Presentation to the Washington Sentencing Guidelines Commission

April 12, 2019

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The Council of State Governments (CSG) is a national nonprofit, nonpartisan membership association of state government officials that engage members of all three branches of state government.

The CSG Justice Center is a national nonprofit, nonpartisan organization that combines the power of a membership association, representing state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities. For more information about the CSG Justice Center, visit www.csgjusticecenter.org.
Washington State requested assistance to review the Sentencing Reform Act (SRA) by examining the following areas:

- Review of the literature on effective supervision—what it looks like and the impact it can have on reducing recidivism

- Sentencing analysis including scoring rules, sentence modifications, and recidivism

- Analysis on the state’s supervision system, including sanctioning policies and practices and recidivism of people on supervision
This is the third and final presentation to the commission before submission of a final report.

October 2018 presentation on effective supervision

February 2019 presentation on sentencing, supervision, and recidivism

April 2019 presentation on sentencing, supervision, and recidivism

May 2019 final report submitted to Sentencing Guidelines Commission

- Review of the literature on effective supervision—what it looks like and the impact it can have on reducing recidivism
- Sentencing analysis including scoring rules, sentence modifications, and recidivism
- Analysis on the state’s supervision system, including sanctioning policies and practices and recidivism of people on supervision
Presentation Outline

- **Sentencing**
  - County variation in statewide sentencing trends
  - Use of sentencing alternatives
  - Comparison of sentencing guidelines

- Supervision Sanctions

- Recidivism
Sentencing findings from February 2019 presentation

- Felony sentences have steadily increased since 2010.
- This increase appears to be driven by people with more extensive criminal histories sentenced for offenses in lower seriousness levels, generally property and drug offenses.
- Nearly all felony sentences include a period of incarceration in jail or prison, with more than half of felony sentences including a jail sentence.
- While alternative sentences without incarceration do exist, they are applied to less than 10 percent of felony sentences.
- As a result of having few non-custodial sentencing options, lower-level property offenses and possession of controlled substances make up nearly half of all felony sentences to incarceration.
Analysis presented at the last meeting highlighted particular drug and property offenses that have seen the greatest increase in number of felony sentences.

Percent Change in Felony Sentences by Offense Type, FY2010–FY2018

*Includes Escape from Community Custody. CFC Forecasting Categories were used to determine offense type.

Source: Justice Center analysis of CFC data
The increase in sentences for motor vehicle theft and drug possession was widespread across the state in recent years.

### Change in Sentences for TMVWOP by County, FY2010–FY2018

<table>
<thead>
<tr>
<th></th>
<th>Clark</th>
<th>King</th>
<th>Pierce</th>
<th>Snohomish</th>
<th>Spokane</th>
<th>Thurston</th>
<th>Yakima</th>
<th>All others</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>100</td>
<td>206</td>
<td>181</td>
<td>90</td>
<td>109</td>
<td>26</td>
<td>79</td>
<td>262</td>
<td>1,053</td>
</tr>
<tr>
<td>2018</td>
<td>136</td>
<td>430</td>
<td>324</td>
<td>305</td>
<td>288</td>
<td>68</td>
<td>135</td>
<td>483</td>
<td>2,169</td>
</tr>
<tr>
<td>Percent change</td>
<td>36%</td>
<td>109%</td>
<td>79%</td>
<td>239%</td>
<td>164%</td>
<td>162%</td>
<td>71%</td>
<td>84%</td>
<td>106%</td>
</tr>
</tbody>
</table>

### Change in Sentences for Poss CS – Other by County, FY2010–FY2018

<table>
<thead>
<tr>
<th></th>
<th>Clark</th>
<th>King</th>
<th>Pierce</th>
<th>Snohomish</th>
<th>Spokane</th>
<th>Thurston</th>
<th>Yakima</th>
<th>All others</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>229</td>
<td>60</td>
<td>399</td>
<td>130</td>
<td>210</td>
<td>109</td>
<td>115</td>
<td>1,123</td>
<td>2,375</td>
</tr>
<tr>
<td>2018</td>
<td>405</td>
<td>181</td>
<td>310</td>
<td>460</td>
<td>553</td>
<td>217</td>
<td>152</td>
<td>2,187</td>
<td>4,465</td>
</tr>
<tr>
<td>Percent change</td>
<td>77%</td>
<td>202%</td>
<td>-22%</td>
<td>254%</td>
<td>163%</td>
<td>99%</td>
<td>32%</td>
<td>95%</td>
<td>88%</td>
</tr>
</tbody>
</table>
The number of FTOW and DOSA sentences each year has remained fairly stable and represents a small proportion of total felony sentences.

First-Time Offender Waiver (FTOW) and Drug Offender Sentencing Alternative (DOSA) Sentences, FY2001–FY2018

Proportion of All Felony Sentences that are FTOW, Residential DOSA, or Prison-based DOSA

<table>
<thead>
<tr>
<th>Year</th>
<th>FTOW Proportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>14%</td>
</tr>
<tr>
<td>2002</td>
<td>14%</td>
</tr>
<tr>
<td>2003</td>
<td>13%</td>
</tr>
<tr>
<td>2004</td>
<td>11%</td>
</tr>
<tr>
<td>2005</td>
<td>9%</td>
</tr>
<tr>
<td>2006</td>
<td>9%</td>
</tr>
<tr>
<td>2007</td>
<td>8%</td>
</tr>
<tr>
<td>2008</td>
<td>11%</td>
</tr>
<tr>
<td>2009</td>
<td>11%</td>
</tr>
<tr>
<td>2010</td>
<td>13%</td>
</tr>
<tr>
<td>2011</td>
<td>14%</td>
</tr>
<tr>
<td>2012</td>
<td>15%</td>
</tr>
<tr>
<td>2013</td>
<td>16%</td>
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<tr>
<td>2014</td>
<td>16%</td>
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<tr>
<td>2015</td>
<td>17%</td>
</tr>
<tr>
<td>2016</td>
<td>17%</td>
</tr>
<tr>
<td>2017</td>
<td>17%</td>
</tr>
<tr>
<td>2018</td>
<td>17%</td>
</tr>
</tbody>
</table>

Source: Justice Center analysis of CFC data.
Counties vary in the distribution of alternative sentences, with more variation in FTOW sentences than DOSA sentences.

Percent of Property or Drug Felony Sentences Receiving a First-Time Offender Waiver (FTOW) or Drug Offender Sentencing Alternative (DOSA) by County*, FY2018

*Counties with fewer than 100 felony sentences in FY2018 were excluded. FTOW analysis includes only sentences of people with no prior convictions.

Source: Justice Center analysis of CFC data
Sentencing guidelines systems use offense severity and prior criminal history to guide disposition and length of sentence.

In Washington, the rows and columns are **Seriousness Level** and **Offender Score**.

**Minnesota**

**Arkansas**

**North Carolina**
While offense severity is fairly straightforward, prior criminal history tends to involve a more nuanced approach.

*In Michigan, the Prior Record Variables (PRV) level is determined based on a calculated score comprised of seven PRVs.*

<table>
<thead>
<tr>
<th>PRV Level</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRV 1 – Prior High Severity Felony Convictions</td>
<td>75 points = 3 or more prior high severity felony convictions</td>
<td>50 points = 2 prior high severity felony convictions</td>
<td>25 points = 1 prior high severity felony conviction</td>
<td>0 points = No prior high severity felony convictions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PRV 2 – Prior Low Severity Felony Convictions</td>
<td>30 points = 4 or more prior low severity felony convictions</td>
<td>20 points = 3 prior low severity felony convictions</td>
<td>10 points = 2 prior low severity felony convictions</td>
<td>5 points = 1 prior low severity felony conviction</td>
<td>0 points = No prior low severity felony convictions</td>
<td></td>
</tr>
<tr>
<td>PRV 3 – Prior High Severity Juvenile Adjudications</td>
<td>50 points = 3 or more prior high severity juvenile adjudications</td>
<td>25 points = 2 prior high severity juvenile adjudications</td>
<td>10 points = 1 prior high severity juvenile adjudications</td>
<td>0 points = No prior high severity juvenile adjudications</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PRV 4 – Prior Low Severity Juvenile Adjudications</td>
<td>20 points = 6 or more prior low severity juvenile adjudications</td>
<td>2 points = 1 prior low severity juvenile adjudication</td>
<td>0 points = No prior low severity juvenile adjudications</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PRV 5 – Prior Misdemeanor Convictions or Prior Misdemeanor Juvenile Adjudications</td>
<td>20 points = 7 or more prior misdemeanor convictions or adjudications</td>
<td>15 points = 5 or 6 prior misdemeanor convictions or adjudications</td>
<td>10 points = 3 or 4 prior misdemeanor convictions or adjudications</td>
<td>5 points = 2 prior misdemeanor convictions or adjudications</td>
<td>2 points = 1 prior misdemeanor conviction or adjudication</td>
<td>0 points = No prior misdemeanor convictions or adjudications</td>
</tr>
<tr>
<td>PRV 6 – Relationship to Criminal Justice System</td>
<td>20 points = Serving a sentence in Department of Corrections or jail</td>
<td>15 points = Incarcerated in jail awaiting trial or probation violation hearing</td>
<td>10 points = On parole, probation, or delayed sentence status for a felony</td>
<td>5 points = On probation or delayed sentence status for a misdemeanor</td>
<td>0 points = No relationship to the criminal justice system</td>
<td></td>
</tr>
<tr>
<td>PRV 7 – Subsequent or Concurrent Felony Convictions</td>
<td>20 points = 2 or more subsequent or concurrent felony convictions</td>
<td>10 points = 1 subsequent or concurrent felony conviction</td>
<td>0 points = No subsequent or concurrent felony convictions</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In most guideline states, prior criminal history is a good predictor of a person’s likelihood of recidivating.

Two Year Rearrest Rates by PRV Level for Probation or Jail Sentences in Michigan, 2010

Twice as likely to be rearrested as people in PRV Level A.

In Washington, offender score is not consistently calculated across different offense types and is based on factors other than a person’s criminal history.

The Offender Score is calculated based on five factors:

1) Number of prior criminal convictions or juvenile dispositions
2) Relationship between any prior offense(s) and the current offense of conviction
3) Presence of other current convictions
4) Community custody status at the time the crime was committed
5) Length of crime-free time between offenses

Additionally, the scoring rules vary depending on the type of offense and circumstances of the current conviction.

A higher offender score does not correlate strongly with a higher likelihood of recidivism.

Three-Year Reconviction Rates by Offender Score for Jail Sentences and Prison Releases in Washington, FY2015

Source: CSG Justice Center analysis of CFC, DOC, and WSP arrest data.
The lack of clear correlation between offender score and recidivism is particularly noteworthy in light of Washington’s adoption of sentencing guidelines over time.

**First of the six goals articulated in the 1981 enabling statute:**

- sentences “proportionate to the seriousness of the offense and the offender’s criminal history”

**Seventh goal added in 1999:**

- sentences should “reduce the risk of reoffending by offenders in the community”
Sentencing Summary

- Counties of all sizes across the state have experienced increases in motor vehicle theft and non-narcotic drug possession, with drug possession in particular having widespread increases.

- The number of FTOW and DOSA sentences has not changed over time and makes up a small proportion of felony sentences.

- There is wide variation across counties in the application of FTOW sentences and to a lesser extent DOSA sentences.

- Washington is unlike other guidelines states in how criminal history is incorporated in the grid.
Presentation Outline

• Sentencing

Supervision Sanctions

○ Supervision sanctioning practices in WA
○ Comparison with other states
○ Costs and implications

• Recidivism
Supervision Findings from October 2018 and February 2019 Discussions

- A strong research foundation exists to support the use of supervision as an effective public safety alternative to more traditional custody-based sentencing options.

- Statutory restrictions limit access to supervision for certain offenses, resulting in more than half of sentences to jail having no supervision following release.

- Supervision is more likely applied in cases with a higher seriousness level and is less closely tied to a person’s criminal history.

- There are limited opportunities for supervision of people sentenced for property offenses.

- The number of supervision violation admissions and the average daily population of people incarcerated for supervision violations have increased in the last three years.
In 2012, Washington became the first state to implement Swift and Certain (SAC) as a supervision model statewide and, as a result, became the site for the largest implementation of SAC.

**WA Supervision Sanctioning Process**

1. **1st Low-Level Violation – Stipulated Agreement**  
   *No confinement*

2. **2nd – 5th Low-Level Violation – Short-Term Confinement**  
   *1-3 days confinement*

3. **6th+ Low-Level Violation / High-Level Violations**  
   *Up to 30 days confinement*

A person’s violation count will accrue during *any continuous period* of department jurisdiction. A continuous period of department jurisdiction ends only when a person has no active, inactive, or consecutive supervision periods remaining or a prison DOSA sentence is reclassified.

DOC currently interprets any orders for multiple supervision sentences to run consecutively unless the order clearly states that they run concurrently.

Source: WADOC Response to Violations and New Criminal Activity, WADOC Behavior Accountability Guide.
The supervision violator population in county jails has increased at a rate much higher than the increase in the total supervision population, with most of the increase occurring after 2014.

Source: Washington State Department of Corrections, Average Daily Population of Incarcerated Individuals; Caseload Forecast Council, Adult Community Supervision Contact Required Caseload forecast.
Both the number of people violating and the number of times they violate in a year has increased since 2015.

### Violator Admissions*, FY2015–FY2018

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of people violating each year</th>
<th>Number of violation admissions per person each year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>11,285</td>
<td>42% 5% 5% 9% 15% 24%</td>
</tr>
<tr>
<td>2016</td>
<td>12,959</td>
<td>39% 6% 10% 15% 23%</td>
</tr>
<tr>
<td>2017</td>
<td>14,235</td>
<td>36% 7% 10% 15% 23%</td>
</tr>
<tr>
<td>2018</td>
<td>15,065</td>
<td>34% 9% 7% 11% 22%</td>
</tr>
</tbody>
</table>

*Admissions include local county jail/violator facilities.

Source: Justice Center analysis of DOC data.
States with similar approaches to supervision sanctioning as Washington have much lower numbers of violation admissions annually.

<table>
<thead>
<tr>
<th>State</th>
<th>People on or starting supervision in a year</th>
<th>Annual number of supervision violation admissions to incarceration (excludes revocations)</th>
<th>Violation admissions per 100 people supervised</th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington</td>
<td>38,015</td>
<td>41,745</td>
<td>109</td>
</tr>
<tr>
<td>North Carolina</td>
<td>84,003</td>
<td>3,049</td>
<td>4</td>
</tr>
</tbody>
</table>

*North Carolina employs short incarceration stays as a supervision sanction as an alternative to revocation. These sanctions are generally 3 days or less, whereas in Washington they may stay up to 30 days.*

Population growth of people incarcerated for supervision violations has cost implications for the state.

Estimated Annual Cost of Community Supervision Violator Beds Assuming Total Reimbursement, FY2012–FY2018*

- In FY2018, the state spent $185 million on community supervision.
- DOC reports actual expenditures for supervision violator beds were around $40 million in FY18.

*Cost estimate based on a violator bed cost per day of $80.

While the majority of sanctioned people only had one to two sanctions imposed, those who had six or more imposed sanctions weren’t necessarily more likely to have a mental health issue or be at a higher risk of reoffending.

Source: Justice Center analysis of DOC data.
To fully understand what is driving supervision violator admissions to incarceration, a number of research questions need to be addressed.

What is the prevalence of different types of violations (low level vs. high level) and how often do they occur?

What are the underlying causes of low-level and high-level violations?

Are longer lengths of stay associated with high-level violations or the accumulation of low-level violations?

What is the average total number of violations a person has while on supervision, and has this changed over time?

When do violations tend to occur during a period of supervision?

How are people with mental health and/or substance addictions affected by short-term incarceration stays as a result of a supervision sanction?

*Admissions include local county jail/violator facilities. 10 people were admitted in 2018 but did not have a release to calculate length of stay.

Source: Justice Center analysis of DOC data
Supervision Summary

- The increase in the violator population has outpaced the increase in the supervision population, with an estimated three-quarters of people on supervision admitted to a violator center at some point during a given year.
- People on supervision are accumulating higher numbers of violations, which leads to longer incarceration stays and growth in incarcerated populations and costs.
- States with similar approaches to supervision sanctioning as Washington have far fewer violation admissions per person.
- Further study is needed to fully understand the dynamics and drivers of supervision violation admissions.
Presentation Outline

- Sentencing

- Supervision Sanctions

Recidivism

- Limitations to recidivism comparisons
- Timing of recidivism
- Impact of supervision on recidivism
Recidivism Findings from February 2019 Discussion

- People sentenced to jail have higher recidivism rates than people released from prison, particularly in the first year following release.

- Recidivism rates vary across types of offense; people sentenced for certain property and drug offenses have higher rates than people sentenced for other offense types.

- People sentenced for property and drug offenses are most likely to be rearrested for property and drug offenses.
In Washington, nearly all felony sentences include a period of incarceration, which complicates potential comparisons in supervision vs. incarceration outcomes.

![Table and Graph]

The only sentencing options that do not include a period of incarceration in Washington are sentencing “alternatives,” which require certain eligibility criteria and affect a relatively small number of cases.

Source: Justice Center analysis of CFC data
Nearly half of recidivism events occur in the first six months following a jail release, and rates stabilize after 18 months.

*Estimated jail release date was calculated using sentence date, sentence length, and credit for time served. People released more than once in a fiscal year were only counted once in the analysis.

Source: Justice Center analysis of CFC and WSP data
People sentenced to jail who are released with supervision have lower reconviction rates than people sentenced to jail who are released without supervision, but the opposite is true for people released from prison.

<table>
<thead>
<tr>
<th>Jail Sentence</th>
<th>Prison Release</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony rearrest</td>
<td>Felony rearrest</td>
</tr>
<tr>
<td>Jail without supervision</td>
<td>Prison without supervision</td>
</tr>
<tr>
<td>Jail with supervision</td>
<td>Prison with supervision</td>
</tr>
<tr>
<td>50%</td>
<td>44%^</td>
</tr>
<tr>
<td>49%</td>
<td>48%^</td>
</tr>
<tr>
<td>38%^</td>
<td>34%^</td>
</tr>
<tr>
<td>36%^</td>
<td>37%^</td>
</tr>
</tbody>
</table>

^Difference in recidivism between groups is significant at p < .05 level

*Estimated release date was calculated using sentence date, sentence length, and credit for time served. People released more than once in a fiscal year were only counted once in the analysis.

Source: Justice Center analysis of CFC, DOC, and WSP data
People sentenced to jail who are released with supervision had lower recidivism rates across various levels of criminal history.

Jail Sentence* Three-Year Recidivism Rates, FY2015 Releases

<table>
<thead>
<tr>
<th>Prior Convictions</th>
<th>Jail with Supervision</th>
<th>Jail without Supervision</th>
</tr>
</thead>
<tbody>
<tr>
<td>No prior convictions (N = 5,660)</td>
<td>43%^</td>
<td>39%^</td>
</tr>
<tr>
<td>1–2 prior convictions (N = 3,560)</td>
<td>54%^</td>
<td>50%^</td>
</tr>
<tr>
<td>3+ prior convictions (N = 3,371)</td>
<td>60%</td>
<td>60%</td>
</tr>
</tbody>
</table>

^Difference in recidivism between groups is significant at p < .05 level

*Estimated release date was calculated using sentence date, sentence length, and credit for time served. People released more than once in a fiscal year were only counted once in the analysis.

Source: Justice Center analysis of CFC, DOC, and WSP data
Recidivism rates for high-risk people released from prison to supervision are lower than for high-risk people released without supervision, but this is not the case for low- and moderate-risk people.

Prison Release Three-Year Recidivism Rates by Risk Level, FY2015 Releases

Low Risk  
(N = 843)

- Felony rearrest: 16% (Prison without supervision), 17% (Prison with supervision)
- Felony reconviction: 12% (Prison without supervision), 19% (Prison with supervision)

Mod Risk  
(N = 784)

- Felony rearrest: 18% (Prison without supervision), 40% (Prison with supervision)
- Felony reconviction: 15% (Prison without supervision), 37% (Prison with supervision)

High Risk  
(N = 6,064)

- Felony rearrest: 54% (Prison without supervision), 52% (Prison with supervision)
- Felony reconviction: 42% (Prison without supervision), 39% (Prison with supervision)

^Difference in recidivism between groups is significant at p < .05 level

Source: Justice Center analysis of CFC, DOC, and WSP data
A number of states have demonstrated that straight probation without incarceration can have better outcomes than jail or prison at a substantially lower cost.

Arkansas

<table>
<thead>
<tr>
<th>Two Year Rearrest Rates for Drug/Property Offenses, FY2010 Cohorts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Prior Felony Arrests</strong></td>
</tr>
<tr>
<td>-------------------------</td>
</tr>
<tr>
<td>0 to 1</td>
</tr>
<tr>
<td>2-3</td>
</tr>
<tr>
<td>4 or more</td>
</tr>
<tr>
<td>Overall</td>
</tr>
</tbody>
</table>

Comparing apples to apples, probation yields as good or better recidivism rates as prison

Return on Investment

- Probation
- Prison

4 years supervision at $2,250/day
2 years in prison at $62/day

$3,285 cost to state

$45,260 cost to state

Georgia

When accounting for criminal history, reconviction rates for people sentenced directly to probation is lower than people sentenced to prison

Three-Year Felony Recidivism Rates for All Offense Types by Criminal History, FY2012

- No prior felonies
- One prior felony
- Two prior felonies
- Three prior felonies
- Four or more priors

Source: CSS Justice Center Analysis of Probation and justice research files

Council of State Governments: Justice Center | 35
Recidivism Summary

- For people sentenced to jail, those who are released supervision have lower rearrest and reconviction rates in three years. For people released from prison, those who are released to supervision have slightly higher recidivism rates in three years.

- Recidivism rates for high-risk people released from prison to supervision are lower than for high-risk people released without supervision, but this is not the case for low- and moderate-risk people.
<table>
<thead>
<tr>
<th>Key Findings</th>
<th>Implications for Washington</th>
</tr>
</thead>
<tbody>
<tr>
<td>The vast majority of sentences handed down involves a period of incarceration, largely driven by the fact that probation is not an available option as a fundamental sentencing alternative to incarceration-oriented punishments.</td>
<td>➢ Consider adoption of probation as a statutorily recognized sentencing alternative to jail and prison to allow for more effective approach to appropriate populations.</td>
</tr>
<tr>
<td>Recidivism rates comparing different populations is challenging, largely due to the inability to separate effects of incarceration and supervision.</td>
<td>➢ Ensure any adoption of more utilization of supervision is in line with research base on known best practices.</td>
</tr>
<tr>
<td>Volume of felony sentences has been increasing steadily since 2010, particularly among drug and property related crimes.</td>
<td>➢ Address behavioral health challenges and repeat criminal behavior with accountability and connection to services.</td>
</tr>
<tr>
<td>Growth is across many counties of various population size.</td>
<td>➢ Seek pathways to establish meaningful local-state relationships to focus on resource issues to help ensure effective interventions at the local level.</td>
</tr>
<tr>
<td>Use of alternative sentences such as the First-Time Offender Waiver varies by county.</td>
<td>➢ Consider more consistent framework tied more directly to criminal history for offender scoring.</td>
</tr>
<tr>
<td>Poor relationship between offender score embedded in guidelines and actual recidivism outcomes. This is predictable given the approach to scoring.</td>
<td>➢ Research is needed on effects of current approach to use of jail sanctions.</td>
</tr>
<tr>
<td>Very high utilization of jail sanctions for supervised population.</td>
<td></td>
</tr>
</tbody>
</table>
Thank You

Monica Peters, Research Manager
mpeters@csg.org

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