders in California to receive substance abuse treatment instead of incarceration, also found a substantial reduction in incarceration costs (Urada et al. 2008).

- **Enhanced supervision options** - such as intensive supervision, day reporting, electronic monitoring, GPS, secure and remote alcohol monitoring, and other technologies that allow for intensive surveillance and monitoring in the community – may also offer an effective alternative to prison. For example, an analysis of electronic monitoring programs found reductions in the likelihood of technical violations, reoffending, and absconding for serious offenders supervised in the community (Padgett, Bales & Blomberg 2006).
Local Impact

Legislatures have enacted changes to sentencing policy with the intent of saving money for the state and addressing issues of prison crowding while maintaining or improving overall public safety. However, because these policies involve keeping formerly prison-bound inmates in the community, they have the potential to place additional burdens on the county jails and community-based agencies and service providers now responsible for their custody, supervision, and rehabilitation.

Impact on Jails

Sentencing policies that either require or encourage the use of jail for otherwise prison-bound inmates do not change the overall level of incarceration in the state. In effect, these changes simply shift the burden to local governments, which house approximately 33 percent of the total incarcerated population and process about 13 million people each year, equivalent to four times the total number of people in jail and prison.

Shifting the prison population into local custody may aggravate already crowded jail conditions. The majority (80 percent) of jail inmates are housed in jail systems that, on average, have filled 90 percent of available beds. A number of jurisdictions experience crowding; in 2008, twenty of the 50 largest jail systems, which house just under one-third of all jail inmates in this country, reported being over 100 percent of capacity, and another eight averaged 95–100 percent full. By 2010, these numbers had improved (nine large jail systems reported being over 100 percent capacity, and an additional nine reported populations between 95 to 100 percent capacity).

Crowded conditions can compromise inmate and officer safety, placing the county in violation of standards set by the American Jail Association and the Prison Rape Elimination Act (PREA), and potentially resulting in lawsuits that could place additional strain on counties. It may also limit the jail’s ability to detain other populations of offenders, such as pretrial defendants and holds from other agencies and jurisdictions.

Crowding in a jail may trigger a population emergency that necessitates the discharge of eligible inmates immediately into the community. When these events occur, some jurisdictions are permitted to

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12 Author’s calculation based on estimated jail inmates at mid-year 2009 (767,620 inmates; see Minton 2010) divided by total incarcerated population in mid-year 2009 (2,297,400 inmates; see West et al. 2010).
13 Minton 2010
14 Note that a local jurisdiction’s policies and practices around arrest, booking, charging and case processing can significantly impact jail capacity and lead to crowding; see La Vigne et al. 2010.
15 Calculations based on Minton 2010
16 Note although jails in larger jurisdictions hover at or above 90 percent of rated capacity, smaller jails tend to have more beds available. Jails with 50-99 inmates report capacity at 75 percent and jails with fewer than 50 inmates at about 63 percent. Minton 2010
17 Justice Policy Institute (Shifting the Problem)
18 “Overcrowding” occurs when the jail population exceeds a certain percentage of capacity; this threshold will vary by jurisdiction. “Capacity” refers to the maximum number of inmates who can be held in a jail facility as allocated by a state or local rating official.
release sentenced inmates while others must discharge only pretrial detainees into the community.\textsuperscript{19} Compared to inmates released under other pretrial conditions, pretrial emergency releases involve individuals more likely to be charged with the most serious crimes who have the highest probability of conviction, the fewest community ties, and neither monetary incentive nor the threat of a bail bondsman to induce a return to court.\textsuperscript{20} As a result, they are also at the highest risk of engaging in “misconduct” prior to trial; according to the Bureau of Justice Statistics, about half (52 percent) of felony defendants released under emergency release conditions either failed to appear in court or were rearrested prior to case disposition, compared to pretrial misconduct rates of 27 to 36 percent for other types of releases.\textsuperscript{21} Although many pretrial detainees could be released with low risk to the community, emergency release decisions are often guided by factors that do not necessarily correspond with his or her likelihood of committing new crimes in the community. Many jurisdictions do not have access to information about an inmate’s risk to reoffend; others have not incorporated risk scores into their release procedures. The net result is the release of offenders who may pose a risk to the community and the continued detention of inmates who could be released with little threat to public safety.

In addition to potential crowding, a jail’s limited physical space, facility design,\textsuperscript{22} and insufficient staffing also constrain its ability to provide programming and medical and mental health care services to this new population, whose need for such services may be particularly acute. Most jails will also not have the financial resources to support new or expanded treatment and services, and additional inmates who do not come with additional – or adequate – funding\textsuperscript{23} may be a burden to counties already struggling to maintain programs in the face of budget deficits and looming jail bed closures. Even if funds are available to develop services for this population, short lengths of stay\textsuperscript{24} and the sizable number of people held pretrial or on an extra-jurisdictional hold\textsuperscript{25} may discourage jails from providing programs to the small percentage of inmates who would actually be eligible and in custody long enough to receive such resources. As a result of these service gaps, jail inmates are typically less prepared to transition back to the community than they would be coming out of state prison,\textsuperscript{26} which has a more stable population and is able to offer assessments, treatment, programs, and other services to support inmates in custody and returning to the community.

\textsuperscript{19} Most laws bar the release of violent and/or sex offenders. Michigan’s County Jail Overcrowding State of Emergency Act allows for the release of sentenced jail inmates who have served 85 percent or more of their sentence, while sheriffs in Oregon are barred from releasing sentenced inmates per ORS 169.046.
\textsuperscript{20} Helland & Tabarrok 2004
\textsuperscript{21} Cohen & Reaves 2007
\textsuperscript{22} The provision of treatment and programs may represent an administrative challenge to jails that were designed to serve primarily as detention centers that house people for a minimal period of time.
\textsuperscript{23} Although states typically pay for some or all expenses associated with housing state-sentenced inmates in local facilities, reimbursements for locally sentenced inmates are much less common.
\textsuperscript{24} Inmates typically have a shorter length of stay than those in prisons, with only 19 percent of those admitted to jail staying more than one month. Beck 2006
\textsuperscript{25} The considerable size of the pretrial and extra-jurisdictional hold population may also discourage counties from developing in-custody programs for inmates (a) who may receive such services as part of their sentence; or (b) whose custody-status means they will not pose a direct threat to the safety of the host county.
\textsuperscript{26} Justice Policy Institute (Shifting the Problem)
It is important to note that many states provide funding to county jails to support the housing of inmates whose sentences shifted them from state prison. Kentucky jails receive up to $50 per day for room and board, plus a $20 paperwork fee, special charges for inmates requiring extra security or supervision, and revenue from inmates placed onto community work release. Legislation in Michigan and Pennsylvania provides/will provide additional funding to counties that opt to keep convicted offenders under local control. The majority of jails in Oregon that house offenders who are serving prison sentences locally will benefit from the receipt of the state per diem, which averages housing costs across counties and is typically higher than the cost of housing a rural inmate.

**Impact on the Community**

Although incarceration in jail or prison is the most common sentence for a person convicted of a felony,27 about 25–30 percent will not be sent to prison or jail and instead will receive a community-based sanction that includes some combination of probation, fines, community service, restitution, and/or treatment. This option is most common for persons convicted of fraud, driving-related offenses (such as DUI), and non-trafficking related drug crimes, and tends to decrease in use with the severity and number of past offenses on the person’s criminal record. The prevalence of community-based sentences will also vary by jurisdiction, as seen in the example of below, where over 90 percent of offenders in Prince George’s County (MD) received a sentence involving incarceration, compared to 75 percent in Montgomery County (MD) and 57 percent in Baltimore (MD).

### Most severe type of sentence for convicted felons and charging offense for felony defendants, 2006

<table>
<thead>
<tr>
<th>County</th>
<th>Incarceration</th>
<th>Non-Incarceration</th>
<th>Charging Offense</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Prison</td>
<td>Total Probation</td>
<td>Violent Property Drug Public</td>
</tr>
<tr>
<td>Baltimore</td>
<td>57% 34% 23%</td>
<td>43% 43% 0%</td>
<td>32% 49% 17% 2%</td>
</tr>
<tr>
<td>Montgomery</td>
<td>75% 20% 56%</td>
<td>25% 23% 2%</td>
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Probation is the most common community-based alternative and is sometimes combined with treatment and other programs. Policies that shift people who previously would have gone to prison onto probation will increase caseloads and may also result in a higher-risk supervised population. As a result, probation offices may need to adopt new policies and expand resources to address the fact that new clients will have more serious offenses and potentially higher risks and needs than those previously supervised. Without additional funding from the state, probation offices will either have to manage with overall higher caseloads, which may compromise the personal safety of probation officers, or reallocate supervision resources to the highest risk clients and move more clients onto lower-supervision caseloads. Although research suggests that lower-risk offenders benefit from reduced programming and supervision intensity,28 there may be a point at which supervision has been shifted away from people

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27 In the fifty largest urban counties; see Cohen & Kyckelhahn 2010.
28 Barnes et al. (2010) found that a lower intensity of supervision showed no evidence of increased volume or seriousness of crime. Also see Lowenkamp & Latessa (2004).
who need it. Risky and criminal behaviors may reappear, leading to increased revocations, especially if probation officers feel pressure to remove high-risk clients from the community, and to increased demands on police to monitor and arrest offenders for new criminal activity.

Similarly, diversion options that rely on local public safety resources (such as prosecutors to staff specialty courts and sheriffs’ deputies to provide court security) will also place a strain on local governments, especially as these agencies face their own set of budget reductions. If funding is not provided to these agencies, they may have to cut staff provided to these programs (which in some cases will completely suspend program operations) or remove staff from other areas of the justice system.

Just as public safety agencies must be adequately resourced to accommodate the new population of clients, community-based treatment and service providers must also have funding and support to expand capacity for this new population (see textbox below). For many jurisdictions, residential and outpatient treatment slots will already be at a premium. Budget cuts at both the state and local level may have reduced capacity for services to populations coping with mental illness, homelessness, and other vulnerabilities. Even when funds are available, local treatment and service providers will need to plan for an expansion and have the necessary supports to hire and train new staff and expand a facility if necessary. Although the majority of prisoners will be released to urban areas, those who reside in rural areas will likely find it especially difficult to obtain services due to the lack of supportive infrastructure. Local agencies must also have the ability to assess risk and to determine which clients should receive services and the willingness to work with high-need populations that may not comply with treatment. Issues with programs that are not evidence-based or that do not target appropriate populations have arisen in several states that provide funds to support community-based services and treatment.

**Local Resources & Program Success**

Individuals who completed treatment as part of California’s Proposition 36, which allows first- and second-time nonviolent, simple drug possession offenders to receive substance abuse treatment instead of incarceration, were consistently less likely to reoffend than those that did not complete treatment. Providing that treatment, however, proved to be more of a challenge than the state anticipated. Eligible participants had more severe drug problems and more untreated mental illness, and as a result, there was a large statewide increase in the number of clients requiring drug treatment and in the number of heavy-using clients in need of intensive treatment. Appropriate drug abuse treatment was generally available in the first year after implementation, but in the second year, statewide funding was reduced, which seriously limited access to residential care. Demand was met largely by expanding less expensive outpatient care, which several stakeholders felt was inappropriate for the high-needs population. Other concerns included limited availability of treatment slots, insufficient lengths of stay in residential care, lack of sober-living facilities, and a lack of funding available to properly implement Proposition 36.

Urada et al. 2008; RWJ Foundation 2007

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29 La Vigne, Cowan & Brazzell 2006
30 The Urban Institute found preliminary evidence of a rural disadvantage in its Year 2 (internal) evaluation of the Transition from Prison to Community Initiative.
The increased demand for treatment and services will be unmet without additional funding and may extend the period of probation required before an offender can meet the conditions of his or her sentence. Without treatment and support, failure is a distinct option, which may lead to a return to prison; for example, offenders who fail to complete drug court in Oklahoma face longer prison sentences than those who did not participate in drug court – 77 months for failures, compared to an estimated 64 months for non-participants. Hospitals, emergency rooms, mental health crisis responders, and homeless shelters may also see an increased demand for services if this population is unable to get needed treatment and secure housing.

Changes in sentencing policy that shift populations into the responsibility of local governments – by increasing either the number of people sent to jail or the number supervised/treated in the community – will have an impact on resources and capacity. Even when the state provides funding to local governments to support the increased demand for services and beds, local agencies must also have the time to prepare and the space to accommodate the new population. Decisions about additional resources must also account for changes in the risk level of the new population – in many cases, it is not simply a matter of just having more people, but also having more high-risk people.

**Local Influence**

The potential impact of legislation on local resources and public safety will not be lost on local criminal justice actors, whose support will be critical in passing legislation. Local public safety actors – particularly prosecutors, sheriffs, and chiefs of police – have a strong voice in the community and are typically able to mobilize the community in order to impact the success of bills considered by the legislature or to push back on state policy decisions. In fact, many of the mandatory minimums and sentencing enhancements that states are currently working to abolish or modify were championed by local public safety stakeholders. Local actors are also typically part of a larger association that can mobilize support or opposition from across the state. The textbox below illustrates the importance of local buy-in in passing sentencing legislation.

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**Local Elected Officials’ Opposition to Changes in Sentencing Legislation**

The Indiana legislature recently tried to pass legislation to shift from a restrictive sentencing policy for certain non-violent offenses to an approach that expands judicial options to mete out a degree of punishment proportional to the severity of the crime committed. The proposed legislation would have increased the availability of substance abuse treatment in the community and cognitive-behavioral therapy in prison; encouraged local governments to reduce the number of Class D offenders sentenced to prison; and enabled probation officers to use “swift and certain” sanctions for people who violate conditions of supervision. The bill faced tremendous opposition from county prosecutors, who argued the bill’s reduction in prison time for nonviolent drug offenders was “soft on crime” and pushed the senate to lock up maximum-security inmates for longer terms under the amended bill and maintain penalties that have been attributed to driving Indiana’s correctional population. The bill died in committee in April 2011.

Indiana Star Tribune 2011; CSG 2010

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31 Oklahoma Department of Mental Health and Substance Abuse Services 2005
Even when legislation is passed to control sentencing policy, local actors have a tremendous amount of discretion in determining which defendants will be sent to prison and for what length of time. These decisions are influenced not only by changes in community capacity brought on by state-level changes in sentencing policy, but also by each agency’s mission and ideology.

Courts
Judges are typically elected within a judicial district or appointed by an elected judge and primarily interface with local officials, such as prosecutors, defense attorneys, sheriffs, police, and city and county elected officials. At the time of sentencing, judges frequently have the option (a) to select in what setting the defendant will serve a sentence; and (b) to assign conditions of supervision, treatment and programming, and restitution requirements that can have a tremendous effect on the lives of offenders, victims, and the community. Even states with sentencing guidelines that prescribe jail or prison typically have areas on the grid that allow for judicial discretion. For example, a portion of the Michigan sentencing guidelines allows judges to choose between a sentence to local sanctions or to prison. Florida judges also have the ability to select prison or jail for certain sentenced offenders (see textbox).

Prison may be an attractive option for judges for multiple reasons. Judges who view sentencing as an opportunity to give offenders “just deserts” for their crime may opt for a prison term. Judges may also be influenced by public sentiment – or at least perceived public sentiment – about the need for “punitive” sentences, particularly during election years. For example, Berdejo and Yuchtman (2010) found that non-partisan elections affect judges’ sentencing behavior, such that sentences for identical crimes tend to become longer as an election approaches.

Prison may also be the preferred option of judges who see sentencing as an opportunity to promote rehabilitation and reintegration. As judges become more aware of programs that promote successful reentry, they may seek out sentencing options that provide offenders with the most opportunities for programs, services, and treatment that support a safe return to the community. As a result, offenders may receive “harsher” penalties (i.e., prison) in order to receive the in-custody treatment and services required by judges in their sentences. The use of incarceration for services and treatment may be particularly attractive to courts in rural counties that lack the local infrastructure and capacity to support these clients. Similarly, some counties may also detain offenders in jail because of a lack of residential treatment services in the community.

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32 For a more detailed review of the roles judges play in local justice costs, see La Vigne et al. 2010.
33 The authors estimate that, after controlling for changes in case characteristics, the difference in sentence length between the beginning and the end of a judge’s political cycle is around 10 percent of the average sentence for serious crimes. Sentencing guidelines that limit judicial discretion appear to reduce judges’ response to political pressure. Gordon & Huber (2004 c.f. Berdejo and Yuchtman 2010) found that these patterns vary by state; sentencing became more severe as referendum elections approached in Pennsylvania, but in Kansas, judges only alter sentencing if retained in partisan elections.
34 For example, New York Penal Code 1.05(6) was amended in 2006 to add a new goal to the four traditional sentencing goals of deterrence, rehabilitation, retribution, and incapacitation: “the promotion of a (convicted person’s) successful and productive reentry and reintegration into society.” Rosenthal, Weissman & Wolf (n.d.)
35 Camarena 2008
It is important to note that judges make these decisions based on what they know about the program at the time of sentencing or plea. Poor communication about the availability of treatment, programs, and other services in different facilities or in the community; limited knowledge about the offender’s risks and needs; and varying degrees of knowledge about “what works” best at addressing those risks and needs may lead to sentences involving programs and treatment that the offender doesn’t need and/or that prolongs time spent in jail waiting for completion.

Urban Institute interviews with stakeholders in Allegheny County and Orange County (as part of UI’s Justice Reinvestment at the Local Level and Transition from Jail to Community work, respectively) support this finding. When judges assign offenders to in-custody programs, they may have missing or incomplete information about (a) the capacity of this program to take on new offenders; (b) its availability in specific facilities; and (c) its fit with the risks and needs of the sentenced offender. Inmates encountered lengthy wait lists, treatment, and services not located in the facility best suited for their classification level, and programs that did not address their particular risks and needs – factors that can greatly increase the time an inmate spends in custody.

Prosecutors

The District Attorney’s Office also exerts a strong influence on sentencing decisions. Prosecutors are solely responsible for the decisions that dictate not only what charges a person will face in court, but also whether the person will be prosecuted. The charging process is not typically reviewed by other agencies and may be influenced by internal resource considerations, such as the number of staff available to review cases and the expected workload of prosecutors. DAs also control the plea bargaining process, which is responsible for the resolution of approximately 95 percent of felony convictions. Although judges are ultimately responsible for determining a sentence, they rarely depart from the conditions arranged during plea negotiations. Some analysts suggest that mandatory minimums and sentencing guidelines give prosecutors even more influence over charging decisions and sway in determining sentencing outcomes by allowing prosecutors to reduce charges and prison terms.

Jail versus Prison?

In 2007, Florida saw a substantial increase in sentences that, if one day shorter, would have resulted in jail time. According to the Florida Department of Corrections, 18 percent of total prison admissions (or 6,700 inmates) in FY2007 were for sentences of 366 days (“Year and a Day”) that just qualified inmates for a prison term. This rate had doubled since FY2002. Further inquiry revealed that 74 percent of these Year and a Day prison admissions received a risk score in their sentencing report indicating that they could safely serve time in a non-state institution.

Notably, three judges accounted for 27 percent of these sentences, with one court responsible for sentencing 13 percent of Year and a Day offenders. The vast majority of the individuals sentenced (76-96 percent) had a risk score that qualified them for a local sentence. Observers suggest that the increased use of Year and a Day sentences was due to efforts by local jurisdictions to bring the jails into compliance by reducing crowding and to avoid the cost of expanding local jails.

CSG 2007; Gelin 2007; Pew 2008a

36 Bay 2006
37 Cohen & Kyckelhahn 2010
in exchange for a secured conviction and the avoided uncertainty and expense of trial.\(^{38}\) Although very little empirical research has tested the validity of this claim,\(^{39}\) anecdotal evidence abounds, such as in California, where changes in prosecutorial practices appear to have contributed to a decline in the number of individuals sentenced under the state’s three-strike statute. According to a recent article in the Sacramento Bee, the 2000 election of a new DA in Los Angeles County significantly changed plea bargaining practices, such that prosecutors were directed to reserve “heavier sentences for defendants with serious or violent third strikes” and overlook prior convictions for lower-level offenders.\(^{40}\)

DAs may also be influenced to prosecute cases and secure a harsher conviction during election years. Research has found that defendants face a higher probability of conviction and a lower probability of having all charges dismissed in an election cycle for District Attorney. The effects are more pronounced for defendants charged with property or drug crimes than for those charged with violent offenses, and in districts with more electoral competition.\(^{41}\)

Some states are exploring strategies to provide incentives for local decision makers to opt for jail time in lieu of prison, such as passing legislation that reduces funding to counties that incarcerate offenders who are reasonable candidates for community placement.\(^{42}\) Michigan passed legislation that provides additional funding to counties when judges choose a sentence to local sanctions in lieu of prison for defendants in a portion of the sentencing guidelines grid that allows discretion.\(^{43}\) An analysis of the impact of this incentive-based strategy showed that between its first year of implementation (1989) and FY2007, felony dispositions resulting in a prison sentence had fallen from nearly 35 percent to less than 22 percent.\(^{44}\) A similar effort is under way in Pennsylvania. Efforts to limit or influence prosecutorial discretion are virtually non-existent; all but one state has included a limit on plea bargaining in its sentencing guidelines system, and even this attempt at reform resulted in standards that were too vague for effective review.\(^{45}\)

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\(^{38}\) During charging and plea negotiations, prosecutors have the ability to (a) charge defendants with a lesser-included offense that does not carry a mandatory minimum; (b) agree to an offense of conviction that carries a statutory maximum below the defendant’s guidelines exposure; (c) agree not to seek aggravating factors that would increase a defendant’s punishment; or (d) stipulate to mitigating factors that reduce the potential sentence. See Alschuler 1991; Bay 2006; Reinganum 2000.

\(^{39}\) One study found no evidence of changes in plea bargaining practices related to sentencing guidelines or of overcharging, but also had several limitations that make its findings difficult to generalize; see Miethe 1987.

\(^{40}\) Furillo 2011

\(^{41}\) Dyke 2007; results based on analysis of felony charge disposition in North Carolina throughout the 1990s.

\(^{42}\) Pew 2008a

\(^{43}\) Michigan’s sentencing guidelines mandate that serious, violent, and repeat offenders who fall into the “presumptive prison” section of the grid be sentenced to prison and that low-level offenders in the “lockout” section be sentenced to local sanctions.

\(^{44}\) Pew 2008a

\(^{45}\) Alschuler 1991
Findings & Implications

States are finding ways to manage the size of their prison population at sentencing by eliminating and modifying laws that mandated a prison sentence for certain offenders and by encouraging the use of community-based treatment and supervision in lieu of prison. These strategies respond to both current and future budget realities, including inadequate funds to build new facilities for additional inmates, and may lead to long-term improvements in public safety if offender risk and needs can be addressed early.

The short-term impact of these changes – particularly on the local entities now responsible for additional offenders – must also be considered. Without adequate resources, local agencies and service providers may struggle with the sheer volume of people now in need of custody, supervision, monitoring, treatment, and services. A limited number of beds and “slots” available in the jail and in the community may result in jail crowding and the release of inmates unprepared to function in the community. The scarcity of resources may tax other “back-up systems,” such as hospitals, emergency rooms, mental health crisis responders, and homeless shelters. Even when adequately resourced, agencies and community services may not have the time to prepare for the new population of offenders and determine what programs and services need to be expanded to meet the increased demand.

A number of policy implications follow this discussion:

1. **Inmates sentenced to a term in jail often have the same need for programming, treatment, and reentry assistance as their prison-bound counterparts.**
   Strategies that shift the prison population into a jail setting do not change the underlying risks and needs of that population. In order to be successful in the community following release, jail inmates will need access to programs that are often lacking in a jail setting. Jails will need additional funding to develop and expand in-custody programs and train staff, and will also likely need help in determining the right mix of programming for inmates. State corrections departments could coordinate with jails to share risk assessment information and lessons learned from preparing inmates for release. National efforts, such as the Transition from Jail to Community initiative, can also assist local communities in preparing jail inmates for release.

2. **States can help jails reduce the chances of overcrowding by developing sound emergency population release procedures.**
   A strong pretrial supervision system and proactive emergency release procedures can help reduce the likelihood of jail overcrowding and ultimately improve public safety by releasing the lowest-risk inmates from custody. For example, the Oakland County (MI) Circuit Court and Sheriff’s Office use the county’s criminal justice data warehouse to plan for jail overcrowding emergencies and identify inmates eligible for sentence reductions or early release. Judges also use the warehouse to determine which inmates pose a high risk to public safety and should

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46 Daniels 2006
not be granted sentence reductions. Volusia County (FL) has been able to control the size of its jail population and not pursued any new jail construction for more than 20 years through strong collaboration and organization in the justice system and constant jail data monitoring.47

3. **Probation offices and treatment/service providers need more than just funding – they also need time to prepare for new clients.**
   For many jurisdictions, state and local budget cuts have already reduced the capacity of probation offices and services for those coping with mental illness, homelessness, and other vulnerabilities. In order to take on this new population, community agencies will require additional funds and adequate prep time to hire and train staff, expand a facility if necessary, secure new technology, and make other changes in infrastructure. Risk assessments may help local agencies forecast offenders’ demand for treatment and services while in custody and in the community. If those agencies don’t have the capacity to conduct their own risk assessments, this information might be available through other criminal justice partners (such as probation offices, pretrial services, etc.).

4. **Short-term costs often yield long-term benefits to the state.**
   Increasing the amount of funding for community-based treatment and services will mean fewer resources available to the state to invest in other priorities. However, because these programs address the underlying causes of criminal behavior, they have the potential to yield public safety benefits that actually help states and local governments save money in the long-term. The Washington State Institute for Public Policy has developed a tool to help the State of Washington estimate the fiscal impact of similar justice reinvestment strategies.

5. **The success of a prison population control strategy will depend on local buy-in and support.**
   Although constrained by sentencing guidelines and other mandates, judges and prosecutors still have tremendous control over prison admissions and expected length of stay. They also have the ability to mobilize community support (or opposition) to legislation. As such, their support is crucial to the successful passage and implementation of state laws and administrative policies, and states should engage local criminal justice stakeholders, particularly those who are independently elected, early in the process.

6. **Strategies that encourage and incentivize certain decisions may ultimately be more successful than strategies that mandate certain outcomes or limit discretion.**
   Changes to sentencing law over the last thirty years have reduced judicial discretion by mandating minimum prison sentences and directing judges to follow a guideline for sentencing. However, in addition to shifting decision making power to the state that developed the laws, prosecutors have gained leverage during charging and plea negotiations. Incentives for judges to use jail over prison have worked in many states to reduce the size of the prison population while retaining judicial discretion at sentencing. These strategies could be expanded to other states and developed for other stakeholders who influence sentencing outcomes.

47 Ford 2007
Inmate Release & Transfer

In the previous section, this report explored how sentencing decisions can impact the size of the prison population by controlling the number of individuals admitted for a new criminal offense and their ordered length of stay in custody. State efforts to reduce the size of the prison population at the sentencing stage included legislation that shortened prison sentences, shifted the prison population into local jails, and encouraged the use of community-based alternatives to incarceration. Similarly, states have the ability to modify the size of the prison population at the custody stage by reducing the amount of time that inmates actually spend in prison. Releases and transfers from prison are frequently employed by states to relieve crowding; to save money; and/or to reconnect soon-to-be-released inmates to family, friends, and community resources. These policy options will also have an impact on the resources and capacity of local jurisdictions.

State Strategies

The majority of prisoners (about 80 percent) will be released prior to the expiration of their prison sentence, and many will serve less than half of that sentence behind bars. The vast majority of states offer some type of sentence reduction program, and in 2009, 31 states provided earned time incentives to inmates and also set conditions on that earned time, such as the amount of time and inmate eligibility. These release decisions are based, first and foremost, on criminal history. Dynamic factors – such as institutional behavior, completion of in-custody programming, and in some cases, scores on risk/needs assessments – are also used in many states to advance the earliest parole date or to allow inmates to accumulate credits against a sentence. As a result, these policies not only function as a population release valve for states, they also provide an incentive for inmates to comply with rules while in custody and to complete programs (see textbox on following page). Research on state earned time policies generally finds that reducing lengths of incarceration does not negatively affect public safety and, in many instances, improves it. For example, an evaluation of the merit time program in New York found that a parole release group had a slightly lower three-year recidivism rate (31 percent) than did the comparison group of inmates serving the full term (39 percent).

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48 Hughes, Wilson & Beck 2001
49 First-time releases served on average 49% of their sentence in 1999. Hughes, Wilson & Beck 2001
51 Lawrence 2009
52 Proctor 1999 c.f. Campbell 2008
53 Burke and Austin 2008; also see NIC 2001 for a summary of the use of risk-assessments by parole boards.
54 Lawrence 2009
### Programming & Release Decisions

Release decisions may consider an inmate’s completion of in-custody programming as a sign that risk has been mitigated. However, because completion of programming depends as much on the resources available in a facility as on an inmate’s willingness to participate, release decisions based on the successful completion of programming may disadvantage inmates housed in facilities in which such resources are not available. An analysis of prison population drivers in Pennsylvania determined that, in 2006, 75 percent of denials by the Board of Parole were due to inmate failure to participate in or complete in-prison programs. Pennsylvania law now authorizes the parole board to grant parole to an inmate whose only requirement for parole is completion of programming. Inmates may be released on condition of being able to complete their programming requirement in the community.

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A state’s parole and earned time policies will depend on whether these decisions are determined by a parole board (discretionary) or awarded by the state (mandatory).

**Discretionary parole release policies**, in which members of a parole board determine whether an inmate can serve the remainder of his or her sentence in the community, make up the majority of release decisions (60 percent or more) in about half of the states in this country.\(^5^5\) In addition to criminal history and other factors related to the individual, the personal opinions and background of board members will influence decision making. Requirements for parole board appointment vary by state, and some members enter with limited experience with offenders or knowledge of criminal justice policy and research.\(^5^6\)

Board reliance on tradition, personal experience, and familiar methods may result in subjective and unpredictable release decisions in which members deny release to individuals whom they consider “risky” even when empirical assessments suggest otherwise.\(^5^7\) For example, Michigan’s parole guidelines identify “high probability of paroling” inmates who are low-risk of recidivating, who have completed their minimum terms of parole, and who by statute should be paroled absent a substantial and compelling reason. However, the actual grant rate for this population was at just over 50 percent in 2006. Boards must also have the necessary infrastructure and technology to facilitate risk assessment and information gathering from victims, family members, and other relevant stakeholders.\(^5^8\)

The remaining states – an estimated 16 of which have completely abolished their parole boards and an additional five that have eliminated parole release for violent offenders\(^5^9\) – have **mandatory parole release policies**, such that the majority of release decisions are set by determinate sentencing statutes, earned credits for compliance with rules while in custody, emergency releases, or terms set by a judge.

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55 Author’s calculations based on Glaze, Bonczar & Zhang 2010
54 Campbell 2008
57 CAPPS (Six Strategies for Right-Sizing Michigan’s Prison Population). Also see Campbell 2008.
58 Campbell 2008
59 These decisions to abolish state parole boards were made as part of the “Truth in Sentencing” movement in the 1990s that sought greater consistency between sentenced length and actual time served. By 1991, 41 states and the District of Columbia had passed truth in sentencing legislation; 29 states required offenders to serve at least 85 percent of their sentence. Estimates as of 1999; see Sabol et al. 2002.
to a fixed period of incarceration based on a determinate statute.\textsuperscript{60} Most states with an earned time policy also allow inmates to earn reduced sentence time by completing educational courses or participating in a work detail. In Nevada, for example, an inmate can earn 10 days per month for participation in an education program and an additional 60, 90, or 120 days for completing a certificate, diploma, or degree, respectively.\textsuperscript{61} On average, persons released under mandatory parole releases served less time in prison and a greater percentage of their total prison sentences before release than those released by a parole board.\textsuperscript{62}

In addition to parole releases, states can also reduce inmates’ time spent in prison by\textbf{transferring inmates into the custody of another agency}. Approximately one in eight state prisoners is held in a private or local facility.\textsuperscript{63} The reason for these custody arrangements, either as explicitly stated in contracts or as developed in practice, vary by state but typically include (a) the\textit{relief of prison crowding} when the system reaches capacity; (b)\textit{cost savings} when the reimbursement rate is lower than the cost of housing that inmate in the state’s prison system; and (c)\textit{separation of inmates} from other prisoners.

Contracts with local jails will\textit{also} be used to (d)\textit{facilitate reentry} by transferring inmates near the community to which they will be released in order to strengthen ties with families and connect with local community resources and employment prospects; (e)\textit{provide a temporary hold} for prison-bound inmates, including recently sentenced inmates, captured escapees and absconders, and inmates in the county to attend a court proceeding; and (f)\textit{sanction probation and parole violators} or house individuals whose parole has been revoked.

\textbf{Local Impact}

Prison release policies and inmate transfers that decrease the size of the prison population also rely on shifting this population into the local community,\textsuperscript{64} which must have the resources to support new inmates and supervisees.

\textit{Impact on Jails}

The extent to which state prison transfer policies impact the jail will depend on whether custody is mandatory (as might be the case with sentenced prisoners awaiting Department of Corrections

\textsuperscript{60} Parole boards make the majority of release decisions in 26 “discretionary parole” states. An additional 14 states have “mandatory parole” (i.e., determined by statute, good time provisions, or emergency release) and another 5 have “term-of-supervision” releases. One state, New York, showed a split between discretionary, mandatory, and term of supervision releases. Glaze, Bonczar & Zhang 2010

\textsuperscript{61} Lawrence 2009

\textsuperscript{62} In 1999, mandatory releases served 33 months in custody, which amounted to 61 percent of their total sentence. Discretionary releases served 35 months, or 37% of their total prison sentence. See Hughes et al. 2001.

\textsuperscript{63} Author’s calculations based on West, Sabol & Greenman, 2010; at year-end 2009, there were 95,249 inmates held in a private facility and 83,757 held in a jail facility, out of 1,405,622 total state prisoners.

\textsuperscript{64} Private prisons are not discussed in this report, but are another option available for housing state prisoners. Although most studies estimate that private prisons are slightly less expensive to operate than state-run prisons (4–14 percent) and have at least comparable program quality, research is not conclusive about whether private or public prisons are categorically superior (costs or conditions of confinement) to the other. See Culp 2005.
transport) and the extent to which the county is reimbursed for the full cost of the inmate. A 2010 review of state contracts with county jails reveals that some states cover the full cost of housing a jail inmate; others will pay for room and board, but not medical expenses; and others pay little to nothing. Adjustments may be applied based on the cost of living in the host county or according to characteristics of the inmate, such as gender or work-release status. The specific terms for reimbursement will also vary depending on, at what point in the inmate’s custody, s/he is technically considered under the jurisdiction of the Department of Corrections (DOC) – typically, the inmate must be sentenced to state prison and have spent a certain amount of time in jail before the state will reimburse the county. Contracts that reimburse at a rate below a county’s per inmate cost will create a structural deficit that drives up the costs associated with housing other inmates (see textbox). Conversely, if states reimburse at a rate higher than the county average, counties may benefit from the transaction.

**High Cost of Housing State Inmates**

Many counties are only reimbursed at a fraction of the cost of housing an inmate. The New Mexico Association of Counties estimates that the state’s appropriation of $5 million covers about one sixth of the estimated $30 million that it costs counties to house state prisoners. New York’s reimbursement rate of $34 per day falls far short of the New York State county jail inmate average of $105 per day and represents one tenth of the $300 per day needed to hold an inmate in a New York City jail. Alabama jails receive just $1.75 per day to cover the cost of food for state prisoners. Even when the state reimburses the county for the full cost of housing the inmate, budgetary pressures may prompt suspension of these funding obligations. For example, Nebraska can typically only afford to reimburse county jails for the first five months of the fiscal year.

State financial incentives to house offenders locally will also impact the jail. The Georgia Department of Corrections has an agreement with local counties to house prison inmates for up to 15 days after the DOC receives the sentencing paperwork from the Clerk of the Court, but because the state actually saves about $35 per day by housing prisoners in local facilities ($22 per day for jail reimbursement versus $57 per day in the prisons), counties have expressed concern that states have a disincentive to retrieve their inmates.

The same problems associated with shifting the prison population into the jails at sentencing will also be present when inmates are transferred to jails as a custody decision. Limited physical and financial resources, coupled with a transitory population, can mean that many inmates held in local jails will be less prepared to reenter the community upon release.

**Impact on the Community**

The release of inmates prior to the expiration of their sentence is common. As mentioned earlier, about four out of every five prisoners will exit prison “early” and be placed onto community supervision. Problems begin to arise, however, when an earned time release policy is first implemented, which may result in the release of a large volume of prisoners into the community. Regardless of the ability of

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65 Albert 2010
66 For example, Florida reported paying $32 for male inmates and $42 for female inmates. Albert 2010
67 A small number of states require the DOC to pick up inmates held in county jails after a certain period of time. Albert 2010
parole offices and community programs to accommodate the new population in the long-term, a sudden increase in the number of clients will increase the caseloads of parole agents. Even when additional funding is attached, an abrupt influx of inmates may be difficult for parole offices to accommodate in the short-run.

Most inmates who have just exited prison will need immediate supports in the community in order to be successful on parole, but often will return to neighborhoods in which they will face a paucity of resources and a high demand for services. Special needs populations, although less expensive to treat in the community than in prison, may represent a significant burden to the jurisdiction to which they are sent. For example, some states have enacted policies that provide “compassionate releases” to seriously ill individuals. The impact of the return of these offenders on the community has not been measured, but if these inmates (and their families) are as resource-poor as the average returning prisoner, their health care needs will likely be met by public clinics and emergency services.

One strategy for easing the transition from prison to community is the use of halfway houses and other residential treatment options that provide individual and group counseling sessions, substance abuse treatment, and other services. However, these residential options also serve other vulnerable populations and may not have adequate capacity to take on new residents. Without proper funding, these options can hinder rehabilitation; as one recent study found, offenders placed in the least successful residential correctional programs – including halfway houses – were 32 percent more likely to engage in recidivism than those who received no services at all. Successful programs relied heavily on resources available in the community, such as a strong network of support from the residential correctional program and in the wider community; staff training in effective techniques to providing treatment; routine risk/need assessments; and quality assurance.

Just as a community must be prepared to receive inmates, those inmates must be prepared to return to the community. Parole release policies that do not adequately account for an inmate’s risk to recidivate or that award credits based solely on the institution’s desire to reduce the size of its population create situations that may place the community at risk and hinder an offender’s chance of success in the community. For example, although criminal history is one of the strongest predictors of an offender’s risk to reoffend, release decisions based on criminal history typically weigh the severity of the crime and the stakes associated with a possible new offense higher than the probability of actually committing a new crime. Similarly, an inmate’s compliance with rules while in custody does not necessarily translate into success in the community. In fact, individuals who have adapted to an institutional, highly-

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68 La Vigne, Davies, Palmer & Halberstadt 2008
69 La Vigne & Kachnowski 2003; La Vigne & Mamalian 2003; La Vigne & Thompson 2003; La Vigne, Cowan & Brazzell 2006
70 For example, Mississippi (2004) and South Carolina (2011).
71 Lowenkamp, Latessa & Holsinger 2006
72 For example, the chances of a person convicted of a homicide committing a new homicide are much lower than a person convicted of a DUI committing a new DUI; however, the public safety consequences if the former were to happen will likely prohibit that person’s early reentry into the community.
structured setting may have difficulty making decisions and managing their free time, putting them at risk of violating their supervision and returning to prison. Finally, programs that arbitrarily award credits are in danger of releasing inmates who are not prepared for reintegration (see textbox).

“Quick Fix” Release Policies

In 2009, the Illinois Department of Corrections instituted “MGT Push,” a modification of the department’s existing Meritorious Good Time (MGT) program that released inmates early for good behavior. The new push program reduced MGT’s 60-day minimum stay requirement to 11 days, during which time inmates were to complete two classes totaling fifteen hours of instruction. The program soon came under scrutiny because:

- Short-term offenders were considered for MGT credit as soon as they arrived at the intake centers, and many were never transferred to long-term facilities;
- The decision to award an MGT credit could not take into account the inmate’s holding offense or any other offense in the inmate’s criminal history;
- Inmates were being released well before the 60 day prior policy;
- The DOC did not adequately notify the appropriate agencies (district attorneys, sheriffs, and other law enforcement) from jurisdictions to which offenders were being released; and
- The Department was using MGT principally to manage its prison population.

A committee tasked with reviewing this policy reported to the Governor that:

Inmates had to do little or nothing to demonstrate meritorious conduct deserving of MGT Credit awards and then, given the perceived irrevocability of MGT Credit, could do nothing to jeopardize their awards. Under MGT Push and under the old MGT program, inmates were labeled as meritorious simply by virtue of being delivered into DOC custody, a form of good behavior inflation. By accelerating the release of hundreds of inmates under MGT Push, the Department compounded the basic problem of its pre-existing MGT program: the lack of any attempt to gauge individual inmates’ in-prison conduct in a meaningful way... despite Illinois’ dire economic state and the very real need to maximize control of facilities, these programs should not simply be population pressure release valves; they must be, first and foremost, a means to incent and reward good conduct that shows a genuine rehabilitative intent.

Both programs – MGT and MGT Push – were suspended in 2009 until changes were made to its release and notification policies.

Report on the Meritorious Good Time and MGT Push Programs 2010

It is important to note that although parole releases may temporarily strain local resources, shifting the prison population onto supervision can lead to long-term improvements in public safety and reductions in corrections spending. For example, participants in the Maryland Reentry Partnership Initiative, a collaboration of community-based organizations providing housing assistance, substance-abuse treatment, mental-health counseling, vocational training, and other services, committed fewer new crimes, resulting in a total net benefit of $21,500 per participant to the citizens of Baltimore.  

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73 La Vigne, Davies, Palmer & Halberstadt 2008; Nelson & Trone 2000
74 Roman, Brooks, Lagerson, Chalfin & Tereshchenko 2007
Similarly, the *denial* of parole release will likely be detrimental for both the offender and the community if it means that the person leaves prison without supervision. About one in four inmates will be released into the community without correctional supervision. This population is more likely to suffer from mental illness, which may have prompted the parole board to deny early release (and thereby avoid assuming risk for the inmate’s behavior in the community), and to have reduced ability to access treatment and services. Other inmates denied early release are those who have committed the most serious crimes or who did not engage in appropriate or productive behavior while in custody. In recognition of the public safety risk posed by unsupervised offenders in the community, about half of states (24) mandate parole conditions for at least some portion of released inmates; 14 of those 24 states have mandatory parole for the majority of releases.

**Local Influence**

In contrast to their role in sentencing decisions, judges and prosecutors have little influence over a state’s release and transfer decisions, except in cases that require a hearing to review contested releases. Release decisions are almost exclusively a state function, and hence, local actors will have limited ability to influence the number of people discharged early onto parole.

Earned time release policies tend to attract the attention of community members and local criminal justice actors, particularly prosecutors, when they are first implemented and result in the release of a large number of inmates convicted of certain types of crimes. Although some research suggests that reentry is barely on the radar for most citizens, high profile cases in which a released parolee commits a new crime may skew public opinion and fuel opposition against reentry.

**State Early Release Policies & Local Jails**

One interesting local response to state release policies was observed in California, which passed legislation (SB X318) in 2010 to increase sentence reductions for inmates who complied with rules while in custody. Although the legislation was developed as part of an emergency effort to reduce prison crowding, county jails also applied the law to their sentenced inmates. Jail inmates went from serving two-thirds of their sentence to just half. In addition to creating a mechanism to reduce the current inmate population, jails also wanted this option in the event that “state prisoners [who had been] released early ended up in local jails.” Shortly after the policy’s implementation by local Sheriffs, a man was arrested for attempted rape within a day after his early release from a Sacramento jail.

Voluntary arrangements to house state prisoners in local jails mean that sheriffs and county board members have the ability to refuse agreements that do not financially benefit their jail (see textbox on next page). Jails often rely on revenue generated from renting beds to other agencies and jurisdictions, including U.S. Immigration and Customs Enforcement (ICE), U.S. Marshals, and the state’s corrections.

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75 West, Sabol & Greenman 2010  
76 See La Vigne, Davies, Palmer & Halberstadt 2008  
77 Piehl 2002  
78 Author’s calculations based on Glaze, Bonczar & Zhang 2010  
79 Immerwahr & Johnson 2002
Jails may also rely on this funding to support new construction or pay back debt from previous projects. For example, some rural counties in Utah rely on the Department of Corrections renting jail beds to pay the bonds associated with new construction. Jails typically have an incentive to accept these contracts, as empty jail beds may mean increased per-inmate costs if there are not enough vacancies to allow closing a housing unit, a floor, or a facility.

An incentive structure that encourages the use of jail beds for state-sentenced prisoners will impact the capacity of the local facility. Overcrowding may trigger a jail population emergency that necessitates the discharge of inmates who are in custody for releasable holds. Although counties cannot release inmates being held for other agencies, they will likely try to coordinate transfer back to the originating jurisdiction before releasing county inmates. As a result, states need to be prepared for the unexpected return of state inmates who were held in a local jail that entered a population emergency.

Findings & Implications

States often reduce the size of their prison population by instituting release policies and transferring inmates to other facilities; all told, about 80 percent of inmates are released prior to the expiration of their sentence and one in eight is housed in a private or local facility. The presence of a parole board will dictate whether early releases are discretionary (board-controlled) or granted based on a system of earned and automatic credits. Both release mechanisms take into account criminal history, institutional behavior, and completion of programs when determining eligibility for release and/or applying reductions to time served or to parole review dates. Some release decisions will also consider risk assessments, which may provide recommendations that contradict conventional wisdom about what type of offenders pose the greatest risk to the community.

Release decisions, because they are so common, only begin to impact local jurisdictions when they result in a large shift of inmates into the community, such as after a major change in legislation that is applied retroactively to inmates. In these instances, demand for supports at the moment of release will increase, such as for temporary and transitional housing, basic necessities such as food and clothing, and urgent medical and mental health care. This demand may be particularly acute after the release of special populations – such as those with serious illnesses or significant substance abuse issues.

Local Opposition to Inmate Transfer Policies

A provision in North Carolina’s HB 642 (2011) that authorized the Department of Correction to house certain misdemeanants in county jails initially received strong opposition from the Sheriffs’ Association and the Association of County Commissioners. The legislature responded by amending the legislation to allow counties with adequate jail space to volunteer to participate. Jails that agree to house these inmates will receive up to $30 million in new funding from the newly created “Statewide Misdemeanant Confinement Program,” which will be administered by the North Carolina Sheriffs’ Association. As a result, the Sheriffs’ Association and the Association of County Commissioners supported the bill, which was enacted nearly unanimously by the legislature.

80 Krauth & Stayton 2005; jails also generated revenue through garnished wages and fees for room and board.
81 Albert 2010
82 For example, Michigan’s County Jail Overcrowding State of Emergency Act allows sheriffs to review hold agreements with other jurisdictions to determine whether those agreements may be terminated.
In contrast, jails may actually benefit from the movement of inmates into local custody if they are provided sufficient funding. Many jails generate funds from renting beds to other agencies, including their state’s DOC, and may rely on this money to subsidize other beds in the system. However, these detention arrangements, especially mandatory ones that are typically enforced while an inmate is awaiting transfer or has a court proceeding in the county, may strain the capacity and resources of jails, particularly if prisons have an incentive to use these beds to relieve crowding and save money. Other jails will find that these arrangements only partially cover the costs of housing a state-sentenced inmate.

Although prisoner release and transfer policies may temporarily strain local resources, they can also lead to long-term benefits to jails (by providing additional resources), communities (by compelling offender supervision), and offenders (by reconnecting them to social supports and community programs).

A number of policy implications follow this discussion:

1. **In-custody programming and reentry planning are critical to offenders’ success in the community.**
   Adequate preparation for all prison inmates is necessary in order to ease the burden of this new population on the community. States must give offenders time and opportunity to complete in-custody programs that address their unique risks and needs. For many states, this has meant beginning release planning (and assessment) at the time of prison admission. In addition to addressing the factors that will likely impact an inmate’s long-term success in the community (such as GED, secure and permanent housing, health insurance), correctional departments should also plan for the inmate’s needs at the moment of release (such as basic computer literacy, transitional housing, and medication). Part of this preparation for the moment of release may include a “step down” process in which inmates are transferred to lower custody levels, including jails, that offer more freedom and opportunities to connect with the community in the months before release.

2. **Post-prison supervision benefits the offender and the community.**
   Overall, parole and early releases can support rehabilitation and benefit families and communities by allowing the offender to reintegrate sooner into the community. They also benefit public safety by ensuring that offender activities are monitored and that the individual is complying with the terms of his or her parole. Some states have opted to mandate parole for certain categories of individuals released from custody.

3. **Local and state partnerships play a role in the success of transfer and release policies.**
   Although local actors do not have as strong an influence on early release decisions and transfers as they do on other policies, coordination and communication between state and local leaders are critical for determining the jurisdiction’s ability to provide services to the new population and to ensure that state policies are implemented as intended. The development of positive, trusting partnerships between state and local policy makers will also be important for securing local buy-in and support for state early release policies.
Supervision Violation Response

This report has considered changes made by states to sentencing policy, which regulates the number of admissions to prison and expected lengths of stay for new criminal activity, and to policies governing transfer and early release, which regulate the actual time that inmates will serve in prison. The last major driver of the prison population that legislatures and state administrators can adjust is the number of offenders returning to prison for a violation of their parole or probation.

A sizable portion of individuals on supervision will violate one or more of the terms of their parole or probation, either by committing a new (typically low-level) crime; absconding; or failing to comply with a condition of supervision, such as passing a drug test. One study estimates that about half of individuals on parole in California had at least one technical or criminal violation and about a quarter violated multiple times.83 These violations prolong offenders’ time on supervision and lead in many cases to a revocation of supervision and a return to prison.84 All told, a minority of clients on parole and probation actually complete the terms of their supervision in any given year.85 On a national level, parole violators represented one third of all prison admissions in 2009,86 a rate that shows tremendous variation across the country, with parole violations accounting for over 50 percent of admissions in seven states and fewer than 10 percent of admissions in four states.87 Between technical violations and new criminal activity, about half (43 percent) of released prison inmates can expect to return to prison within three years of discharge.88 Most violators can expect to serve an additional 13 months in prison.89

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83 The most common violation (39 percent) was for a “Type 1” crime, considered the least serious in California penal code (including drug use, driving with a suspended license, public intoxication), and the second most common violation (23 percent) was absconding from supervision. Grattet, Petersilia & Lin 2008
84 In the California example, half of parole violations resulted in a revocation and a return to prison, a fact unsurprising given that an estimated 68 percent of admissions in California were due to parole violations. According to the Bureau of Justice Statistics, “California reported a decline of 11,122 admissions in 2009, a decrease that was almost 4 times greater than any other state... fewer admissions for parole violations accounted for almost 87% of the decline in the number of California state prison admissions, and about 87% of the decline in the number of parole violators entering state prison nationwide during the year.” West, Sabol & Greenman 2010
85 In 2009, only 36 percent of probationers and 41 percent of parolees exited supervision, and just over half of those exits were due to a successful completion of supervision. Glaze, Bonczar & Zhang 2010
86 Author’s calculations based on West, Sabol & Greenman 2010; approximately 1.36 million of 1.4 million state prisoners were sentenced at year end 2009.
87 West, Sabol & Greenman 2010
88 Pew 2011
89 Hughes et al. 2001
State Strategies

In order to address this significant prison population driver, several states have passed legislation that empowers the supervising agency responsible for detecting the violation with the ability to also determine an appropriate sanction response. This power has traditionally rested with the courts, corrections departments, and parole boards typically responsible for such decisions.90 Local decisions about violation responses are often directed by a menu of graduated sanctions that offer parole and probation officers a continuum of institutional and community-based community service programs and day reporting centers to effectively respond to violation behaviors.91 Using this matrix as a guide, parole and probation agencies have the authority to sanction locally, including imposing short stays in jail, without having to go back to court. This response to technical violators has the potential to reduce prison admissions without compromising the safety of the community (see textbox).92

States are also experimenting with using performance incentives for probation and parole agencies to change the response to supervision violations and thereby reduce the number of revocations to prison. In Michigan, counties that authorized probation agents to issue “Probation Violation Waivers” in lieu of the courts issuing bench warrants or petitions to “show cause” experienced fewer jail admissions and a declining number of court appearances.93 In 2008, Arizona enacted legislation (SB 1476) to provide funding to counties that could reduce probation violations and revocations without increasing criminal activity in the supervised population. The measure received strong support from Arizona counties.94 If a county experienced an increase in the number of new convictions for violators, it became ineligible for incentive funding. This provision was to ensure that jurisdictions did not artificially lower violation and revocation rates (i.e., by underreporting or decreasing supervision levels) in order to get the incentive (40 percent of the money saved through avoided incarceration). Counties were supposed to begin receiving the financial incentive in 2010, but budget cuts prompted the Arizona legislature to cut all funding for the program in the state’s FY 2010 budget. The law was repealed in 2011.95

90 For example, in Mississippi, Maine, Montana, Delaware, and Oregon, the probation agency has authority to implement specific intermediate sanctions in lieu of revocation. See Lawrence 2008; Pew 2008b; United States Sentencing Commission 2008.
91 Pew 2008b
93 Michigan Task Force on Jail and Prison Overcrowding 2005
94 Pew 2008a; United States Sentencing Commission 2008
95 Grado 2011

Sanctions in Hawaii’s HOPE Court

The HOPE model attempts to reduce probation failure among a high-risk population by concentrating on a small number of easily verifiable behaviors (drug use and showing up for appointments). Violations are met with swift and certain sanctions that make limited, deliberate use of jail beds. A positive drug test results in an immediate, short jail sanction, and probationers receive a jail sanction during an immediate court hearing. Participants in the program had fewer no-shows for probation appointments, fewer positive urinalysis test, lower rates of re-arrest, lower revocation rates, and fewer days incarcerated.

Hawken & Kleiman 2009
Local Impact

Policies that seek to reduce revocations by managing violations through graduated sanctions have reduced prison admissions for parole violations in a number of states. The focus on local control and management of violations has also meant increased coordination between state and local agencies and increased attention to the effect of these policies on local resources and capacity.

Impact on jails

State efforts to reduce parole and probation revocations have focused primarily on encouraging the use of graduated sanctions in response to violations, thereby reducing the reliance on revocations in order to deal with minor infractions that can be handled within the community. Although the menu of graduated sanctions available to a supervising officer will vary by jurisdiction, almost all supervising officers will have the ability to sanction a violator to a jail term and may inadvertently overwhelm counties with probation and parole violators. Further, because supervision functions are rarely controlled by sheriffs or jail administrators, parole and probation officers have little financial incentive to moderate their use of jail beds. Hence, although “local governments have a greater incentive to intervene and treat criminal offenders early because they are responsible for the costs of re-incarcerating offenders who commit parole violations,”96 local agencies that operate in organizational silos do not face the same incentives and may burden their own system.97 Limited space in county jails may eventually push this population back into the prison system.98

Some states have responded to this pressure on jail capacity by setting limits and restrictions on the use of jail in response to a probation violation:

- **Limits on the use of jail:** Louisiana capped the length of stay a person convicted of a first-time, non-violent offense could be incarcerated for a technical violation of probation or parole at 90 days.99 Maine also authorizes probation officers to impose administrative sanctions up to 90 days in a residential prerelease center.100 Delaware’s Probation Reform Act authorizes the Department of Corrections to impose administrative sanctions for minor or technical probation violations, including up to five days in jail, not to exceed 10 days annually.101

- **Restrictions on the use of jail:** Courts in Vermont may not order incarceration for a probation violation “absent a finding that community safety is in jeopardy or if the offender needs treatment that can most effectively be provided while incarcerated.”102 Similarly, Minnesota law prohibits probation officers from using detention or incarceration in response to violations.103

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96 California Legislative Analyst’s Office 2011
97 For example, see Michigan Task Force on Jail and Prison Overcrowding 2005.
98 For example, one analysis of technical violators in Ohio found that this population was being held in prison pending violation hearings. La Vigne & Thomson 2003
99 U.S. Sentencing Commission 2008
100 Pew 2008b
101 Ibid
102 Lawrence 2008
103 Ibid
Other states have responded by involving local jails in the development of legislation that addresses supervision violation response. New Hampshire considered jail capacity when drafting legislation to provide probation and parole officers with additional sanctioning and treatment options. The Council of State Governments, the technical assistance provider chosen to help the state develop its strategies, worked closely with the association of counties, which included a group of jail superintendents, and collected data on jail populations in order to estimate the impact of state policy changes on local jails and address any unintended consequences. Technical assistance providers also conducted focus groups with judges from across the state; met several times with the union representing probation and parole interests; and consulted with behavioral health treatment providers. The resulting legislation is projected to reduce parole revocations by 40 percent and probation revocations by 20 percent.

Impact on communities
Policies that encourage supervising officers to handle violations through graduated sanctions can, as with other policies profiled in this report, increase the size of caseloads and the workload of probation and parole officers, who by retaining violators in the community are now responsible for their sanctions and continued supervision. The risks and needs of the supervised population are also likely to increase, because those who are now supervised locally have demonstrated impaired ability to comply with rules and function on supervision without monitoring and support. As a result, instead of decreasing the resources expended on this population (by removing violators from the community and placing them in prison), probation and parole offices will likely increase the resources spent on this population by applying more sanctions and monitoring offenders more closely.

These temporary spikes in caseload size may indirectly impact revocations by altering the detection of violation behavior. Several studies have found that more intensive supervision increases the likelihood that violations will be detected, exclusive of community characteristics or the offender’s personal attributes and criminal history. Compared to minimum supervision parolees, actively supervised parolees have two to three times the risk of being detected for drug use and possession, misdemeanor violations of the law, and technical violations (not including absconding). For example, when the Illinois Department of Corrections’ reorganization of its parole-monitoring system increased surveillance functions, the state saw an 81 percent increase in the number of parolees returned to prison.

As a result, policies that lead to an increase in the ratio of active clients to officers (e.g., by increasing or maintaining the number of clients on probation or parole or altering the mix of high-, medium-, and low-risk offenders) are also likely to lead to reduced supervision for some offenders, fewer detected violations, and fewer revocations to prison. State requirements that certain types of offenders be given intense supervision regardless of risk – such as sex offenders – may reduce the amount of supervision that can be provided to high-risk individuals whose crimes are not believed to warrant intensive

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104 Conversation with Marshall Clement, Council of State Governments (CSG)
105 http://justicereinvestment.org/states/new_hampshire/how-nh/
106 Grattet, Petersilia & Lin 2008
107 La Vigne & Mamalian 2003
monitoring. For example, individuals who have committed serious and violent offenses generally pose less risk of reoffending than do drug or property offenders, yet crime severity is often used to determine supervision, programming and violation response decisions.

In this way, even decisions made “upstream” to place additional offenders on parole and probation – such as at sentencing or release – may indirectly impact the size of the prison population by decreasing the detection of violations that lead to revocations. This short-term “bonus” to state budgets in reduced prison usage could lead to additional victimization and new criminal activity if violations are not detected and responded to with swift and certain action.

As found in other policies, the availability of local resources will impact the options available to those responsible for responding to violations. Communities that do not have sufficient sanction options, such as electronic monitoring or day reporting, may rely on jails and prison in order to address violations. This issue is particularly salient for individuals placed on probation with the court; even when a community has resources, these resources may not be at the disposal of judges who monitor high-risk/need offenders whose crimes did not warrant active supervision.

In recognition of the impact that violation responses can have on local capacity, some states and local jurisdictions have incorporated resource considerations into their sanctioning matrices. For example, Oregon statute provides guidance on the development of a structured sanctions grid in response to post-prison supervision (parole) violations that takes into consideration, among factors related to the offender and the violation, the capacity of state prisons and availability of appropriate local sanctions.\(^\text{108}\) The response guidelines for a probation violation in Michigan indicate that DOC staff should meet with local community corrections advisory board managers to develop county-specific probation violation response guidelines that best utilize available local options. Wayne County’s Circuit Court (MI), in collaboration with the Community Corrections Advisory Board and the Michigan DOC, implemented a Show Cause Hearing process to have technical probation violators appear in court and has reduced the average daily population of probation violators in jail from 70 to 20.\(^\text{109}\)

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\(^\text{108}\) Lawrence 2008

\(^\text{109}\) Michigan Task Force on Jail and Prison Overcrowding 2005
Local Influence

The shift in control over probation and parole violation responses to local agencies means a greater ability for local jurisdictions to influence resources, but also requires a greater need for justice partners to coordinate at the local level. Some counties have responded proactively by implementing policies that impact resource levels without sacrificing the “swift and certain” response. For example, Multnomah County, Oregon’s post-prison supervision department was able to cut its jail consumption by 75 beds by limiting violators’ length of stay in jail. The department expanded the number of sanctions available to supervision officers, resulting in more clients under heightened community supervision, and also allowed more violators to be sent to jail, only for shorter periods of time. The program is estimated to have saved the county over $2 million in jail costs and has not adversely impacted public safety.110 A number of jurisdictions also participate in ongoing, strategic collaboration through state mandated criminal justice coordinating councils and participation in national initiatives, such as the Justice Reinvestment at the Local Level Initiative111 and the Evidence-Based Decision Making Initiative.112

Another example of local coordination tied to a state-wide corrections reform effort can be seen in Ohio. From the beginning, judges, prosecutors, sheriffs, police chiefs, county commissioners, community corrections, probation officers and chambers of commerce were deeply involved in the state’s Justice Reinvestment work and helped develop a key provision in the resulting legislation. Sheriffs noted that probationers were spending a substantial number of days in jail (up to 90) while awaiting violation hearings. These long lengths of stay were not set by policy, but rather, were the result of coordination challenges between the jail and the courts. State policy makers responded to this feedback by limiting the number of days that a probationer could spend in jail awaiting a violation hearing at 30 days.113

Shifting control of violation response to supervising authorities does little to change whether the DA’s Office will prosecute parole violations involving new criminal activity or instead defer to the state’s releasing authority for final review and violation response.114 If prosecutors believe that a case will be difficult to prosecute or do not think it serious enough to pursue, they may reject the case and send it to the state’s parole board, which typically has a lower standard of proof, can dispose of cases more quickly, and is more likely to re-incarcerate the parolee.115 For example, 70 percent of technical violation and new criminal activity cases referred to the California Board of Parole Hearings resulted in a new prison term.116 As Grattet and colleagues (2008) note, “district attorneys may be weighing the certainty of return against the severity of the potential sentence that a parolee is likely to receive.”117 Prosecutors and judges can also influence revocations on the front end through plea negotiations that influence the type of conditions placed on an offender while in the community.

110 Rengifo & Scott-Hayward 2008; Taylor 2009  
111 La Vigne et al. 2010  
112 The Urban Institute will be completing an evaluation of this NIC initiative in the coming year.  
113 Conversation with Marc Pelka and Megan Grasso, CSG, October 17, 2011  
114 Probation violations go through a similar process, but will remain in the courts if the DA declines prosecution.  
115 Grattet et al. 2008  
116 Ibid  
117 Ibid
Findings & Implications

States can respond to parole and probation violations in a variety of ways. A revocation response will lead to increased prison admissions, whereas the use of graduated sanctions can be administered by probation and parole officers in the community. These modified responses offer parole and probation officers a greater menu of options to adequately and appropriately address problematic behavior.

The decision to sanction locally will likely have an impact on the workload of probation and parole officers who, by retaining violators in the community, also assume responsibility for their sanctions and continued supervision. As a result, resources may be shifted toward monitoring this population more closely and lead to reduced supervision for other categories of offenders. Reduced supervision, as noted in the review of changes to sentencing legislation, can be beneficial for clients who are either low-risk from the beginning or who “prove themselves” by not violating their probation or parole in the first six months. It may also lead to a decreased ability for officers to detect violations and respond to problematic behavior before it escalates into new criminal activity.

Local sanctions may also impact the capacity of jails. Supervising officers typically have the ability to sanction violators with a term of local incarceration, but because supervision functions are rarely controlled by sheriffs or jail administrators, these officers have little financial incentive to moderate their use of jail beds. As a result, a state’s efforts to promote graduated sanctions may inadvertently overwhelm jails with probation and parole violators.

A number of policy implications follow this discussion:

1. **Policies that encourage the use of graduated sanctions in lieu of revocation should also consider the impact of these changes on the detection and reporting of violations.**
   The use of graduated sanctions may impair officers’ ability to detect violations by shifting more clients onto reduced supervision caseloads and encourage under-reporting of violations in order to obtain funding through incentive programs. Some states have included provisions in their graduated sanctioning policies that discourage under-detecting and under-reporting of violations. For example, Arizona developed a program that provides funding to counties that demonstrate a reduction in the number of supervision violations and revocations without an increase in crime committed by supervised offenders.

2. **Local resources and capacity can be incorporated into sanction grids.**
   In developing legislation and policies that promote the use of graduated sanctions in lieu of revocation, states must also consider the impact that these strategies can have on jails and on community-based agencies and service providers. Several states have addressed this problem by placing limits on the use of jail in response to violations and by incorporating resource considerations into the sanctions grid (such as Oregon and Michigan).
3. *Coordination among local criminal justice agencies is crucial to the success of these efforts.*
Parole and probation officers who control the response to technical violations, sheriffs and jail administrators who control detention beds, and prosecutors who control charging decisions made in response to parole and probation violations all must work together to ensure support and buy-in from all groups. A number of jurisdictions participate in strategic collaboration through state-mandated criminal justice coordinating councils and participation in national initiatives. They may also be included in state prison population management efforts.
Findings & Implications for Future Policy

This report has explored how state efforts to reduce the prison population impact and are influenced by the resources and policies of local governments. The most common strategies that states employ to reduce the size of the prison population include requirements and incentives for decision makers to use local custody, supervision, and treatment options in lieu of prison at the time of sentencing, inmate release and transfer, and supervision violation response. At sentencing, states have focused on developing legislation that shortens prison sentences, shifts the prison population into local jails, and encourages the use of community-based alternatives to incarceration. Similarly, states have the ability to modify the size of the prison population by transferring inmates to other facilities, including local jails, and granting discretionary (parole) and mandatory (non-parole) releases that place prisoners in the community on parole. Finally, many states have empowered probation and parole officers to use graduated sanctions, such as jail and community-based options, in response to violations of supervision.

Policies that shift or keep offenders in the community – by serving time in jail, being placed on supervision, or participating in community-based treatment and programs – will increase the number of inmates and clients in the community, particularly immediately after a major legislative change. The sheer increase in client volume may also be accompanied by an increase in the number of high-risk and serious offenders who previously would have served time in prison.

Just as states have limited resources to support the offender population in the prison, local communities will also struggle to support the population of offenders in need of custody, supervision, monitoring, treatment, and services. Funding will be needed to expand services, but even when adequately resourced, agencies and community services will also need time to prepare for the new population of offenders and expand programs and services to meet the increased demand. The number of beds and “slots” available in the jail and in the community will be difficult to increase without major changes in infrastructure and possibly the construction of new facilities. Jail inmates may require treatment for medical, mental health, and substance abuse issues, and will likely need programs that prepare them for release into the community. Offenders in the community will have similar needs – and may be required to participate in treatment and programs in order to satisfy the conditions of their sentences. The demand for services may be particularly acute for special populations, such as those with serious illnesses or significant substance abuse issues; individuals who were released from prison or jail without adequate preparation for their return to the community; and unsupervised offenders that do not have any conditions of supervision (or the accompanying support).

Limited time, resources, and capacity in the jail and the community mean that some offenders will not be able to receive the services that they need, pushing some of them into unstable “back-up systems,” such as hospitals, emergency rooms, mental health crisis responders, and homeless shelters. Clients on parole or probation may be placed on reduced supervision, potentially leading to undetected violations.
and escalation into new criminal activity. Limited physical and financial resources in the jail, coupled with a transitory population, will mean that many inmates held in local facilities will be less prepared to reenter the community upon release. Crowding is also a distinct possibility, in some counties prompting the emergency release of inmates into the community.

The success of state policies that shift the prison population in local options depends not only on the availability of jail beds, treatment slots, and trained staff. It will also depend on the support and buy-in of local officials who have the ability to garner strong support (or opposition) for legislation and who control many of the key decision points that impact prison population size, such as arrest (city police), charging (prosecutors), sentencing (judges), detention (sheriffs), and violations of supervision (probation officers). Each agency has its own unique mission, goals, and perspective on public safety, which may not align with state efforts to reduce prison population growth. Although constrained by state laws, judges and prosecutors have tremendous control over sentencing decisions and can impact prison admissions and expected length of stay. Because they control charging decisions, prosecutors can also influence the response to violations involving new criminal activity.

This report’s examination of the role of local jurisdictions in prison population management strategies yielded several important policy implications:

1. **Many jail and prison inmates need reentry assistance in order to be successful upon release.**

   Some amount of reentry planning is necessary for all inmates. Prisons and jails should offer inmates access to programs that prepare them for release and reentry. Jail programming is less consistently available, despite the fact that individuals serving time in jail often have the same underlying risks and needs as the prison population. Jails may require additional funding to develop and expand in-custody programs, train staff, and identify the right programming for inmates. State corrections departments could coordinate with jails to share risk assessment information and lessons learned from preparing inmates for release. National efforts can also assist local communities in preparing jail inmates for release.

   In addition to addressing the factors that will likely influence an inmate’s long-term success in the community, correctional departments and jails should also plan for the inmate’s needs at the moment of release. Part of this preparation could include a coordinated “step down” process in which inmates are transferred to local jails near the community to which they will be released in order to strengthen ties with families and connect with community resources.

   Part of release planning in the jails may also include the development of a strong pretrial supervision system and emergency release procedures that can help reduce the likelihood of jail overcrowding and ultimately improve public safety by releasing the lowest-risk inmates from custody. Oakland County (MI) and Volusia County (FL) provide examples of how the combination of data-driven decision-making and strong local partnerships can inform release decisions and reduce the likelihood of a jail crowding emergency.
2. **Community agencies and providers need more than just funding – they also need time to prepare for new clients.**

   For many jurisdictions, state and local budget cuts have already reduced the capacity of supervision offices and services for those coping with mental illness, homelessness, and other vulnerabilities. In order to take on this new population, community agencies will likely require additional funds and adequate prep time to hire and train staff, expand a facility if necessary, secure new technology, and make other changes to infrastructure.

   Even with adequate resources, local agencies must also have access to validated risk assessments and staff trained in the principles of evidence-based practices in order to target services at those offenders with the *highest* risks and needs. If those agencies lack the capacity to conduct their own risk assessments, this information might be available through other criminal justice partners (such as probation offices, pretrial services, etc.). Risk assessments may also help state and local agencies forecast offenders’ demand for services in the community and monitor that the right offenders are assigned the right type (and dosage) of treatment.

3. **Incentive programs can be very successful in guiding placement decisions and can be expanded to include other decision makers.**

   Many of the strategies profiled in this report provide incentives for actors to use local options in lieu of prison, an approach that may ultimately be more successful than efforts to mandate certain outcomes or limit the discretion of key decision makers. These incentives are typically targeted at judges, probation officers, and others considered “direct” decision makers and could be expanded to other states and/or targeted at other stakeholders, such as prosecutors who influence sentencing through decisions made during charging and plea negotiations.

   Any unintended consequences of incentive programs should also be addressed. For example, financial incentives to use graduated sanctions may encourage some jurisdictions to under-report violations. Some states have addressed this issue by including provisions in their graduated sanctioning policies that discourage underreporting. Arizona provides funding to counties that demonstrate a reduction in the number of supervision violations and revocations *without* increasing the number of crimes committed by supervised offenders.

4. **States should consider the short-term and long-term fiscal impact of legislation on local and state agencies.**

   In designing strategies to reduce the size of the prison population through changes in sentencing law, states should consider the fiscal impact of legislation on local communities. For example, when drafting its Public Safety and Offender Accountability Act, Kentucky developed a local fiscal impact statement to document the likely impact of the legislation on local jurisdictions (most specifically, jails).[^118] These reviews should consider both the long- and short-term fiscal impact.

[^118]: Kentucky Legislative Research Commission 2011
impact of legislation. Although state efforts to reduce the size of the prison population may temporarily strain local resources, shifting some inmates from prison into the local community can lead to long-term reductions in corrections spending and improvements in public safety that benefit the state, local agencies, the community, and the offender.

5. **Local resources and capacity can be incorporated into criminal justice decision making.**
   In developing legislation and policies that promote the use of local options in lieu of prison, states must also consider the impact that these strategies can have on jails and on community-based agencies and service providers. Several states have addressed this problem in dealing with responses to technical violations by placing limits on the use of jail as an intermediate sanction and by incorporating resource considerations into sanctions grids (such as Oregon and Michigan). Similar strategies could be developed at sentencing and inmate release and transfer.

6. **State and local coordination is crucial to the success of these efforts.**
   Incarceration is not a problem limited to state government, nor can its solutions be conceived and executed solely by state governments. In designing strategies to control the size of the prison population, states must consider the effect of these changes on local jurisdictions and involve local stakeholders early in the process. They must also consider the important role that local criminal justice policy makers, particularly those who serve in an elected office, play in the successful passage and implementation of state laws and administrative policies. The development of positive, trusting partnerships between state and local policy makers will also be crucial for securing local buy-in and support for these strategies.

7. **Coordination among local criminal justice agencies is crucial to the success of these efforts.**
   Parole and probation officers who control the response to technical violations, sheriffs and jail administrators who control detention, judges who control sentencing, and prosecutors who control charging and plea decisions all must work together to ensure support and buy-in from all groups. A number of jurisdictions participate in strategic collaboration through state-mandated criminal justice coordinating councils and participation in national initiatives.
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