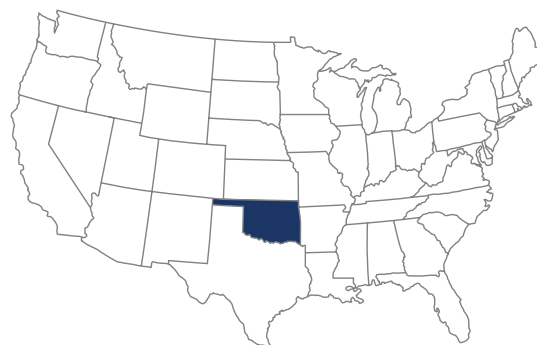


# Justice Reinvestment in Oklahoma

## Analysis and Policy Framework



## Background

**I**N JANUARY 2011, GOVERNOR MARY FALLIN, Speaker of the House Kris Steele, Senate President Pro Tempore Brian Bingman, and Supreme Court Justice James Edmondson expressed interest in employing a justice reinvestment strategy, which is a data-driven approach to contain corrections spending and reinvest a portion of the savings generated in strategies that will increase public safety. These state leaders wrote to the Bureau of Justice Assistance (BJA), a division of the U.S. Department of Justice, and the Pew Center on the States (Pew) seeking intensive technical assistance, which was approved by BJA and Pew in May 2011. As a result, the Council of State Governments Justice Center (CSG Justice Center)—the technical assistance provider working in partnership with BJA and Pew—launched a comprehensive analysis of the state’s criminal justice system.

To guide the CSG Justice Center’s work, state leaders established a bipartisan, inter-branch working group co-chaired by Speaker Kris Steele (R-Shawnee) and Don Millican, Chairman of the Oklahoma Christian University Board of Trustees. Other members of the working group include state lawmakers, state agency directors, members of the judiciary, district attorneys, and other stakeholders in the criminal justice system. The full working group met on five occasions between June 2011 and January 2012 to review data analyses and discuss policy options that would address the challenges facing the state’s criminal justice system.

The CSG Justice Center collected and analyzed vast amounts of state criminal justice, mental health, and substance abuse data, drawing on information systems maintained by the Oklahoma Department of Corrections (OKDOC), the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), the Oklahoma State Bureau of Investigation (OSBI), the Administrative Office of the Courts, and the Federal Bureau of Investigation’s Uniform Crime Reports. In total, the Justice Center analyzed over 700,000 individual records across these information systems.

In addition to these quantitative analyses, the CSG Justice Center convened focus groups and meetings with district attorneys (DAs), the defense bar, behavioral health and substance abuse treatment providers, faith and community leaders, victim advocates and survivors, judges, probation officers, the parole board, law enforcement executives, members of the business community, and others. Between June 2011 and January 2012, the Justice Center convened over 100 in-person meetings with nearly 350 individuals.

This report summarizes the CSG Justice Center’s findings and provides state leaders with a policy framework to address key issues that emerged from the quantitative and qualitative analyses. Policy options are organized around three strategies: 1) reducing violent crime, 2) improving supervision of people on probation, and 3) containing state spending on prisons.

# Summary of Challenges

## 1. High rate of violent crime; public safety resources are stretched beyond their limits

- Violent index crime in Oklahoma is higher than national violent index crime. Three of the four largest urban areas in Oklahoma experienced significant increases in homicides and robberies over the past decade. At the same time, the per capita number of law enforcement staff in these cities declined.
- The insufficient law enforcement resources available to local governments are stretched further by recent reductions in mental health services and crisis stabilization beds. Police today spend considerably more time transporting individuals in mental health crisis to an appropriate facility than they did just 2 years ago.
- Prosecutor-based victim/witness services are limited because of scarce resources, impacting the involvement of victims, including victims of violent crime, in the criminal justice system and the prosecution of crime.

## 2. Inadequate supervision and treatment

- Fewer and fewer people exiting prison have some form of post-release supervision.
- Risk and need assessments are not used consistently to inform sentencing and non-OKDOC supervision decisions.
- Insufficient resources and burdensome processes make it difficult for probation officers to respond quickly and appropriately when someone violates a condition of supervision.
- Treatment is frequently unavailable to people who are on supervision and battling addiction, even though compliance with supervision conditions often depends on participation in such treatment.

## 3. Growing prison population

- As Oklahoma's prison population has increased over the past 10 years, so has state spending on this budget item; this growth is expected to continue.
- Many people charged with felony drug possession are diverted to community-based supervision and services that are more effective than prison in changing behavior. But drug possession is still the most common felony offense among people admitted to Oklahoma state prisons. When it comes to how supervision and treatment should be used for people convicted of low-level drug felonies, state laws are silent.

# Justice Reinvestment Policy Framework

Strategies	1. Fight Crime and Enhance Public Safety	2. Strengthen Supervision	3. Contain Prison Costs
Policies	<p><b>1(A):</b> Help local law enforcement prevent violent crime with state funding for technology, overtime, crime analysis, and community partnerships.</p> <p><b>1(B):</b> Prioritize and fund additional community-based psychiatric crisis stabilization beds throughout the state.</p> <p><b>1(C):</b> Allocate dedicated funding to each DA's office for the purpose of enhancing victim/witness services and securing more convictions.</p>	<p><b>2(A):</b> Require that every prison sentence include a period of post-release supervision of no less than 9 months.</p> <p><b>2(B):</b> Provide probation with additional resources to strengthen supervision.</p> <p><b>2(C):</b> Conduct a presentence risk and need screen on all people admitted to county jails who have been charged with a felony.</p> <p><b>2(D):</b> Utilize swift and certain intermediate sanctions when people violate conditions of supervision.</p> <p><b>2(E):</b> Improve access to treatment for high-risk/high-need people sentenced to supervision.</p>	<p><b>3(A):</b> Provide a graduated approach to sentencing people convicted of drug possession based on a person's risk of reoffending, criminal history, and substance abuse.</p> <p><b>3(B):</b> Require people convicted of the most serious and violent offenses to serve 85 percent of their sentence in prison before they are able to apply banked good behavior and/or achievement credits.</p> <p><b>3(C):</b> Permit a longer period after conviction for judges to modify sentences.</p>

# Projected Impact of Policy Framework

## Objectives

Unless policymakers take action, the state's high violent crime rate will likely remain unchanged, thousands of people will continue being released from prison unsupervised each year, and state spending on prisons will increase by more than a quarter billion dollars over the next decade. The policy framework below outlines the following objectives to avoid this situation:

- Target a 10 percent reduction in violent crime by 2016 by providing law enforcement with the tools and resources necessary to use data-driven strategies for increasing public safety, making additional crisis stabilization beds available, and improving victim/witness services;
- Strengthen supervision by requiring a period of supervision to follow every term of incarceration and increasing resources available to reduce recidivism while holding offenders accountable; and,
- Manage prison growth to contain spending by slowing the population increase currently projected.

## Savings

As a package, the policies described in this report could generate significant savings for the state of Oklahoma. By averting growth in the state prison population between fiscal year (FY) 2013 and FY 2021, the policy framework avoids an estimated \$249 million in additional spending that would otherwise be needed to accommodate prison population growth.

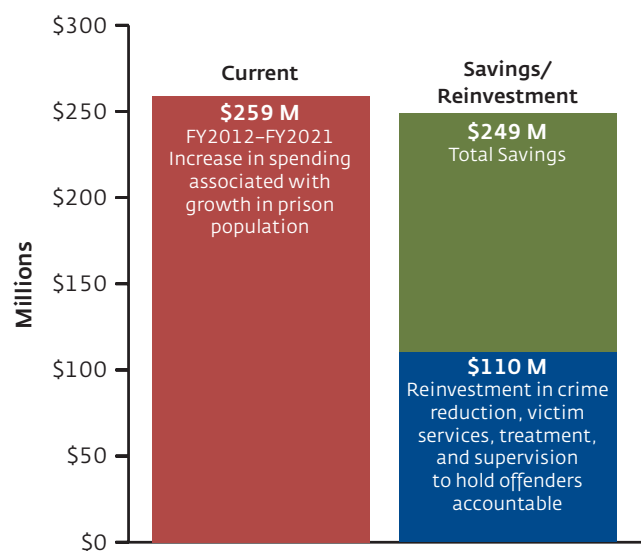
## Reinvestment

To achieve these outcomes and generate the savings described above, Oklahoma must reinvest \$110 million in their criminal justice system between FY 2013 and FY 2021. Additional details are listed below.

FIGURE 1: REINVESTMENT DETAILS

POLICY	FY 2013	FY 2014 & FUTURE	TOTAL REINVESTMENT: FY 2013-FY 2021
1(A): Violent Crime Reduction	\$2 M	\$5 M	\$42 M
1(C): Victim/Witness Services	\$500 K	\$1 M	\$8.5 M
2(B): Probation Improvement	\$1 M	\$2 M	\$17 M
2(C): Felony Jail Screen	\$500 K	\$1 M	\$8.5 M
2(E): Substance Abuse Treatment	\$2 M	\$4 M	\$34 M
<b>TOTAL</b>	<b>\$6 M</b>	<b>\$13 M</b>	<b>\$110 M</b>

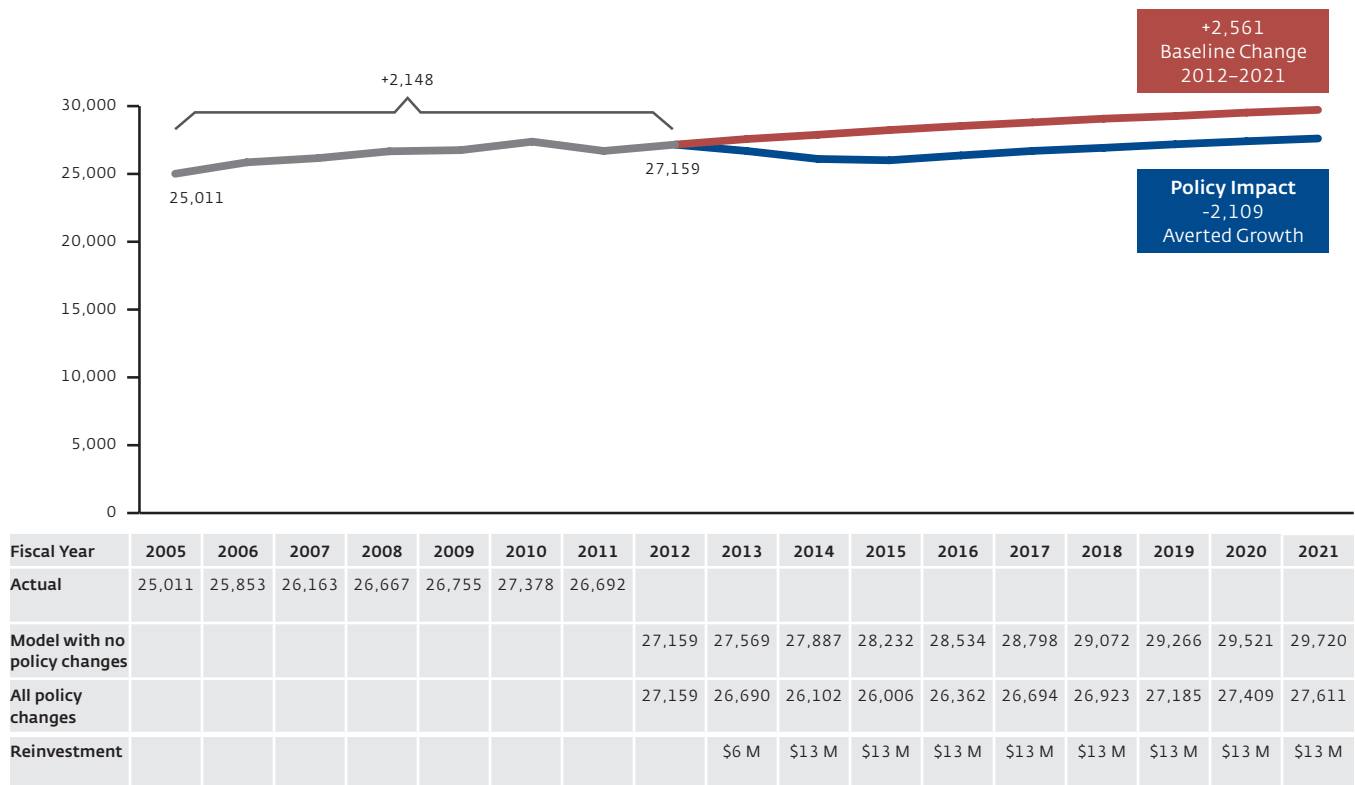
FIGURE 2: COMPARISON OF SPENDING AND PROPOSED SAVINGS/REINVESTMENT (FY 2012-FY 2021)



## Assumptions

The following analysis projects the policy framework's impact on an offender base of 26,692—the prison population at the start of FY 2012.<sup>1</sup> The model assumes policy implementation begins in FY 2013 and will be completely phased in by FY 2015. The base prison population projection demonstrates the accumulation of the 85 percent offender population (per the effects of current policy), but holds other admission types and jail backlogs static. Cost savings and proposed levels of reinvestment are based on projected savings as calculated by the CSG Justice Center after consultation with OKDOC.

FIGURE 3: FULL IMPACT OF POLICIES WILL AVERT GROWTH OF MORE THAN 2,000



1. This number includes people awaiting transfer to OKDOC.

# Challenge 1: High rate of violent crime; public safety resources stretched beyond their limits

Oklahoma's violent crime rate is high and has remained relatively unchanged since 2000; during the same period, violent crime has declined significantly nationally and in most states.

## Violent index crime is high throughout the state; homicide and robbery rates increased in many large urban areas.

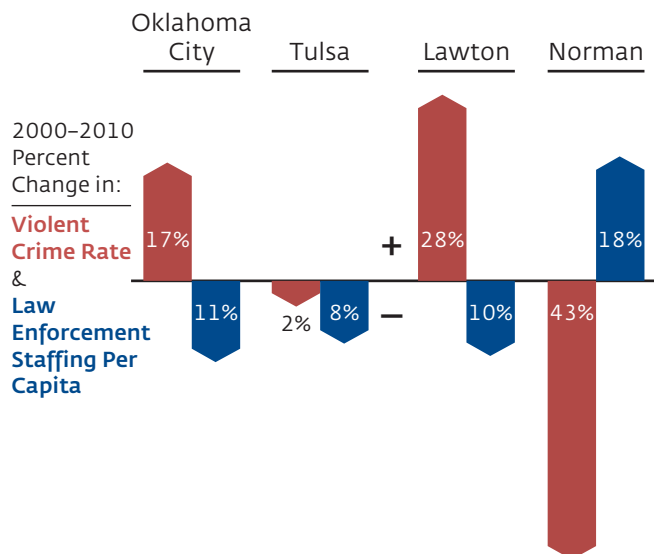
- The violent crime rate in Oklahoma declined slightly, less than four percent, between 2000 and 2010; during the same period 40 states experienced decreases, which drove the national violent crime rate down 20 percent.<sup>2</sup>
- In 2010, Oklahoma had the 12th highest rate of violent crime in the United States, with 480 reported crimes per 100,000 residents. Oklahoma ranked higher than Texas, with 450, and Kansas, with 369, but lower than Arkansas, with 505.<sup>3</sup>
- Oklahoma's robbery rate increased 15 percent since 2000; nationally, the robbery rate has decreased 18 percent.<sup>4</sup> The 91 percent increase in Tulsa's robbery rate drove the statewide increase.
- In 2010, the cities of Tulsa and Oklahoma City accounted for 56 percent of the state's total murders, yet only 26 percent of the state's population. Tulsa's murder rate increased 67 percent between 2000 and 2010, and Oklahoma City's increased by 25 percent, whereas the national rate dropped 13 percent.<sup>5</sup>

## Law enforcement staff per capita declined in most major Oklahoma cities from 2000 to 2010, while violent crime rose.

- Oklahoma City and Lawton experienced significant increases in their violent crime rates between 2000 and 2010: Lawton's violent crime rate increased by 40 percent and Oklahoma City's rate increased by 18 percent. Meanwhile, these two cities experienced considerable declines in the number of sworn law enforcement officers per capita.<sup>6</sup>

- Cities in Oklahoma whose number of law enforcement per capita either remained unchanged or increased did not experience the same spike in crime. Tulsa's violent crime rate decreased by one percent over the last decade and their law enforcement officers per capita fell eight percent. Norman increased law enforcement officers per capita by 18 percent through a citywide bond and saw a 41 percent decrease in the violent crime rate.<sup>7</sup>
- According to police chiefs throughout the state, budget shortages have diminished the ability of law enforcement agencies to develop and deploy proactive strategies to reduce and prevent violent crime in their communities. With the reduction in staff and resources, most police agencies in Oklahoma focus

FIGURE 4: 3 OUT OF 4 MAJOR CITIES FOUGHT RISING CRIME WITH FEW LAW ENFORCEMENT STAFF<sup>8</sup>



2. United States Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 2000–2010*. Retrieved September 29, 2011 from [www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2010/crime-in-the-u.s.-2010](http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2010/crime-in-the-u.s.-2010).

3. Ibid.

4. Ibid.

5. Ibid.

6. Ibid.

7. Ibid.

8. United States Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 2000–2010*. Retrieved September 29, 2011 from [www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2010/crime-in-the-u.s.-2010](http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2010/crime-in-the-u.s.-2010).

on responding to 911 calls and providing basic police services. The deployment of specialized units has been curtailed; investigative officers have often been reassigned to patrol duty.<sup>9</sup>

- Oklahoma City Police Department (OKCPD) officials reported that personnel reductions created significant challenges to providing an effective police presence in their jurisdiction, particularly given the large area – 621 square miles – that the city spans.<sup>10</sup> A 2009 OKCPD manpower study found OKCPD, with 1.68 sworn staff per square mile, had the lowest sworn staffing per square mile when compared with a group of 10 similar cities. Nashville, Tennessee, followed Oklahoma City with 2.63, while Denver, Colorado, had the highest at 10.03 sworn staff per square mile.<sup>11</sup>

**Targeted violent crime reduction strategies have demonstrated positive results, but funding for such strategies is either intermittent, diminishing, or both.**

- Despite successes, federal funding for local law enforcement, such as grants through Byrne Justice Assistance, Community Oriented Policing Services, and Weed and Seed, is declining, and Oklahoma has yet to identify funding streams to replace these programs.<sup>12</sup> In 2000, Oklahoma City received \$1,412,262 in local law enforcement grants; in 2011, \$445,379. This is a 68 percent decrease in funding.<sup>13</sup>
- Law enforcement executives have identified strategies they would like to implement to lower crime in their communities. For example, OKCPD officials collect a large amount of crime data that could be used to pinpoint locations where criminal activity is most likely to occur, but do not have enough crime analysts to analyze these data and deploy officers effectively.<sup>14</sup>

**Since the number of crisis stabilization beds for people with acute mental health needs has decreased, law enforcement agencies have had to dedicate more staff time and dollars to transport individuals in mental health crisis to an appropriate facility, diverting already diminished police resources from strategies most likely to reduce violent crime.**

- Law enforcement executives across the state reported that their officers committed considerable resources to the transportation of people with mental illnesses in crisis to appropriate crisis stabilization facilities.<sup>15</sup> When local or regional facilities do not have available bed space, officers must transport individuals to a facility with space, regardless of the geographical distance from the point of origin. As a result, it is not uncommon for officers to drive several hours across multiple law enforcement jurisdictions, which in turn reduces the availability of staff to perform basic patrol functions, making the implementation of crime reduction strategies difficult.
- Transporting individuals in crisis generates significant costs. Although the state reimburses police departments for mileage, police departments remain responsible for overtime expenses incurred.<sup>16</sup> State data reveal that the miles driven by police officers for mental health transports increased 45 percent between FY 2009 and FY 2011.<sup>17</sup>

9. CSG Justice Center meetings and focus groups with approximately 20 chiefs of police from throughout the state (October, November, and December 2011).

10. OKCPD Chief of Police Bill Citty, personal communication, August 23, 2011.

11. OKCPD, Management and Manpower Analysis, February 10, 2009.

12. Oklahoma City, in particular, has seen positive outcomes from federally funded crime reduction strategies. For example, the city faced a decade-high 260 drive-by shootings in 2005, but using federal funding, OKCPD augmented gang-intervention efforts, and the number fell 63 percent to a decade-low 97 in 2010 (OKCPD, Drive-By Comparison Memo 2002–2011).

13. OKCPD Chief of Police Bill Citty, personal communication, December 2, 2011.

14. OKCPD Chief of Police Bill Citty, personal communication, November 16, 2011.

15. CSG Justice Center meetings and focus groups with approximately 20 chiefs of police and 13 sheriffs (October, November, and December 2011).

16. Ibid.

17. David Wright (ODMHSAS), personal communication, December 8, 2011.



**In focus groups across the state, law enforcement executives and line-level officers voiced the need for more state mental health and addiction treatment facilities and crisis stabilization beds.**

- Cuts to the ODMHSAS budget required reductions in the total number of mental health inpatient and crisis beds across the state. In 2009, hard caps were instituted at all crisis centers and hospitals. Prior to these caps, facilities would accept patients regardless of bed availability. For example, Griffin Memorial Hospital in Oklahoma City had capacity of just under 150 beds at the start of 2009, yet often had a patient count of 175–200 on any given day. In 2008, the hospital was over capacity 283 days out of the year. Since the caps were instituted, patient admission is contingent upon available bed space. If a facility lacks bed space, law enforcement must transport an individual to a facility with an available bed.<sup>18</sup>
- In 2008, a 15-bed treatment facility was closed in Claremore, and in 2010, 12 beds were closed in Lawton. Consequently, these areas have little capacity to

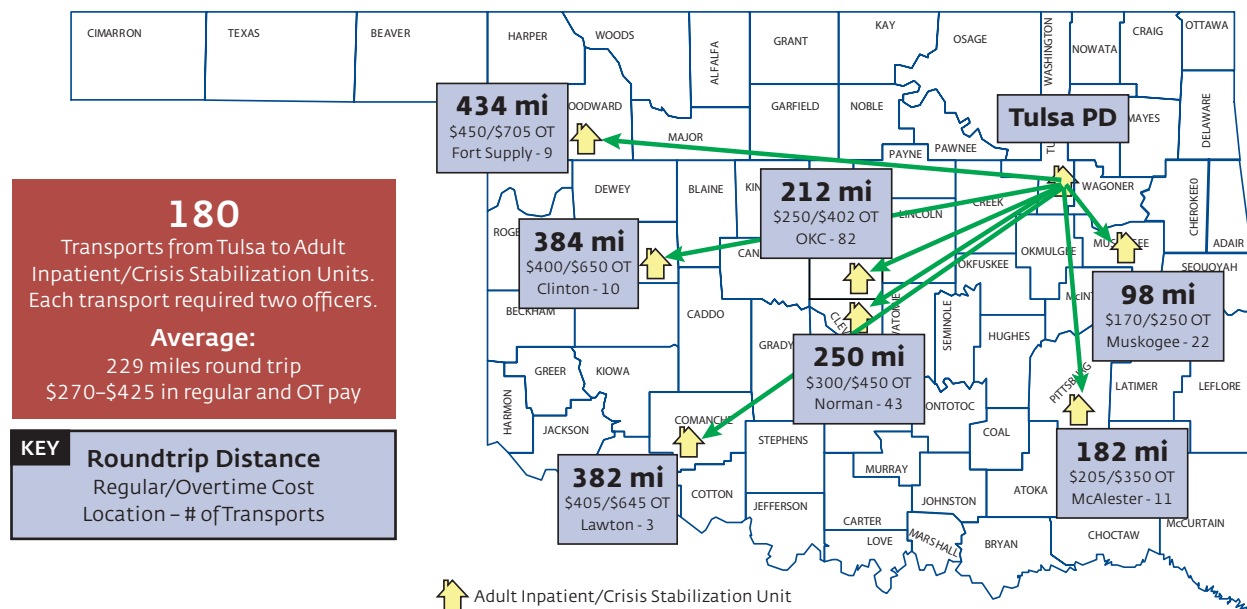
provide crisis stabilization and inpatient treatment to members of their local community.<sup>19</sup>

- Since 2008, there has been a loss of Medicaid-contracted and private-pay psychiatric beds. The loss of these beds is particularly noticeable in Tulsa, where the total number of Medicaid-funded psychiatric beds is disproportionately low compared to the population. Additionally, in Oklahoma City, the University of Oklahoma Medical Center closed its entire general adult psychiatric unit.<sup>20</sup>

**Some victims are not receiving services and supports guaranteed to them under the state constitution.**

- The Victims Bill of Rights in Oklahoma's State Constitution requires that victims be provided information, notification, protection, restitution, property return, victim impact statements, and speedy disposition.<sup>21</sup> Many of these services are supposed to be delivered or coordinated by victim witness staff based in DAs' offices.

**FIGURE 5: TULSA POLICE DEPARTMENT MENTAL HEALTH TRANSPORTS<sup>22</sup>**



18. ODMHSAS Commissioner Terri White, personal communication, December 10, 2011.

19. Ibid.

20. Ibid.

21. Oklahoma Victims Bill of Rights. Retrieved from [www.ok.gov/dac/documents/Victims%20Bill%20of%20Rights.pdf](http://www.ok.gov/dac/documents/Victims%20Bill%20of%20Rights.pdf).

22. Tulsa Police Department, personal communication, November 9, 2011. Analysis includes 1 year of data from 11/2010 to 10/2011; ODMHSAS, personal communication, November 30, 2011.



- Less than half of crime victims surveyed in 2009 reported receiving some type of victim services (such as explanation of court system, referral to victim services, safety planning, and court preparation). Of those, three-fourths of the services they described as most helpful were those that were provided by victim/witness professionals.<sup>23</sup>
- Victims, survivors, and advocates who convened for this project were unanimous in their assessment that staff in these offices are often unable to meet the demand for support of victims because of mounting budget cuts over the past several years.<sup>24</sup>

## Strategy 1: Fight crime and enhance public safety

*By 2016, reduce statewide violent index crime at least 10 percent by increasing resources available to law enforcement.*

### 1(A): Help local law enforcement prevent violent crime with state funding for technology, overtime, crime analysis, and community partnerships.

- Create a statewide competitive grant program that encourages law enforcement agencies to deploy data-driven strategies to reduce violent crime by at least 10 percent by 2016.
- Direct grant funding to activities that include overtime, targeted policing strategies, the use of technology for crime prevention and problem solving, improved crime analysis capabilities, and partnerships between law enforcement and community agencies to reduce violent crime.

**RATIONALE:** Research has found that targeted policing strategies such as place-based “hot spot” policing that increase police presence in high crime areas can help prevent and reduce crime.<sup>25</sup> Data-driven staffing and resource allocation through crime analysis models like intelligence-led policing can produce similarly

positive results.<sup>26</sup> Additionally, community engagement programs that address the many facets of violent crime, including youth crime and gang violence, are making communities safer for citizens, especially children and youth.<sup>27</sup>

### 1(B): Prioritize and fund additional community-based psychiatric crisis stabilization beds throughout the state.

**RATIONALE:** The development of additional community-based crisis stabilization beds throughout the state of Oklahoma not only will improve outcomes for people with acute mental health care needs who are experiencing psychiatric crisis, but will also help law enforcement agencies focus their limited resources on those strategies most likely to reduce crime. Transporting individuals who are a danger to themselves or others is a critical function performed by law enforcement, and as such, law enforcement should have local resources available to meet this need.

### 1(C): Allocate dedicated funding to each DA's office for the purpose of creating, enhancing, or extending victim/witness services and securing more convictions.

**RATIONALE:** Dedicated funding is needed to ensure that crime victims and witnesses receive the protection accorded them by the state constitution. Support provided to victims and survivors enables them to navigate the criminal justice system, serve as effective witnesses in criminal cases, and access services that can help them recover from their experiences with crime. Prosecutors who can provide victim/witness support are better able to secure convictions. Victim/witness support personnel arrange for witnesses' or victims' availability to prosecutors, coordinate their court appearances, assist with their preparation, explain court procedures to them, make sure they understand their role in court proceedings, and inform them about the status of their cases.

23. April Doshier, Oklahoma Victim Assistance Academy Needs Assessment Report, June 30, 2009.

24. CSG Justice Center focus group with 24 victims, survivors, and advocates, September 7, 2011.

25. Anthony Braga and David Weisburd, *Policing Problem Places: Crime Hot Spots and Effective Prevention*, 2010.

26. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Intelligence-Led Policing: The New Intelligence Architecture*, September 2005.

27. Anthony A. Braga and Christopher Winship, “What Can Cities Do to Prevent Serious Youth Violence?” *Criminal Justice Matters* 75.1 (2009): 35–37. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Reducing Gun Violence: The Boston Gun Project's Operation Ceasefire*, September 2001.

## Challenge 2: Inadequate supervision and treatment

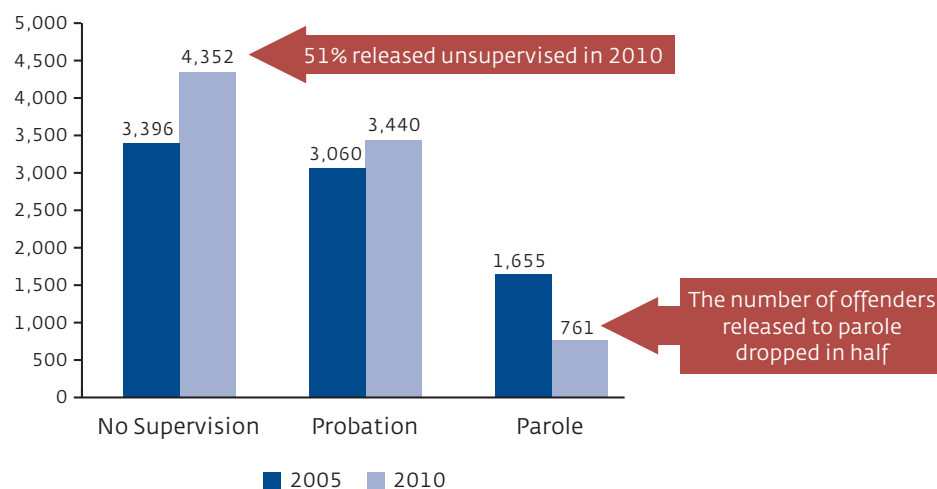
*Many people exiting prison are released to no supervision, and they do not have access to treatment services needed to keep them drug and alcohol-free.*

**More people in prison are completing their sentence while incarcerated and returning to the community without any post-release supervision. Many of these are the people who are most likely to reoffend.**

- The percentage of people released from prison without supervision has steadily increased from 42 percent in FY 2005 to 51 percent in FY 2010. Only 9 percent of people exiting prison in 2010 were released to parole supervision. An additional 40 percent of prison releases subsequently began a period of probationary supervision to complete a split sentence.<sup>28</sup>
- Thirty-four percent of people in prison eligible for parole waived their right to a parole hearing in 2010 and opted to complete their sentence in prison (“flat-time”).<sup>29</sup> Keenly aware that relatively little time remains on their sentence, people who waive their hearings take advantage of time served and credits earned with good behavior and/or participation
- Oklahoma law prohibits probation (and therefore split sentences) on third or subsequent felony convictions. As a result, people with a lengthy criminal history who are most likely to reoffend are especially likely to go from prison to the community without any post-release supervision.

programs. Consequently, they get out of prison only a few weeks or months later than they would had they received parole. Furthermore, by completing their sentence in prison, these individuals are not subject to parole. Accordingly, the narrow time difference between being paroled and flat-timing to unsupervised release is having the unintended consequence of people eluding parole.<sup>30</sup> In focus groups with people who have declined parole, it was clear that these individuals had done the math; one person bluntly said, doing time “is faster inside” than doing time on parole, since people on parole are not eligible to earn time off their sentence for good behavior.<sup>31</sup>

**FIGURE 6: MORE PEOPLE ARE BEING RELEASED FROM PRISON UNSUPERVISED<sup>32</sup>**



28. OKDOC, Exit Data for FY 2005–FY 2010.

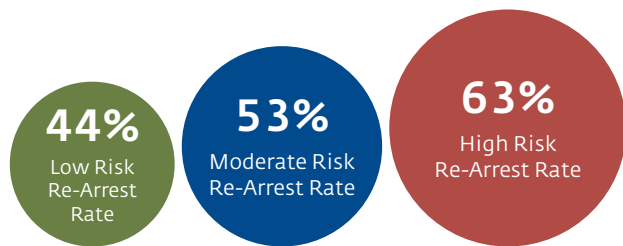
29. OKDOC, personal communication, November 28, 2011.

30. CSG Justice Center focus group with eight offenders at Joseph Harp Correctional Center, August 24, 2011.

31. Ibid.

32. OKDOC, *The State of Corrections in Oklahoma: Fiscal Year 2010*. Retrieved from <http://www.doc.state.ok.us/newsroom/annuals/2010/annualreport2010.pdf>.

**FIGURE 7: HIGH-RISK INDIVIDUALS RELEASED FROM PRISON ARE MORE LIKELY TO BE REARRESTED WITHIN 3 YEARS<sup>33</sup>**

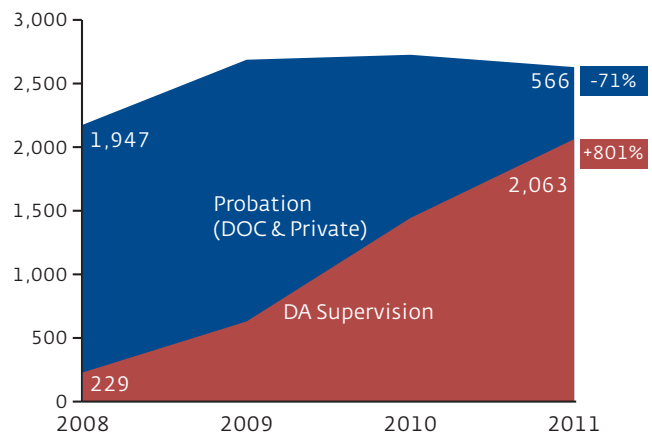


- Of those people returning to the community from prison without post-release supervision in 2007, 43 percent were assessed as “high-risk.” Sixty-three percent of those high-risk offenders were rearrested within 36 months of release, compared to 53 percent of moderate-risk and 44 percent of low-risk offenders.<sup>34</sup>
- In FY 2007, of the 3,677 people who returned to the community from prison without post-release supervision, more than half (54 percent) were rearrested in the 3-year period following their release.<sup>35</sup> People in this cohort of recidivists were rearrested for one or more of the following offenses: 480 for statutorily defined violent crimes; 1,028 for drug offenses; and 1,890 for property crimes.<sup>36</sup>
- Victims, survivors of crime, and their advocates expressed concern in focus groups about the increasing number of people leaving prison with no post-release supervision. They spoke in particular about situations involving people returning to the community without post release supervision who are especially likely to reoffend, predominantly in the months immediately following their return to the community.<sup>37</sup>

**Since its inception, the number of people on DA supervision has increased dramatically; in the meantime, the number of people under probation supervision has decreased significantly.**

- During FY 2011, felony offenders made up 28 percent of the 38,836 offenders on DA supervision.<sup>38</sup>
- In 2008, five percent of Oklahoma County felony dispositions received a sentence of DA supervision, but by 2011, the number increased to 39 percent of felony dispositions. This trend contributed to the decrease in the proportion of felony dispositions receiving a probation sentence, which fell from 43 to 11 percent during those 4 years.<sup>39</sup>
- The Tulsa County DA’s Office began supervising felony offenders in 2008: The program started with 46 felony offender admissions and grew rapidly to 1,042 admissions by 2010.<sup>40</sup>

**FIGURE 8: IN OKLAHOMA COUNTY, DA SUPERVISION IS REPLACING PROBATION AS THE MOST COMMON FORM OF SUPERVISION FOR FELONS<sup>41</sup>**



<sup>33</sup>. Three year re-arrest rate by risk categories as defined by the LSI-R. N=6,599 FY2007 OKDOC exiters. OKDOC and OSBI raw data files of 2007 Prison Releases

<sup>34</sup>. OKDOC, Exit Data for FY 2005–FY 2010; OSBI, Arrest History for OKDOC FY 2007 Exits. This analysis used a 36-month rearrest recidivism rate and only allows each person to be counted once. OSBI could only provide arrest data, not disposition or charge-level information; therefore, it is unknown if the arrest was at the misdemeanor or felony level, or if it led to reconviction or reincarceration.

<sup>35</sup>. Ibid.

<sup>36</sup>. Ibid.

<sup>37</sup>. CSG Justice Center focus group with 24 victims, survivors, and advocates, September 7, 2011.

<sup>38</sup>. Suzanne McClain-Atwood, email, October 7, 2011.

<sup>39</sup>. Oklahoma Administrative Office of the Courts, calendar year (CY) 2007–CY 2011 Disposition Data.

<sup>40</sup>. 3-year rearrest rate by risk categories.

<sup>41</sup>. Administrative Office of the Courts, Oklahoma County Court Records, FY2008–FY2011.

**Decisions made about whether someone convicted of a crime is sentenced to probation, DA supervision, drug court, or prison are not informed by standardized assessments, which objectively predict the likelihood that the person will have additional contact with the criminal justice system.**

- Sentencing decisions are not informed by an objective risk assessment because most people convicted of a crime do not receive assessments prior to sentencing. Without such information, people are prescribed levels of punishment, supervision, and programming that may not necessarily correspond to their risk levels. As a result, key opportunities
- to change the likelihood of someone committing another offense are missed.
- People placed on OKDOC probation are given an objective risk assessment within 45 days of sentencing. This assessment helps the probation officer determine what strategies are most likely to be successful, given the unique needs of the person under his or her supervision.
- People sentenced to DA supervision are not subjected to an objective risk assessment. Furthermore, conversations with prosecutors indicated that the majority of DAs' offices do not have the resources to ensure the same levels of supervision as those provide by a probation officer working for OKDOC P&P. Accordingly, DA supervision may be inadequate for high- or moderate-risk offenders.<sup>42</sup>

## Oklahoma's Types of Community Supervision

**Probation:** DAs and judges use probation to sentence felony offenders to community supervision in lieu of prison. They also use it as part of a split sentence to ensure supervision following release from prison. The state funds all probation services administered by the OKDOC's Division of Probation and Parole (P&P). P&P is responsible for the certification, training, and support of all probation officers, who are assigned to the state's six P&P districts.

**Parole:** Release to parole supervision is a discretionary decision made by the Oklahoma Pardon and Parole Board to ensure some period of post-release community supervision before the person's sentence is complete. The Pardon and Parole Board is a part-time, five-member body constitutionally charged with making parole recommendations to the Governor of Oklahoma, who has the final say in whether a person is paroled. Parole, like probation, is funded by the state and overseen by P&P.

**DA Supervision:** Instead of sentencing a person to a term of probation supervision administered by P&P, the court may sentence a person to community supervision overseen by the local district attorney. This form of supervision was created in 2005 through 22 O.S. § 991(d), although some DAs did not launch the program until some years later. The extent to which DAs use this supervision program varies from one county to the next. People sentenced to DA supervision pay fees to offset the costs of this program.

**Drug Court:** The Oklahoma Drug Court program is a court-supervised and state-funded substance abuse treatment program that offers nonviolent, felony offenders an alternative to prison. People enter the program by pleading guilty to a specific charge that carries with it a sentence of incarceration. Upon successful completion of the treatment program, the court dismisses the original charge. For repeated noncompliance with the program, however, the court terminates participation in the program, remanding the person to prison where he or she serves the original sentence.

**Community Sentencing:** Oklahoma's Community Sentencing program provides a community sanction as an alternative to prison for felony offenders. According to state statute, an offender is eligible if he/she has been assessed as moderate or high using a risk assessment and has a felony conviction. Community Sentencing is funded by the state and governed by a council of elected county officials and citizens.

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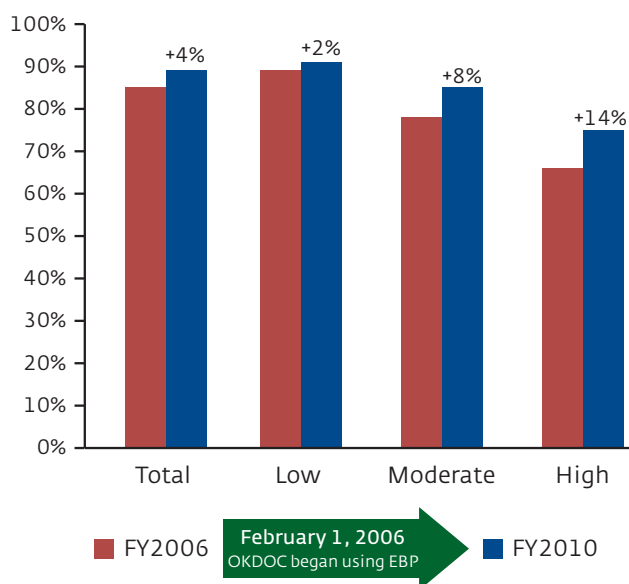
42. Oklahoma DAs Council, personal communication, November 17, 2011.

## A shift to evidence-based practices has increased the effectiveness of OKDOC P&P, but there remain aspects of P&P operations that could be improved.

- P&P began integrating evidence-based practices into its supervision model in early 2006. Between FY 2006 and FY 2010, completion rates for all categories of probationers increased, with high-risk offenders completing 14 percent more frequently, moderate-risk improving by 8 percent, and low-risk by 2 percent.<sup>43</sup>
- In various focus groups, state and local officials observed that the probation culture has changed markedly since they adopted new, evidence-based practices. Officers apply the latest research regarding risk and needs, and they are focused on *changing* the behaviors of the person they are supervising, as opposed to an exclusive focus on monitoring the person's compliance with the conditions of supervision.

- In a focus group of probation officers, participants reported that they typically conducted meetings with high-risk offenders once or twice a month for 15 to 25 minutes per session.<sup>44</sup> With as much as weeks between visits, the response to violations may not be timely.<sup>45</sup>

**FIGURE 9: COMPLETION RATES FOR PROBATION INCREASED AFTER OKDOC IMPLEMENTED EVIDENCE-BASED PRACTICES<sup>46</sup>**



## Understanding Risk Assessment<sup>47</sup>

Risk assessment tools help users sort individuals into low-, medium-, and high-risk groups. They are designed to gauge the likelihood that an individual will come in contact with the criminal justice system, either through a new arrest and conviction or re-incarceration for violating the terms of supervision. They usually consist of 10 to 30 questions designed to ascertain an individual's history of criminal behavior, attitudes and personality, and life circumstances. Risk assessments can be administered at any time during a person's contact with the criminal justice system—from first appearance through presentencing, placement on probation, admission to a correctional facility, the period prior to release, and post-release supervision. They are similar to tools used by an insurance company to rate risk: they predict the likelihood of future outcomes according to their analysis of past activities (e.g., criminal history) and present conditions (such as behavioral health or addiction). Objective risk assessments have been shown to be generally more reliable than any individual professional's judgment. Too often, these judgments are no more than "gut" reactions that vary from expert to expert on the same individual.

43. OKDOC P&P, 2006–2010 Exit Cohorts, Exit Cohort Less Deaths.

44. CSG Justice Center focus group with Central District Probation and Parole officers, November 16, 2011.

45. Michael D. Spiegler and David C. Guevremont, *Contemporary Behavior Therapy*, Wadsworth Publishing Company, 2003.

46. OKDOC P&P, 2006–2010 Exit Cohorts. Exit Cohort Less Deaths — This is a proportion of people who lived to complete probation.

47. CSG Justice Center, *The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime, and Corrections Spending*, January 2011.

**According to a survey of probation officers conducted by the CSG Justice Center in October 2011, insufficient resources and burdensome processes make it difficult for probation officers to respond quickly and appropriately when someone violates a condition of release.<sup>48</sup>**

- Although a process exists to incarcerate very briefly someone who violates a condition of release, this option appears to be exercised infrequently. Fifty percent of probation officers surveyed highlighted time-consuming procedures, inefficient processes, and insufficient jail capacity as reasons they are unable to use intermediate sanctions that they feel would be timely and effective responses to violations of supervision conditions.<sup>49</sup>
- Probation officers estimated that they imposed an intermediate sanction of jail in response to 10 percent of supervision violations. Of the 140 respondents, 52 percent said they “never” give jail time as an intermediate sanction. The Tulsa Probation and Parole District reported the highest use of jail as an intermediate sanction: 13 percent of probation violations in Tulsa resulted in jail time; the Southwest

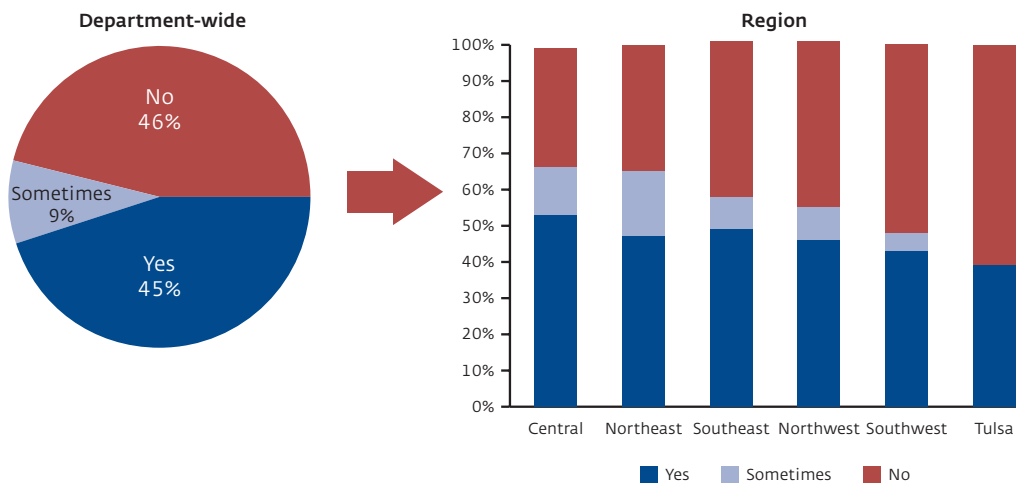
District responded to 5 percent of violations with jail time, which was the lowest reported use of the six P&P Districts.<sup>50</sup>

- Forty-five percent of probation officers surveyed reported that capacity concerns in their district’s jails limited their use of jail time as a sanction. Nine percent reported that this is “sometimes” a concern and 47 percent reported that it is not a concern.<sup>51</sup>

**Oklahoma has a statewide drug court system, which was designed to meet national standards and apply best practices, but as with any program, there is always room for improvement.**

- ODMHSAS coordinates a system of 45 drug courts that operate in 72 of Oklahoma’s 77 counties. These specialty courts promote accountability and recovery from addiction for people who are convicted of certain low-level crimes and who have substance abuse disorders. In FY 2010, Oklahoma drug courts had the capacity to serve approximately 4,100 participants on any given day. ODMHSAS spent \$17 million in state dollars to support these drug courts, which amounts

**FIGURE 10: A SURVEY OF PROBATION OFFICERS INDICATES THAT THEY REFRAIN FROM USING A SANCTION OF JAIL DUE TO JAIL CAPACITY CONCERNS<sup>52</sup>**



<sup>48</sup>. CSG Justice Center Oklahoma Probation Officer Survey, October 2011. The response rate was 58 percent, or 140 out of the 242 probation officers currently on the OKDOC P&P payroll.

<sup>49</sup>. OKDOC’s policy operation manual states that if jail time is the recommended sanction, the sentencing judge must approve and sign a form and the sheriff or jail administrator must stamp a copy. Retrieved from [www.doc.state.ok.us/Offtech/op161002.pdf](http://www.doc.state.ok.us/Offtech/op161002.pdf).

<sup>50</sup>. CSG Justice Center Oklahoma Probation Officer Survey, October 2011.

<sup>51</sup>. Ibid.

<sup>52</sup>. OKDOC’s policy operation manual states that if jail time is the recommended sanction, the sentencing judge must approve and sign a form and the sheriff or jail administrator must stamp a copy. Retrieved from [www.doc.state.ok.us/Offtech/op161002.pdf](http://www.doc.state.ok.us/Offtech/op161002.pdf).



to almost half of all state substance abuse treatment dollars appropriated in FY 2010 to treat people with addictions who fall below 200 percent of the poverty line.<sup>53</sup>

- The state's drug court graduation rate is consistent with drug court graduation rates nationally. In 2008, 59 percent of total participants successfully completed the program.<sup>54</sup> The same year, the average graduation rate for all drug courts nationally was 57 percent.<sup>55</sup>
- A validated risk assessment tool is not utilized to prioritize drug court resources for those people who are most likely to reoffend and whose need for treatment is most acute. The use of such a risk assessment would ensure that high-risk offenders who would benefit most from the intensity of a drug court program have the opportunity to participate.
- Currently, decisions about who is admitted to drug court are based on the number of prior felony convictions, which is one of the best indicators of a high-risk and -need offender. People admitted to drug courts in Oklahoma in 2010 averaged two prior

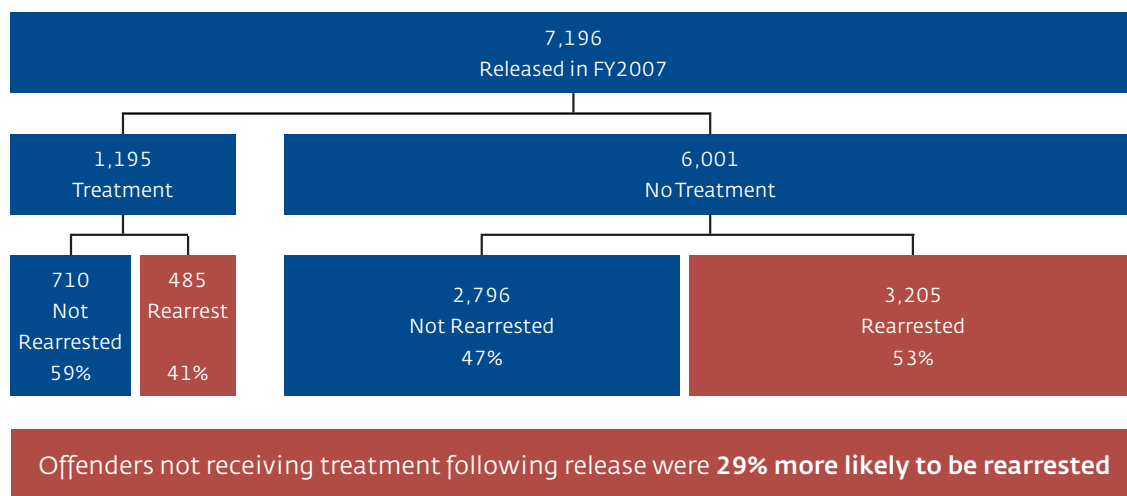
felony convictions, but further analysis of this pool of participants reflects that 569, or 28 percent, had no prior convictions.<sup>56</sup>

- In 2008, Oklahoma drug court officials revoked, terminated, and sent to prison 31 percent of drug court participants.<sup>57</sup> Drug court failures often serve lengthy terms of incarceration because they must serve the sentence determined in the original plea agreement based on the underlying charge.

### There are insufficient substance abuse treatment resources available to people under community supervision.

- ODMHSAS has limited funds to set aside each year for substance abuse treatment services for people in the community under supervision of the criminal justice system. How these dollars are allocated among the hundreds of thousands of people on probation, parole, DA supervision, or some other form of community corrections depends exclusively on the person's health needs; risk of reoffense is not a factor.<sup>58</sup>

**FIGURE 11: PEOPLE RECEIVING TREATMENT AFTER RELEASE FROM PRISON IN FY 2007 WERE LESS LIKELY TO BE REARRESTED<sup>59</sup>**



53. Ibid. Forty-six percent of all state substance use treatment dollars were dedicated to drug courts.

54. David Wright (ODMHSAS), personal communication, November 4, 2011.

55. National Drug Court Institute, *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Court Programs in the United States*. Retrieved November 18, 2011, from [www.ndci.org/sites/default/files/nadcp/PCP%20Report%20FINAL.PDF](http://www.ndci.org/sites/default/files/nadcp/PCP%20Report%20FINAL.PDF).

56. David Wright (ODMHSAS), personal communication, November 30, 2011.

57. David Wright (ODMHSAS), personal communication, November 4, 2011.

58. ODMHSAS; OSBI 2007 release and rearrest data; OKDOC 2007 release data.

59. ODMHSAS; OSBI 2007 releases rearrest data; and OKDOC 2007 Release Data.

- The availability of substance abuse treatment programs was rated as poor to fair by 62 percent of probation officers.<sup>60</sup>
- Between 2008 and 2011, ninety-five residential substance abuse treatment beds were lost due to budget cuts. When a residential treatment bed is not available, a person in need is placed on a waiting list, which on any given day can exceed 600 Oklahomans.<sup>61</sup> While waiting, people under community supervision may relapse.
- Offenders with a treatment need who are able to access treatment services have a reduced likelihood of rearrest: for those released from prison in FY 2007, people who did not receive treatment were 29 percent more likely to be rearrested in the 36 months following release.<sup>62</sup>

## Strategy 2: Strengthen supervision

*Reduce recidivism among those most likely to reoffend by mandating supervision following prison and ensuring supervision resources are sufficient to hold offenders accountable.*

### **2(A): Require that every prison sentence include a period of post-release supervision of no less than 9 months.**

**RATIONALE:** This policy would ensure that people who are at risk of reoffending, and who currently are manipulating existing policies to avoid supervision in the community once they leave prison, have some form of post-release supervision.

### **2(B): Provide probation with additional resources to strengthen supervision.**

- Increase resources incrementally to ensure additional probation officers are hired, trained, and ready to supervise the growing number of people who will have mandatory supervision terms following their prison release.
- Design and implement a plan to increase the amount of time probation officers spend with the people they supervise who are most likely to reoffend.

**RATIONALE:** Hiring additional probation officers will free up more time for increased contact with people under probation supervision. P&P should ensure that supervision is clearly differentiated based on risk level and that resources are focused on high-risk offenders whose behavior is most likely to change with supervision more intense than is currently provided.

### **2(C): Conduct a presentence risk and need screen on all people admitted to county jails who have been charged with a felony.**

- Building on already existing screening efforts, conduct a screen on people charged with felony offenses to ensure that objective information about a person's risks and needs informs prosecutorial and sentencing decisions.
- Follow initial screening with an objective and validated risk assessment for those people who, through the initial screening, appear to be at high risk of reoffending.
- Provide professional development opportunities to ensure that judges, DAs, and the defense bar understand the risk and need assessment and how it should be used.

**RATIONALE:** This policy will help ensure DAs and judges have information about a person's risks and needs, which can guide their recommendations and decisions about the most appropriate level of punishment, supervision, and treatment. It also will ensure that the state's resources are concentrated on those people for whom they can make the greatest difference.

<sup>60</sup>. CSG Justice Center Oklahoma Probation Officer Survey, October 2011.

<sup>61</sup>. ODMHSAS Commissioner Terri White, personal communication, December 10, 2011.

<sup>62</sup>. ODMHSAS, personal communication, November 23, 2011. Percent change is based on rounded whole number percentages (as seen in Figure 11) and therefore may not be exact.

## 2(D): Utilize swift and certain intermediate sanctions when people violate conditions of supervision.

- Authorize probation officers to respond, without a court hearing, to certain probation violations with sanctions that include up to 3 days in jail. Limit the use of this jail sanction to a maximum of 6 days per month. Permit probationers to waive their right to a violation hearing.
- Ensure that DA supervision can impose an intermediate sanction of jail on probationers, and transfer them later to OKDOC P&P, rather than simply revoking their probation and sending them directly to prison.
- Create an intermediate sanction facility (ISF) where people whose probation is being revoked for the first time must be held for up to 6 months. This policy shall apply only to those people who have not absconded or been convicted of a new crime.
- Allow drug court participants to be sanctioned to the ISF after committing serious violations of the conditions of their program.

**RATIONALE:** This policy would provide probation officers with the authority and flexibility they currently lack to ensure that responses to supervision violations are swift and certain. Probation departments in both Georgia and Hawaii have implemented similar policies. Researchers evaluating these policy changes have found that the Georgia policy, which enables probation officers to impose these sanctions without seeking a court hearing, reduced by 70 percent the number of days that people on probation spent in jail because they violated a condition of supervision or because they were awaiting a court hearing.<sup>63</sup>

## 2(E): Improve access to treatment for high-risk/high-need people sentenced to supervision.

- Expand substance abuse treatment capacity by creating a funding stream within ODMHSAS that serves people on supervision who are determined to be at high risk of reoffending and who have acute substance abuse problems.
- Support efforts by the ODMHSAS to contract with certified or licensed substance abuse treatment professionals that provide services and/or employ practices that research has demonstrated are effective.
- Provide funding to train substance abuse treatment providers in the evidence-based principles of risk, need, and responsivity.

**RATIONALE:** Research shows that the greatest reductions in recidivism can be achieved when treatment and supervision resources are concentrated on high-risk, high-need individuals. Furthermore, research demonstrates that applying the same level of supervision resources to high- and low-risk offenders is counterproductive and can actually increase recidivism rates for low-risk offenders.<sup>64</sup>

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63. Jon Speir and Tammy Meredith, *An Evaluation of Georgia's Probation Options Management Act*, Georgia Department of Corrections, 2007.

64. Presentation by Dr. Ed Latessa, "What Works and What Doesn't in Reducing Recidivism: Applying the Principles of Effective Intervention to Offender Reentry." Oklahoma City, Oklahoma, September 14, 2011.

## Challenge 3: Growing prison population

*If current policies remain unchanged, the prison population will continue to grow, and the state will need to expand prison capacity at a significant cost to taxpayers.*

**As Oklahoma's prison population has grown, state spending on corrections has also increased.**

- The prison population in Oklahoma grew 17 percent, from 23,258 to 26,692 people, between FY 2000 and FY 2011.<sup>65</sup> This rate of growth exceeded the rate of growth of Oklahoma's resident population, which increased almost nine percent, from 3,350,654 to 3,751,351.<sup>66</sup>
- During the same period, the annual appropriation for the OKDOC increased 30 percent, from \$356 million in FY 2000 to \$462 million in FY 2011.<sup>67</sup>

**Much of the prison population growth stems from an Oklahoma statute that increased the percentage of a sentence that people convicted of various serious or violent crimes must serve in prison.**

- Violent offenders are serving longer sentences in prison than ever before. The 85 percent law, which became effective in 2000, requires certain offenders to serve at least 85 percent of their sentence before becoming eligible for release. Policies intended to offset the impact of this new law on the prison population were adopted at the time, but subsequently repealed. As a result, Oklahoma's prison population has increased significantly over the past decade.
- In FY 2005, people sentenced to prison under the 85 percent law accounted for 10 percent of the prison population; by FY 2010, this population increased to 19 percent.<sup>68</sup>

### Explanation of the 85% Law

Persons convicted of an 85 percent offense are required to serve no less than 85 percent of the court-imposed sentence of imprisonment prior to becoming eligible for parole consideration. Persons convicted of these offenses are not eligible to earn credits reducing their length of stay until 85 percent of their sentence has been served. The 85 percent law became effective in 2000 and the original law identified 11 offenses; the following year, the legislature added ten more crimes to this list. One year later, and again in 2007 and 2011, the legislature added an additional offense. As of 2011, there were a total of 25 offenses, which include serious and heinous crimes such as first degree murder, rape, robbery, arson, child pornography, and assault with intent to kill.

65. OKDOC's Evaluation and Analysis, *The State of Corrections in Oklahoma: FY 2010* (retrieved May 1, 2011, from [doc.state.ok.us/newsroom/annuals/2010/annualreport2010.pdf](http://doc.state.ok.us/newsroom/annuals/2010/annualreport2010.pdf)); Christopher Hyde, personal communication, August 19, 2011.

66. U.S. Census Bureau. Retrieved December 23, 2011 from <http://quickfacts.census.gov/qfd/states/40000.html>.

67. State of Oklahoma, FY 2011 State Agency Appropriations Summary. Retrieved May 20, 2010, from <http://ftpcontent.worldnow.com/>

griffin/NEWSon6/PDF/1005/budgetdetails.pdf. The Oklahoma Legislature appropriated \$503 million to OKDOC in both FY 2009 and FY 2010. This is a 41 percent increase from FY 2000 and OKDOC's peak appropriation during the decade. By FY 2011, the figure dropped to \$462 million, which is eight percent lower than FY 2010's apex.

68. CSG Justice Center analysis based on OKDOC admissions data.

- In practice, the 85 percent offenders serve approximately 92.5 percent of their sentences.<sup>69</sup> There are two reasons for this phenomenon. First, state statute is not interpreted in a way that allows 85 percent offenders to earn programmatic or good behavior credits until they have completed 85 percent of their sentence.<sup>70</sup> Second, many people sentenced under the 85 percent law choose to waive the parole process when they become eligible for parole after serving 85 percent of their sentence. They elect to do so because they want to avoid post-release supervision. Only one percent of the 761 parolees in FY 2010 also had an 85 percent conviction.<sup>71</sup>

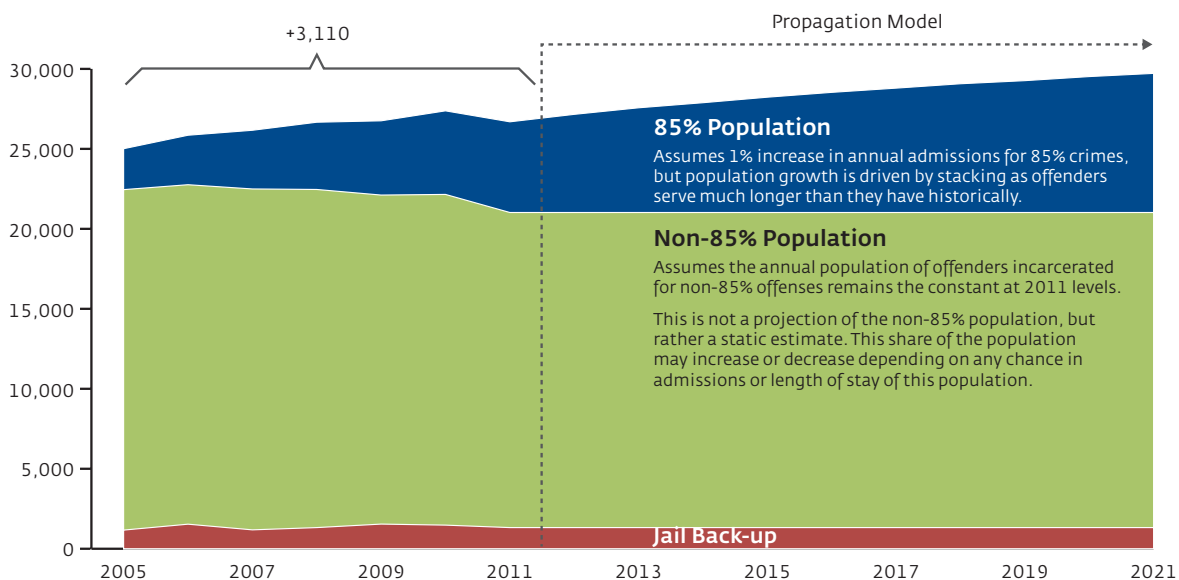
### Oklahoma's prison population growth is expected to continue.

- According to a CSG Justice Center propagation model, the prison population will continue to grow over the next decade, largely because of an increase in the number of people sentenced under the 85 percent law.<sup>72</sup> That number is projected to rise from

6,137 in FY 2012 to 8,698 in FY 2021, an increase of 3,028 or 42 percent.<sup>73</sup> The CSG Justice Center, in consultation with OKDOC, projects the cumulative additional cost to the state to house these offenders between FY 2013 and FY 2021 will be \$259 million, on top of what the state already spends on corrections.<sup>74</sup>

- The propagation model assumed a 1 percent annual increase in the number of admissions for people sentenced under the 85 percent law, which is consistent with past annual trends. It is not the number of admissions that simply drives the prison population upward; it is also the certainty that the number of people in prison who will serve at least 85 percent of their sentence is steadily accumulating.
- The propagation model is a static estimate; it assumes that the annual population of offenders convicted for non-85 percent offenses remains constant at the FY 2011 level. That share of the population may increase or decrease depending on changes in admissions and/or length of stay.

**FIGURE 12: ESTIMATE OF GROWTH IN PRISON POPULATION (DRIVEN BY STACKING OF THE 85% OFFENDERS)<sup>75</sup>**



69. CSG Justice Center analysis based on OKDOC exit data.

70. Mike Oakley (Office of the Oklahoma Attorney General), personal memorandum to OKDOC Director Justin Jones, October 12, 2011. The Oklahoma Court of Criminal Appeals has also issued various opinions related to the intent of the statute. One of the most noteworthy is the unpublished Oklahoma Court of Criminal Appeals case of *Sooter v. Oklahoma Department of Corrections*, REC-2008-442.

71. Ibid.

72. A propagation model analyzes past patterns to estimate future patterns for a discrete component in a system. In contrast, a simulation model includes all data elements and can make dynamic predictions across multiple attributes.

73. CSG Justice Center analysis based on OKDOC data. A propagation model analyzes past patterns to estimate future patterns.

74. Tom James (OKDOC), personal communication, December 29, 2011. Full calculation completed by CSG Justice Center.

75. OKDOC, Entry and Exits, FY2005 to FY2011.

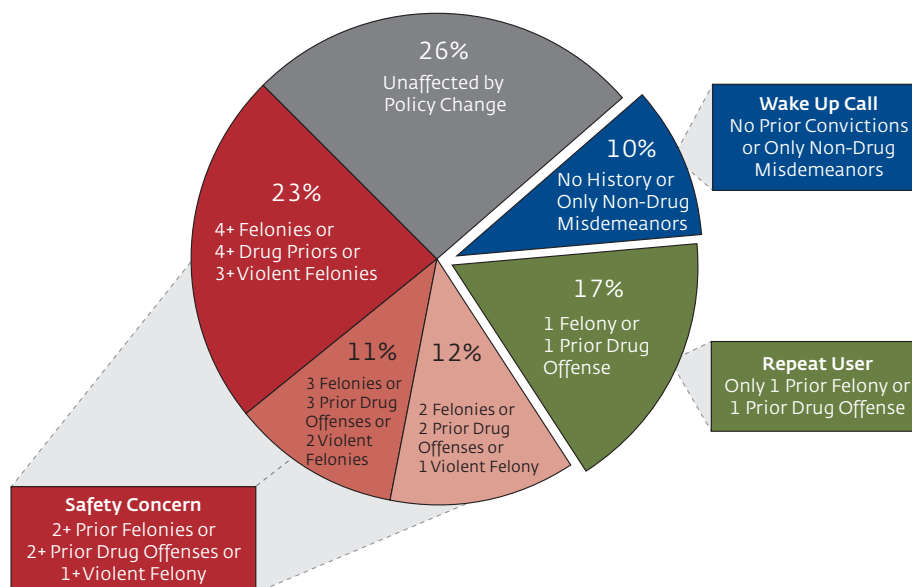
**Drug possession is the most common nonviolent felony in Oklahoma, yet state law is ambiguous about the appropriate sentence for people convicted of this crime, so use of prison and probation for this population varies considerably across the state.**

- Drug possession cases make up approximately 30 percent of court dispositions in Oklahoma and Tulsa Counties.<sup>76</sup> The options available to DAs and judges when sentencing individuals convicted of felony drug possession in these two counties – and most other counties in the state – include DA supervision, probation, community sentencing, drug court, and prison.
- In practice, DAs and judges use their discretion to divert most people charged with drug possession from prison into other forms of punishment, supervision, and treatment. Analysis of 2010 Tulsa County data found that, of those people convicted of felony drug possession, 24 percent were sentenced

to prison, 39 percent were sentenced to DA supervision, 22 percent to probation, 10 percent to drug court, and 6 percent to community sentencing.<sup>77</sup>

- Despite extensive use of diversions from prison for drug possession felonies, analyses suggest that for people convicted of this crime, prison is used inconsistently, the level of community supervision provided does not correspond to the likelihood of whether someone will reoffend, and treatment is not delivered in a manner that maximizes its impact.
- An analysis of a sample from the 7,056 people admitted to prison between FY 2005 and FY 2010 for a drug possession offense found that 10 percent had no prior felony convictions, nor any prior misdemeanor drug convictions. An additional 17 percent had one prior drug conviction or one nonviolent felony.<sup>78</sup>
- In FY2010, the 1,070 offenders admitted to prison for drug possession received an average sentence of 5.3 years, with sentence lengths ranging from 1.3 years to 12.7 years.<sup>79</sup>

**FIGURE 13: ANALYSIS OF DRUG POSSESSION OFFENDERS ADMITTED TO PRISON BETWEEN 2005 AND 2010<sup>80</sup>**



<sup>76</sup>. Administrative Office of the Courts, Oklahoma and Tulsa County Court Data

<sup>77</sup>. David Wright, personal communication, November 23, 2011 (Tulsa County DA probation data: CY 2010 receptions; OKDOC FY 2010 probation data: FY 2010 community sentencing and prison receptions).

<sup>78</sup>. OSBI rap sheets for sample of drug possession receptions, retrieved December 5, 2011. An offender can have a misdemeanor drug charge and a non-drug felony charge and fall in this category.

<sup>79</sup>. CSG Justice Center analysis based on OKDOC entry data.

<sup>80</sup>. OSBI Rap Sheets for sample of Drug Possession Receptions



- The drug possession statute provides just two sentencing ranges: one for first-time possession convictions (2–10 years) and another for second or subsequent possession convictions (4–20 years).<sup>81</sup> The vague guidance provided in statute for judges sentencing people convicted of a drug possession offense contrasts with the specific parameters provided for judges sentencing people convicted of Driving Under the Influence (DUI). That statute spells out punishment, supervision, and treatment according to criminal history, risk of reoffense, and need for treatment.<sup>82</sup>

### **Judges do not have a long enough window of time in which to modify a sentence.**

- State statute provides judges with only a 365-day window, starting the day of conviction, to modify sentences.<sup>83</sup>
- Many of the interventions ordered by a judge require either more than 1 year for successful completion or take so long to enter into that the offender is unable to show successful compliance by the time the judge's ability to exercise discretion has lapsed.
- In focus group meetings with judges from across the state, participants noted that they are unable to fully utilize the option of sentence modification because the timeline for doing so is too short.<sup>84</sup>

## **Strategy 3: Contain prison costs**

*Manage growth in the prison population while ensuring the most serious and violent offenders serve lengthier sentences that are required by the state's 85 percent law.*

### **3(A): Provide a graduated approach to sentencing people convicted of drug possession based on a person's risk of reoffending, criminal history, and substance abuse.**

**RATIONALE:** State law should provide a graduated approach that can be applied systematically for sentencing individuals convicted of drug possession. Such an approach would ensure that sentencing decisions are made according to the likelihood that a person will reoffend, past criminal history, and need for treatment, and, as a result, increase public safety, reduce recidivism and associated costs, and increase accountability among people convicted of drug possession.

### **3(B): Require people convicted of the most serious and violent offenses to serve 85 percent of their sentence in prison before they are able to apply banked good behavior and/or achievement credits.**

- Clarify the intent of the 85 percent law by modifying it to indicate that, starting in FY 2012, individuals incarcerated for 85-percent crimes may be authorized to start earning credits toward sentence reduction from 100 to 85 percent, while ensuring that they will not be released before serving a full 85 percent of their court-imposed sentence.

<sup>81</sup>. Schedule I or II, excluding marijuana possession.

<sup>82</sup>. Oklahoma Statutes, Title 63: Public Health and Safety, 63-2-402, and Title 47: Motor Vehicles, 47-11-902 (retrieved from [www.oklegislature.gov/osstatuestitle.html](http://www.oklegislature.gov/osstatuestitle.html)); Oklahoma Driver's Manual, November 2010 (retrieved from [www.dps.state.ok.us/dls/pub/ODM.pdf](http://www.dps.state.ok.us/dls/pub/ODM.pdf)).

<sup>83</sup>. 22 O.S. § 982a. The allowable window for sentence modification was previously 120 days. The statute was changed to 365 days on July 1, 1999.

<sup>84</sup>. CSG Justice Center meetings and focus groups with approximately 20 judges from across the state (August, September, and October 2011).

- The credits will be applied when the person completes 85 percent of the sentence. Unless the offender is engaged in misconduct during incarceration that result in credit reductions, being convicted of an 85-percent crime will mean that the offender will serve approximately 85 percent of the sentence.

**RATIONALE:** This policy change would clarify the statute regarding the inability of 85 percent offenders to earn and bank credits for good behavior/participation in programs and subsequently apply them once they have served 85 percent of their sentence. This change would align the law with the understanding that most people in Oklahoma’s criminal justice system had about the intent of the 85 percent law when it was enacted. This change would also encourage 85 percent offenders to exhibit good behavior and participate in rehabilitation and educational programming before serving 85 percent of their sentence. They currently have no incentive to do either.

### **3(C): Permit a longer period after conviction for judges to modify a sentence.**

**RATIONALE:** The ability to modify a sentence after a period of time allows judges the option to recommend that an offender undertake treatment, programming, or other intervention and, upon completion of recommended activities, that the sentence be altered in response to the offender’s compliance and demonstrated behavior change.

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This project was supported by Grant No. 2010-RR-BX-K071 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United State Department of Justice.

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Research and analysis described in this report has been funded in part by the Public Safety Performance Project of The Pew Charitable Trusts' Center on the States. Launched in 2006 as a project of the Pew Center on the States, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable, and control corrections costs.

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Suggested citation: Council of State Governments Justice Center, *Justice Reinvestment in Oklahoma: Analysis and Policy Framework* (New York: Council of State Governments Justice Center, 2012).

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