

Substance Misuse and Incarceration in Tennessee

Key Takeaways:

- Corrections in Tennessee cost over \$1 billion annually due to a rising incarceration rate.
- The State's increasing incarceration rate is related to the growth in substance misuse which on its own costs Tennessee \$2 billion each year and leads to over \$1 billion in lost income from a shrinking work force.
- Prioritizing evidence-based treatment that targets the underlying medical and behavioral issues driving addictive habits for justice-involved individuals could simultaneously address rising recidivism, reincarceration, and growing substance misuse.

In 2020, Tennessee's incarceration rate was [6% higher than the national average and 75% higher than in New York](#).¹ Over the last decade, Tennessee's prison population has grown by an average of [6% each year](#),² while the state budget for corrections has increased by 65%, with [\\$1.12 billion requested in fiscal year \(FY\) 2019-2020](#).³ While the budget request for corrections has grown, it is important to note that the cost per incarcerated individual has remained relatively stable and, in some years, even decreased—[indicating that increases in costs are directly related to increases in the number of individuals incarcerated and the duration of the sentence served](#).⁴

Still, despite the growth in Tennessee's incarceration rate and increases in corrections funding, [there is little evidence to suggest that communities are safer](#).⁵ Much of the growth in incarceration is due to non-violent offenses, reincarceration, and recidivism.⁶ In FY 2017-2018, [74% of felony admissions were for non-person offenses](#),⁷ with [39% of admissions](#) due to reincarceration for technical violations of parole, probation, or community supervision conditions.⁸ Further, 2016 estimates from the Tennessee Department of Corrections (TDOC) indicate that the statewide recidivism rate is more than [46% for all justice-involved individuals](#).⁹

Contributing to this revolving door is that individual encounters with the justice system are increasingly caused by, or related to, substance misuse. [Between 2003 and 2017, the state incarceration rate for drug offenses increased by 26%](#).¹⁰ Despite evidence that drug addiction treatment is far more cost-effective and beneficial to society, [with every \\$1 invested in treatment yielding up to \\$7 in reduced crime-related costs](#),¹¹ more than 337,000 of adult Tennesseans were unable to access a specialized facility for substance misuse treatment even when it was needed according to [2017-2018 estimates](#) by the National Survey on Drug Use and Health.¹²

The purpose of this brief is to detail the relationship between incarceration for non-violent drug offenses, reincarceration, and recidivism related to post-release substance misuse, and the

subsequent toll on the criminal justice system. Similar analyses have recently led to a series of recommendations for criminal justice reform by [Governor Bill Lee's Criminal Justice Task Force](#). This brief seeks to build upon this work to suggest potential paths forward to ensure state resources are being used most effectively and communities are able to thrive.

Substance Misuse, Incarceration Rates, Reincarceration, and Recidivism

The Tennessee Bureau of Investigations (TBI) reports that 5% of residents have used pain relievers for non-medical purposes and [70% of people who use pain relievers for non-medical purposes obtained them from a friend or relative](#).¹³ Additionally, it is estimated that approximately [70,000 Tennesseans are addicted to opioids](#).¹⁴ The substance misuse epidemic these numbers represent has been costly to the state's criminal justice system. In 2018, more than [1 in 4](#) of all prison admissions in Tennessee were for non-violent drug offenses¹⁵ and that same year, [drug offenses surpassed homicides as the primary offense among incarcerated individuals](#).¹⁶ As of FY 2019-2020, [drug offenses accounted for 18%, or nearly 1 in 5 incarcerated individuals in the Tennessee prison system](#).¹⁷

According to data released by TDOC, at least 1,535, or [nearly 8% of individuals incarcerated last year met the Diagnostic and Statistical Manual of Mental Disorders \(DSM-5\) criteria for having Substance Related and Addictive Disorder](#).¹⁸ However, this number may be an underestimate of the scope of the disorder as the Bureau of Justice Statistics (BJS) has found that more than half, [58%, of state prisoners and about two-thirds, 63%, of sentenced jail inmates met the DSM-IV criteria for drug dependence or abuse between 2007 and 2009](#).¹⁹ If the BJS statistics hold true for Tennessee, [this would indicate that approximately 7,800 TDOC inmates in jails and 13,140 in prison have a substance use disorder](#).²⁰

In general, [most individuals entering the criminal justice system are engaged in illicit drug use at the time of their arrest](#), and many have substance misuse problems.²¹ As a result, many of the non-violent drug admissions are the result of [technical violations of probation or parole, often times coming in the form of a missed drug screen, positive drug screen, or other non-person offense behavior](#).²² [Between 2010 and 2019, the number of revocations for a technical violation during parole or probation increased by 53%](#).²³ These revocations increase the reincarceration rate, while the failure to address underlying substance misuse, a significant factor in rising recidivism rates, leads to new offenses. These new offenses, such as property crimes, are often committed to obtain money to purchase drugs, while [participation in drug crimes frequently places individuals in situations where other crimes are likely to occur](#).²⁴

Evidence-Based Best Practices

Using evidence-based best practices, justice-involved individuals can be [effectively managed by community-based treatment programs](#) at a far lower cost than if they are incarcerated.²⁵ In fact, [drug treatment reduces drug use by 40% to 60%](#) and significantly decreases criminal activity during and after treatment.²⁶ For example, [a study of therapeutic community treatment for drug offenders demonstrated that arrests for violent and nonviolent criminal acts were reduced by 40% or more](#).²⁷ Further, a 2012 study found that if just 40% of justice-involved individuals nationwide who suffered from substance misuse were treated under community supervision

instead of while incarcerated, [upwards of \\$12 billion could be saved from corrections budgets](#).²⁸ [These strategies](#) include diversionary programs, such as drug courts, medication-assisted treatment, and behavioral therapy.

[Diversionary programs](#), which divert individuals from incarceration and offer the opportunity to attend drug treatment, have shown positive results in decreasing drug use and recidivism rates amongst participants.²⁹ [Drug Courts](#) are a type of diversionary program that serves high-risk high-need people, and requires collaboration between the courts, substance misuse treatment providers, community supervision, and other ancillary services. These [courts](#) have been shown to be effective in [changing behavior and reducing recidivism](#).^{30,31}

In addition, best practices indicate that a [combination of treatments including medication and counseling can help individuals achieve sobriety](#).³² [Medical treatments](#) such as Methadone, buprenorphine, and naltrexone can help prevent return to use by re-establishing normal brain functions and decreasing cravings, while counseling, such as cognitive behavioral therapies, can help readjust attitudes.³³ While these [evidence-based treatments can be effectively facilitated while individuals are incarcerated or under community supervision](#), [research indicates](#) that they are rarely made available to justice-involved individuals due to cost and other barriers.^{34,35}

TN ROCS

The Tennessee Recovery Oriented Compliance Strategy (TN ROCS), is a low-cost, high-impact strategy developed by Circuit Court Judge, Duane Slone, in 2013. TN ROCS utilizes the essential components of the most successful long-lasting recovery strategies: a clinical assessment and rapid linkage to the best available treatment services, accountability, leverage, and relationship. With the assistance of the TDOC and the Tennessee Department of Mental Health and Substance Abuse Services [it has become a nationally recognized evidence-informed promising practice to assist people in the criminal justice system](#) who have [substance use and mental health disorders on a large scale](#).^{36,37} In addition to reduction in overdose deaths, neonatal opioid withdrawal syndrome, and crime in both Grainger and Jefferson Counties, a 2020 Policy Research Associates [Sequential Intercept Mapping](#) report revealed a greater than 50% reduction in TDOC sentences being served locally in Jefferson County from October 2017-October 2019.³⁸ TN ROCS is now being utilized in approximately eleven judicial districts in Tennessee.

Potential Roadblocks to Shifting Strategies

Despite the significant need for substance misuse treatment, many people in the criminal justice system do not receive it. One of the reasons non-violent drug offenses continue to dominate prison admissions in Tennessee is the limited availability of options that divert a person from the system and the [few alternatives to incarceration](#) available to criminal defendants.³⁹

In Tennessee, some of the potential roadblocks of such a shift to more evidence-based practices include:

- A number of offenses are prohibited from probation eligibility, including Class B drug offenses despite the fact that most other types of Class B offenses are eligible.
- [Tennessee currently imposes statutorily standard supervision conditions on all individuals](#)

- Some research shows that tailoring supervision and treatment conditions to an individual’s criminogenic needs and responsivity factors is critical for treatment success.⁴⁰

Another barrier to evidence-based treatment of substance misuse is stigma. Although medicine has reached a consensus that [addiction is a complex brain disorder](#) with behavioral components, many in the public and in the criminal justice system continue to view it as a result of moral weakness and flawed character.⁴¹ As a result, [criminal justice agencies are often reluctant to offer effective treatments for addiction](#), such as medications for opioid misuse.⁴²

Finally, though a sentencing judge or parole board may order special conditions, there are [no statutory requirements](#) to ground those conditions with the individualized results of the TDOC risk and needs assessment.⁴³ Furthermore, the [TDOC assessments occur after an individual has spent time incarcerated](#), most often in local jails which are not required to conduct an assessment.⁴⁴ In some cases, this time can be lengthy, even longer than a year. The lack of grounding the conditions in the risk and needs assessment, as well as the delay in its administration, leads to inconsistent treatment requirements and gaps in services provided across the State. This contributes to disparities in incarceration rates. For example, the eastern part of the State, [which is on average more rural, has the highest incarceration rate in the State and has seen an increase of 11% over the last decade](#).⁴⁵ This inconsistency in approaches and resource distribution leads some individuals and communities to bear a disproportionate burden. [The task force recommends](#) that “funding associated with each individual otherwise incarcerated would follow the individual to allow for more diverse sentencing options including treatment and recovery programs beyond what is available in recovery courts.”⁴⁶

Moving Forward

Support for the approaches detailed here is already demonstrated in the recent passage of legislation by the Tennessee General Assembly ([SB 767/HB 784](#) and [SB 768/HB 785](#)).^{47,48} For example, Tennessee State Senate Bill (767) and companion House Bill (784), also known as the “Alternatives to Incarceration Act,” creates a process for local governments and organizations to develop alternatives to incarceration, prohibits parole revocation upon one instance of a technical violation or violations, and opens drug court treatment programs to individuals who were previously ineligible. Similarly, SB 768/HB785, or the “Reentry Success Act” requires that eligible inmates be released to supervision one-year prior to the expiration of the original sentence and states that inmates who were ineligible for early release will not be returned to incarceration after the expiration of the sentence for noncriminal, technical violations of supervision conditions. In addition, the legislation limits the liability for employers who hire individuals with convictions and encourages community colleges and technical schools to provide training and programs to facilitate workforce development among those previously incarcerated.

In addition to this crucial legislation, the most helpful solutions going forward would be for Tennessee to prioritize funding and training for programs and supervision that rely on evidence from the brain science of addiction to guide decision-making as well as provide community-based alternatives to divert individuals from incarceration. Such support would lead to more

efficient and effective services for justice-involved individuals struggling with substance misuse and would allow for evidence-based treatments, such as counseling and medication, to be prioritized and to actually treat rather than react to the underlying substance misuse conditions in those who pass through the criminal justice system.

Grundy County Jail Programs

Grundy County Jail, a 114-bed facility located in rural middle-Tennessee, implemented a program in 2017 to support successful re-entry for inmates back into society following release. According to the Grundy County Sheriff's Office Re-entry Coordinator, this grant-funded program includes a needs assessment after 30 days of incarceration, which is used to identify courses that ease the transition from incarceration back into the society. These trainings allow participants to gain skills related to stress management, financial planning, parenting, substance use disorder, as well as many others. Some Grundy County inmates will also qualify for a work-release program, Correction Career Pathway, which provides employment outside of the jail for people with non-violent offenses. Participants are able to earn wages to pay court fines and child support while incarcerated and have savings upon release. Prior to release, a needs assessment is performed with each inmate to determine what resources within the community could contribute to successful re-entry. Although Grundy County has a recidivism rate of 22%, their program participants have a recidivism rate of only 10.5%

¹ From data in the US Department of Justice's "[Prisoners in 2019](#)" full report compiled by the Bureau of Justice Statistics, p. 11-12, Table (7). Imprisonment rates per 100,000 of U.S. residents, based on sentenced prisoners under jurisdiction of state or federal correctional authorities age 18 or older in 2019. This report is the 94th in a series that began in 1926. It provides counts of prisoners under the jurisdiction of state and federal correctional authorities in 2019 and includes findings on admissions, releases, and imprisonment rates. Accessed March 2021.

² From jail population data from the [Tennessee Department of Corrections \(TDOC\) Fiscal Year 2020 Annual Statistical Abstract](#), p. 52, which is reported as fiscal year averages of total jail population, the assigned count on the last day of the month. It includes inmates on furlough, out to court for appearances, in the hospital, or on escape status. All of these are expected to return to in-house custody. The data used for this report is recorded as submitted by the Tennessee county sheriff and/or jail administrator's designee for each jail system and summarized by *Decision Support: Research & Planning of the Tennessee Department of Correction*. The figure presented here is a year-to-year average over 10 years. Accessed March 2021.

³ From the data from the [annual reports of each fiscal year on the Tennessee Department of Corrections \(TDOC\) website](#) on the Total Corrections Budget. The cost per incarcerated is calculated by dividing the jail population fiscal year average by the fiscal year total corrections budget. In FY 2019-2020, this figure is an increase due to a significant drop in the incarcerated population related to COVID-19. From FY 2013-2014 to FY 2018-2019, the cost per incarcerated was stable or declining. Accessed March 2021.

⁴ Under Tennessee's [2016 Public Safety Act](#), for individuals who are convicted of their third felony burglary or drug charge the law sets the mandatory minimum period of time served to at least 85% of the sentence. Accessed March 2021.

⁵ [Criminal Justice Investment Task Force](#). Published December 19, 2019. Accessed January 2021, p. 5.

⁶ For clarity, recidivism must involve an offense for which the offender receives a new sentence, reincarceration may not. Reincarceration involves a return to prison, while recidivism may involve either a new prison sentence or a new probation sentence.

⁷ [Criminal Justice Investment Task Force](#), p. 15. Accessed March 2021.

⁸ From data in the [Tennessee Department of Corrections \(TDOC\) Fiscal Year 2020 Annual Statistical Abstract](#), p. 25 ([system total](#)). Reported as fiscal year averages of percent of total violators returned. Violators Returned refers to commitment of felons on technical violations of the conditions of their parole or probation, or community correction terms. Accessed March 2021.

⁹ From data in the [Tennessee Department of Corrections \(TDOC\) Fiscal Year 2020 Annual Statistical Abstract](#), p. 63 (system total). Accessed March 2021.

¹⁰ Knox News Sentinel. “[Treatment Makes More Sense Than Incarceration for Drug Offenders.](#)” Published December 19, 2019. Accessed January 2021.

¹¹ National Institute of Health’s National Institute on Drug Abuse, February 2016. “[Understanding Drug Abuse and Addiction: What the Science Says](#)” p. 31. Accessed March 2021.

¹² From projections by the US Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) based on data from the National Survey on Drug Use and Health (NSDUH), as found in the [2017-2018 NSDUH Estimated Totals By State data](#) Table (26), 18 or older estimates, the actual estimate is 6.33%. This number was arrived at by taking the [US July 1, 2019 population estimates](#) for the state (6,829,174) for 18 or older (78%) and multiplied by 6.33%. Respondents were classified as needing substance use treatment if they met the criteria for an illicit drug or alcohol use disorder as defined in the 4th edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) or received treatment for illicit drug or alcohol use at a specialty facility (i.e., drug and alcohol rehabilitation facility [inpatient or outpatient], hospital [inpatient only], or mental health center). *Needing But Not Receiving Substance Use Treatment* refers to respondents who are classified as needing illicit drug or alcohol treatment, but who did not receive illicit drug or alcohol treatment at a specialty facility.

¹³ [Current Drug Trends](#). Accessed February 2021.

¹⁴ Tennessee Bureau of Investigation. (2020). *Opioids*. <https://www.tn.gov/tbi/crime-issues/crime-issues/opioids.html#:~:text=Approximately%2070%2C000%20Tennesseans%20are%20addicted,number%20of%20opioid%20prescriptions%20overall.>

¹⁵ [Criminal Justice Investment Task Force](#). Published December 19, 2019. Accessed January 2021, p.5-8.

¹⁶ From data in the [Tennessee Department of Corrections \(TDOC\) Fiscal Year 2020 Annual Statistical Abstract](#), p.19. Reported as fiscal year averages by percent of total incarcerations. Figure excludes kidnapping and the other category Property offenses include all non-robbery property offenses. As of July 2000, offenses are categorized according to the Tennessee Incident Based Reporting System (TIBRS) which is based on the FBI’s National Incident Based Reporting System (NIBRS). This system of reporting is an attempt to standardize categorical offense reporting across criminal justice agencies. For more detail on how TCA code is categorized according to the TIBRS system, see the [TBI website](#) or the TDOC Research Brief, “Assessing the Impact of the TIBRS on TDOC Criminal Offense Reporting.” Accessed March 2021.

¹⁷ Ibid.

¹⁸ From the [Tennessee Department of Corrections \(TDOC\) Fiscal Year 2020 Annual Statistical Abstract](#), p.102. It is unclear if this figure includes the jail population.

¹⁹ Bronson, J, Stroop, J., Zimmer, S., Berzofsky, M. and PH, D. 2017. 2017. “[Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009](#)” *Bureau of Justice Statistics*, July 27, 2007 (NCJ 250546). March 2021.

²⁰ This is estimated using the prison and jail populations and multiplying by 60% the rate suggested in Bronson, J, Stroop, J., Zimmer, S., Berzofsky, M. and PH, D. 2017. 2017. “[Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009](#)” *Bureau of Justice Statistics*, July 27, 2007 (NCJ 250546). March 2021.

²¹ [Treating Substance Use Disorders in the Criminal Justice System](#). Published November 1, 2014. Accessed January 2021.

²² [Criminal Justice Investment Task Force](#). Published December 19, 2019. Accessed January 2021, p. 17.

²³ Ibid, p.16-17.

²⁴ Ibid, p.16-17.

²⁵ Zarkin, G., Cowell, A., & Hicks, A. (2012). Lifetime benefits and costs of diverting substance-abusing offenders from state prison. *Crime & Delinquency*, 61(6), 829-850. <https://doi.org/10.1177/001128712461904>

²⁶ National Institute of Health’s National Institute on Drug Abuse, February 2016. “[Understanding Drug Abuse and Addiction: What the Science Says](#)” p. 29. Accessed March 2021.

²⁷ Ibid.

²⁸ Zarkin, G., Cowell, A., & Hicks, A. (2012). Lifetime benefits and costs of diverting substance-abusing offenders from state prison. *Crime & Delinquency*, 61(6), 829-850. <https://doi.org/10.1177/001128712461904>

²⁹ [Treating Substance Use Disorders in the Criminal Justice System](#). Published November 1, 2014. Accessed January 2021

³⁰ Ibid.

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- ³¹ For example, Washington State’s “Swift and Certain” program led to a 20% reduction in likelihood of another conviction amongst participants, a 30% reduction in violent offenses, and a greater likelihood in future participation and completion of other treatment programs, along with a cost savings ratio of \$16 for every \$1 spent on the program. [Evaluation of Washington State Department of Corrections \(WADOC\) Swift and Certain \(SAC\) Policy Process, Outcome and Cost-Benefit Evaluation](#). Published August 31, 2015. Accessed January 2021. 6-8
- ³² Evidence-based Practices for Substance Use Disorders. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3678283/>. Published June 11, 2013. Accessed January 2021.
- ³³ Treatment Approaches for Drug Addiction. <https://www.drugabuse.gov/publications/drugfacts/treatment-approaches-drug-addiction>. Published January 2019. Accessed January 2021.
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- ³⁶ United States Department of Agriculture (USDA). [Rural Community Action Guide](#). Accessed March 2021, p. 68-69. Accessed March 2021.
- ³⁷ Lucas, D. and Arnold, A. 2019. “Court Responses to the Opioid Epidemic” Center for Court Innovation, What’s Happening Now. <https://www.drugabuse.gov/publications/drugfacts/treatment-approaches-drug-addiction>. Published July 2019. Accessed March 2021.
- ³⁸ Abbott, E., Vize, D. and Pitt, T. 2020. “Sequential Intercept Model-Mapping and Strategic Planning Workshop” Presented at the Jefferson County Justice Center, Dandridge, TN, January 16-17, 2020 workshop by Policy Research Associates <https://www.prainc.com/sim/>
- ³⁹ [Criminal Justice Investment Task Force](#). Published December 19, 2019. Accessed January 2021, p. 15-17.
- ⁴⁰ Ibid.
- ⁴¹ [Addressing the Stigma that Surrounds Addiction](#). Published April 22, 2020. Accessed January 2021.
- ⁴² Grella, C. E., Ostle, E., Scott, C. K., Dennis, M., & Carnavale, J. (2020). [A scoping review of barriers and facilitators to implementation of medications for treatment of opioid use disorder within the criminal justice system](#). *International Journal of Drug Policy*, 81, 102768. DOI: 10.1016/j.drugpo.2020.102768
- ⁴³ [Criminal Justice Investment Task Force](#). Published December 19, 2019. Accessed January 2021, p.16.
- ⁴⁴ Ibid, p. 25 and p. 26.
- ⁴⁵ [Tennessee’s Incarceration Rate Above Average, African Americans have 3x Rate of Whites](#). Published October 11, 2019. Accessed February 2021.
- ⁴⁶ [Criminal Justice Investment Task Force](#). Published December 19, 2019. Accessed January 2021, p.25.
- ⁴⁷ [Tennessee General Assembly](#). HB0784/SB0767. Published May 2021. Accessed May 2021.
- ⁴⁸ [Tennessee General Assembly](#). HB0785/HB0768. Published May 2021. Accessed May 2021.

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