

A special report by Auditor General Eugene A. DePasquale

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# CRIMINAL JUSTICE

Reforms to Improve Lives & Save Money



# Dear fellow Pennsylvanians,

Which country do you think has the highest percentage of its population incarcerated in the world?

The answer is, by far, the United States, which locks up 698 of every 100,000 people.<sup>1</sup> Pennsylvania surpasses that rate, incarcerating 725 of every 100,000 people.

We got to this point because of the lock-'em-up, tough-on-crime policies started in the 1990s that have played a large role over the past 30 years.<sup>2</sup> Mandatory minimums, three-strikes-and-you're-out and other buzz phrases that once sounded good are turning out to be, in practice, unsustainable both fiscally and morally.

These practices all cost taxpayers money. For example, Pennsylvania spent **\$2.6 billion in fiscal year 2018-19 to incarcerate roughly 45,929 people**. About 16 percent of those nearly 46,000 **prison beds** are occupied by people who have technically violated probation or parole but have committed no new crimes, which **costs taxpayers an estimated \$101 million per year**.<sup>3</sup>

Yet these statistics reflect criminal justice reform progress made over the past few years. Efforts such as the Justice Reinvestment Initiative in 2012 have shown that incarcerating fewer people corresponds with lower crime rates — as well as hundreds of millions of dollars in cost savings for taxpayers. More work remains to be done, however, especially since reforms have yet to affect the systemic racism that disproportionately punishes and incarcerates defendants of color.

After more than a year of research and discussions with dozens of experts, I provide this special report, which makes 18 recommendations for actions to continue Pennsylvania's criminal justice reform progress. The report is divided into observations in three areas: pretrial, during incarceration and after incarceration. It makes simple recommendations and relies on simple facts, such as studies that show **every \$1 spent on educational programs in prison yields \$5 saved in related incarceration costs**.<sup>4</sup>

Progress is being made to reform the way we look at and administer criminal justice in Pennsylvania. This report details many of the efforts under way and suggests additional paths forward to continue to treat offenders as the humans they are while simultaneously saving taxpayer dollars.

Thank you for the opportunity to serve you.

Sincerely,



Eugene A. DePasquale



<sup>1</sup> <https://www.prisonpolicy.org/global/2018.html>

<sup>2</sup> <https://www.bjs.gov/content/pub/pdf/p90.pdf>. Statistics show Pennsylvania's annual prison population in 1990 was 22,290. At its peak in the mid-2010s, the annual total was over 50,000.

<sup>3</sup> Council of State Governments Justice Center. "Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets." Published 2019. <https://csgjusticecenter.org/publications/confined-costly/?state=PA#primary>.

<sup>4</sup> [https://www.rand.org/content/dam/rand/pubs/infographics/IG100/IG113/RAND\\_IG113.pdf](https://www.rand.org/content/dam/rand/pubs/infographics/IG100/IG113/RAND_IG113.pdf)

The United States incarcerates the largest share of its population of any country in the world.<sup>5</sup> The term “criminal justice reform” refers to efforts to change facets of the criminal justice system to make it more fair and equitable for all defendants. In Pennsylvania, this change has also been undertaken with the intent to reduce corrections costs.<sup>6</sup>

In Pennsylvania, the most recent initiatives toward reform have been the Clean Slate Law and the Justice Reinvestment Initiatives (JRI1 and JRI2), all of which had bipartisan support.

## CLEAN SLATE LAW

Enacted in 2019, Clean Slate will seal 30 million criminal records by June 2020. Those eligible for the program include people arrested but not convicted of crimes and people who committed summary offenses and nonviolent misdemeanors but did not reoffend during the next 10 years.

Although these records are sealed from public view, they remain visible to law enforcement should any future potential criminal acts be investigated.<sup>7</sup> Pennsylvania is the only state to provide automatic record sealing.<sup>8</sup>

## JRI1

The main thrusts of Act 122 of 2012 were to address:

- the size of Pennsylvania’s incarcerated population;
- recidivism rates; and
- the inefficient parole process.<sup>9</sup>

Since the passage of JRI1, Pennsylvania’s prison population has declined significantly. According to the Department of Corrections, the prison population is 26.8 percent lower than projections without JRI1, and **the \$2.6 billion annual budget is 23.3 percent lower** than projections without JRI1 — resulting in **an estimated savings of roughly \$543 million.**<sup>10</sup>

## JRI2

The bulk of the second Justice Reinvestment Initiative was passed by the General Assembly in December 2019 and became law. The stated intent of this legislative initiative was the same as JRI1: to reduce corrections spending and reinvest savings in strategies to reduce recidivism and improve public safety.

SB 500 and SB 501 became, respectively, Acts 114 and 115 of 2019. They create a county adult probation and parole advisory committee to review county programs and have oversight of the justice reinvestment grants ear-marked to help supplement county probation and parole programs.

For a full list of criminal-justice-reform-related bills in the Pennsylvania legislature, see Appendix A.

<sup>5</sup> <https://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/>

<sup>6</sup> <https://csgjusticecenter.org/jr/pa/>

<sup>7</sup> <https://pittsburgh.cbslocal.com/2019/06/28/clean-slate-act-passed-pennsylvania/>

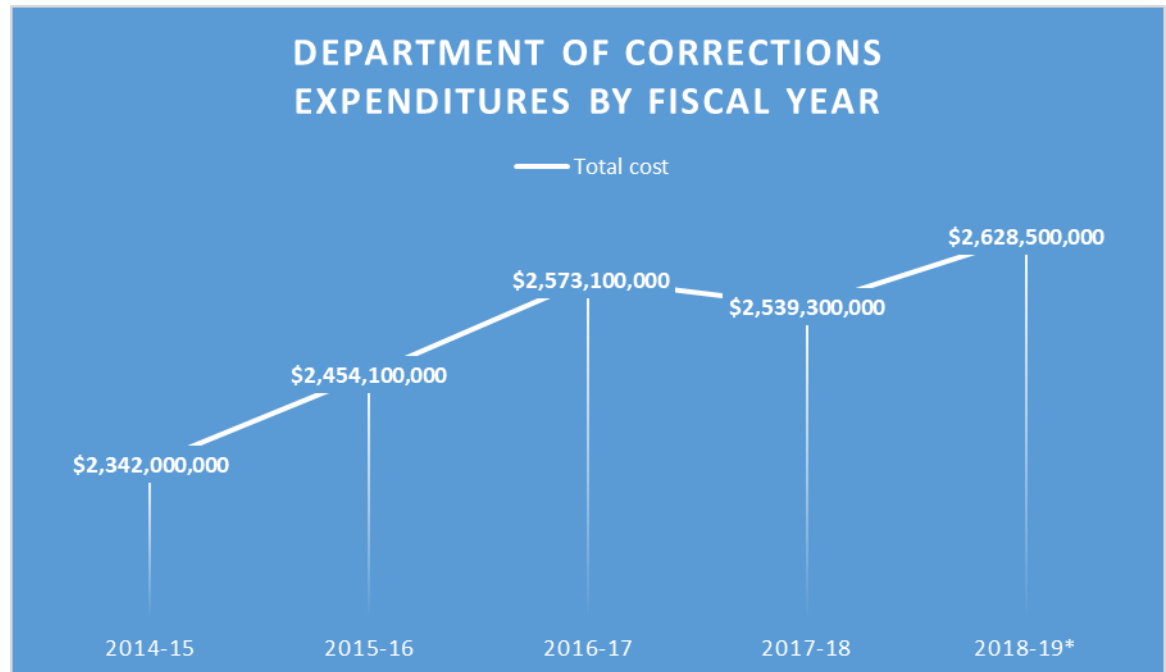
<sup>8</sup> *Ibid.*

<sup>9</sup> [https://www.pccd.pa.gov/Pages/JRI%20Subpages/JRI-in-Pennsylvania-\(2011-2012\).aspx](https://www.pccd.pa.gov/Pages/JRI%20Subpages/JRI-in-Pennsylvania-(2011-2012).aspx)

<sup>10</sup> <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/Budget%20Testimony%202019-20.pdf>, page 5.

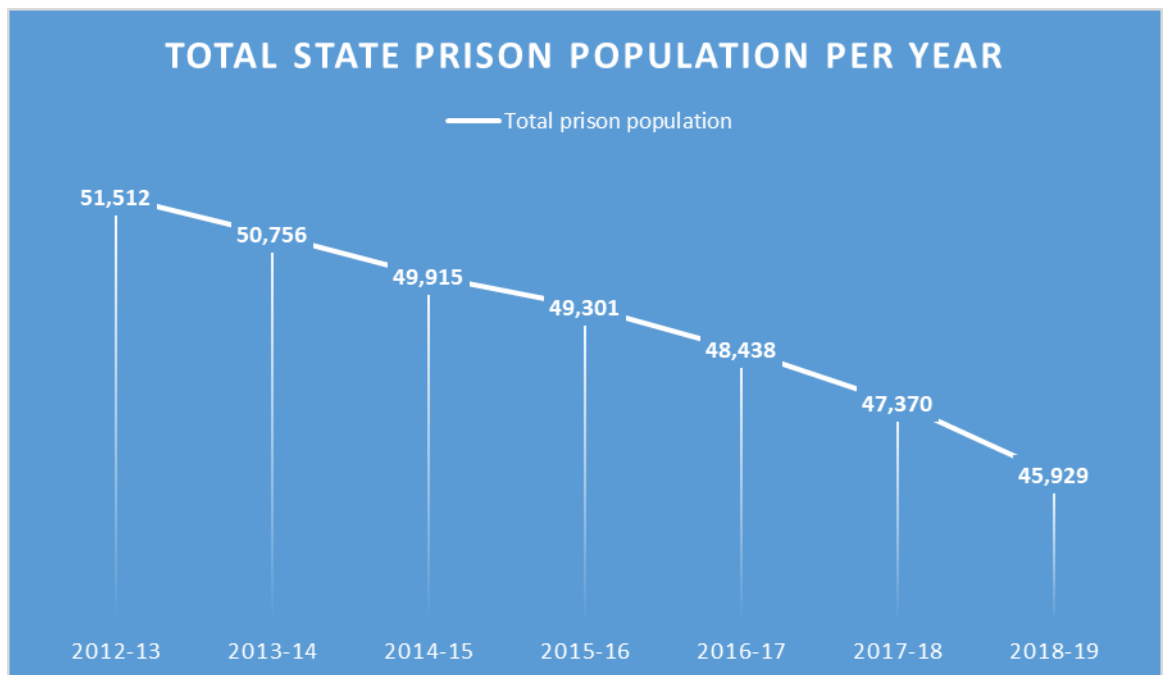
## THE COST OF CORRECTIONS

Pennsylvania spent **\$2.6 billion** to incarcerate people in the 2018-19 fiscal year:



\*2018-19 total is the budgeted amount; all others are actual amounts<sup>11</sup>

Approximately 46,000 people were incarcerated in 2019, a 10.8 percent decrease since 2012, when JRI1 was passed and implemented<sup>12</sup>:



NOTE: Information on number of inmates per year comes from DOC's 2019-20 budget testimony<sup>13</sup>, except for 2018-19, which comes from DOC custody total as of Oct. 31, 2019<sup>14</sup>

<sup>11</sup> <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/Budget%20Testimony%202019-20.pdf>, page 3.

<sup>12</sup> *Ibid*, page 6.

<sup>13</sup> *Ibid*, page 5.

<sup>14</sup> <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Monthly%20Population%20Reports/Mtppop1910.pdf>

## THE COST OF CORRECTIONS (cont.)

Although the prison population has declined steadily since 2012, **the cost per inmate per year has risen 32 percent** since 2013-14:



NOTE: Information on number of inmates per year comes from DOC's 2019-20 budget testimony<sup>15</sup>, except for 2018-19, which comes from DOC custody total as of Oct. 31, 2019<sup>16</sup>

### Juvenile Justice System Trends

Juvenile justice statistics — including crime rates, arrest rates, delinquency dispositions and delinquency placements — mirror the declining trends in Pennsylvania and the nation.

According to the Juvenile Court Judges' Commission's 2018 annual report, there were:

- 23,354 juvenile cases, down 17.4 percent from 2014;
- 22,023 delinquency-related dispositions, down 13.4 percent from 2014;
- 7,623 secure detention admissions, down 24.7 percent since 2014; and
- 2,965 delinquency placements, down 29 percent from 2014.

<sup>15</sup> <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/Budget%20Testimony%202019-20.pdf>, page 5

<sup>16</sup> <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Monthly%20Population%20Reports/Mtpop1906.pdf>



# What We Heard 1: Pretrial

Aspects of the pretrial process that must be improved include indigent defense, cash bail, risk assessments and use of diversionary courts.

## INDIGENT DEFENSE

In 1963, the U.S. Supreme Court ruled that the Sixth Amendment of the Constitution mandates that states provide free counsel for criminal defendants who cannot afford an attorney.<sup>17</sup> Yet 57 years after that ruling, Pennsylvania continues to ignore the mandate.

**Pennsylvania is the only state that provides no state funding for indigent defense.<sup>18</sup>**

Instead, the state shifts the burden of paying for public defense attorneys to each of the 67 counties, which set their own public defender budgets individually.

As a result, Philadelphia County spends nine times more per person on indigent defense than, for example, Columbia County spends, resulting in wide disparities in available resources for defendants.<sup>19</sup>

According to a 2011 Joint State Government Commission report, the system is overly burdensome to poorer, more rural counties, which tend to incarcerate higher percentages of their populations.<sup>20</sup>

<sup>17</sup> Gideon v. Wainwright, 372 U.S. 335, 344, 83 S.Ct. 792, 796-97 (1963).

<sup>18</sup> In 2019, a fiscal note provided \$500,000 to reimburse counties for indigent defense courts in some death penalty cases – an amount entirely too small to make even a dent in the costs. For details, see <https://www.penncapital-star.com/civil-rights-social-justice/a-new-state-grant-program-will-help-poor-defendants-in-capital-murder-cases-why-arent-reformers-satisfied/>.

<sup>19</sup> <https://www.aclupa.org/en/issues/criminal-justice-reform/indigent-defense-reform>

<sup>20</sup> <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2011-265-indigent%20defense.pdf>, page 2.

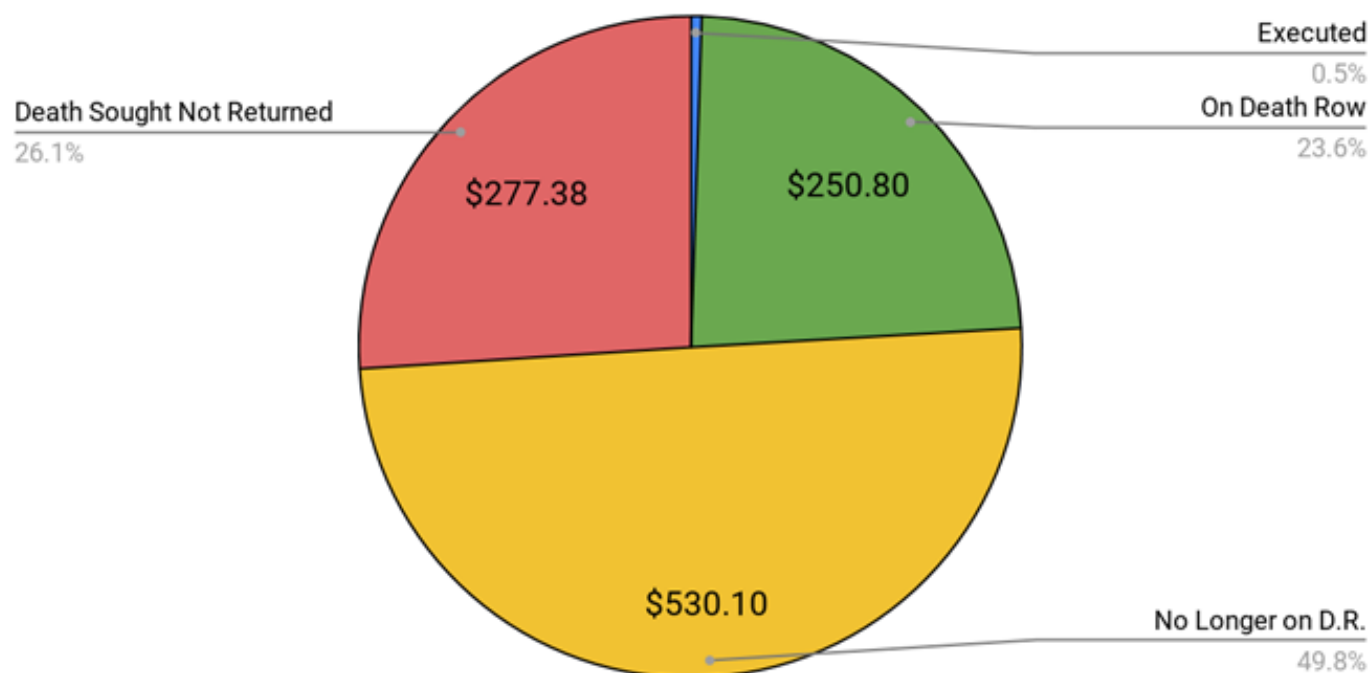
## Death penalty costs

From 1978 to 2018, Pennsylvania **taxpayers spent \$1.06 billion to try death penalty cases**, to house death-row inmates and to execute three inmates, according to research done by the nonprofit Pennsylvanians for Alternatives to the Death Penalty.

Here's a breakdown of how that \$1.06 billion has been spent:

### Pa. Capital Punishment Spending

(Millions)



More than 75 percent of the money spent has been on people who are no longer on death row or on cases where prosecutors sought the death penalty but a different verdict was returned.

**Only 0.5 percent — roughly \$6 million — has been spent to apply the death penalty and execute prisoners. That means 99.5 percent of the money spent was not used to execute people.**

*Source: For more information and research on this topic, including methodology and data used, see <https://www.paauditor.gov/Media/Default/Reports/PA%20Capital%20Punishment%20Costs.pdf> and <http://jsq.legis.state.pa.us/resources/documents/ftp/publications/2011-265-indigent%20defense.pdf>.*

## CASH BAIL

With no state funding to help the poorest of defendants, Pennsylvania courts end up treating them more harshly than other defendants who can afford attorneys. Poorer defendants are unlikely to be able to post cash bail, which means they are disproportionately incarcerated pre-trial – when they have not been convicted of any crime and yet cost taxpayers thousands of dollars to lock up.

An October 2019 study by the ACLU of Pennsylvania focused on cash bail in Allegheny County and found a litany of problems with the system there:<sup>21</sup>

“The research also points to trends of black residents and poor residents being disproportionately assigned cash bail. This has led to a surge in pretrial detention reflected in the population of the Allegheny County Jail: 95% of the growth in the overall jail prisoner population since 2000 was due to the increase in the unconvicted population.

“‘When a person is assigned cash bail that they cannot afford and ends up in pretrial detention, the consequences are often devastating,’ said Reggie Shuford, executive director of the ACLU of Pennsylvania. ‘People can lose their jobs, their housing, their transportation, or worse in just a matter of days before they have ever been convicted of a crime.’”

Multitudes of studies have been done in the last decade on alternatives to cash bail. For example, a 2014 Center on Juvenile and Criminal Justice study found that existing pre-trial alternatives, such as diversionary and treatment courts, produce better outcomes for both defendants and for society.<sup>22</sup>

<sup>21</sup> <https://www.aclupa.org/en/press-releases/aclu-pennsylvania-releases-new-report-accounting-use-cash-bail-and-pretrial-detention>. For the full report, see <https://www.aclupa.org/en/publications/punishing-poverty-cash-bail-allegheny-county>.

<sup>22</sup> [http://www.cjcj.org/uploads/cjcj/documents/cjcj\\_pretrial\\_reform\\_july\\_2014.pdf](http://www.cjcj.org/uploads/cjcj/documents/cjcj_pretrial_reform_july_2014.pdf)



### THE RISK OF RISK ASSESSMENTS

In September 2019, the Pennsylvania Commission on Sentencing approved the use of a risk-assessment tool to help judges determine sentencing for defendants who were convicted of or who pleaded to a crime.<sup>23</sup>

The tool is a computer algorithm that assesses a person's risk of reoffending based on factors such as age, gender and previous criminal history. The stated goal is to identify those who are low risk of reoffending and alert judges to those for whom the possibility of diversionary or treatment courts might be more helpful in preventing recidivism than prison.

Critics of the assessment tool say that the algorithm does nothing but further entrench systemic racism by amplifying the problems that arise because statistics show that people of color are disproportionately intertwined with the criminal justice system from younger ages than white people.

The tool is scheduled to be implemented in July 2020.

In March 2020, the Pennsylvania Commission on Sentencing also approved the use of a new pre-trial risk assessment tool, known as the Ontario Domestic Assault Risk Assessment, for domestic offenders.<sup>24,25</sup>

<sup>23</sup> <https://technical.ly/philly/2019/09/06/pennsylvanias-controversial-sentencing-risk-assessment-tool-was-just-approved/>

<sup>24</sup> <http://pcs.la.psu.edu/about-the-commission/meetings/record-of-actions/march-5-2020/view>

<sup>25</sup> [http://www.waypointcentre.ca/UserFiles/Servers/Server\\_9960/File/ODARA%20Fact%20sheet%20v0116.pdf](http://www.waypointcentre.ca/UserFiles/Servers/Server_9960/File/ODARA%20Fact%20sheet%20v0116.pdf)

## DIVERSIONARY AND TREATMENT COURTS

Instead of going through the traditional, punitive court system process, certain defendants often fare better – meaning they are less likely to reoffend and more likely to re-assimilate well into society — by having their cases diverted to treatment courts, such as drug court or mental health court. Such courts have existed for more than 20 years, and a mountain of data supports their efficacy in reducing recidivism for less than the cost of incarcerating people.

According to the Unified Judicial System of Pennsylvania’s website:

“These innovative courts ... focus on specific types of behaviors or conditions, often linked to crime and social problems. These behavioral problems, particularly drug addiction and untreated severe mental illness, have a major impact on the courts, jails and prisons.

“The goal of problem-solving courts is to supervise the treatment and rehabilitation of carefully screened and selected defendants to try to change their behavior. Instead of a jail sentence, defendants are given counseling, treatment for their addictions or illnesses, educational assistance and healthcare support.”<sup>26</sup>

York County Common Pleas Court Judge Craig Trebilcock said in February 2019 that he quickly discovered after becoming a judge that 80 percent of the defendants in his courtroom are there because of a mental health or substance abuse problem.

“They are lost souls,” Trebilcock said.

<sup>26</sup> <http://www.pacourts.us/judicial-administration/court-programs/problem-solving-courts>

## **DIVERSIONARY AND TREATMENT COURTS (cont.)**

York County has seven diversionary treatment courts, including Drug Treatment Court, Heroin Opioid Court, Mental Health Court and Veterans Court. The goal of these courts is to provide early intervention for nonviolent offenders and get them the social services help they need to prevent them from reoffending.

For example, from 2012-2018, York County Judge John Kennedy ran a program called Target 25, which focuses on defendants who are caught driving under the influence (DUI). Kennedy's efforts to get first-time DUI offenders into drug or alcohol treatment as soon as possible after their arrest has resulted in a 90 percent decrease in DUI offenders committing a subsequent DUI within a year.<sup>27</sup> It also cut DUI-related traffic injuries and deaths in the county by 21 percent in 2013 alone.<sup>28</sup> Target 25 continues to be used in York County.

Trebilcock said the traditional court system produces a success rate of only 45 percent, meaning 55 percent go on to commit other crimes. By contrast, York County's diversionary courts each have about an 80-90 percent success rate.

"The old system, in my opinion, wastes taxpayer money, and we don't get the results that we can get through a better system that focuses on earlier intervention," Trebilcock said.<sup>29</sup>

<sup>27</sup> <https://www.scramsystems.com/images/uploads/general/downloads/target-25-implementation-guide.pdf>, page 7.

<sup>28</sup> *Ibid.*

<sup>29</sup> <https://www.eveningsun.com/story/news/2019/10/23/york-county-works-early-intervention-addiction-mental-health-treatment/3907976002/>

## What We Heard 2: During Incarceration

Incarceration is a life-altering, overwhelmingly destabilizing life experience. While incarcerated, people need to have their physical and mental health cared for, and they need to have the opportunity to use their time to learn viable work skills or earn an education degree to improve their chances of successfully rejoining society upon their release.

Here are just a few of the areas that could be improved for inmates in Pennsylvania prisons and jails:

### HEALTH CARE: MENTAL HEALTH

Nearly 20 percent of U.S. adults have some form of mental illness,<sup>30</sup> and living with mental illness increases a person's odds of becoming entangled in the criminal justice system.<sup>31</sup>

Although all of Pennsylvania's county jails provide general psychological counseling,<sup>32</sup> mentally ill inmates are stuck in places fundamentally not conducive to caring for mentally ill people.

Of those with mental illness, a small subset are diagnosed as having serious mental illness.<sup>33</sup> In Pennsylvania's state prisons, roughly 8 percent of the population have been diagnosed with serious mental illness, according to the Department of Corrections,<sup>34</sup> **and the annual cost of incarcerating them is more than \$140 million.**<sup>35</sup>

<sup>30</sup> <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>

<sup>31</sup> <https://healthpolicy.usc.edu/wp-content/uploads/2018/07/PA-Facts-and-Figures.pdf>

<sup>32</sup> [https://www.rural.palegislature.us/documents/reports/rural\\_county\\_jails\\_2012.pdf](https://www.rural.palegislature.us/documents/reports/rural_county_jails_2012.pdf)

<sup>33</sup> According to the National Institute on Mental Health, "any mental illness" is defined as "a mental, behavioral or emotional disorder"; "serious mental illness" is defined as "a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities."

<sup>34</sup> <https://www.inquirer.com/news/graterford-prison-suicide-pennsylvania-lawsuits-correct-care-solutions-mhm-20200220.html>

<sup>35</sup> *Ibid.*

### HEALTH CARE: MENTAL HEALTH (cont.)

Like many other issues, treating seriously mentally ill inmates particularly plagues county-level jails, where so few resources are allocated compared with state prisons. Shortages of mental health services throughout Pennsylvania exacerbate the problems in both state prisons and county jails, which rely largely on outside contractors for providing inmates' mental health care.

Having serious mental illness also means that inmates are more likely to spend additional time behind bars. For example, in 2016, the Council of State Governments (CSG) Justice Center studied Dauphin County Prison's (DCP) population with serious mental illness and found that they spent 40 percent more days in prison than other inmates.<sup>36</sup>

The study also found that seriously mentally ill inmates who were considered to have "low criminogenic risk" nevertheless stayed at DCP the longest — twice as long as people at low risk of reoffending who did not have serious mental illness (117 days versus 57 days).<sup>37</sup>

Among those with serious mental illness released from DCP in 2016, 44 percent were back in the system within the year.<sup>38</sup>

<sup>36</sup> <https://csgjusticecenter.org/wp-content/uploads/2020/01/Dauphin-County-Report.pdf>

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

### HEALTH CARE: MENTAL HEALTH (cont.)

Also of note is that the suicide rate among Pennsylvania state prisoners as of 2019 was twice the national average.

Since 2015, there have been 1,774 suicide attempts in state prisons.<sup>39</sup>

The prevalence of substance use disorder, which is defined as a mental health disorder,<sup>40</sup> is also on the rise in jails and prisons. According to the Department of Corrections, approximately two-thirds of the state's incarcerated population have a problem with drugs and/or alcohol.<sup>41</sup> And the problem is only getting worse: Statewide, for 2018 and 2019, an average of 73 percent of new admissions had diagnosed substance abuse problems.<sup>42</sup>

<sup>39</sup> <https://www.inquirer.com/news/graterford-prison-suicide-pennsylvania-lawsuits-correct-care-solutions-mhm-20200220.html>

<sup>40</sup> <https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health/index.shtml>

<sup>41</sup> <https://www.cor.pa.gov/Initiatives/Documents/Medication%20Assisted%20Treatment/Handout%20-%20MAT%20for%20general%20public.pdf>

<sup>42</sup> <https://data.pa.gov/Opioid-Related/Inmate-Admissions-with-Substance-Use-Year-2018-Cur/bvin-4fk2>



## HEALTH CARE: MEDICATION ASSISTED

### TREATMENT

For those with diagnosed substance use disorder, the state Department of Corrections makes available Medication Assisted Treatment (MAT) in the form of medications that block the body's ability to feel the high associated with taking drugs.<sup>43</sup>

According to the DOC:

"Substance Use Disorder has been generally treated as if it were an acute illness, rather than a chronic disease. Research results suggest that long-term care strategies of medication management and continued monitoring produce lasting benefits. The use of MAT for those suffering from addiction should be insured, treated and evaluated like other chronic illnesses."<sup>44</sup>

MAT was first used in 2014. Although not all MAT drugs are available at all state correctional institutions, the DOC has been expanding its MAT programs statewide for the last two years. Available MAT drugs include Vivitrol, methadone and naltrexone.

Monthly Vivitrol shots were made available to people being released from any state prison as of 2018, and the DOC works to keep participants on Vivitrol for 11 months after they're released, often by helping them enroll in Medicaid so they can afford the shots.<sup>45</sup>

Anecdotal evidence from counties has shown that MAT programs have significantly reduced recidivism and relapse, which saves money on corrections costs.<sup>46</sup>

<sup>43</sup> <https://whyy.org/articles/pa-prisons-offering-inmates-addiction-treatment-on-their-way-out-but-is-it-working/>

<sup>44</sup> <https://www.cor.pa.gov/About%20Us/Initiatives/Pages/Medication-Assisted-Treatment.aspx>

<sup>45</sup> <https://whyy.org/articles/pa-prisons-offering-inmates-addiction-treatment-on-their-way-out-but-is-it-working/>

<sup>46</sup> [https://observer-reporter.com/news/localnews/vivitrol-program-meets-goals-after-one-year/article\\_71c12870-a0a4-11e8-8d19-1757c62c2280.html](https://observer-reporter.com/news/localnews/vivitrol-program-meets-goals-after-one-year/article_71c12870-a0a4-11e8-8d19-1757c62c2280.html)

## HEALTH CARE: PHYSICAL HEALTH

People being held in correctional facilities have a constitutional right to medical treatment.

However, statistics show that Pennsylvania hovers near the bottom nationally in its health care spending and staffing for inmates.<sup>47</sup> For example, in 2015, **Pennsylvania spent \$4,548 per state inmate on health care compared with the \$5,720 average nationwide.**<sup>48</sup>

For a state prison population that hovers around 50,000, according to DOC statistical reports, there are fewer than 1,300 medical professionals spread across the state correctional system.<sup>49</sup> That equates to 25 full-time health care workers per 1,000 inmates, which places Pennsylvania in the bottom 10 states for staffing levels.<sup>50</sup>

Health care policies vary across the state and among counties, so there are no consistent standards of care.<sup>51</sup> Studies have shown investing in preventive health care saves money on treating sick inmates further down the road.

When it comes to health care in county jails, inmates have no choice in provider and, if they require medical care, have to pay co-payments to private providers.<sup>52</sup> In 2014, Pennsylvania collected roughly \$373,000 in medical co-payments from prisoners.<sup>53</sup> Medical co-payments come out of inmates' commissary accounts.

<sup>47</sup> <https://whyy.org/articles/pennsylvania-near-bottom-prison-health-care-spending-delaware-near-top/>

<sup>48</sup> <https://www.pewtrusts.org/en/research-and-analysis/reports/2017/10/prison-health-care-costs-and-quality>

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> <https://www.aclupa.org/sites/default/files/RHLUrpt.pdf>

<sup>52</sup> <https://whyy.org/articles/he-went-into-jail-with-a-toothache-he-ended-up-on-life-support-and-in-debt/>

<sup>53</sup> <https://publicpolicy.wharton.upenn.edu/live/news/1736-the-current-state-of-public-and-private-prison/for-students/blog/news.php>

### HEALTH CARE: PHYSICAL HEALTH (cont.)

At any given county jail in Pennsylvania, the ACLU of Pennsylvania says, there is no guarantee any of these services are available to incarcerated people:<sup>54</sup>

- Prenatal care (according to the state, this should be guaranteed and free);
- Postpartum care (only Lackawanna and Montgomery counties provide it regardless of the outcome of a pregnancy);
- Policies that protect an individual's constitutional right to medical care for serious medical needs and their right to an abortion; or
- Testing and treatment for sexually transmitted diseases.

The ACLU also argues there is a dangerous gulf among county jails' policies and practices, which result in disparate qualities of care being provided within individual facilities, as well as from jail to jail.

<sup>54</sup> <https://www.aclupa.org/sites/default/files/RHLUrpt.pdf>

### EDUCATION

Access to postsecondary education prepares people to learn skills that will enable them to seek employment upon release.<sup>55</sup> But a long-time ban on providing federal student aid to people in prison negated prisoners from having the option to develop that stability.

Since 2016, at six state prisons, Pennsylvania has been experimenting with making higher education available to inmates through federal grants — something that was readily available until the mid-1990s.<sup>56</sup> In order to participate now, inmates must meet criteria established by the U.S. Department of Education, as the initiative — the Second Chance Pell Program — is an experiment “for the purpose of determining whether access to higher education results in reduced recidivism.”<sup>57</sup>

Over the past four years, however, the U.S. Department of Education has not collected much data on the program, so there is little evidence available to researchers based on this experiment that education reduces recidivism.<sup>58</sup>

But previous data have shown the value of education for inmates: A RAND Corporation study in 2014 concluded that people who participated in educational programs while incarcerated “had a 43 percent lower chance of recidivating than those who did not.”<sup>59</sup> RAND concluded from the study that **every \$1 spent on educational programs in prison yielded \$5 saved in related incarceration costs.**<sup>60</sup>

<sup>55</sup> [https://storage.googleapis.com/vera-web-assets/downloads/Publications/investing-in-futures-education-in-prison/legacy\\_downloads/investing-in-futures-factsheet.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/investing-in-futures-education-in-prison/legacy_downloads/investing-in-futures-factsheet.pdf)

<sup>56</sup> <https://www.cor.pa.gov/CorrectionalNewsfront/Pages/Article.aspx?post=391>

<sup>57</sup> *Ibid.*

<sup>58</sup> <https://www.insidehighered.com/news/2019/07/16/full-repeal-pell-ban-prisons-top-mind-annual-convening-second-chance-pilot>

<sup>59</sup> [https://www.rand.org/pubs/research\\_reports/RR564.html](https://www.rand.org/pubs/research_reports/RR564.html)

<sup>60</sup> [https://www.rand.org/content/dam/rand/pubs/infographics/IG100/IG113/RAND\\_IG113.pdf](https://www.rand.org/content/dam/rand/pubs/infographics/IG100/IG113/RAND_IG113.pdf)

## WORKFORCE TRAINING

People currently in prison in Pennsylvania can participate in programs to qualify to practice cosmetology, electrical engineering, plumbing, welding and other vocations. As of December 2019, there were 5,789 inmates in Pennsylvania prisons with vocational certifications.<sup>61</sup> All of them should be able to utilize those skills and qualifications to gain stability in their lives after incarceration — but they might not be able to.

Many of the jobs for which those certifications exist require a professional license, and people with criminal records can be disqualified from obtaining those licenses under current state law. Professional licensing boards are allowed to deny an application from — and in some cases must automatically deny an application from — someone with a criminal record.<sup>62</sup>

Not only does helping people in prison learn job skills improve their chances of not reoffending once released, it also provides an opportunity to train more people for careers that are in desperate need of additional workers.

In 2019, separate bills passed in both the House and the Senate that will enable people leaving prison to benefit from the vocational and certificate training programs they can participate in while incarcerated.<sup>63</sup> All are currently stalled in the General Assembly. For a list of legislation pending in the General Assembly, see Appendix A.

<sup>61</sup> <https://data.pa.gov/Workforce-Development/Inmate-Vocational-Training-Status-CY-2018-Current-/xpkf-94wz>

<sup>62</sup> <https://www.penncapital-star.com/criminal-justice/ex-offenders-in-pa-can-be-denied-professional-licenses-because-of-old-convictions-bipartisan-lawmakers-want-to-change-that/>

<sup>63</sup> *Ibid.*

## What We Heard 3: After Incarceration

When people released from incarceration have no support, Dr. Kevin Dolphin says, they return to repeating what got them incarcerated in the first place. Dolphin is president of Dauphin County-based Breaking the Chainz Inc., a mentoring program that serves formerly incarcerated people as well as at-risk youth.

If reentry programs are not focused on supporting people in their efforts to stabilize their lives, regain access to housing and employment, and see themselves living a law-abiding life, they will be trapped in conditions that perpetuate recidivism, Dolphin says.



## PROBATION AND PAROLE

People who violate conditions of their probation or parole put a strain on criminal justice resources: They occupy one-third of prison beds statewide, costing taxpayers an estimated \$420 million per year.<sup>64</sup>

In 2016, Pennsylvania had the third-highest per capita rate of people under supervision in the country.<sup>65</sup> In Philadelphia alone that year, roughly 1 out of every 35 people was under supervision of some kind.

**In fact, Pennsylvania had more people under correctional control (375,000) than the entire population of Pittsburgh (305,928).<sup>66</sup>**

This is due in part to issues specific to Pennsylvania, which means the state can do something about it.

## Glossary

**Probation:** Supervision in lieu of incarceration

**Parole:** Supervised release from incarceration

<sup>64</sup> Council of State Governments' Justice Reinvestment in PA policy framework

<sup>65</sup> <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities>

<sup>66</sup> <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-PA.pdf>

### PROBATION AND PAROLE (cont.)

Until January 2020, Pennsylvania's sentencing guidelines did not address probation or probation violations.<sup>67</sup> Before then, in the event of probation violations, judges had the ability to add time to people's probation sentences, up to the maximum legal sentence time. So, for instance, if a crime has a maximum legal sentence of 10 years, an offender could be on probation for 10 years.<sup>68</sup>

But because maximum sentences are required by Pennsylvania law to be at least twice as long as the minimum sentence, that leaves the door open for community supervision to last for many years.<sup>69</sup> As a result, according to the Council of State Governments Justice Center, in Pennsylvania, "almost half of parole supervision terms are longer than three years, and one-fifth of parole terms are longer than five years."<sup>70</sup>

As of January 2020, the Commission on Sentencing instituted guidelines for resentencing probation violators that direct judges to return to the options available at the initial sentencing. This new approach means that, while probation violators cannot be incarcerated unless they commit a new crime, incarceration will now be recommended no matter how serious the probation violation is.<sup>71</sup>

Missing curfew or failing a drug test are examples of what are identified as "technical violations," meaning people have technically violated the terms of their probation or parole.

<sup>67</sup> <https://www.inquirer.com/news/inq/probation-parole-pennsylvania-philadelphia-judges-criminal-justice-system-20191024.html>

<sup>68</sup> *Ibid.*

<sup>69</sup> Council of State Governments' Justice Reinvestment in PA policy framework

<sup>70</sup> *Ibid.*

<sup>71</sup> <https://www.inquirer.com/news/probation-pennsylvania-sentencing-commission-resentencing-guidelines-20200106.html>

## PROBATION AND PAROLE (cont.)

**Supervision violations** — which include technical violations, but also encompass new offenses — that result in incarceration **cost the state \$344 million annually.**<sup>72</sup> **Technical violations account for a third of that cost: \$101 million.**<sup>73</sup> (See “Supervision violations” chart, page 23.)

Instead of prompting punitive reactions, technical violations should prompt supportive measures such as drug treatment. As it stands now, supervised release remains one of the biggest contributors to mass incarceration in Pennsylvania, as opposed to being a means of helping former offenders reenter society and thrive.

A way to support people on probation and stem this financial drain would be to focus more funding on counties. In 2014, 66 percent of the people in the criminal justice system statewide were being supervised at the county level.<sup>74</sup>

However, only 6 percent of spending on the system was allocated to counties that year, itself a factor feeding people back into prisons and costing the state almost \$200 million per year.<sup>75</sup>

<sup>72</sup> <https://csgjusticecenter.org/confinedandcostly/?state=PA>

<sup>73</sup> *Ibid.*

<sup>74</sup> Council of State Governments’ Justice Reinvestment in PA policy framework

<sup>75</sup> *Ibid.*

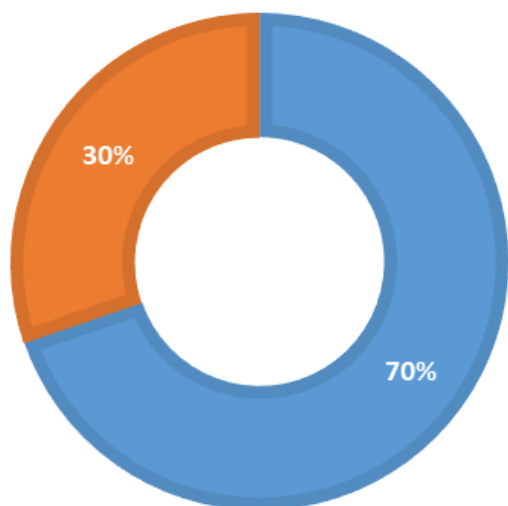
## PROBATION AND PAROLE (cont.)

By the end of 2017, the number of people being supervised at the county level comprised nearly 86 percent of the statewide total.<sup>76</sup> However, since 2011, state grant-in-aid support — county-level probation's primary means of funding — has been stagnant.<sup>77</sup>

In 2014, probation officers handled an average of 109 cases and parole officers handled an average of 66 cases. In 2014, 59 percent of officers reported spending less than half their time in direct contact with the people they supervise because of how busy they are.<sup>78</sup>

## SUPERVISION VIOLATIONS

■ New offense supervision violations: \$233 million      ■ Technical violations: \$101 million



<sup>76</sup> <https://www.pbpp.pa.gov/Information/Documents/CAPP%20Reports/2017%20County%20Adult%20Probation%20and%20Parole.pdf>

<sup>77</sup> <http://lbfc.legis.state.pa.us/Resources/Documents/Reports/509.pdf>

<sup>78</sup> Council of State Governments' Justice Reinvestment in PA policy framework

## PARDONS AND CLEMENCY

The pardons process in Pennsylvania has remained virtually the same since its inception in 1872 — nearly 150 years.

The Board of Pardons (BOP) makes recommendations to the governor to grant pardons or clemency or to commute sentences.

The composition of the BOP is determined by the state Constitution, which states that the BOP consists of the lieutenant governor, who serves as the chair; the attorney general; and three members appointed by the governor who serve six-year terms and must be approved by a majority of the Senate.<sup>79</sup> The three appointees must be a crime victim; a corrections expert; and a doctor of medicine, a psychiatrist or a psychologist. All must be Pennsylvania residents.<sup>80</sup>

According to Lt. Gov. John Fetterman's office, only 16 percent of people who began a pardons application in 2017 actually completed it: More than 3,400 people paid to access the form, but only 564 submitted it to the board.<sup>81</sup>

However, Fetterman and Pardons Secretary Brandon Flood have been working to simplify the application process, including eliminating the \$63 in fees.<sup>82</sup> That simple step, taken in March 2020, resulted in a doubling of submitted applications in the following four weeks.<sup>83</sup>

The BOP also handles applications for clemency, and it currently takes years for the board to evaluate such applications.<sup>84</sup> Those are years during which applicants face barriers to housing, employment and much more — and most people seeking clemency have 20- to 30-year-old convictions affecting their quality of life.

## Glossary

**Pardon:** executive power of a governor or president to forgive a person convicted of a crime. A pardon strikes the conviction from the books as if it had never occurred, and the convicted person is treated as innocent.

**Clemency:** leniency or mercy. A power given to a public official, such as the governor, to lower or moderate the harshness of punishment.

**Expungement:** process by which a record of criminal conviction is sealed.

<sup>79</sup> <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=00&div=0&chpt=4&sctn=9&subsctn=0>

<sup>80</sup> *Ibid.*

<sup>81</sup> <https://www.penncapital-star.com/criminal-justice/pa-s-board-of-pardons-sees-spike-in-applications-after-eliminating-fees/>

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> <https://www.pennlive.com/news/2019/10/its-the-right-thing-to-do-gov-wolf-allies-tout-expedited-pardons-process-for-low-level-marijuana-crimes.html>

### **PARDONS AND CLEMENCY (cont.)**

Traditionally, every application has been processed the same way, with no minimum eligibility requirements — which means applications for clemency for convictions for possession of a small amount of marijuana were processed the same way as applications for clemency for third-degree murder.

In October 2019, Gov. Wolf announced that he, Lt. Gov. Fetterman and Secretary Flood were encouraging the BOP to expedite clemency applications for possession of small amounts of marijuana so they take less than a year to process.<sup>85</sup>

The number of people seeking clemency has also increased recently. Flood said that, until Dec. 31, 2018, BOP had never received more than 600 applications annually. In 2019, BOP received more than 1,100 applications.

The increased interest in clemency, coupled with BOP's complement of only six staff members and its existing backlog of more than 500 clemency applications, shows that it is time for BOP to modernize its administrative operations and its application process.

Flood also pointed to a recent report by the Economy League of Greater Philadelphia<sup>86</sup> that found that pardons granted between 2008 and 2018 enabled recipients to earn an estimated \$16 million in additional wages as of December 2019 — while also significantly lowering recipients' recidivism rates.

<sup>85</sup> <https://www.governor.pa.gov/newsroom/gov-wolf-lt-gov-pardons-board-provide-update-on-pardons-process-benefit-to-those-with-marijuana-convictions/>

<sup>86</sup> [https://www.bop.pa.gov/news-references/Documents/plse\\_report.pdf](https://www.bop.pa.gov/news-references/Documents/plse_report.pdf)





## Conclusion

Progress is being made in the way Pennsylvania administers criminal justice after charges are filed, but more work remains to be done.

As bipartisan bills pile up in the General Assembly to remedy wrongs of the criminal justice system, now is the time for well-thought-out reform.

We can treat people more equitably while saving hundreds of millions of dollars – something that is not only possible, but also necessary.

# Recommendations

1. **The General Assembly** should follow the recommendations from the 2011 Joint State Government Commission report on how Pennsylvania can provide an effective indigent defense system.
2. **Magisterial District Justices (MDJs, or local-level judges)** should be trained on the current disparities of the cash bail system.
3. Any use of a risk assessment tool to determine pretrial detention should be balanced by the use of a needs assessment tool to determine what basic human needs a person has — such as the need for food or shelter — to be released pretrial and not reoffend.
4. **Court officials** must work with police, district attorneys, public defenders, health bureau officials, probation/parole officers and more to create robust systems that identify as early as possible those defendants who need help, not punishment, to prevent them from committing new crimes.
5. **County courts** that have not done so should implement diversionary courts, especially those for drug treatment, mental health and veterans.
6. **All county prisons** should adopt the recommendations made in the July 2019 Council of State Government's Justice Center's report on treating defendants with serious mental illness.\*
7. **The state Department of Corrections** should continue expanding Medication Assisted Treatment programs and share how such programs are affecting relapse and recidivism rates among reentrants.
8. **County commissioners and county prison boards** should work together to standardize medical services based on best practices. For example, labor and delivery policies should be standardized so that a consistent level of care and safety is present across the state and so that care is guaranteed in case of complications.
9. At the state and county level, policies governing health care in prison should prioritize continuity of care.
10. At the state and county level, screenings for mental health histories, substance abuse histories and sexually transmitted diseases should be automatically performed at intake.
11. At the state and county level, accessible resources should be provided about health care in prison — a pamphlet in English is not accessible to all; there should be forms at the ready for whoever needs those resources, including counseling opportunities.

*\*According to the Stepping Up Initiative's website, 35 counties have so far officially pledged to do so: Allegheny, Berks, Blair, Bradford, Bucks, Butler, Carbon, Centre, Chester, Clinton, Cumberland, Dauphin, Delaware, Erie, Fayette, Franklin, Fulton, Juniata, Lancaster, Lycoming, McKean, Mercer, Mifflin, Montgomery, Northampton, Northumberland, Philadelphia, Pike, Potter, Tioga, Warren, Washington, Wayne, Westmoreland and York. For details, see <https://stepuptogether.org/what-you-can-do/stepping-up-counties>.*

12. **Congress** should expand the Second Chance Pell Program and provide for more federal student aid in prisons.
13. **The General Assembly** should pass a law ensuring that people with criminal records cannot be automatically disqualified from obtaining professional licenses unless the crime committed relates to the practice of that profession.
14. **The General Assembly** should pass the Pennsylvania Second Chance Jobs Act so that the Department of Labor and Industry can develop and maintain a website where formerly incarcerated people can search for and apply to jobs.
15. **County probation** needs to be better funded so that probation officers can better support the people they supervise and help them meet the terms of their supervision. Probation should be about providing people with ways to address mistakes that amount to technical violations.
16. **State and county officials** should work together to reallocate resources to counties so they can provide support services to people on probation or parole.
17. **The Wolf Administration** should continue to automate and streamline the clemency application and pardons process.
18. The state Constitution should be amended so that the Board of Pardons requires at minimum a majority vote, not a unanimous vote, to send pardon and clemency recommendations to the governor in cases with sentences of life imprisonment or death.

## Pending House bills

**HB 135:** Would reform sentencing laws, specifically life sentences. After serving a certain number of years of a life sentence, an inmate could be eligible for parole. Also creates an Office of Re-entry program. **STATUS:** In House Judiciary Committee.

**HB 440:** Deals with certain types of record expungement, but requires full payment of all fees and costs. **STATUS:** Passed by House; in Senate Judiciary Committee

**HB 562:** Would require judges to hold a hearing if someone has defaulted on the payment of a fine, fee, or restitution and define the parameters that mean “manifest hardship.” **STATUS:** In House Judiciary Committee.

**HB 586:** Would apply any excess cash bail to restitution or other fines, but would also allow defendants to waive this if they can show financial hardship. **STATUS:** In House Judiciary Committee.

**HB 634:** Establishes a 12-member Task Force on Technical Probation Violations that would review the state’s judicial processes of technical violations and make recommendations to ensure due process. **STATUS:** Passed by House; in Senate Judiciary Committee

**HB 642:** Would establish the Medical Parole and Early Release program for certain elderly and infirm inmates. **STATUS:** In House Judiciary Committee.

**HB 772:** Would allow for alternative sentencing for primary care providers if person is convicted of a nonviolent crime. Can include sentencing without confinement. **STATUS:** In House

Judiciary Committee

**HB 841 and HB 866:** Would automatically expunge the criminal record of a person who receives a pardon by the governor. **STATUS:** In House Judiciary Committee.

**HB 898:** Would create an ex-offender Access to Employment Enforcement Fund and prohibit any employer from asking about a criminal record until after a conditional offer of employment is given (some exceptions apply). **STATUS:** In House Labor and Industry Committee

**HB 1009:** Would allow for alternative sentencing for pregnant offenders. **STATUS:** In House Judiciary Committee

**HB 1312:** Would expand the “categories” of offenses eligible for expungements to some 3rd degree misdemeanors and, if committed by people under the age of 25, some 2nd degree misdemeanors. **STATUS:** In House Judiciary Committee.

**HB 1431:** People who receive a pardon will have all records of the crime expunged. **STATUS:** In House Judiciary Committee.

**HB 1477:** Would create a licensing board to review convictions of license applicants, with certain factors to be considered. **STATUS:** Passed by House; sent to Senate.

**HB 1492:** Would consolidate a number of statutes, including the entire Pennsylvania Commission on Crime and Delinquency (PCCD) law, into one called the Law and Justice Code. **STATUS:** In House Judiciary Committee.

**HB 1540:** Rolled into HB 440 in House Judiciary Committee, would

amend the Clean Slate Law to allow those who have completed court-ordered financial obligations to have their records automatically expunged.

**STATUSES:** HB 1540 in House Judiciary Committee; HB 440 in Senate Judiciary Committee.

**HB 1555:** Would make a number of changes to probation consideration, including allowing for a schedule of repayment for fees and restitution, disallowing the court to extend probation or parole for non-payment of fines or court costs, and allowing for accelerated probation review conference for good behavior.

**STATUS:** Scheduled for House consideration

**HB 1632:** Would not allow pregnant or post-partum inmates to be in any kind of restrictive placement, like solitary confinement. **STATUS:** In House Judiciary Committee.

**HB 1801:** Would prohibit any minor from being detained, committed or sentenced to a facility that houses adult inmates, except in the case of murder. **STATUS:** In House Judiciary Committee.

**HB 1850:** Would reinstate mandatory minimums sentences for offenses committed with firearms, certain drug offenses committed with firearms, offenses committed on public transportation, offenses against elderly persons, offenses against infants, and offenses committed while impersonating a law enforcement officer. **STATUS:** Eligible for full House vote.

*Note: All statuses are current as of June 8, 2020*

**HB 1851:** Would establish mandatory minimum sentences around the felony of illegal possession of a firearm. **STATUS:** Eligible for full House vote.

**HB 1852:** Would allow for consecutive sentences, as opposed to concurrent sentences, for “crimes of violence.” **STATUS:** Scheduled for House consideration

**HB 2040:** Would require the Department of Labor & Industry to establish a website of available jobs by employers looking to hire people who were formerly incarcerated. **STATUS:** Eligible for full House vote.

**HB 2211:** Would eliminate the death penalty as a sentencing option for many death-penalty-eligible crimes and instead provide for life imprisonment. **STATUS:** In House Judiciary Committee.

**HB 2262:** Would require a minimum 3-2 vote, not a unanimous vote, by the Board of Pardons to recommend pardoning someone for a crime that carried a life-imprisonment or death sentence. **STATUS:** In House Judiciary Committee

### Pending Senate bills

**SB 14:** Would set limits on amount of allowable probation, disallow expansion of probation or parole for failure to pay fees/fines, and allow for early termination of probation. **STATUS:** In Senate Judiciary Committee

**SB 123:** Known as “Karen’s Law”; would increase the time between parole hearings for sexually violent offenders from one year to three years. **STATUS:** In House Judiciary Committee.

**SB 193:** Would treat crimes motivated by a gambling addiction the same as those tied to drug or alcohol addiction, and establish a treatment program. **STATUS:** In Senate Judiciary Committee.

**SB 474:** Companion bill to HB 1799; would repeal the mandate for the

Pennsylvania Commission on Sentencing to use a risk-assessment tool. **STATUS:** In Senate Judiciary Committee.

**SB 502:** Would enhance victims’ rights. **STATUS:** Passed Senate; sent to House

**SB 508:** Would set misdemeanor and felony classes for certain drug related offenses, such as trafficking, relating to when people possess a firearm. **STATUS:** In Senate Judiciary Committee.

**SB 637:** Would require occupational licensure boards and commissions to apply one common set of rules when considering whether to deny, suspend or revoke a license on the basis of a criminal conviction; the Board of Professional & Occupational Affairs would not be able consider convictions that don’t directly relate to the desired occupation. **STATUS:** In House Judiciary Committee.

**SB 780:** Would add the Office of the Victim Advocate, Pennsylvania Association of Criminal Defense Lawyers and County Commissioners Association of Pennsylvania to the list of organizations permitted to provide testimony before the Sentencing Commission on proposed guideline changes. **STATUS:** In Senate Judiciary Committee.

**SB 942:** Companion bill to HB 135. **STATUS:** In Senate Judiciary Committee.

**SB 976:** Would codify Veterans Courts, which assist veterans charged with crimes who are struggling with addiction, mental illness or co-occurring disorders. **STATUS:** Passed Senate; sent to House

**SB 990:** Would eliminate the death penalty as a sentencing option for many death-penalty-eligible crimes and instead provide for life imprisonment **STATUS:** In Senate Judiciary Committee.

*Note: All statuses are current as of June 8, 2020*



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