Behavioral Health Treatment Access Legislative Task Force

Report and Recommendations

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Charge of the Task Force

The Behavioral Health Treatment Access Legislative Task Force was created by Act 895 of 2015. The Task Force is charged with ensuring that persons in the criminal justice system who have demonstrated a need for behavioral treatment have access to treatment and to:

- Facilitate access to behavioral health treatment programs;
- Coordinate with other public and private entities to develop and promote access;
- Take steps to reduce costs and encourage evidence-based care;
- Assess feasibility and make recommendations for changes to state programs to improve access.

Policy Considerations

Various groups recommended the following policies, based on their stated reasons (also below), to the Task Force for its review for purposes of facilitating access to behavioral health treatment:

1) **Expand the populations eligible for substance abuse services** within traditional Medicaid to include the overwhelming number of individuals who do not have access to coverage or services for substance abuse as their primary diagnosis and in turn burden the state in other ways. The Task Force has been informed that Divisions within the Department of Human Services, including both the Division of Behavioral Health Services (DBHS) and Division of Medicaid Services, have initiated this change.

   DBHS proposes that the current Medicaid reimbursable substance abuse treatment service array be enhanced to include:
   - Accessible outpatient counseling services
   - Substance abuse assessment
   - Individual substance abuse counseling
   - Group substance abuse counseling
   - Marital/family substance abuse counseling
   - Multi-family substance abuse counseling
   - Intensive rehabilitative and residential services
   - Supportive housing
   - Supportive employment
   - Short-term substance abuse residential
   - Acute crisis units
   - Detoxification

   The establishment of a behavioral health system that ensures the efficient and effective provision of services would result in savings that could fund the proposed expansion of substance abuse programming in the state, so that the cost to the state is neutral. This model could be supported through multiple program and funding options through the Centers for Medicaid and Medicare (CMS).

2) **Provide consistency in the rate of reimbursement for all Behavioral Health Services** (mental health (MH) and substance abuse). In the past, reimbursement rates that were tied to Substance Abuse Treatment Services (for SATS) were not comparable to the MH RSPMI rates for services. Because of the overlap in need between those two services, the financial reimbursement system must be integrated so that the services can also be integrated, thereby increasing both effectiveness and efficiency in the system.

3) **Address the credentialing process and requirements of behavioral health providers** across the state. The requirements of credentialing of providers, including both licensing requirements and certification standards, from payers in private arena (e.g., through Arkansas Works) and in the public sector (e.g., through traditional Medicaid) are not consistent, and have been viewed by providers as overly stringent or heavy-handed. This leads to a shortage of providers in the state, especially in rural areas, making access more challenging.

4) **Review the current process of prior authorization** (requesting services to be reimbursed), including ongoing approval for services and the current measure of "Medical Necessity" as opposed to "Effective and Best Practice." The current system is not designed to focus on improvement of an individual in treatment, or to provide the best outcome for the individual or the state. In the current system, services are not able to be approved if a client is making progress or getting better. Providers profit by continuing to show need for treatment, rather than show that treatment is working.

   The process of getting approval for services for MH clients is rigorous. The prior authorization process through Beacon Health Options (previously ValueOptions, the contracted third party company that manages AR MH Medicaid services) is tedious and time-consuming. This discourages providers from accepting clients with Medicaid (or becoming credentialed as a Medicaid provider.

5) **Allow retention of Medicaid/SSI** by suspending rather than terminating benefits during incarceration and help people who lack benefits apply for them prior to release. The state should investigate this possibility using Medicaid 1115 waivers to limit the number of times a person's eligibility is scrutinized in a given year, to reduce administrative burden and eliminate coverage breaks caused by short jail stays.

6) **Expand services that are not currently reimbursed by Medicaid** in the Behavioral Health System such as Care Coordination, which assists adults and children with behavioral health needs. The current state reimbursement model is based on the "medical necessity model" and does not reimburse for services that are evidence-based, best practice, or even preventative. Care coordination is also not a service reimbursed by third-party payers in the Private Sector and Private Option plans.

7) **Review current policy that may exclude persons formerly incarcerated** from housing services and employment.

8) **Review and propose policy regarding Transitional Living** (group homes, halfway homes, recovery houses, etc.). There are not statewide regulatory standards for transitional living other than post-incarceration.

9) **Address Legal Options in treatment (voluntary vs. mandates).** The question of how to legally provide treatment services to an individual who does not desire those services must be addressed. What is the role of District Courts? Specialty courts may provide an alternative-to-sentencing option. However, this does not provide the immediate relief law enforcement is requesting for local jails. Current civil commitment laws differ for mental illness and substance abuse but both are time-consuming and again unlikely to provide the immediate relief that is desired.

10) **Examine the current policy and practice of the transition from incarceration to treatment and community** (to provide support and to educate benefit of treatment).

Program Considerations

Various groups also recommended the following policies, based on their stated reasons (also below), to the Task Force for its review for purposes of facilitating access to behavioral health treatment:

1) **Sequential Intercept Model**
   This evidence-based model is being used by stakeholders to identify points of interception at which services can be provided to keep offenders with behavioral health disorders from becoming further involved with the criminal justice system. Intercept points include: pre-arrest, pre-adjudication, pre-incarceration, currently incarcerated individuals, and services for those re-entering the community from prison. The model is evidence-based. There is no inherent cost to follow this model. The cost is in the selected points of interception.

2) **Assertive Community Treatment**
   ACT is a team-based approach to delivering comprehensive and flexible treatment, support, and services to help people stay out of the hospital and develop skills for living in the community. This type of program is most useful for individuals with chronic mental illnesses who may or may not have a co-occurring substance abuse disorder. It is evidence-based but costly.

3) **Crisis Center(s)**
   This concept is for a physical location to serve as a diversion rather than entry into either the criminal justice system or into the more costly hospitalization for those with mental illness. Its cost varies significantly depending on the comprehensiveness of the services included and the number of centers.

4) **Core Service Statewide Agency Crisis Line**
   This concept, used in New Mexico, appears effective in defusing as many as 95% of crisis situations, thereby diverting the need for involvement with the criminal justice system as well as managing the entry into the Behavioral Health Treatment system to a non-crisis entry. This is considered an evidence-based service and has minimal expenses associated with implementation.

5) **Recovery Homes**
   The Department of Community Corrections is moving forward in expanding this concept as a community re-entry model. Use of this model as a method of prison diversion

requires policy changes noted above. It is evidence-based, and, while costly, research supports that it is ultimately cost-neutral through savings from minimizing reoffending.

6) **24/7 Sobriety Project**

This program is designed exclusively for alcohol and other drug offenders. It involves voluntary sobriety testing which is paid for by the offenders who wish to stay in society. It is intensive (twice per day at the highest level) alcohol and drug testing. It focuses on the personal responsibility and accountability of the offender. It is evidence-based and cost-neutral for the state. It does require the establishment of specialty courts.

Proposed Recommendations

The Behavioral Health Treatment Access Task Force is grateful for the expertise shared with it during its term over the course of the 90th General Assembly. The Behavioral Health system is clearly in need of reform on many levels. While the Task Force's recommendations will not address every issue in the system that is in need of reform, or that was presented, the Task Force is eager to engage in the following reform proposals that will improve the overall system substantially if implemented, and that will enable further reform in the future. Specifically, the Task Force proposes five reforms to redirect mentally ill offenders from entering the criminal justice system:

1. Provide crisis intervention training for law enforcement officers—the Task Force received testimony that such training would be available for law enforcement throughout Arkansas for a total cost of $50,000;

2. Open Crisis Stabilization Units (CSUs)—these CSUs will be 16-bed units; there should ultimately be one located within 100 miles of every part of the state, and each CSU will serve a catchment basin; funding may not be available to open 8 CSUs at once, so the state should work to open as many as possible each year until 8 are open and in operation; we recommend spending not less than $5 million in state funds (not counting federal funds leveraged through Medicaid or local government contributions) for FY2018—the Task Force received testimony that the CSUs can operate on a total of $2 million per facility, with some combination of state and federal funding;

3. Develop a standardized assessment tool used by county intake officials to screen all incoming inmates for risk as to criminogenic, mental health, and substance abuse factors—the Task Force understands that County governments, including Sheriffs and County Jails, are working to implement these assessment tools locally on a best-practices model through no cost to the state;

4. Develop a statewide database for law enforcement officers to share screenings, assessments, and other information with other law enforcement agencies across the state—the Task Force has received testimony that such a database already exists, and the cost to enable the County governments to access this database would be minimal;

5. Provide traditional Medicaid coverage for offenders diagnosed with substance abuse disorders as their primary diagnosis, and otherwise enhance the support for community-based care for people with behavioral health needs in Arkansas—the Task Force has received testimony from the Division of Behavioral Health Services of the Department of

Human Services that it is implementing these changes in a manner that is revenue/cost neutral to the state;

6. To the extent possible under applicable federal law, allow retention of Medicaid/SSI coverage for offenders by suspending rather than terminating benefits during incarceration—the Task Force understands this change would save the state funds in administrative costs.

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- Arkansas Department of Human Services, Division of Behavioral Health Services
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- Arkansas Insurance Department
- Arkansas Public Policy Panel
- Arkansas Sheriffs' Association
- Arkansas Substance Abuse Treatment Providers Association
- Council of State Governments Justice Center
- HISTECON Associates, Inc.
- Judicial Equality for Mental Illness Coalition
- Mental Health Council of Arkansas
- Mickelson Consulting Group, LLC
- Policy Research Associates
- SAS (Software Company)
- The Stephen Group Report – A "Blueprint for Action"
- UAMS, College of Medicine, Department of Family and Preventive Medicine

Appendix A

Policy Options for Consideration by the Legislative Criminal Justice Oversight Task Force

POLICY OPTION 1:
Focus supervision resources on people who are most likely to reoffend.


Increase public safety and reduce recidivism

A. *Provide the most intensive supervision at the beginning of a person's supervision term, when rearrest rates are highest.*

For people who began supervision terms in FY2012 in Arkansas, 26 percent of those on probation and 32 percent of those on parole were rearrested within the first year. During their second year on supervision, rearrest rates fell to 12.3 percent for probationers and 16 percent for parolees, and in their third year on supervision, rearrest rates fell to 8 percent for probationers and 9 percent for parolees.[1] This trend is consistent with national data, which shows that rearrest rates are highest within the first year of supervision. **This policy option addresses the need to focus attention and resources on people who are in the early stages of their supervision term, when they are most likely to be rearrested.**

In systems where caseloads are high and supervision officers' time is limited, such as in Arkansas, officers will have more time to devote to challenging cases by actively supervising people during the first one to two years of their supervision terms. ACC should make efforts to shift people to annual reporting status once they have successfully completed active supervision so that officer caseloads remain manageable and officers can continue to focus time and resources on people who need them most.

B. *Hire additional supervision officers to reduce the number of cases per officer, and improve training in effective recidivism-reduction strategies to increase the quality of supervision.*

The effectiveness of community supervision in reducing recidivism is largely reliant on the ability of supervision officers to devote the necessary time and attention to people who have been assessed as being at a moderate to high risk of reoffending. Currently, ACC supervision officers, who carry both probation and parole cases, have high caseloads that significantly inhibit their ability to facilitate behavior change among people on probation or parole.[2] Officers must also be equipped with appropriate training and resources to effectively motivate behavior change. **This policy option will reduce caseloads and increase the quality of supervision by (1) allocating the necessary funding to ACC to increase the number of supervision officers, (2) adjusting caseload sizes based on assessed risk**

and needs of probationers and parolees, and (3) charging ACC with ensuring that initial and recurring training is based on proven strategies to reduce recidivism.

In FY2015, Arkansas's supervision officers oversaw an average of 129 cases each. In numerous discussions with supervision officers and administrators across the state, many officers stated that they were overwhelmed and sometimes struggled to complete assigned tasks due to the heavy workload. Between supervisory duties and other tasks that every officer is expected to perform, including working the desk at the local field office and serving as part of the transportation team, officers described having very little time to engage with probationers and parolees in a meaningful and constructive manner.

To effectively change the behavior of people on probation or parole, officers must have the time and training to create and foster personal relationships with the people they supervise, monitor behavior and compliance with conditions of supervision, and assist other officers and staff in various duties, as necessary. An analysis of the agency's staffing needs resulted in the development of officer staffing goals based on probationers' and parolees' risk of reoffending and the desire to focus supervision resources on people during the first one to two years of their supervision terms. These staffing goals are as follows:

- High risk: active supervision for two years; no more than 40 cases per officer
- Medium risk: active supervision for 18 months; no more than 60 cases per officer
- Low risk: active supervision for 12 months; no more than 120 cases per officer

To meet these caseload goals, ACC will need to hire approximately 100 additional officers for a total field supervision officer allotment of around 550 officers statewide. Such staffing goals are consistent with nationally recognized best practices.

Furthermore, ACC should revisit its core training curriculum to ensure that officers have an adequate foundation in core correctional practices, which include risk assessment and programming, and cognitive behavioral interventions. Additionally, training on how to supervise specialized populations, such as people convicted of sex offenses and people with mental disorders, will equip officers with the tools to effectively supervise more complex cases. Improvements in training will contribute to the development of a highly skilled workforce that focuses on an individual's unique needs and

implements strategies to help change criminal thinking and reduce recidivism.[3]

POLICY OPTION 2:
Increase the availability of effective community-based substance use treatment and services.


Increase public safety and reduce recidivism

A. *Expand community-based substance use programming and treatment for medium- and high-risk populations on supervision.*

Providing medium- and high-risk probationers and parolees with quality treatment services for substance use disorders is important to breaking the cycle of offending related to addiction. The size and scope of Arkansas's current network of community-based treatment providers is insufficient to adequately serve people on supervision who have been assessed as being at a high to moderate risk of reoffending. **This policy option will increase funding for substance use treatment providers in the community for medium- and high-risk probationers and parolees.**

Of the more than 20,000 people beginning terms of supervision each year in Arkansas, it is estimated that two-thirds—approximately 14,000 people—are at moderate to high risk of reoffending. Using national estimates of the prevalence of substance use disorders among people in the criminal justice system, it is also estimated that around 5,900 moderate- to high-risk people beginning terms of supervision in Arkansas have diagnosable substance use disorders.[4] Though some substance use treatment services are provided by ACC, feedback from ACC staff indicated that these services are inadequate to meet current demand. Additionally, many people on supervision do not have sufficient income or health insurance coverage to pay for substance use treatment and services in the community. Therefore, community-based treatment and services in Arkansas should be expanded to adequately meet the needs of the thousands of people under supervision with substance use treatment needs.

For people on probation or parole, treatment combined with adequate supervision is more effective in reducing recidivism than intensive supervision alone or treatment without supervision.[5]

B. *Leverage Medicaid to cover the cost of substance use treatment and services for medium- and high-risk people on supervision.*

As a state that has expanded Medicaid to provide additional coverage to low-income people, Arkansas has an opportunity to leverage federal funding to pay for a network of community-based substance use treatment services. **This policy option requires adjustments to Arkansas's current Medicaid**

policy to (1) use available federal Medicaid expansion funding to create or expand a network of community-based substance use treatment providers that focus on people on supervision who have moderate and high risk and needs profiles, and (2) cover treatment costs for people whose primary diagnosis is a substance use disorder through traditional Medicaid.

For the estimated 5,900 moderate- to high-risk people in Arkansas beginning supervision each year who have substance use disorders, it is projected that the community-based substance use treatment services necessary for this group will cost an average of around $5,400 per person per year for a total annual cost of more than $32 million. Arkansas can leverage available federal funding to cover the majority of this cost.[6] Because this population consists largely of people who are eligible for Medicaid, it is estimated that the state can receive federal funding for as much as 85 percent of the cost, meaning that Arkansas can provide around $30 million in services for a cost of less than $4 million to the state annually.[7] By expanding community-based programming and treatment to address substance use needs for people on supervision, the state is likely to see fewer people entering or returning to prison, the most expensive sanction in Arkansas's criminal justice system.

POLICY OPTION 3:

Increase public safety and reduce recidivism

Reconfigure aspects of ACC's residential facilities to ensure the effectiveness and efficiency of services that are intended to reduce recidivism.

ACC operates two types of residential facilities with 1,603 beds statewide: Community Correction Centers (CCCs) provide programming and treatment for people placed there by a judge, and Technical Violator Programs (TVPs) provide an alternative to prison for parolees who have violated the conditions of their supervision.[8] Analysis has shown that for people admitted to CCCs, the average length of stay is eight months, which research indicates may be longer than necessary to provide an adequate dosage of programming and treatment.[9] For people admitted to TVP, the average length of stay is around 100 days. **This policy option requires changes to relevant community corrections policies to refine current programming and treatment in these facilities to maximize effectiveness and efficiency.** For CCCs, this will entail an increase in the intensity of treatment and programming in order to shorten the average length of stay so that more people can be served each year within existing physical capacity, and for TVPs, it will require changes to existing

programming to more effectively address the criminogenic risk and needs of technical parole violators.

CCCs, which represent approximately three-quarters of ACC's residential capacity, have proven effective in reducing recidivism rates. The one-year rearrest rate for people exiting these facilities in 2014 was 22.7 percent, compared to 32.3 percent for people released from prison in the same year. While recidivism rates for people exiting TVPs are comparable with those released from ADC, the shorter length of stays at TVPs is a more cost-effective approach to sanctioning than prison.

Research on the effectiveness of treatment interventions shows that people at a high risk of reoffending who have significant behavioral health needs require between 200 and 300 total hours of programming. The programming should be delivered over a long enough period of time to allow for the necessary treatment dosage, typically four to five hours a day, five days a week. Given these parameters, the necessary dosage can be provided to even high-risk people within six months.[10] Research has shown that, especially for low- and medium-risk people, programming beyond 150 and 200 hours, respectively, can be counterproductive and may actually increase the likelihood of recidivism.[11] Even for high-risk people, overly long programming interventions eventually reach a point of diminishing returns.

POLICY OPTION 4:

Limit the amount of time people who have violated the conditions of their supervision may spend in prison so that prison space is reserved for people who commit serious and violent offenses.

Avert prison population growth

Arkansas's supervision officers can use a range of graduated non-custodial sanctions, such as increased reporting and/or additional conditions of supervision or electronic monitoring, as well as custodial sanctions, including jail stays of seven days or less or placement into one of ACC's residential facilities, to respond to supervision violations. However, many people on supervision who commit low-level violations of the terms of their supervision are sent to prison as a sanction. In these cases, there are no limits on the length of such sanctions, even for technical violations (such as failing a drug test, missing programming, or not paying fees). **This policy option limits time served in prison for probation or parole violators to no more than 45 days for technical violations and no more than 90 days**

for violations involving a new arrest for nonviolent, non-sex misdemeanor offenses or absconding.[12]

These caps will help ensure that space in prison is reserved for people convicted of serious and violent offenses. After serving three capped sanctions, technical or applicable misdemeanant violators will be subject to full revocation for the remainder of their original sentence. Those charged with a new felony offense or a misdemeanor violent or sex offense would not be subject to this cap.

Analyses conducted by the CSG Justice Center have shown that of the 10,462 people admitted to prison in FY2015, nearly 70 percent (7,228) were revoked from supervision. Of these, almost half of parole violators (47 percent) and more than one-third of probation violators (34 percent) did not have a felony arrest while on supervision. CSG's analysis has also shown that the average length of stay for technical violators in FY2015 was more than 12 months for probation violators and 10 months for parole violators. Using conservative approximations for length of stay and cost per day in ADC, it is estimated that housing technical supervision violators in prison cost the state of Arkansas at least $18.5 million in FY2015. Based on the most recent prison population forecast and current ADC and ACC data, it is projected that this proposed cap will decrease the projected growth of the prison population by 1,232 people by FY2023.

Research has shown that connecting people to services that address the reasons for their criminal behavior can have the greatest impact on recidivism, particularly when such programming and treatment is provided in the community.[13] Limiting the length of prison sanctions will allow people to access community-based treatment and programming sooner than they would under current practice. By making sanctions shorter, the state will be able to increase spending on community-based services to reduce recidivism and increase public safety.

POLICY OPTION 5:

Improve the quality and consistency of the parole decision-making process, preparation for release, and information sharing between Arkansas's correctional agencies as it relates to parole.

Avert prison population growth

A. *The Arkansas Parole Board (APB) should establish parole guidelines to aid the board in making fair and consistent release decisions.*

Currently, the APB does not use an official set of guidelines to aid members in making fair and consistent decisions about whether, and when, to release parole-eligible people from prison. **This policy option urges the Arkansas Parole Board to adopt structured, informed, actuarially based guidelines for release decisions and the timing of release for all cases.**

The guidelines should outline how, and to what extent, a person's risk and needs assessment results, participation in recidivism-reduction programs, in-prison behavior, and seriousness of offense should be weighed in each release decision. The guidelines should inform voting actions prior to release in all cases.

B. *Fully implement risk and needs assessment tool(s) for use across Arkansas's correctional agencies (ACC, ADC, and APB) and develop validation protocols.*

As required by law, each of Arkansas's correctional agencies has adopted assessment tools that are used to determine each person's risk and need profile and guide programming decisions. Although the agencies developed the tools based on sound designs and research, they have yet to fully coordinate the implementation of these tools system wide. **This policy option requires ACC, ADC, and APB to coordinate the implementation of these assessment tools and share risk and needs information across agencies in order to ensure that treatment and programming is provided appropriately and consistently throughout the state's criminal justice system.** As part of this effort, all participating agencies should validate these tools to ensure that they reliably identify differing risk levels.

For more information on risk and needs assessment in corrections, see "Understanding Risk and Needs Assessment."[14]

C. *Improve coordination between ADC and the parole board to expedite the communication of programming requirements to prevent delays in release to parole.*

Although many people entering prison are candidates for programming based on their risk and needs assessments results, completion of ADC-recommended programming is not mandated as part of their sentence. However, programming is often required by the parole board as a condition of release. A significant number of people choose not to participate in ADC-recommended programming until they meet with the parole board to learn which programming the parole board requires them to complete, a meeting

that might not happen until as few as six months before their release eligibility date. Further, information on people who will soon be eligible for parole—e.g., post-release plan or in-prison record—is transferred to the APB only 6 months before that person is eligible for release. **This policy option requires (1) that the results of ADC's initial risk and needs assessment be provided to the parole board for consideration as soon as practicable after the person's admission to prison, (2) that the parole board's programming requirements be communicated to the person within 3 to 12 months (depending on the length of sentence) of admission to prison so that the person can attempt to complete this programming in advance of the date of parole eligibility, and (3) that a person's parole plan and other relevant information to be considered during the parole release decision-making process be transferred to the parole board 12 months prior to the person's parole eligibility date in order to allow sufficient time for programming enrollment and completion.**

Analysis of ADC data shows that in FY2015, more than 1,800 people in Arkansas's prisons were past their parole eligibility date, which represents a 37-percent increase over FY2012.[15] While some of these people remained in prison past their parole eligibility date due to the lack of a suitable parole plan, many remained there to complete parole board-required programming that could have begun earlier in their stay. Ensuring that people receive the parole board's programming requirements at the earliest opportunity will allow more time for them to meet these requirements and result in more people being released on parole without unnecessary delays. Accelerating the transfer of information to the parole board would allow more people to complete necessary programming and still be released at the first legal opportunity.

POLICY OPTION 6:

Revise the Arkansas Sentencing Standards to ensure that sentences to prison are reserved for people convicted of the most serious offenses or who have extensive criminal histories.

Avert prison population growth

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*A. **Reduce the number of "all-options" cells in the Arkansas Sentencing Standards, thereby increasing the number of cells that provide explicit dispositional guidance.***

Compared to other states' sentencing guidelines, the current Arkansas Sentencing Standards contain a high number of cells in which all sentencing

disposition options are available (for example, prison, community correction center, or alternative sanction). Because all options are available, such cells do not provide any actual guidance in terms of disposition. **This policy option reduces the number of "all-options" cells in the Arkansas Sentencing Standards to increase the guidance provided by the standards.**

Of the 60 cells in Arkansas's current sentencing standards, 24 cells (40 percent) allow all available sentencing options: prison, community correction center, or alternative sanctions.[16] In comparison, North Carolina's grid allows for all options in only 28 percent of cells. Kansas uses separate sentencing grids for drug and non-drug cases, but only 8 percent of each grid allows for all sentencing options. Analysis of Arkansas sentencing data from 2014 shows that 43 percent of all cases fell into these "all-options" cells, with more than half of these cases—56 percent—resulting in sentences to prison, which is the state's costliest and most resource-intensive sanction. A decrease in the number of all-options cells will increase the degree to which the sentencing standards actually guide sentencing decisions. To the extent that judges adhere to the standards, an increase in guidance will allow Arkansas policymakers and criminal justice administrators to more effectively and efficiently allocate resources to areas that can have the greatest impact on recidivism.[17]

B. *Revise the Arkansas Sentencing Standards to include recommended sentence length ranges rather than single value recommendations.*

Sentence ranges are common across states that, like Arkansas, use a sentencing structure that incorporates the type and seriousness of a person's offense and his or her criminal history in the determination of recommended sentences. Such ranges are intended to balance the determinant value of the guidelines with the need and ability of sentencing judges to consider any aggravating and/or mitigating factors in a given case. The current Arkansas Sentencing Standards include only a single sentence length value for each cell, which represents the recommended number of months in prison for that particular combination of offense and criminal history. **This policy option requires that the Arkansas Sentencing Standards be revised so that each cell includes a sentence length range rather than a single value.** The addition of ranges would increase compliance with the sentencing standards by providing judges more latitude while staying within reasonable range of the recommended sentence.[18]

C. *Develop a legal framework to allow for appellate review of sentences that depart from the Arkansas Sentencing Standards, but prohibit appellate review of departure sentences that are imposed by juries or that result from negotiated pleas.*

Because Arkansas's Sentencing Standards are voluntary, judges are under no legal obligation to sentence people to either the disposition or duration recommended by the sentencing standards. As a result, departures, or sentences that deviate from the length or disposition recommended by the guidelines, are fairly common. **This policy option calls for the creation of a legal framework to allow appellate judges, in cases of departure, to consider the recommended sentence disposition and/or duration upon appeal in order to increase consistency and fairness in sentencing across the state.** Such appellate review would be prohibited for sentences imposed by juries or that result from negotiated pleas.

Because judges are not legally compelled to follow the sentencing standards, no framework exists to appeal a sentence that deviates from what is recommended by the standards. While other states that use sentencing guidelines vary as to whether or under what circumstances departures from the guidelines are allowed on initial sentencing, almost all have a legal framework that allows for the consideration of the guideline-recommended sentence during the appellate review process. For example, Alabama requires that judges make a finding on the official record of their reasons for deviating from the guideline-recommended sentence. Kansas's sentencing guidelines enumerate certain case-specific factors to be used by the appellate judge to determine if reasoning for a departure from the guidelines is "substantial and compelling."[19]

POLICY OPTION 7:

Improve the collection of information related to restitution and access to compensation for victims of crime.

Increase public safety and reduce recidivism

A. *Assist the Administrative Office of the Courts (AOC) and the Association of Arkansas Counties (AAC) in collecting information on court-imposed financial obligations to improve the monitoring and collection of these obligations.*

While individual counties have the capacity to track information on court-imposed financial obligations, including court fines/fees, restitution, and other obligations, the lack of a statewide database makes it difficult for officials at the state level or in other counties to access this information and assist in the collection of monies owed. **This policy option would require that the state assist the AOC and AAC in the development and maintenance of a system for collecting information on legal financial obligations.** If information is shared across counties and with state agencies,

supervision officers, courts, and local law enforcement can more efficiently and effectively enforce the collection of fines, fees, and restitution owed to counties and victims. Furthermore, having this information will enable the state to better work with those who have these financial obligations to develop payment plans that account for what the person has the ability to pay as well as the total amount of their obligations.

B. Expand eligibility and increase funding for the Arkansas Crime Victims Reparation Program to better serve victims of crime.

1. Consider revising eligibility requirements for the Arkansas Crime Victims Reparation Program that currently disqualify people with criminal histories.

Arkansas is one of only ten states that place restrictions on people with prior felony convictions from receiving money through the victim compensation program, and it is one of only two states that extend these restrictions to a lifetime ban. Although the state should maintain the right to deny compensation to a victim whose criminal act may have contributed to their victimization, in other instances, someone with a felony record may be the victim of a crime through no fault of his or her own and should be eligible for compensation. **This policy option recommends that the Crime Victims Reparation Board consider adjusting the eligibility requirements for the Crime Victims Reparation Program to include people with criminal histories who did not contribute to their victimization.**

2. Increase the time limit for claims to be filed with the Arkansas Crime Victims Reparations Program from one year from the date of the crime to two years.

Currently, victims must apply to the Arkansas Crime Victims Reparations Program within one year of the date of their victimization. Many victims delay their reporting, so extending the time limit to two years will allow more victims who qualify for assistance from the state to participate in the program.

POLICY OPTION 8:

Develop and fund strategies to reduce pressures on county jails, including specialized law enforcement training, screening and assessment, and diversion for people with mental illnesses.

Provide tools to reduce pressure on jails

A. ***Create a fund to reimburse Arkansas's local law enforcement agencies for expenses associated with training officers/deputies in specialized responses for people with mental illnesses.***

Law enforcement officers in Arkansas, and across the nation, often come into contact with people who are suffering from mental illness or are experiencing a mental health crisis. In recent years, many law enforcement agencies, including several in Arkansas, have provided their officers with specialized training in how to respond to these situations so that they are more likely to be resolved peacefully, and people with mental illnesses are, when possible, diverted from jail. **This policy option would require the creation of a fund to reimburse the state's local law enforcement agencies for costs associated with training officers in specialized police response for people with mental illness.** This includes travel costs for officers to attend training outside their immediate area and overtime costs for other officers to fill shifts for those attending training.

B. ***Fund the creation of crisis stabilization units as well as necessary programming and treatment so that people with mental illnesses can be diverted from jails and successfully reintegrated into the community.***

While training in how to safely deal with people experiencing a mental health crisis is important and can result in a diversion from jail, law enforcement agencies in Arkansas do not currently have a place to take people in crisis to receive necessary services. These locations, known as crisis stabilization units (CSU), are important tools for law enforcement and community leaders in providing appropriate interventions for people with mental illness, rather than using jail as a first resort. **This policy option requires that the state provide necessary funding for the creation and operation of CSUs and associated programming and treatment that enable people with serious mental illnesses to successfully remain in their community and receive the support they need.**

C. ***Assist the Association of Arkansas Counties (AAC) and the Arkansas Sheriffs' Association (ASA) in the development and implementation of screening and assessment tools for use by local jails.***

Many Arkansas jails lack effective screening and assessment tools to determine behavioral health needs of people being booked into the facility. **This policy option requires the state to provide funding and assistance to the AAC and ASA for the purposes of developing a voluntary behavioral health screening tool(s) to be used in county jails.** In other states, this tool is brief and is administered by correctional officers/deputies or other staff with minimal training. Responses to questions on the screening

instrument may trigger a further assessment by medical staff or staff from the contracted local Community Mental Health Center (CMHC).

D. *Create a secure statewide database to allow for the collection of information on jail intake screenings/assessments so that this information is readily accessible to county and state agencies.*

Arkansas's sheriffs and jail administrators are increasing the use and effectiveness of behavioral health screenings and assessments of people entering their facilities. Information gleaned from these screens and assessments should be added to a database that is maintained by one entity so that it is available to all jails and state correctional agencies. **This policy option would require development of a database to allow for the collection and sharing of screening and assessment information that is gathered when people are booked into jail.** The sharing of this information will allow jails in other counties, as well as state law enforcement and corrections agencies, to quickly access someone's prior behavioral health screening or assessment information when the person comes into contact with the criminal justice system and to take appropriate steps to ensure the safety of that person, as well as staff and officers. Development and deployment of this database must take into account law and best practices around access to sensitive or confidential health-related information.

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[1] ADC Release Data, ACC Intake Data, ACIC Arrest Data. Of the 3,586 probation revocations during FY2015, almost 1,700, or 47 percent, happened within the first twelve months. The dynamic was very similar for those revoked from parole: 2,132 of the 4,485 revocations, some 48 percent, occurred within the first year

[2] Arkansas Community Correction, Annual Report FY2014-2015, page 26. http://www.dcc.arkansas.gov/images/uploads/publications/ACC%20Annual%20Report%202015.pdf.

[3] See Bree's note on Core Correctional Practices curriculum through NIC: http://nicic.gov/training/ebplp

[4] James, Doris J. and Lauren E. Glaze. "Mental Health Problems of Prison and Jail Inmates." Bureau of Justice Statistics Special Report. United States Department of Justice. September 2006. http://www.bjs.gov/content/pub/pdf/mhppji.pdf

[5] Steve Aos, Marna Miller, and Elizabeth Drake (2006). Evidence-Based Adult Corrections Programs: What Works and What Does Not. Olympia: Washington State Institute for Public Policy. *See CSG Arkansas JR presentations from July and August 2016—slides 34 and 24, respectively.*

[6] *See CSG Arkansas JR presentation from August 2016- Slide 25.*

[7] Analysis by the CSG Justice Center of the supervision population in Arkansas suggests that the majority of those on supervision would be eligible for coverage under Medicaid expansion, which is based on income, rather than traditional Medicaid, which is based on physical disability/need. In pursuing this option, Arkansas policymakers will need to determine how best to leverage the state's Medicaid expansion structure to provide coverage to those on supervision. Under the current structure, the choice facing Arkansas policymakers would be to either (A) amend the definition of "medically frail" to include this population, or (B) amend the current *Arkansas Works* program to require that insurance plans include the necessary coverage for substance use treatment for criminal justice involved populations.

[8] ACC Population Reports, August 2016 showing a total of 1,603 beds in residential facilities, including Community Corrections Centers (CCC) and Technical Violator Program (TVP); ACC website outlining the role of various facilities, including CCC and TVP. http://www.dcc.state.ar.us/programs-and-services

[9] Matthew Makarios , Kimberly Gentry Sperber & Edward J. Latessa (2014) Treatment Dosage and the Risk Principle: A Refinement and Extension, Journal of Offender Rehabilitation, 53:5, 334-350

[10] Matthew Makarios , Kimberly Gentry Sperber & Edward J. Latessa (2014) Treatment Dosage and the Risk Principle: A Refinement and Extension, Journal of Offender Rehabilitation, 53:5, 334-350

[11] Matthew Makarios , Kimberly Gentry Sperber & Edward J. Latessa (2014) Treatment Dosage and the Risk Principle: A Refinement and Extension, Journal of Offender Rehabilitation, 53:5, 334-350

[12] Consistent with the ACC Offender Violation Guide (OVG- published August 2015), "absconding" is defined as evading supervision for 180 days or more.

[13] Washington State Institute for Public Policy, Evidence-Based Adult Corrections Programs: What Works and What Does Not, January 2006.

[14] CSG Justice Center "Understanding Risk Assessment"

[15] *See CSG Arkansas JR presentation from July 2016- Slide 11.*

[16] Alternative sanctions refers to probation, suspended-imposition of sentence (SIS), fines, or community service. All are non-incarceration sanctions.

[17] For more information on sentencing policy and structure in other states where guidelines are used, see the *Sentencing Guideline Resource Center* from the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota (http://sentencing.umn.edu/).

[18] For more information on sentencing policy and structure in other states where guidelines are used, see the *Sentencing Guideline Resource Center* from the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota (http://sentencing.umn.edu/).

[19] For more information on sentencing policy and structure in other states where guidelines are used, see the *Sentencing Guideline Resource Center* from the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota (http://sentencing.umn.edu/).