

Justice Reinvestment in Action: The Delaware Model

Juliene James • Suzanne Agha

POLICY BRIEF • APRIL 2013

Executive Summary

Justice reinvestment is a data-driven approach to corrections policy that seeks to cut spending and reinvest savings in practices that have been empirically shown to improve safety and hold offenders accountable. The Vera Institute of Justice is working with Delaware to advance its efforts under the Justice Reinvestment Initiative—a project sponsored by the U.S. Department of Justice’s Bureau of Justice Assistance and The Pew Charitable Trusts.

Delaware’s work in justice reinvestment began in the summer of 2011, when Governor Jack Markell established the Delaware Justice Reinvestment Task Force through executive order to conduct a comprehensive examination of the factors contributing to the size of the corrections population, both pretrial and sentenced individuals.

Vera assisted the task force in analyzing these factors and assessed the capacity and quality of institutional and community-based programs. The task force found that people awaiting trial made up a large proportion of the prison population, that supervision practices resulted in a large number of probationers spending time in prison, and that Delaware prisoners served long sentences with limited opportunity to earn reductions in their sentences—even when they had made significant steps toward rehabilitation. Based on these findings, Vera helped the task force develop a policy framework to address these drivers of the corrections population and ensure that scarce justice resources are used to reduce recidivism and enhance public safety.

Legislators translated these policy recommendations into Delaware Senate Bill 226. Among other changes, the legislation requires implementation of an objective risk assessment instrument to help magistrates make decisions about pretrial release, makes available objective risk and needs assessment for judges’ use in sentencing, supports improved community supervision practices, and creates incentives for those who are incarcerated and under supervision to complete evidence-based programs designed to reduce recidivism. Strong bipartisan efforts led to the near-unanimous passage of the legislation, which the governor signed in August 2012.

As other jurisdictions consider how best to invest limited public safety dollars, Delaware’s experience offers a helpful example of what can be accomplished through a close consideration of data and social science. Because it is a unified system—one of only a handful in which the state’s Department of Correction has custody of both pretrial and sentenced populations—Delaware’s recent work is relevant not only to other states, but also to local jurisdictions, which typically are responsible for jail populations. This brief reflects on Delaware’s efforts.

Background

By 2011, Delaware’s criminal justice stakeholders found themselves at a crossroads. The state’s arrest rate for violent crime was one in 322, compared with one in 529 for the United States as a whole.¹ Delaware ranked fourth in the nation for its violent crime rate.² This alone would be cause for concern, even if the prisons were not already crowded. Although Delaware’s corrections population has been relatively stable, the state’s four facilities were well over design capacity.³ Finally, the recent recession left the state grappling with budget shortfalls; in 2008, the Delaware Department of Correction (DOC) reversed a five-year trend of increasing expenditures and began trimming operational expenses. This had a limited impact on overall correctional spending; without reductions in its prison population, Delaware could not spend less on corrections and still protect public safety.

Complicating matters further, Delaware policymakers lacked access to timely, reliable data about the criminal justice system, which hindered their ability to make informed decisions about how to invest limited resources most effectively. For example, the state had not measured recidivism—the rate at which those exiting prison commit new crimes. Without knowing how much crime is committed by repeat offenders, it was not possible to

“These reforms will make our justice system more efficient and effective, reduce costs, and save lives.”

—U.S. SENATOR CHRIS COONS,
DELAWARE

determine the degree to which recidivism might be contributing to the state’s high rate of violent crime and, therefore, how much to target that population.

Faced with a high crime rate, prison overcrowding, and budget shortfalls, state leaders concluded they had to think creatively about how to shrink a system that had been growing for years. This was no small task. To achieve consensus would require time-consuming effort and cooperation—and leadership—on the part of all three branches of government and multiple agencies.

At the direction of Governor Jack Markell, and with the support of community-based organizations, the Delaware Criminal Justice Council applied to participate in the Justice Reinvestment Initiative (JRI), funded by the U.S. Department of Justice’s Bureau of Justice Assistance (BJA). After assessment by the Vera Institute of Justice (Vera), BJA accepted Delaware for participation in JRI in April 2011.

Task Force Findings and Recommendations

In July 2011, Governor Markell convened the Delaware Justice Reinvestment Task Force to study the criminal justice system to determine the factors driving the prison and jail population and to identify ways to generate savings and increase public safety, focusing on evidence-based practices for reducing recidivism.⁴ During an intensive eight-month period, Vera worked with the task force, a bipartisan group of legislators, judges, representatives from the state prosecutor’s and public defender’s offices, law enforcement officials, and corrections agency officials to conduct data analysis, review state corrections policy and practice, research best practices, and propose recommendations.

ANALYZING THE DATA

First, the task force needed to understand the way the system was working—who were those admitted to prison, the reasons for their admissions, how long they stayed, and what they did while in the DOC’s custody. Vera assisted the task force by conducting an extensive analysis of Delaware’s sentencing and corrections data and an in-depth review of the policies and practices at state criminal justice agencies; and by consulting a wide range of stakeholders to identify the factors driving Delaware’s prison population. The analysis revealed three main drivers:

- > a large pretrial population,
- > violations of probation, and
- > long lengths of stay for the incarcerated population.

Large pretrial population. The DOC has custody of both pretrial and sentenced populations. With 23 percent of Delaware’s prison beds taken up by pre-sentenced people, Delaware uses more of its prison space for this population than other unified systems.⁵ Using core elements of standard pretrial risk assessments, the analysis concluded that 14 percent of 2010 detention admissions could be candidates for release instead of incarceration while awaiting trial. This lower-risk group excludes those who might pose a risk of flight or rearrest.⁶ It demonstrated that there was a clear opportunity in the pretrial arena to reduce the prison population by releasing more people on recognizance or with supervision without jeopardizing public safety.

Violations of probation. While standard recidivism data would have provided a more complete picture of the rate at which those exiting prison reoffend, this information was not available to the task force. Instead, Vera did two analyses of probation revocation cases that indicated that recidivism may be a key driver of the prison population. (Since Delaware abolished parole in 1989, Delaware courts have imposed terms of probation following incarceration for most people sentenced to prison.) The first analysis showed that 39 percent of admissions to prison in 2010 had a violation of probation (VOP) as the lead charge.⁷ While 13 percent of all probation revocations in 2010 were for new crimes, 87 percent were for technical violations, such as missed appointments, curfew violations, or positive drug tests.⁸ In addition, the second analysis found that those serving time for VOPs took up 13 percent of the system’s total bed space in 2010.⁹ The state has made progress in reducing revocations of probation since probation reform legislation, known as Senate Bill 50, was enacted in 2003.¹⁰ However, incarcerating this population still consumes substantial resources; treatment interventions, added programming, or intermediate sanctions would be more effective and less costly responses.

Long lengths of stay. Delaware prisoners serve long sentences: in 2010, the average length of stay for prisoners was more than three years,¹¹ while the national average is about two years.¹² Prisoners have limited opportunity to earn reductions in their sentences even when they have taken significant steps toward rehabilitation while incarcerated to lower their risk to public safety.

RECOMMENDATIONS

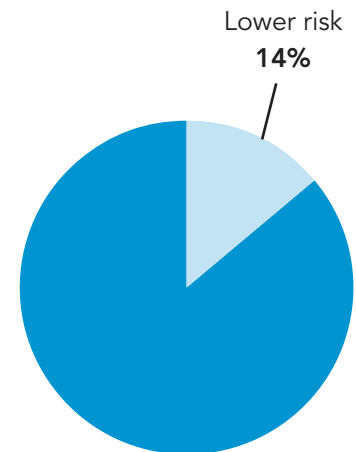
Based on this analysis and the best available research, the task force crafted recommendations to achieve the following objectives:

- > concentrate detention resources on high-risk defendants,
- > focus supervision and prison resources on high-risk people,
- > hold offenders accountable,
- > reduce barriers to reentry, and
- > protect and support victims of crime.¹³

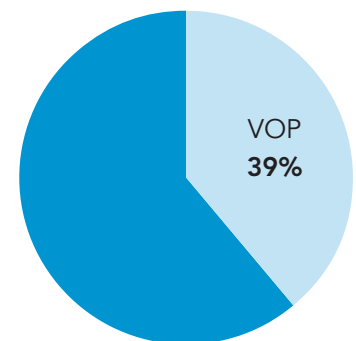
Concentrate detention resources on high-risk defendants. Recognizing that objective, actuarial risk assessments have higher predictive validity than professional judgment alone, the task force recommended that the state implement a pretrial risk assessment that gauges defendants’ risk of flight and re-arrest to help magistrates make more informed release decisions.¹⁴ In addition to better detention decisions, pretrial risk assessment can lead to better outcomes for those who are not detained: when low-risk defendants are released pretrial, they tend to stay out—whereas an established body of evidence shows that defendants who are detained pretrial are more likely to plead guilty, be convicted more often, and be sentenced to longer terms, despite being otherwise similarly situated.¹⁵

The task force recommended that magistrates receive data on rates of re-arrest and failures to appear for scheduled court dates, creating a track record to help improve future decision making. To accommodate a greater number of releases into the community and support public safety, the task force recommended that pretrial supervision capacity be increased to ensure adequate

**Pretrial Prison Admissions in 2010:
Potential Candidates for Release**



**Prison Admissions in 2010:
Violations of Probation (VOP)**



supervision for people whose risk level indicates that they can be released safely with supervision.

The task force further recommended changes in law enforcement agency policies and practices to increase the use of criminal summonses rather than arrests for certain offenses to help reserve detention resources for those who pose a real risk to public safety.

We owe it to Delawareans to ensure that our criminal justice spending is wisely invested to have the biggest impact on public safety. If we can properly allocate that spending to focus on programming that reduces recidivism and prevents future crime we can have a significant impact on the safety of our communities.

—GOVERNOR JACK MARKELL

Focus supervision and prison resources on high-risk people. During its deliberations the task force heard evidence that supervision and intervention resources are most effective when used for those who pose the highest public safety risk, and that, conversely, ordering low-risk offenders to intensive supervision or programming may in fact increase their risk of reoffending.¹⁶ Accordingly, the task force recommended that:

- > the DOC assess inmates and probationers for risk and need areas; create case plans that target services and treatment to identified needs; improve engagement skills of staff; and provide adequate evidence-based programming, such as cognitive behavioral therapy and substance abuse treatment, that addresses the factors most closely associated with recidivism; and
- > judges be provided risk and needs assessment information to assist in sentencing.

For those on community supervision, the task force recommended creating incentives to comply with case plans by reducing time on probation through earned compliance credits. Those in prison can also reduce time served by completing evidence-based programs.

Hold offenders accountable. Since research shows that swift and certain responses to both positive and negative behavior are most effective in changing behavior, the task force recommended increasing the variety, availability, and use of intermediate sanctions for violations of supervision conditions.¹⁷ The task force called upon the DOC to provide probation officers with guidance on their use so that their responses to both compliance and noncompliance are consistent and proportional to both the behavior of and the risk posed by individual offenders. The task force further recommended creating a sentencing guideline for violations of probation that would suggest a maximum to encourage a proportional response by the courts but would also allow judges to retain discretion for people determined to have committed serious violations.

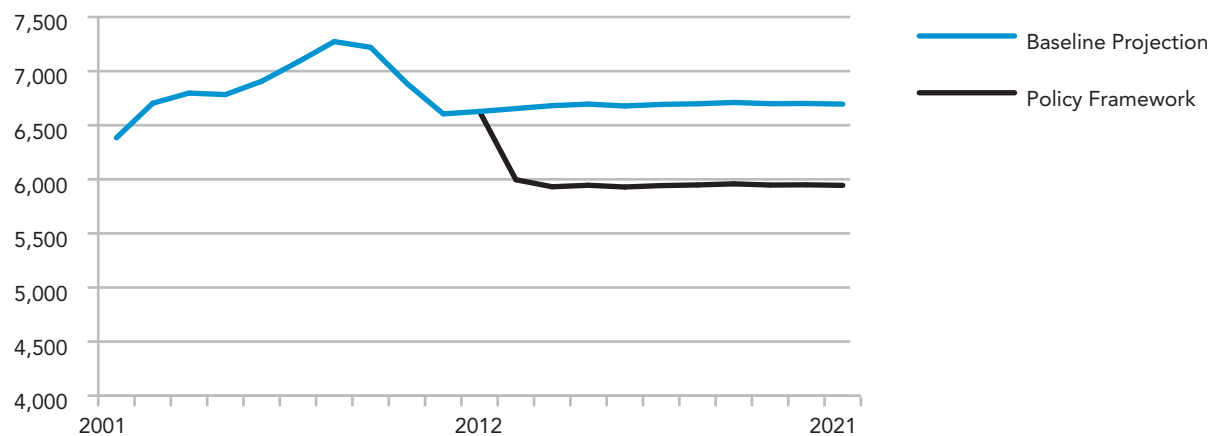
Reduce barriers to reentry. The task force made several recommendations to reduce barriers to success faced by people exiting prison: expand Delaware's reentry program capacity; support community service providers' use of evidence-based practices; and conduct further study of other common barriers to reentry, including restrictions on employment, availability of housing, medical and mental health care, driver license restrictions, fines and fees, and voting restrictions.

Protect and support victims of crime. The task force made recommendations to increase access to offender information and protect victims' confidentiality, but it also recognized that one of the greatest supports for victims would be to reduce recidivism and victimization through the implementation of the risk reduction strategies discussed above.

PROJECTED FISCAL IMPACT

With the adoption of these diverse policies, preliminary estimates suggest a potential reduction in Delaware’s projected prison population of up to 740 beds, which is nearly 18 percent of the state’s total prison capacity. Maintaining this reduced population for five years and simply avoiding the associated food and medical expenses—based on a yearly cost of \$7,455.88 per prisoner—could make up to \$27,300,000 available for reinvestment for that period. Sustained population reductions would allow the DOC to close entire housing units or buildings, resulting in further savings and opportunities for reinvestment.

Projected Impact on Prison Bed Usage with and without Reforms



Moving from Research to Legislation

Legislators translated these policy recommendations into Delaware Senate Bill 226 (S.B. 226). Senator Patricia Blevins, chair of the Senate Judiciary Committee and member of the Delaware Justice Reinvestment Task Force, along with several colleagues, introduced S.B. 226 in the Delaware Senate on May 16, 2012.

Critical to building strong support for S.B. 226 was educating legislators about the evidence-based foundations of the legislation. Senator Blevins convened a joint meeting of the judiciary committees of both houses about the findings of the task force and the research basis of the recommendations, and staff from Vera and the Criminal Justice Council briefed individual legislators.

Also key to the bill’s success was the strong, bipartisan leadership of the legislative members of the task force. In addition to Senator Blevins (D), the other legislative members of the task force—Senator Liane Sorenson (R), Representative and Chair of the House Judiciary Committee Melanie George Smith (D), and Representative Greg Lavelle (R)—worked with their colleagues to ensure understanding of and support for the bill, resulting in near-unanimous passage in both houses.¹⁸

The policy changes in S.B. 226 fall into three categories that are informed by evidence-based practice and target the drivers identified by the data analysis: (1) implementing pretrial risk assessment, (2) responding to violations of supervision appropriately, and (3) addressing needs of the correctional population to reduce recidivism.

Every issue we looked at we looked at the numbers. We looked at the numbers for Delaware, we looked at the numbers nationally, and in other states to see where we stacked up. We looked at what we could do differently, what's been working smoothly, and where there were problems. This is the result of that process.

—STATE SENATOR LIANE SORENSON, HOCKESSIN

PRETRIAL RISK ASSESSMENT

S.B. 226 requires use of an objective pretrial risk assessment instrument to gauge a defendant's risk of flight and re-arrest. The instrument will help magistrates decide which defendants can be safely released into the community and make informed decisions regarding appropriate conditions of pretrial release. The law requires that magistrates receive data on rates of re-arrest and failures to appear for a scheduled court date, creating a track record to improve future decision making.

RESPONSES TO VIOLATIONS OF SUPERVISION

To reduce revocations from supervision safely, S.B. 226 codifies a number of evidence-based practices in community corrections. First, the law requires that the DOC create response guidelines to assist probation officers "in providing consistent and appropriate responses to compliance and violations of the conditions." Second, the law establishes earned compliance credits, which reduce the terms of supervision by 30 days for every 30 days that a person is in compliance. The credits provide incentive to probationers and, by removing compliant probationers from caseloads, they allow officers to focus their resources on those most in need of supervision and programming. Third, the law expands the variety of sanctions that may be used to respond to violations of supervision conditions, adding home confinement as a less restrictive alternative sanction to administratively imposed short jail stays or revocation to the full prison term.

RECIDIVISM REDUCTION

Finally, S.B. 226 mandates that the DOC adopt proven practices for reducing the risk of re-offense. The law requires risk and needs assessment and case planning for both supervised and incarcerated populations.¹⁹ However, without adequate provision of services to address the identified needs of the population—such as help with antisocial thinking, family dysfunction, and substance abuse—assessment and case planning cannot have their intended impact.²⁰ Thus, S.B. 226 requires the DOC to assess (1) the availability of community resources to meet the needs of the supervised population and (2) the ability of the DOC to meet the needs of the incarcerated population. The DOC must endeavor to meet those identified needs, either by supporting community providers or developing programs in its institutions.

The law also creates incentives for offenders to complete recidivism-reduction programs. Inmates who complete such programs may receive a reduction in time served of up to 60 days, in addition to the existing credits for compliance with prison rules and participation in other programs.

S.B. 226 also provides tools to the sentencing court to craft sentences with rehabilitation in mind. Specifically, judges may request an assessment of a person's risk and needs, which can be used to (1) manage and reduce an offender's future risk to the community; (2) determine whether the offender can be supervised safely and effectively in the community; and (3) craft conditions of supervision that will help an offender successfully complete probation and to tailor appropriate responses to violations.²¹

Crucially, S.B. 226 also requires that Delaware's Statistical Analysis Center produce annual reports of one-year, two-year, and three-year rates of re-arrest, re-

conviction, and recommitment of released offender cohorts. These recidivism reports will provide policymakers and practitioners with the tools they need to measure the success of Delaware’s risk-reduction efforts.

Conclusion

The task force members and legislators have accomplished a great deal in a short period, yet much remains to be done. Agencies affected by the legislation have been working to implement the changes since the bill was signed in August 2012. Vera is assisting these agencies—including the Department of Correction, Justice of the Peace Courts, Statistical Analysis Center, Criminal Justice Council, and Administrative Office of the Courts—to plan and execute the implementation effectively. Vera is also providing subject matter expertise and other assistance to ensure that implementation reflects the best practices in the field and is helping Delaware keep champions engaged to ensure enough time, effort, and resources are expended for the policy changes to have their intended impact.

There are challenges ahead, but Delaware’s experience—as a unified system—can serve as an example of how to invest resources wisely for better public safety outcomes for both states and counties. The legislation supports evidence-based practice in pretrial, which can result not only in smaller jail populations (saving counties money), but also in better outcomes. Furthermore, changes that affect the prison population, such as the comprehensive risk-reduction efforts in S.B. 226, address inmates’ needs in order to reduce recidivism. Ultimately, all of these efforts aim to reduce victimization, increase safety, and reduce the prison population in the long term.

ENDNOTES

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- 4 Governor Jack Markell, Executive Order No. 27, July 25, 2011, http://governor.delaware.gov/orders/exec_order_27.shtml (accessed November 26, 2012).
- 5 Suzanne Agha, presentation to the Delaware Justice Reinvestment Task Force, Newark, DE, November 21, 2011.
- 6 Delaware Department of Correction data, 2010 (unpublished data accessible to Vera researchers); Delaware Justice Information System data, 2010 (unpublished data accessible to Vera researchers).
- 7 Ibid.
- 8 Suzanne Agha, presentation to the Delaware Justice Reinvestment Task Force, Newark, DE, December 19, 2011.
- 9 Ibid.
- 10 Senate Bill 50, as amended by Senate Amendment No. 3 and Senate Bill No. 150 (2003). The 2003 Probation Reform Law aimed to reduce the number of revocations to prison for technical violations and standardize and shorten probation terms to make them more manageable for offenders.

- 11 Delaware Statistical Analysis Center data, 2009 (unpublished data accessible to Vera researchers). This analysis compared the national average to the average for people in Delaware who served more than one year (equivalent to "prison" populations in other states).
- 12 U.S. Department of Justice, Bureau of Justice Statistics, National Corrections Reporting Program (2009), <http://bjs.ojp.usdoj.gov/index.cfm?ty=dcdetail&iid=268> (accessed November 26, 2012).
- 13 Delaware Justice Reinvestment Task Force, *Consensus Report: March 2012*, <http://ltgov.delaware.gov/taskforces/djrtf/DJRTFFinal-ConsensusReport.pdf> (accessed November 26, 2012).
- 14 See, for example, Kristin Bechtel, Christopher T. Lowenkamp, and Alex Holsinger, "Identifying the Predictors of Pretrial Failure: A Meta-Analysis," *Federal Probation* 75, no. 2 (2011).
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- 16 Don Andrews, "Enhancing Adherence to Risk-Need-Responsivity: Making Quality a Matter of Policy," *Criminology and Public Policy* 5, no. 3 (2006): 595-602; S. Aos, M. Miller and E. Drake, *Evidence-Based Adult Correctional Programs: What Works and What Does Not* (Olympia, WA: Washington State Institute for Public Policy, 2006); Peggy B. Burke, *Parole Violations Revisited: A Handbook on Strengthening Parole Practices for Public Safety and Successful Offender Transition* (Washington, DC: National Institute of Corrections, 2004); and A.L. Solomon et al., *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes* (Washington, DC: Urban Institute, 2008).
- 17 Edward Rhine, ed., *Reclaiming Offender Accountability: Intermediate Sanctions for Probation and Parole Violators* (Washington, DC: American Correctional Association, 1993); Faye S. Taxman, David Soule, and Adam Gelb, "Graduated Sanctions: Stepping into Accountable Systems and Offenders," *79 Prison J.* 182 (1999); Angela Hawken and Mark Kleiman, "Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE," *Nat'l Crim. Just. Reference Service* 17-26 (2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf> (accessed November 28, 2012).
- 18 The Delaware Senate passed S.B. 226 on June 12, 2012 by a vote of 17-3-1 (not voting), and the House passed it on June 21, 2012, by a vote of 36-3-1 (not voting) -1 (absent). Delaware General Assembly, 146th General Assembly, Senate Bill # 226 w/ SA 1, <http://legis.delaware.gov/LIS/LIS146.nsf/vwLegislation/SB+226?Opendocument> (accessed November 26, 2012).
- 19 For the incarcerated population, where the sentence may not permit completion of programs and where assessment resources are more limited, the law directs DOC to prioritize assessments of those with longer sentences and with more severe offenses. For those assessed to be moderate-to-high risk, the law requires the creation of case plans that target the need factors identified by the assessment. Case planning is mandatory for all supervised individuals determined to be moderate-to-high risk, but for the incarcerated population, DOC must do so "[t]o the maximum extent possible."
- 20 The needs discussed here refer to criminogenic needs, factors that research shows are closely linked to offending and that can be changed. They include a history of antisocial behavior, antisocial personality, antisocial attitudes, antisocial associates, family dysfunction, substance abuse, lack of employment, and lack of pro-social activities. See James Bonta and D.A. Andrews, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation* (Ottawa: Public Safety Canada, 2007). Available at: http://www.publicsafety.gc.ca/res/cor/rep/risk_need_200706-eng.aspx (accessed December 12, 2012).
- 21 Pamela M. Casey, Roger K. Warren, and Jennifer K. Elek, *Using Offender Risk and Needs Assessment Information at Sentencing* (Williamsburg, VA: National Center for State Courts, 2011).

For More Information

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This project was supported by Grant No. 2010-RR-BX-K001 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, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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For more information about the Center on Sentencing and Corrections, contact Peggy McGarry at pmcgarry@vera.org. This publication can be accessed online at www.vera.org/pubs/justice-reinvestment-delaware-model.

This updated version, published on April 18, 2013, supersedes a previous version.

Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
Tel: (212) 334-1300
Fax: (212) 941-9407

Washington DC Office
1100 First St. NE, Suite 950
Washington, DC 20002
Tel: (202) 465-8900
Fax: (202) 408-1972

New Orleans Office
546 Carondelet St.
New Orleans, LA 70130
Tel: (504) 593-0937
Fax: (212) 941-9407

Los Angeles Office
707 Wilshire Blvd., Suite 3850
Los Angeles, CA 90017
Tel: (213) 223-2442
Fax: (213) 955-9250


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