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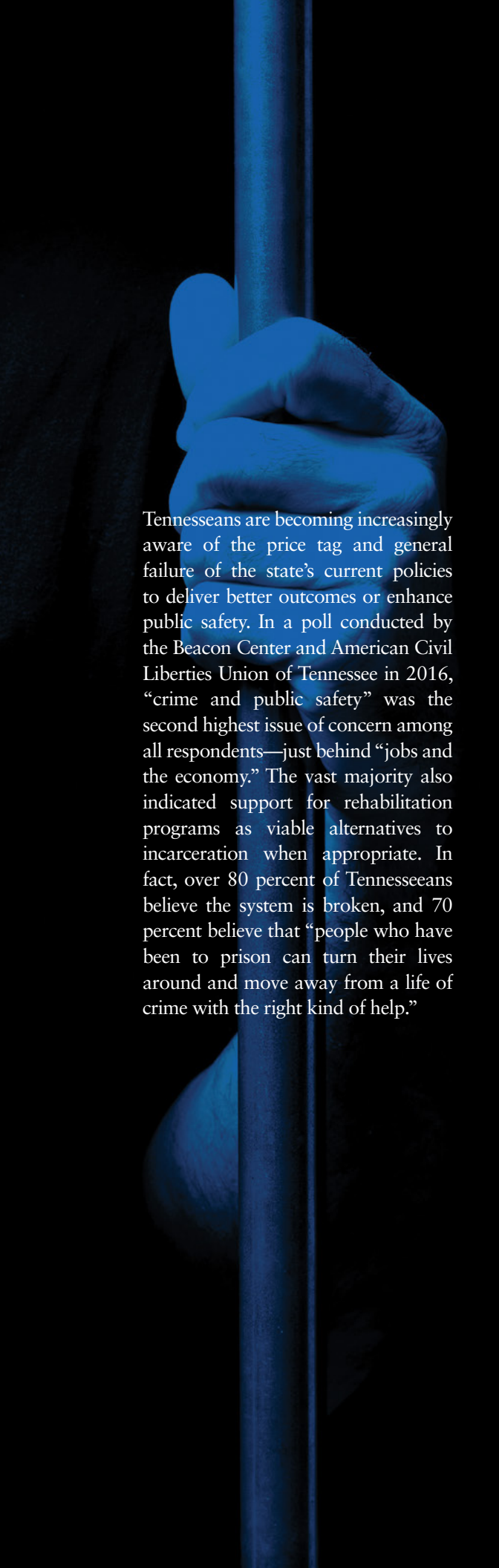
IT'S TIME FOR A SENSIBLE APPROACH TO JUSTICE REFORM

Over the past 30 years, America's prison population has boomed, with state and federal budgetary costs following suit. According to data released by the Coalition for Public Safety, comprised of partners ranging from right-leaning Americans for Tax Reform to the left-leaning American Civil Liberties Union, the number of those in federal prison has risen from 25,000 in the early 1980s to more than 200,000 today. What used to cost taxpayers \$1 billion now costs us over \$6.8 billion.¹ Yet, it would be a mistake to believe this is only a federal issue. In fact, state prisons and local jails are fairing far worse.

Indeed, less than 10 percent of the 2.3 million incarcerated persons across the United States are federal inmates.² In a March 2017 report, the Prison Policy Initiative noted that an astounding 1.35 million people sit in state prisons and another 630,000 inmates are in local jails.³ Over the last 10 years, as rates of new offenders increased, so did the rate of recidivism (or repeat offenders). Bureau of Justice statistician Allen Beck noted during a presentation at the Jail Reentry Roundtable that, of the approximately 12 million jail admissions in 2004-2005 alone, nine million were first time visitors.⁴ The growth in both categories over time has generated a tremendous burden on federal, state,

and local institutions while driving up the costs to taxpayers.

Furthermore, aside from incapacitating an offender for a period of time, there are no public safety benefits, such as lower crime rates, that result from increased incarceration. In fact, the Pew Charitable Trusts Public Safety Performance Project found that over a five-year period "the nation's imprisonment rate fell 8.4 percent while the combined violent and property crime rate declined 14.6 percent."⁵ In contrast, Tennessee's felon inmate population has increased 11.7 percent over the last decade, and 2.7 percent from last year alone.⁶ With the increase in prison population, Tennessee has seen an increase in violent crime. According to the FBI's 2016 Uniform Crime Rate, Tennessee's violent crime rate is calculated at 632.9 per 100,000, an increase from the 618.9 rate the year before.⁷ For context, nationally the violent crime rate average is 386.3, and the average crime rate of Tennessee's neighboring states is 387.9.⁸ The next highest neighboring state is Arkansas at 550.9. As for the rate of re-offense, Governor Bill Haslam's Task Force on Sentencing and Recidivism reported that "from 2010, 46 percent of people released from prison or jail in Tennessee were reincarcerated within three years."⁹



Tennesseans are becoming increasingly aware of the price tag and general failure of the state’s current policies to deliver better outcomes or enhance public safety. In a poll conducted by the Beacon Center and American Civil Liberties Union of Tennessee in 2016, “crime and public safety” was the second highest issue of concern among all respondents—just behind “jobs and the economy.” The vast majority also indicated support for rehabilitation programs as viable alternatives to incarceration when appropriate. In fact, over 80 percent of Tennesseans believe the system is broken, and 70 percent believe that “people who have been to prison can turn their lives around and move away from a life of crime with the right kind of help.”

UNDERSTANDING THE FACES OF CRIMINAL JUSTICE REFORM

The revolving door of our prison and local jail systems has proven costly, both socioeconomically and financially. According to the latest corrections data from 2016, compiled by the Prison Policy Initiative, more than 130,000 Tennesseans are behind bars or working through the criminal justice system. It can be easy to look at these individuals as abstract numbers, but what do they really represent?

62,000

individuals on probation

29,000

individuals within Tennessee’s
state prisons

22,000

local jail inmates

13,000

individuals on parole

5,300

housed for the federal prison
system

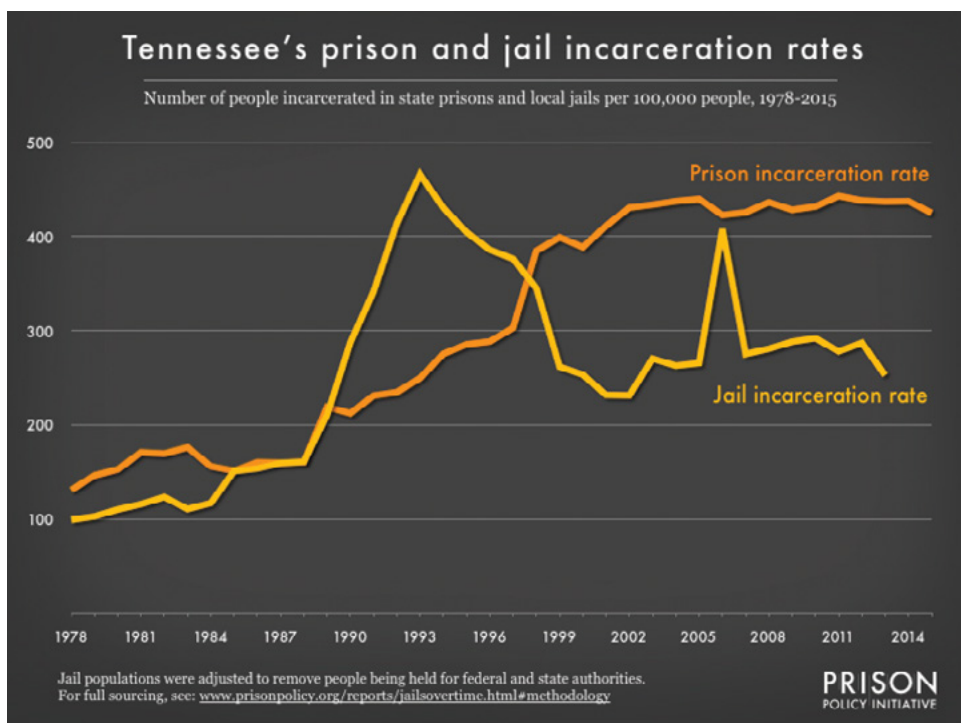
1,100

Tennessee youth moving
through the juvenile justice
system¹⁰

The 2016-2017 state budget notes that 10 cents of every state tax dollar is spent on law, safety, and corrections. That means that these expenditures represent the third largest piece of the state budget, behind education (42 cents) and health/social services (29 cents).¹¹ Unfortunately, as first-time offenders entering the system have risen, Tennessee’s recidivism rate has also remained astronomically high. This high recidivism places an enormous burden on taxpayers, costing an average of \$76 per day to house a single inmate.¹² That translates to twice the median monthly mortgage payment paid by Tennessee families.

Professor Stephen Slivinski with the Center for Economic Liberty, has challenged states to also consider the unseen costs to taxpayers when corrections spending consumes such large amounts of state dollars. In his recent report, *Turning Shackles Into Bootstraps*, he found that the “highest rate of ‘recidivism’ (a relapse into crime and often, as a result, a return to incarceration) occurs within the first three years after release.” Slivinski asserts that states that can keep these individuals from returning to prison stand to save a national average of \$635 million combined, or \$15.2 million each per year, based on data gathered from the Pew Foundation’s study on state recidivism.¹³ Moreover, Slivinski suggests that, “the costs to society, the economy, and to the former prisoners themselves—in the form of lost hours of labor, the social cost of higher crime rates, and the lost potential of the individual ex-prisoner—are immeasurable.”¹⁴

In fact, it is that lost potential that may have the most potential for turning around these disconcerting trends. Indeed, if individuals can find gainful employment, they are less likely to return to a life of crime or even begin one in the first place.



MEET

LINDSAY

HOLLOWAY

Lindsay Holloway grew up in the Cookeville area of Tennessee attending church with her mother and AA meetings with her father. She was a cheerleader, had a high GPA, and was involved with 14 different clubs at her high school. She was the very definition of an all-American teenager. However, when her father's relapse led to her parents' divorce, her life took a sharp turn. She fell in with a bad crowd and became rebellious, and she began to seek out drugs to numb the pain her broken family had caused her.

At 16, Lindsay became a meth addict. For the next eight years, she would bounce in and out of the criminal justice system in her small town. During that time, her addiction became worse and worse. By 18, she was an IV drug user. Life looked pretty grim.

As Lindsay's addiction escalated, so did her crimes. In her short stints in jail she made new friends to do drugs with, and learned new places to buy drugs, how to make drugs, and eventually how to sell drugs. When she was 24, she began driving her stepbrother around town as he robbed houses, looking for anything he could sell to make money and feed their addictions.

That's when it all came crashing down. Lindsay was arrested and charged with a felony. She was looking at up to 10 years in jail, a sentence she was more than ready to accept because she knew her current path would lead to death, whether that be by overdose or due to her lifestyle. She went before a judge and asked not to be released, then entered a treatment program called the Next Door while awaiting her trial. At the Next Door, Lindsay finally received the treatment that she needed. Once she became clean, she also learned

life skills and went through a workforce development program that gave her the tools she needed to become a productive member of society again.

Lindsay's prosecutor, Braden Boucek (coincidentally now the Beacon Center's director of litigation), saw the amazing changes and progress occurring in Lindsay's life. He told her if she stayed on this path he would work with her. When her court date finally came, Lindsay was released and sentenced to two years probation. Since then, Lindsay has devoted her life to helping young women suffering from her same issues. Lindsay and her husband Derek, also a reformed addict, run a jail ministry in Cookeville on Tuesday evenings, and they run a ministry at their church on Thursday nights for those reentering society and trying to stay clean.

Lindsay herself has now been clean from meth for seven years and from pills and alcohol for two and a half years. She is pursuing a double major as an undergrad, and she is investing in her community. Lindsay's story is an amazing illustration of what can happen when we address the root causes of crime, provide treatment for those who need it, and give people the tools that they need to get back on their feet and become productive members of society once they have served their time. But her story is also a harsh reminder that had these programs already been in place at the state level, Lindsay most likely would not have spent nearly a decade as an addict, sparing taxpayers countless dollars, her community numerous crimes, her family such tremendous pain, and Lindsay herself too many wasted years.

This is why it is important that we have diversion programs in place that confront the root causes of crime as soon as someone first encounters the criminal justice system. This is especially true for juveniles like Lindsay who could receive the help they need early on before their issues escalate. Lindsay's case also shows us how important it is for offenders to receive workforce development and re-entry preparation while serving their time. Due to the training Lindsay received, she had the tools to get back on her feet and will almost certainly never commit another crime. But too many like Lindsay do not currently encounter a program like the Next Door. We must create more stories with endings like Lindsay's if we are to really make our community's safer.



WHAT IS OCCUPATIONAL LICENSING AND HOW DOES IT IMPACT THE CRIMINAL JUSTICE SYSTEM?

The purposes of a criminal justice system should be to protect public safety, spend taxpayer money wisely, reform juvenile offenders to lead productive lives into adulthood, maintain successful workforce readiness and reentry, and operate with accountability and transparency. In adjusting state policy to address rising nonviolent crime and high recidivism rates, preparing individuals to obtain gainful employment is one of the most successful approaches states can adopt.

To that end, Slivinski's report also looked extensively at the correlation between state licensing laws and rates of recidivism. The national average of recidivism for those who find jobs after leaving prison is substantially smaller—19 percent—than it is for those who remain unemployed after their release—32 percent. As he examined what challenges may exist for those with criminal histories, Slivinski found that the “foremost barrier for ex-prisoners are state licensing requirements” for jobs that “are usually termed low-skill occupations.”¹⁵ In fact, many licensing boards across the country, including those in Tennessee, have discretion to reject license applications based on “good character” provisions within their rules and regulations. Some state occupational licensing boards even impose blanket rejections for licenses based simply on the existence of criminal history. The consequences of these policies do not exist in a vacuum.

Data collected by the Institute for Justice, the Pew Center of the States, and the National Law Employment Project found that between 1997 and 2007, states with the most extensive licensing laws had an average, three-year new-crime recidivism rate of more than nine percent. Yet, states with the lowest occupational licensing burdens experienced an average decline in their recidivism rates of approximately 2.5 percent, demonstrating a statistically significant correlation even after adjusting for overall state crime and employment rates.¹⁶

Recent studies by the Institute for Justice and the Wisconsin Institute for Law & Liberty indicate that Tennessee's occupational licensing requirements are among the most burdensome nationwide. As demonstrated, their impact on the success of those coming out of our criminal justice system can be extensive.

TENNESSEE'S JUVENILE JUSTICE SYSTEM BEGS FOR REFORM

While there is certainly much to do by way of reforming Tennessee's adult criminal justice system, it is imperative that attention also be paid to the deficiencies in the state's juvenile justice system. For this reason, Governor Bill Haslam, the Administrative Office of the Courts, the Department of Children's Services, Tennessee Supreme Court Chief Justice Jeff Bivins, and legislative leadership convened the Ad Hoc Tennessee Blue Ribbon Task Force on Juvenile Justice to undertake a comprehensive study of Tennessee's juvenile justice system. This task force, chaired by Speaker of the House Beth Harwell and Senate Majority Leader Mark Norris, and comprised of representatives from Governor Bill Haslam's office, lawmakers, prosecutors, law enforcement, juvenile court officials, and representatives from key state agencies, issued findings and recommendations to better serve our juvenile justice efforts, while promoting public safety, fiscal accountability, and strengthening families and communities.

Among its key findings, the task force discovered that 44 percent of children placed in out-of-home facilities were convicted of simple misdemeanors, technical violations of the conditions of supervision, or an unruly offense (such as running away, habitual truancy, or habitual disobedience). In fact, there are more than 1,100 children in state custody for unruly or delinquent offenses. The task force further found that in the last five years, the amount of time that children spend in these facilities and away from their homes and families has increased by 10 percent.

On average, children in the custody of the Department of Children's Services will be placed in 4.4 different "placements." Placements are facilities

where the juvenile is sent outside of the home of origin. Some examples include: family foster homes, mental health treatment facilities, group homes, chemical dependency treatment facilities, child shelters, detention facilities, and correctional facilities for delinquent juveniles. It was reported that some will be placed in as many as 15 different facilities during their custody tenure for a single matter. Overall, it was found that the average time a child will spend under probation supervision of the state has increased 18 percent in five years.

The task force also discovered significant disparities, particularly in rural communities, in terms of the availability of community programs and resources for children in the juvenile justice system. The ability of a child to stay at home and with his or her family should not depend on where they live. Each judicial district must be afforded the resources to provide evidence-based alternatives to out-of-home facilities, especially for those children whose offenses are nonviolent in nature. Alternative programs are also significantly less expensive, considering it costs \$230,000 a year to have a child in an expensive out-of-home secure facility. For context, this is 27 times more costly than juvenile state probation.

In addition to disparities in the availability of alternative programs, the lack of statewide guidelines has led to wildly inconsistent treatment for the same juvenile offenses. In other words, a child who commits a nonviolent offense might be placed in a facility away from his or her home, while another jurisdiction diverts children who commit the same offense into a community supervision program. It boiled down to certain jurisdictions choosing to pursue court action against the majority, if not all, of juvenile offenses, even minor offenses.

It was also determined that Tennessee’s juvenile justice system suffered from the absence of a statewide, comprehensive data collection system. As it currently stands, neither the courts, nor those supervising and providing treatment or other services, have access to information as to whether a child in their custody has a history of behavior in another jurisdiction. Without this information, the system cannot track recidivism or assess the success and productivity of programs, services, or the juvenile justice system as a whole.

The task force issued approximately 80 recommendations addressing these issues. If enacted, these recommended changes will ensure that children across the state are treated equally, and not denied programs and services due to lack of jurisdictional resources. Importantly, more children who commit delinquent or unruly offenses will be afforded the chance to stay with their family rather than be placed in costly out-of-home facilities. The task force recommends an initial upfront investment of \$4.5 million to support the implementation of these recommendations. Moreover, a statewide database will ensure that our juvenile justice system is operating in the most effective and efficient manner possible, not just for the benefit of the children involved, but for all Tennesseans.

The task force projects that these reforms will produce a 36 percent reduction in the number of children in state custody for such minor offenses by 2024, and save taxpayers approximately \$36 million over five years. The task force expressly recommends this cost savings be reinvested “into continuum of in-home and community-based services that research indicates will improve recidivism rates and other outcomes.”¹⁷

The Beacon Center is supportive of the recommendations, and believes that the

initial investment will pay dividends in the form of cost savings down the road, strengthened families, and increased public safety.

INCENTIVIZING EFFECTIVE SUPERVISION

A significant percentage of Tennessee’s inmate population includes those whose supervision (parole, probation, or community supervision) was revoked due to a failed drug test or a technical violation. A technical violation could be a failure to attend a meeting with the supervising official, attend a treatment program, or violating curfew. Incarcerating these low level violators creates significant costs to taxpayers, without yielding any public safety benefits.

There are alternatives to revocation that have proven to balance the overall costs with the public safety risk, rehabilitation needs, and the interest of justice at the local level. States should partner with local governments to create incentives for the implementation of these alternatives by local probation officials. The state can allocate grant funds for counties that successfully implement a probation model that reduces the number of probation revocations. This would work as an added incentive for county probations services to implement proven approaches for safely supervising nonviolent probationers in the community, while reduction the rate of probation violations.

Such a grant program might also encourage local jail officials to identify low-level offenders in their current jail population who could be safely supervised in the community by a probation official. It could also assist counties in their implementation of strategies and programs that they might not otherwise be able to afford, such

as drug courts, substance abuse and mental health treatment, education and workforce readiness programs, and electronic monitoring.

Other states have adopted a similar approach. Texas sought to help counties voluntarily enter into an agreement with the state to reduce the number of low-level, nonviolent offenders among the prison population. To that end, Texas adopted a model whereby counties could set their own goals for reducing recidivism among their probation population, and then receive 35 to 60 percent of the resulting state savings on prisons based on their success. Savings come in the form of not only reducing reincarceration, but also lowering the rate at which probationers commit new offenses and increasing the share of their probationers who are current on their victim restitution payments. The portion of the projected savings tied to the initial commitment reduction would be distributed upfront, while the performance-based portion would be distributed at the end of each fiscal year. The rationale for the upfront portion is that counties need these resources to put in place the initial strategies. For Tennessee, these strategies can include local adoption of the graduated sanction model created by the Public Safety Act of 2016. Graduated sanctions are swift and certain penalties for minor probation violations, and function as an alternative to revocation and incarceration.¹⁸

Under the Texas model, the state's risk from distributing the funds upfront is offset by the state's ability to proportionally claw back funds from any county that does not meet its targets on the backend.

In addition to Texas, the success of incentive funding programs in reducing both recidivism and overall costs to taxpayers has been well documented

in Arizona's adult probation incentive funding model, the Ohio RECLAIM juvenile program, and the Illinois Redeploy juvenile program. In Ohio and Illinois, the local jurisdictions participating in RECLAIM and Redeploy have achieved the desired goals of reducing recidivism and state youth lockups. Arizona adopted its incentive funding model in 2008, which promised to give local probation departments a share of the state's savings if they reduced both revocations and new offenses among probationers. By 2011, Arizona had reduced its probation revocation-to-prison rate by more than 39 percent compared to 2008. Most importantly, the number of new felony convictions among its felony probationers had also decreased by more than 41 percent. The success stems from probation departments implementation of evidence-based practices such as motivational interviewing, where the probation officer "looks for ways to access internal motivation for change."¹⁹

To protect public safety and reduce taxpayer burdens, Tennessee must continue to implement strategies that provide safe alternatives to incarceration. Further, the state must ensure that local governments also benefit from these strategies. Forging a partnership between the state and local jurisdictions can bring the justice system as a whole into greater balance.

PUSHING AHEAD:

CRIMINAL JUSTICE

REFORMS FOR 2018

The Coalition for Sensible Justice, comprised of the Beacon Center, American Civil Liberties Union of Tennessee, Nashville Area Chamber of Commerce, Goodwill Industries, and the Tennessee County Services Association, will pursue the following specific reforms for 2018. We will urge policymakers to:

- Adopt an incentive-based funding model for probation, whereby probation departments are funded based off outcomes—such as job placement, successful substance abuse treatment, and a reduction in recidivism.
- Require a direct correlation between a criminal record and an occupational license sought, removing the ability of state licensing boards to deny, revoke, or suspend a license for an unrelated criminal history.
- Make meaningful changes to our juvenile justice system, creating more uniformity across the state in how juveniles are treated, and focusing on community-based programs that put juveniles on a path to becoming productive members of society as adults.

CONCLUSION

Understanding the impact of the criminal justice system on our society, the Beacon Center and our partners with the Coalition for Sensible Justice will seek to reduce barriers to entry for those exiting the criminal justice system to obtain good jobs, explore juvenile justice reforms that promote Tennessee's youth to pursue productive, law-abiding paths into adulthood, and reform incentives within the state's probation system so that taxpayers fund results, not just numbers. By embracing these approaches, Tennessee lawmakers can take meaningful steps towards making the Volunteer State a model for fostering safer communities, ending the upward trend of crime and recidivism, reducing burdens on taxpayers, and making our criminal justice system more transparent and accountable to its citizens.

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