

Vermont Justice Reinvestment II

Despite decreases in Vermont's corrections populations over the past decade, the state's prisons are significantly overcrowded, and admissions are largely driven by people returning or being revoked to prison from community supervision. Increasingly, this population has complex needs and is at a high risk of failing on supervision. Vermont is currently paying to house 276 incarcerated people in out-of-state contract beds to help alleviate some of the prison overcrowding.

In July 2019, Governor Phil Scott signed Executive Order NO. 03-19 establishing an 18-member Justice Reinvestment II Working Group, chaired by Chief Justice Paul Reiber and composed of designees from the legislative, judicial, and executive branches. Members included representatives from the Department of Corrections, the Department of Health, the Department of Mental Health, the Department of State's Attorneys and Sheriffs, the Office of the Vermont Attorney General, as well as victim rights and advocacy organizations. The Justice Reinvestment II Working Group partnered with The Council of State Governments (CSG) Justice Center on a data-driven Justice Reinvestment approach to analyze data and address challenges in the state's adult criminal justice system.

This document summarizes findings related to Vermont's criminal justice challenges and final policy options that the CSG Justice Center delivered to the working group to improve public safety and behavioral health outcomes for people in the state's criminal justice system.

Key Challenges

- 1. REVOCATIONS AND RETURNS FROM SUPERVISION.** Nearly 80 percent of all prison admissions to Vermont's overcapacity facilities are for supervision returns or revocations (77 percent for men and 85 percent for women).¹ Of the prison admissions due to supervision returns or revocations, over half (53 percent) are people on furlough, 20 percent are people on probation, and just 5 percent are people on parole.² The community supervision system is highly complex with many legal statuses, particularly for furlough.³ Furlough is considered an extension of incarceration; therefore, people on furlough have stricter conditions of release than are defined in statute, as well as no legal representation during revocation hearings, unlike people on parole and probation. In part, high revocation rates are a result of the state's struggle to fully identify the behavioral health needs of people on supervision and connect them with appropriate treatments and services, including housing.
- 2. RACIAL AND GEOGRAPHIC DISPARITIES.** Black people are overrepresented in Vermont's corrections populations, particularly among incarcerated people, and current data challenges limit the state's ability to fully analyze the drivers behind racial disparities. There are also geographic disparities in access to and quality of diversion and pretrial services across the state.

¹ The Council of State Governments Justice Center analysis of FY2017–2019 data from the Vermont Department of Corrections. Estimated as the average annual volume and proportion of admissions from FY2017–FY2019.

² Ibid.

³ Furlough is a status under which the DOC may release a person from their sentenced period of incarceration for reintegration into the community; some furlough statuses are structured as periods of reentry and preparation for parole release.

- 3. GAPS IN DATA REPORTING.** Vermont has not adequately invested in Department of Corrections (DOC) analytic capacity and practices to effectively use data to inform decision-making. As a result, DOC and policymakers are reliant on third-party research reports and projects and are unable to consistently measure key criminal justice measures, including the impact of supervision returns and revocations on prison admissions and populations.
- 4. LACK OF RESOURCES TO SUPPORT PEOPLE ON SUPERVISION WITH COMPLEX NEEDS.** Current funding for DOC and resources available for community-based programs are inadequate to serve the state’s high-risk, high- and complex-needs corrections populations. Level DOC funding in recent years has meant that DOC has been unable to provide large numbers of high-risk people with the criminogenic and behavioral health programs and services they need to succeed in the community, and space and budget challenges limit DOC’s ability to provide sufficient gender-responsive programming to meet the needs of incarcerated women.

Policy Options

1. REDUCE RECIDIVISM AND REVOCATIONS TO PRISON

- Restructure and simplify community supervision by consolidating current supervised release furlough statuses into a single status of “Community Supervision Furlough” to create clear release expectations among people who are sentenced, victims, and DOC facility and community supervision staff.
- Establish presumptive parole for people convicted of non-listed offenses.⁴ Carving out presumptive parole for a small population represents a measured approach that will allow the Parole Board and other entities to adjust to this system change and gauge whether presumptive parole should be expanded in future years.
- Strengthen recently enacted legislation that would allow people to earn time off their minimum incarceration sentence to incentivize good behavior.
- Strengthen the effectiveness of incentive and graduated sanction violation responses for people on community supervision to safely reduce the number of people returned and revoked to prison from community supervision.
- Strengthen and restructure domestic violence treatment programs to ensure a more sustainable funding model and provide more risk-informed programming options for people convicted of domestic violence offenses.
- Increase gender-responsive and trauma-informed training and programming at the Chittenden Regional Correctional Facility, the state’s only female DOC facility, to address needs that may be contributing to recidivism.
- Provide more information at sentencing by expanding the use of presentence investigation reports to better guide program and treatment supervision planning.
- Develop more robust identification of behavioral health challenges among people within the criminal justice system, and strengthen connections to community-based treatment for people with mental illnesses, substance addictions, and co-occurring disorders who

⁴ Listed offenses are a set of the most serious crimes in Vermont as defined in 13 V.S.A. § 5301. Non-listed offenses are less serious crimes.

move through the corrections system to better address behavioral health needs that might be contributing to recidivism.

- Assess and quantify reentry housing needs for corrections populations to inform DOC transitional housing budget priorities, as well as Agency of Human Services cross-departmental planning and statewide permanent supportive housing discussions to support stability in the community after release.

2. ACHIEVE A MORE EQUITABLE SYSTEM ACROSS RACE AND GEOGRAPHY

- Direct the Sentencing Commission, the Racial Disparities in the Criminal Justice and Juvenile Justice System Advisory Panel, and key criminal justice stakeholders to better analyze and reduce racial disparities in the criminal justice system.
- Explore opportunities to create greater consistency in the access to and quality of alternative justice programs across all Vermont counties, including consolidating the administration of reparative panels, court-ordered diversion, Tamarack Program,⁵ and Pretrial Services, and establishing performance measures for funding these programs.
- Embed social workers within local law enforcement agencies across all Vermont counties to respond to behavioral health crisis calls, and strengthen statewide behavioral health crisis training for law enforcement.

3. IMPROVE DATA AND REPORTING TO INFORM DECISION-MAKING

- Invest in and strengthen DOC's analytical staff capacity to provide lawmakers and the public with information to inform policy decisions, including an annual report for the legislature.

4. REINVEST TO REDUCE RECIDIVISM, IMPROVE BEHAVIORAL HEALTH, AND SUSTAIN PROGRESS

- To reduce recidivism, improve behavioral health outcomes, and safely lower the prison population, Vermont must invest in expanding and supporting evidence-based programs that can effectively address the criminogenic and behavioral health challenges among people on community supervision (see Figure 3).
- Immediate priority areas for the \$2 million appropriation proposed in the Justice Reinvestment II bill should include the following:
 - Expanding DOC's risk-reduction programming
 - Strengthening and sustaining domestic violence treatment programs
 - Identifying opportunities for additional reentry housing supports
- Future Justice Reinvestment appropriations should focus on the following:
 - Increasing existing community-based treatment and services for people on community supervision who have mental illnesses,⁶ substance addictions, or co-occurring disorders. Appropriation amounts should be based on a gap analysis informed by the first year of implementing the recommendations to develop more robust identification of behavioral health challenges among people within the

⁵ The Tamarack Program is a statewide court diversion program designed for people with substance use and mental health treatment needs regardless of their criminal justice histories.

⁶ Expansion of community-based mental health treatment should be focused on people with mental health needs that do not rise to the level of Serious Mental Illness (SMI).

criminal justice system and strengthen collaboration and connections to existing community-based treatment for these people.

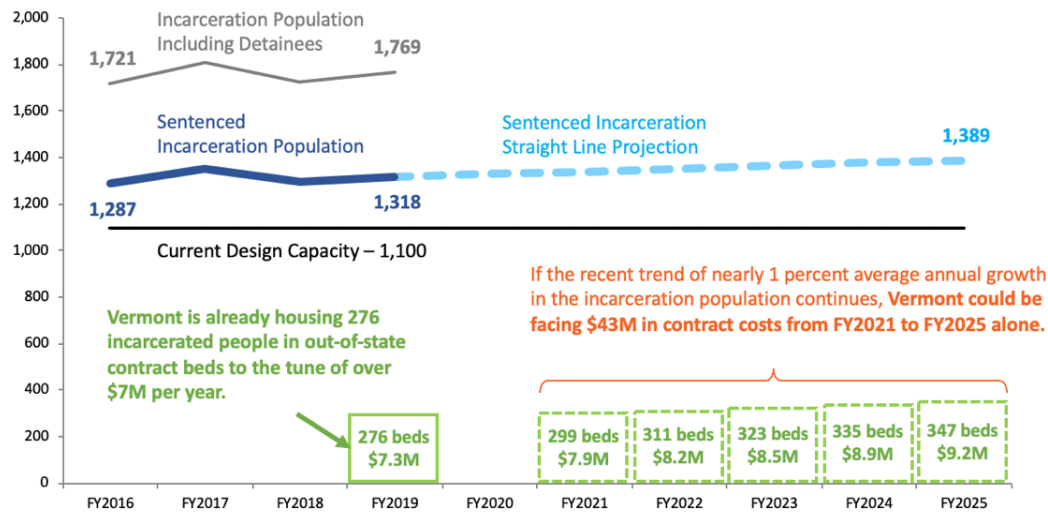
Potential Impacts

Vermont’s sentenced incarceration population has grown 1 percent over the past three years. If this growth continues, the state will likely have to spend an additional \$43 million to house people in out-of-state prisons, assuming the contract rate remains the same (see Figure 1).

The policy options proposed in this document would allow Vermont to potentially avert \$11–\$14 million in costs by reducing its sentenced prison population by 106–135 people by the end of FY2025 (See Figures 1 and 2). The CSG Justice Center developed this five-year (FY2021–FY2025) impact projection using historical data and assumptions based on a combination of all policy options, though impacts to the sentenced incarceration population are derived primarily from establishing presumptive parole, reducing revocations to prison, and strengthening Vermont’s earned good time law.⁷ Figure 2 provides an overview of potential bed savings and averted costs per year over the FY2021–FY2025 period.

To help Vermont meet its goal of reducing its sentenced prison population, the proposed policy options require initial as well as continued investments. Following an initial investment of \$2 million in 2020 (see Figure 3), the state legislature should work with relevant state agencies and organizations to determine the appropriate level of continued investments to ensure there are adequate resources to fully implement the adopted policies.

FIGURE 1. VERMONT SENTENCED INCARCERATION POPULATIONS AT FISCAL YEAR END AND PROJECTED IMPACT



Sources: The Council of State Governments Justice Center analysis of data from the Vermont Department of Corrections.

⁷ The impact model includes a range of potential impacts based on the percent reduction in revocations from supervision that Vermont is able to achieve (5–20 percent reduction). Potential averted costs are based on the reduced incarceration population per year and calculated at the current out-of-state contract cost per person per day of \$73.

FIGURE 2. SUMMARY OF JUSTICE REINVESTMENT POLICY FRAMEWORK AVERTED COSTS

	Range	FY2021	FY2022	FY2023	FY2024	FY2025
Potential Bed Savings at Fiscal Year End	Low End	-35 beds	-96 beds	-99 beds	-97 beds	-106 beds
	High End	-49 beds	-124 beds	-127 beds	-125 beds	-135 beds
Potential Averted Cost per Year	Low End	\$0.2M	\$2.3M	\$2.9M	\$2.9M	\$2.8M
	High End	\$0.2M	\$3.0M	\$3.6M	\$3.6M	\$3.5M

5-year potential averted cost totals range from **\$11M to \$14M**

FIGURE 3. POTENTIAL INVESTMENT FOR FY2020 JUSTICE REINVESTMENT POLICY OPTIONS

	FY2020
Expand risk-reduction programming	\$600K
Strengthen and sustain domestic violence treatment programs	\$400K
Expand reentry housing	\$1M
Total Investment	\$2M

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