

JUSTICE STRATEGIES

A Project of the Tides Center

Positive Trends and Best Practices in Criminal Justice Reform A National Overview

**Prepared for New Jersey General Assembly Majority Leader
Bonnie Watson Coleman**

Judith Greene
May 6, 2009

Judith Greene

139 Washington Avenue
Brooklyn, NY 11205
jgreene@justicestrategies.net

www.justicestrategies.net
riosn@comcast.net

Nestor Rios

109 Broad Street
Flemington, NJ 08822

Justice Strategies, a project of the Tides Center, Inc.,
is a nonpartisan, nonprofit research organization.
Our mission is to provide high quality policy research
to advocates and policymakers pursuing more humane
and cost-effective approaches to criminal justice and
immigration law enforcement.

This report was supported by a grant from the Open Society Institute

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INTRODUCTION

Over the last quarter of the 20th Century our nation was caught in the grip of intense fear about urban crime and disorder. Public anxiety about a rising tide of street crime was exacerbated by lurid media depictions that created an impression that most crime was violent and that most people who were arrested and processed through our criminal justice system were desperate predators.

During the 1970s, a simple prescription for increased imprisonment became the primary response to the complex issues that underlie the problem of urban crime. Many politicians exploited the public's fears to gain votes with "tough on crime" campaign promises. U.S. incarceration rates had closely tracked those of other industrial democracies since the beginning of the Century, but once a "war on crime" was launched, our nation's prison population levels began to spiral toward the sky. Overall prison population growth rates increased during the 1980s, and by the last decade of the Century the U.S. found itself adrift in the uncharted territory of mass incarceration.

David Garland has defined mass incarceration as imprisonment "on a scale never before witnessed in a modern democracy." In the U.S. the emergence of this incomparable level of incarceration has involved virtually indiscriminate arrests and confinement of young men of color from the urban core of our largest cities for drug crimes.

After the turn of the Century, however, a number of factors, including falling crime rates and rising correctional costs, signaled a marked shift in crime policy toward a reexamination of the harsh laws and policies that led to towering incarceration rates. In 2003 Families Against Mandatory Minimums published a report I authored which identified a broad range of new policies – both "front end" sentencing reforms and "back end" release and reentry policies – that had been adopted in 39 states since the beginning of 2000.¹

Since then, concerns about the alarming degree of racial disparity in our prisons have increased, while worsening economic conditions continue to spur embrace of reforms designed to bring relief to budgetary shortfalls. Colleagues at the Sentencing Project documented new reform efforts adopted in 17 states during 2008 that were designed to improve sentencing practices, revise drug policies, reduce parole revocations and increase racial justice.²

Amid the current national economic crisis, public fears about crime have been eclipsed by widespread alarm about urgent needs to reform our financial system, rebuild our nation's physical infrastructure, create a system of affordable universal healthcare, and move the nation toward more sustainable energy policies. These major shifts in public concern appear to be creating a once in a lifetime opening for promotion of more effective, more efficient, and more humane criminal justice policies.

¹ Greene, Judith. *Positive Trends in State-Level Sentencing and Corrections Policy*. Washington, DC: Families Against Mandatory Minimums. November 2003

² King, Ryan S. *The State of Sentencing 2008: Developments in Policy and Practice*. Washington, DC: The Sentencing Project. February 2009

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It appears that addressing the problem of mass incarceration may no longer be a political third rail. Virginia Senator Jim Webb has become an outspoken advocate for creation of a “National Criminal Justice Commission” to take a comprehensive review of state-level sentencing and correctional policies. Webb argues that our mass incarceration policies have produced a prison system that is poorly managed – a breeding ground for crime – harming millions of lives and wasting billions of dollars. He is calling for a nationwide rethinking about whom we are locking up and for how long.³

Reversing the tide of mass incarceration will not be easy. But the prevailing winds have at least somewhat shifted in the right direction over the past decade. State prison population figures from the Bureau of Justice Statistics indicate that between 2000 and 2009, 37 states have experienced at least a single year of declining prison population levels. Eight states have experienced two such years; ten have experienced three. Texas, Massachusetts, New Jersey and New York have taken the lead in prison downsizing, with declines ranging from four to seven years each. BJS recently reported good news that the national rate of prison population increase has slowed to less than one percent in the first half of 2008, and that 16 states reported decreases in their prison population levels during that same period.

It is clear that much more can be done to reduce prison population levels in states where there is political will to move resources from corrections to treatment and crime prevention, and to address the problem of racial disparity. This brief report is intended to support the mission of the many dedicated community advocates and staff from service organizations who participated in “Counting the Costs” – the remarkable hearings convened across New Jersey since the fall of 2008.

The report contains a review of more than a decade of drug sentencing reform efforts in a group of states where positive impacts have been documented that point the way to reducing reliance on incarceration, increasing opportunities for effective drug treatment, and contributing to safer, healthier communities. It surveys strategies from six jurisdictions for reducing racial disparity in the criminal justice system. It includes a brief example from decades past to show that financial incentives can be used to spur dramatic reductions in prison population levels.

Finally the report highlights examples of “justice reinvestment” from three states. Justice reinvestment is an emerging frame for shifting and often reducing spending on corrections, increasing public safety, and improving conditions in the “high stakes” neighborhoods from which most people are sent to prison and to which they return when they are released. I hope these examples will provide useful evidence of effective policies and practices as you seek to implement the many excellent recommendations for reform placed before you during the “Counting the Costs” hearings.

³ Webb, Jim. “Why we must fix our prisons.” *Parade Magazine*, March 26, 2009

CHAPTER I: Reducing reliance on incarceration through drug law reform

In 2001, an emerging budget crisis seemed to spur state policymakers across the nation to reconsider some of the tough-on-crime policies that had been embraced over the final quarter of the 20th Century.⁴ By the end of the 2005 legislative season policymakers in well more than half the states had introduced reforms in their efforts to cut costs while improving the effectiveness of their sentencing and correctional systems.

At least 20 states had rolled back mandatory minimum sentences or restructured other harsh penalties enacted in preceding years to “get tough” on low-level drug defendants or nonviolent lawbreakers. Legislators in at least 24 states had eased prison population pressures with mechanisms to shorten time served in prison, speed the release of prisoners who pose little risk to public safety, and penalize those who violate release conditions without returning them to prison.

Even before the budget crisis, the public had begun to express disaffection with “drug war” policies – voting for drug reform ballot measures in two key states. After Arizona voters approved the landmark Proposition 200 in 1996 – mandating diversion of low-level non-violent drug offenders from prison, and providing drug treatment for probationers – state officials did their best to overturn the initiative. To assure implementation of the reforms, drug law proponents placed the measure back on the ballot in 1998. Voters passed it *again* with a resounding margin of approval.

An analysis by a research team at the Arizona Supreme Court found that Proposition 200 safely diverted non-violent offenders into drug treatment, saving more than \$6 million in annual prison costs. More than three-fourths of those diverted tested drug-free after completing the program.

California’s Proposition 36 initiative in 2000 was also successful in winning drug law reform. Non-violent drug offenders convicted for first or second offenses who are amenable to treatment enter treatment programs instead of prison. Probation and parole violators who commit non-violent drug possession offenses must also be referred to drug treatment in the community rather than sent to prison. The measure diverted more than 140,000 people over its first four years of operation. The number of people incarcerated in state prisons for drug possession fell dramatically – by 32 percent – after Prop. 36 was approved.

Even before these landmark initiatives were approved at the ballot box, policymakers in North Carolina had replaced most of the state’s mandatory minimum drug laws with structured sentences that favor treatment in the community over prison sentences for cases involving possession or sale of less than an ounce of a controlled substance. Most offenders convicted of the types of felony drug offenses that were incorporated into the structured sentencing system receive an intermediate sanction involving treatment or some other community-based penalty.

North Carolina’s sentencing guidelines – introduced in 1994 – have kept prison population levels within prison capacity. The state’s incarceration rate fell for five straight years after 1994,

⁴ Greene, Judith A. “Positive Trends in State-Level Sentencing and Correctional Policy.” Washington DC: Families Against Mandatory Minimums. 2003

largely due to a sharp decline in admissions for drug and property crimes. The prison population was brought under strict controls that reduced the proportion of sentenced felons receiving prison terms from 44 percent to just 29 percent.

Over the three years prior to introduction of guidelines, the percentage of drug offenders sentenced to prison ranged from 35 to 38 percent. The average number of months imposed in these cases for those years was 59. Seven years later the proportion of drug offenders imprisoned under the guidelines was 20 percent, while the number of months imposed dropped to eleven. States that have followed a structured sentencing strategy similar to the one adopted in North Carolina include Washington, Kansas and Michigan.

Sentencing Reforms in Washington State

Washington's state prisons were bursting at the seams at the end of 2002, a year when the prison population grew at a rate of six percent. Then-Governor Gary Locke, facing a budget shortfall of about \$2 billion, advanced some ambitious new policies to reduce prison population pressures. A raft of sentencing policy proposals were designed to save money by diverting low-level non-violent drug offenders to treatment, shortening the average length of stay in prison for more serious drug offenders and reducing or eliminating community supervision for low-risk offenders after prison. He recommended that a substantial amount of the prison budget savings be diverted to fund local drug courts and treatment programs.

Washington had long been a criminal justice bellwether state, repeatedly setting trends in sentencing policy. The state was one of the first to adopt sentencing guidelines. As enacted with resounding bipartisan support, HB2338 authorized guideline changes that allowed diversion of non-violent drug offenders to supervision by drug courts judges instead of a prison term. The bill also authorized reduction of prison sentences for many drug offenders under the guidelines, for example dropping the guidelines sentencing range for some heroin or cocaine trafficking offenses from 21 to 27 months, to 15 to 20 months. The bill authorized changing the guidelines scoring for prior drug offenses (except for methamphetamine convictions) from three points to one point.

In 2003 more reform proposals were enacted that focused on shortening prison terms for non-violent drug and property offenders by increasing "earned time" from 33 to 50 percent for certain non-violent offenders, and eliminating community supervision for 1,300 low-risk offenders after release from prison.

The effects of Washington's drug sentencing reform efforts appear to have been very positive. In 2005 legislators increased funding support for treatment alternatives to prison. The state's drug courts have been expanded and drug court eligibility has been opened to people charged as small-time drug sellers. Prosecutors in King County (Seattle) are now using their discretion to downgrade drug possession cases involving very small amounts from felony charges to misdemeanors.⁵ Recent information from the Department of Corrections indicates that the

⁵ Personal conversation with Roger Goodman, vice-chair of the House Judiciary Committee, Washington House of Representatives. May 4, 2009.

prisons have experienced an overall reduction of the proportion of drug prisoners from 22 percent of the prison population in 2005, to just 13 percent in 2008.⁶

Sentencing Reforms in Kansas

Since 1992, the sentencing of people convicted of crimes in Kansas has been governed by presumptive sentencing guidelines developed by the Kansas Sentencing Commission. The Commission has promulgated sentencing grids for both non-drug and drug offenses, that provide an appropriate sentence for each case based upon the crime of conviction and the individual's past criminal history.

In 2003, a budget crisis loomed as newly elected Governor Kathleen Sebelius took office. The Kansas Department of Corrections (DOC) absorbed a \$6.8 million budget cut. General prison operating costs were reduced by almost \$2 million, while prison programs were slashed by \$2.7 million and community corrections by \$1 million. Community-based outpatient treatment program capacity was reduced by 75 percent.

The Kansas Sentencing Commission sponsored a public opinion survey to document attitudes toward treatment versus incarceration for drug offenders. Researchers at the University of Kansas found that more than 85 percent of state residents believe that drug users can be rehabilitated, and respondents favored treatment over prison for individuals convicted of drug possession by 72 percent.

The Commission proposed changes in the state's sentencing guidelines modeled after Proposition 36 in California. The reform was designed to divert eligible nonviolent offenders convicted of drug possession offenses from prison sentences to mandatory drug treatment. They also removed a then-current guidelines rule that had previously enhanced the offense severity classification level for second, third and subsequent possession convictions.

Managers at the Kansas Department of Corrections estimated that without the Sentencing Commission's drug diversion reform, the state would need an additional 508 prison beds by 2004. They estimated that the cost of adding two new cellblocks at the El Dorado Correctional Facility would be \$14 million, with an added \$7 million in annual operating costs.

As they adopted the proposed reform, legislators authorized expenditure, starting in 2004, of more than \$5.7 million to expand treatment and supervision for people who would be diverted under SB 123. As enacted and signed into law by Gov. Sebelius, the reform was projected to save 194 beds in 2004, increasing to 517 beds by 2013.

SB 123 has produced significant savings for taxpayers.

Under SB 123 both admissions to prison for drug possession and revocations to prison of people sentenced under SB 123 have been reduced. In addition to averting the costs for construction of

⁶ Sullivan, Jennifer. "Closing prisons, slashing sentences eyed to balance budgets." *The Seattle Times*, April 9, 2009

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additional prison beds, estimated bed savings figures for the five years since SB 123 took effect show that after a relatively slow start-up year, the mandatory treatment diversion program is on track to meet lawmakers' expectations:

Fiscal Year	Beds Saved	Money Saved
2004	79	\$1,975,000
2005	270	\$6,750,000
2006	379	\$9,475,000
2007	387	\$9,675,000
2008	405	\$10,125,000

Source: Kansas Sentencing Commission

Combining these savings with both fees collected and the costs for treatment and supervision show an estimated cost savings of nearly \$7.5 million:

Fiscal Year	SB 123 Expenditure	Money Collected	Actual SB123 Cost	Estimated Saving from Prison Cost	Estimated Money Saved
2004	\$998,430	\$15,948	\$982,482	\$1,975,000	-\$992,518
2005	\$5,100,925	\$150,224	\$4,950,701	\$6,750,000	-\$1,799,299
2006	\$7,860,995	\$213,589	\$7,647,406	\$9,475,000	-\$1,827,594
2007	\$8,640,330	\$202,784	\$8,437,546	\$9,675,000	-\$1,237,454
2008	\$8,733,855	\$229,649	\$8,504,206	\$10,125,000	-\$1,620,794
Total	\$31,334,535	\$812,194	\$30,522,341	\$38,000,000	-\$7,477,659

Source: Kansas Sentencing Commission

Abolition of Mandatory Minimums in Michigan

Near the end of his second term in 2002, Governor John Engler signed a three-bill package of legislation enacting landmark sentencing reforms long advocated by Families Against Mandatory Minimums (FAMM). With the solid support of Michigan's judges and prosecutors and endorsement from the Republican leadership that controlled both houses, legislators repealed almost all of the state's mandatory minimum drug statutes – long cited among the toughest in the nation – replacing them with drug sentencing guidelines that gave discretion back to Michigan's judges.

Public Acts 665, 666 and 670 took effect March 1, 2003. Before then, a Michigan offender convicted of sales, conspiracy to sell or possession of drugs faced stiff statutorily-mandated penalties: mandatory minimum prison terms, imposed consecutively if multiple charges were involved or, in very low-level cases, lifetime probation. These sentences were based solely on the weight of the drugs involved. An offender's prior record, role in the crime, or personal circumstances – all factors that are normally assessed by judges as they make sentencing decisions under Michigan's sentencing guidelines system – did not matter, because drug offenses were subject to rigid mandatory minimums and therefore not covered under the guidelines.

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Michigan's sentencing guidelines system was established by the legislature in 1998, but until 2003 the guidelines system did not pertain to drug offenses involving schedule 1 and 2 narcotics such as heroin or cocaine, however, because the law tied judges' hands with rigid mandatory minimum prison terms. The ability to depart from a mandatory minimum sentence was narrowly limited and easily challenged by prosecutors. And if a prosecutor chose to charge an offender for both "delivery" and "conspiracy to deliver" in a single drug transaction, the offender would be sentenced to "stacked" or consecutive mandatory minimum sentences that could result in decades in prison before parole eligibility.

FAMM's reform package eliminated almost all of Michigan's mandatory minimum drug laws and folded the sentencing process for drug offenders into the guidelines system. Now drug weight remains important, but is not the *only* factor to be considered in selecting a sentence, and judges may depart under the normal guidelines rules. Drug weight thresholds were revised for the various drug offenses, and many offense and prior record variables were modified.

Under the guidelines system, the most serious drug offenders (e.g., those with an extensive criminal history, or those who used a weapon) will still face a presumptive prison sentence, but otherwise judges have discretion to sentence a defendant who possesses or sells less than 50 grams of narcotics to an intermediate sanction instead of prison. Judges now have discretion whether to impose consecutive sentences for more than one "delivery" charge, and consecutive sentences were abolished for simple possession offenses altogether. For the lowest-level drug offenses, lifetime probation was replaced by the standard five-year probationary period imposed for all other serious crimes.

The new laws also included "retroactive repeal" of mandatory sentences already imposed. About 1,200 Michigan prisoners sentenced under the old mandatory minimum laws became eligible for earlier parole consideration. And approximately 7,000 low-level drug offenders were able to apply for discharge from lifetime probation after serving the standard term of five years.

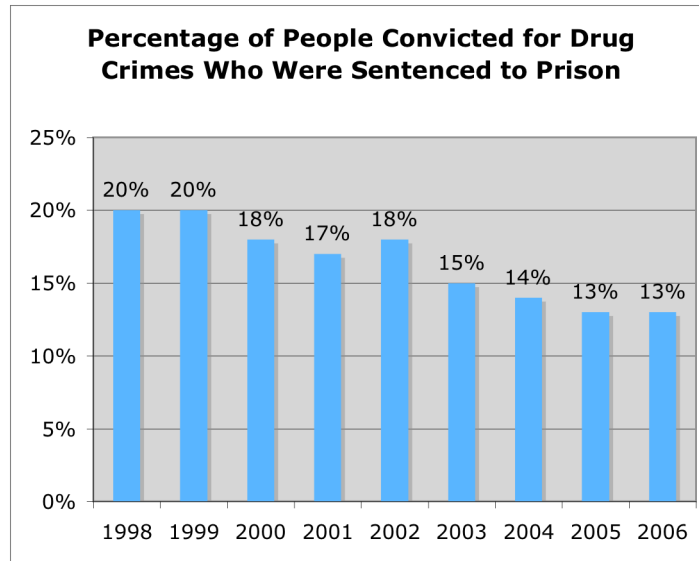
Enactment of FAMM's reforms signaled a bi-partisan consensus that heavy reliance on imprisonment for drug crimes was counterproductive. After 2002 the prison population actually declined for two years and has since leveled off. This development has been attributed to a combination of two significant shifts in policy:

- 1) A five-year plan adopted by Michigan Department of Corrections (MDOC) managers to control prison growth that introduced alternative incarceration methods for people convicted of low level offenses, drug crimes, and those who violate technical rules while on parole.
- 2) The drug sentencing and parole policies adopted by the legislature in 2002.⁷

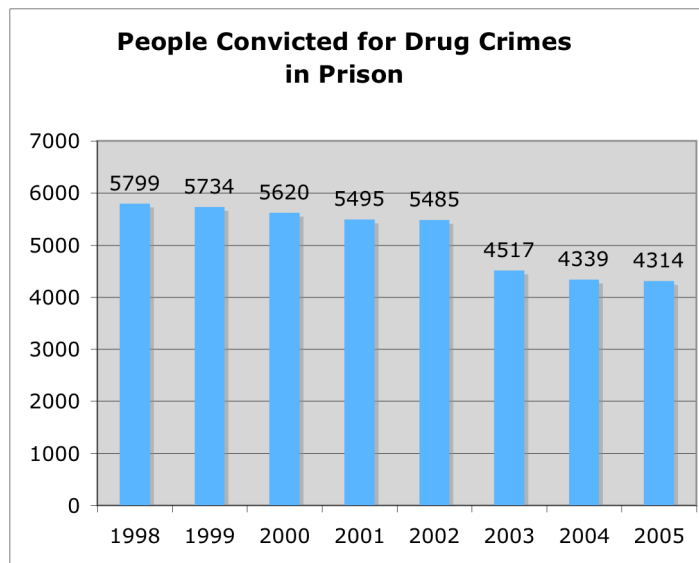
⁷ *Growth in Michigan's Corrections System: Historical and Comparative Perspectives* Citizens Research Council of Michigan: Report 350, June 2008

The impact of the reforms on Michigan's prison population

To examine how sentencing and correctional population trends have shifted in drug cases since 2002, I have compiled data from statistical reports for recent years. The first chart shows that since judges gained discretion in sentencing people convicted of drug crimes, they are sending fewer to prison:



A combination of policy reforms cited above worked to reduce the number of people in prison for drug crimes, with the sharpest reduction coming in the first year – presumably due in large part to the “retroactive repeal” of mandatory drug sentences:

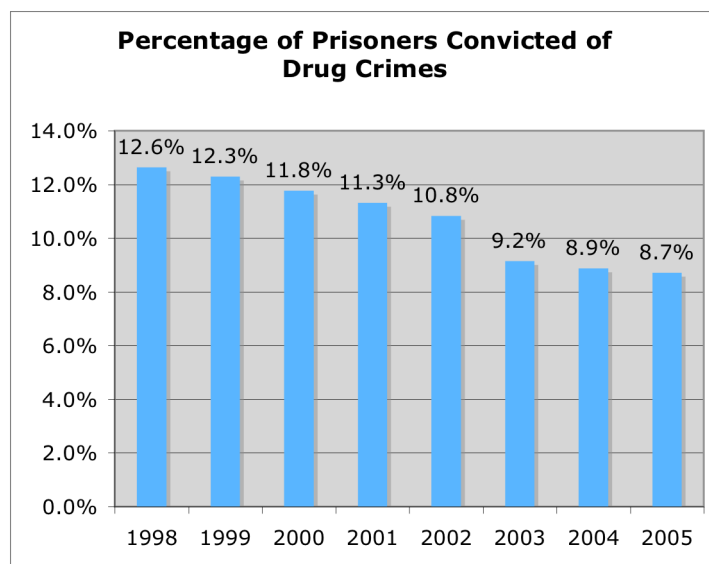


Sentencing patterns in drug cases involving less than 50 grams (cases where judges were given discretion to substitute intermediate sanctions for prison terms) show significant shifts in use of

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prison sentences. Between 2002, the year the reforms were enacted, and 2005, the most recent year for which such data are available, the number of dispositions in cases involving sale of less than 50 grams of schedule 1 and 2 narcotics (e.g., heroin and cocaine) increased by 11 percent, but the number sentenced to prison declined by 37 percent. For possession of less than 50 grams, dispositions rose by 27 percent, but the number sentenced to prison fell by 25 percent.

Reduced reliance on imprisonment has significantly reduced the proportion of prison beds occupied by people convicted for drug offenses:



Downsizing prisons through drug reform in New York

New York has experienced a remarkable decline in the number of state prisoners over the past decade. The U.S. Bureau of Justice Statistics reports that New York's prison system held 62,211 prisoners at midyear of 2008, down from 72,899 in 1999. The incarceration rate fell by 21 percent, from 400 per 100,000 residents to 317 between 1999 and 2008. This decline followed decades of prison population expansion and prison construction driven in large part by two sentencing laws that launched the U.S. war on drugs.

In 1973 Gov. Nelson Rockefeller pushed a program of mandatory minimum drug laws through the New York State Legislature. Under the Rockefeller Drug Laws, sales of just two ounces, or possession of just four ounces, of a narcotic drug was made a Class A felony, carrying a minimum sentence of 15 years and a maximum of life in prison. Most drug crime prisoners are sentenced to lesser prison terms after conviction for Class B, C or D drug sales and possession offenses.

The Second Felony Offender Law, enacted in tandem with the Rockefeller Drug Laws, mandates a prison sentence for a person convicted of any two felonies within 10 years, regardless of the circumstances or the nature of the offenses. Together, these harsh sentencing laws have flooded New York's prisons with people convicted of petty drug offenses. Annual drug commitments to

prison rose from 470 in 1970 to 8,521 in 1999, helping to swell the prison population from 12,144 in 1972 to a high of 72,899 in 1999.⁸

“Smart” reforms gain ground over get-tough policies

Efforts to toughen sentencing laws and stiffen parole policies began to fade in New York as legislators struggled to trim spending in the face of projected budget shortfalls after 2001. Modest reforms were won in both sentencing and parole policy over the next few years, though most veterans of the decade-long campaign for sweeping changes to the Rockefeller Drug Laws remained frustrated by how little progress had been achieved in this regard.

Modification of the 1973 drug laws began without fanfare in 2003 when Gov. Pataki quietly inserted two provisions in the state’s 634-page budget bill as part of his effort to resolve the state’s huge budget deficit. One measure provided that those serving a mandatory sentence under the Rockefeller Drug Laws could receive a “merit time” reduction of their sentence in the amount of one-third of the minimum imposed by the court for good behavior and participation in work or treatment programs. The reform also moved up parole eligibility for some 75 prisoners who were serving a 15-to-life sentence and had already served 10 years behind bars.

According to Paul Korotkin, assistant director of program planning, research and evaluation at the New York State Department of Correctional Services (DOCS), between September 2003 and October 2006 98 people serving time for an “A1” Rockefeller Drug Law conviction gained release from prison through the merit time provision. On average, they left DOCS custody 42 months before their parole eligibility date. Korotkin estimates that the impact of these releases amounted to 64 beds, for a savings of \$9.8 million.

A second measure expanded the Department of Correctional Services “earned eligibility” program, under which certain prisoners who complete work and/or treatment program assignments may earn a certificate that makes parole release presumptive at the first hearing unless the parole board decides otherwise. Eligibility to earn a parole presumption was expanded from prisoners serving a minimum sentence of up to six years to include those serving terms of up to eight years. Further, “nonviolent” prisoners with a clean prison record and no prior violent felony record can apply to the commissioner of corrections for a “presumptive release” after serving five-sixths of their minimum term. If granted a “presumptive release,” a prisoner is released to parole supervision by the Corrections Commissioner without having to go before the parole board.

In 2004, legislators enacted more substantial changes in the Rockefeller Drug Laws. They doubled the drug amounts that trigger mandatory prison sentences – from four to eight ounces for class “A1,” and from two to four ounces for class “A2.” The infamous “A1” indeterminate 15-to-life sentence was replaced by a determinate sentence to be set within a range of eight to 20 years. More than 400 people already in prison for “A1” convictions were granted the right to petition judges for early release under the sentencing provisions of the new law.

⁸ New York State Department of Criminal Justice Services. “1999 Crime and Justice Annual Report.” Online at http://criminaljustice.state.ny.us/crimnet/ojsa/cja_99/contents.htm

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As of Oct. 31, 2006, a total of 189 people (including six women) in prison for “A1” Rockefeller Drug Law convictions had been resentenced and released. Korotkin says that on average, they were released from DOCS’ custody 47 months before their previously calculated earliest release dates. Based on an annual operational cost of \$29,000, he estimated that the new law has accrued \$21.3 million in savings for the taxpayers of New York State.

In addition to shortening the minimum term for class “A1” convictions, legislators slightly shortened terms for non-violent class “B” convictions. Legislators reduced the amount of time prisoners are required to serve before becoming eligible for drug treatment by six months. And those convicted of drug offenses in class “A2” through class “E” are able to earn an additional “supplemental merit time” reduction of one-sixth off their minimum sentence. Korotkin says that by October 6, 2006 1,831 prisoners obtained an average of 6.3 months off their sentence through this provision, lowering demand for DOCS bed space by 636 and saving \$28 million in prison costs.

In 2005 legislators revisited the Rockefeller Drug Laws, adding a “merit time” allowance for people convicted under class “A2,” and granting them the right to petition judges for resentencing. Judges were given broader ranges for determinate sentences, increasing their discretion in handling resentencings.

These reforms provided significant relief from some of the harshest provisions of the Rockefeller Drug Laws, but they did not go far enough. Judges still lacked discretion to decide whether treatment would be more constructive than imprisonment for an individual convicted of a B-Felony drug offense, or whether someone facing sentencing for a second felony conviction might be a good candidate for an alternative to incarceration.

Finally, on April 7, 2009, New York’s Governor David Patterson signed into law historic reforms of the Rockefeller Drug Laws that addressed these problems. A statewide coalition of service providers, policy advocates, treatment and medical professionals convinced lawmakers that shorter sentences for drug convictions, restoration of judicial discretion in drug sentencing, and much broader access to a wide range of treatment options are good public policy.

Crucial elements of the 2009 drug law reforms include:

- Judicial discretion to place people convicted of drug offenses into treatment and to offer second chances when appropriate.
- Diversion for people who commit crimes other than drug offenses because of issues stemming from substance dependence.
- Diversion for people who commit drug offenses but are not drug users or chemically dependent.
- Diversion eligibility for people convicted of second felony offenses.
- Opportunities to try community-based treatment without the threat of a longer sentence for failure.
- Plea deferral options, especially for non-citizen green card holders who will become deportable if they take a plea to *any* drug conviction, even if it is later withdrawn.
- Opportunities for re-sentencing for more than 900 drug prisoners who received

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indeterminate sentences under the longer pre-2005 sentencing ranges and who are still serving those sentences in state prison.

- Sealing provisions that will protect people who finish their sentences from employment discrimination based on the past offense.
- The option to dismiss a case in the interests of justice when the accused has successfully completed a treatment program.

The Rockefeller Drug Laws were extremely expensive, pushing the proportion of state prisoners in for drug offenses up from 11 percent to a high of 34 percent. The 2009 reforms are expected to greatly decrease this load on the prison budget, saving New York Taxpayers some \$250 million dollars each year.⁹

In addition to Rockefeller Drug Law reform, other measures enacted this year will make it easier for prisoners to gain early release. Prisoners suffering from a serious and permanent medical disability who do not pose a threat to public safety will be eligible for medical parole after serving half of their prison term. Prisoners who take college courses, enroll in state-approved apprenticeships, or work as a prison hospice aide can qualify for increased “merit time” credits off their sentence. Eligibility for early release through the “shock prison camp” program will be extended to more prisoners serving terms of non-violent crimes.

With 7,000 empty prison beds, New York’s correctional managers are preparing for long-overdue closure of three state prisons, along with shuttering annexes at seven prisons that will remain in operation.

⁹ Hastings, Deborah. “Money problems and crowded prisons lead states to pull back the hammer on get-tough laws.” *Newsday*, April 4, 2009

CHAPTER II: Reducing racial disparity in the criminal justice system

Racial disparity diminishes the legitimacy of the criminal justice system, especially in the eyes of people who live in the communities most beset with high rates of victimization. It damages our trust in law enforcement, reduces our confidence in the court system, and undermines the effectiveness of the correctional system.

Disparity in the criminal justice system is symptomatic of far broader social and economic issues in our society as a whole. Criminal justice agencies cannot simply eliminate disparity, but there are many specific efforts underway across the country to diminish the scope and the impact of the problem. Last year I undertook a national survey of best practices for the Sentencing Project. A number of the specific examples of reform efforts I documented were published in a new Sentencing Project report last September.¹⁰ These include efforts to reduce racial disparity related to police practices, prosecutorial policies, criminal court process, as well as sentencing and correctional policies.

The Defender Association's Racial Disparity Project

The goal of the Racial Disparity Project is to reduce disparity in enforcement of drug laws. In April 2001 the Seattle-based Defender Association held a joint press conference with the Seattle Police Department to reveal the findings of a study of police enforcement of drug laws. A team of researchers from Harvard's Kennedy School of Government had analyzed patterns of drug use, drug markets and drug law enforcement in Seattle. They found that a concentration of buy-and-bust tactics on visible "open air" drug markets in certain downtown locations resulted in disproportionate numbers of arrests of minority people. While just eight percent of Seattle residents are African Americans, and their proportion among drug users is even lower (six to seven percent), they comprised 57 percent of those arrested for drug crimes, and 79 percent of all buy/bust arrests. The head of the Seattle-King County Public Defender Association and the Seattle Chief of Police issued a joint call for more money for treatment and expanded use of drug courts – while defenders moved to consolidate a score of buy/bust cases in a legal challenge to the patterns of enforcement.

A 2004 study by University of Washington Professor Katherine Beckett, again compared the racial and ethnic composition of those who sold drugs with the racial and ethnic composition of those arrested for this offense.¹¹ Beckett found that several police practices explain racial disparity in drug arrests, including a law enforcement focus on crack offenders, and the priority placed on outdoor drug venues. She documented that these practices are not determined by race-neutral factors such as crime rates or community complaints.

The Defender Association organized a coalition of community advocates to support development of "Clean Dreams," a street-level outreach program in the Rainier Beach neighborhood to

¹⁰ Sentencing Project. "Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers." Washington, DC. September 2008.

¹¹ Beckett, Katherine. "Race and Drug Law Enforcement in Seattle," is available online at: <http://www.soc.washington.edu/users/kbeckett/Enforcement.pdf>

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prevent arrests by offering people who sell drugs immediate access to resources they can use to leave the streets and change their lives. Established in 2006, Clean Dreams offers case management and whatever purchased services – housing, substance abuse treatment, education, job training and placement, licensing fees, childcare, clothing – will help people move on to a stable, crime-free life. Defenders continue to challenge disparate arrest practices by consolidating individual cases together for trial, where they plan to introduce evidence of disparity.

An evaluation of the Racial Disparity Project conducted by the University of Minnesota Institute on Race and Poverty concluded that the project enables defenders to broaden their advocacy “to encompass not only representation of individual clients, but also efforts to change the system for the benefit of disadvantaged communities, and particularly communities of color.” Recent data from the Seattle Police Department indicates that drug arrests in the city have declined significantly, down from 4,200 in 2007 to just 2,650 in 2008.¹²

The Dorchester “school-zone” study

A 1989 Massachusetts statute establishes 1,000-foot penalty enhancement zones around schools and 100-foot penalty enhancement zones around parks and playgrounds. Defendants convicted of distributing or possessing drugs with an intent to distribute in a drug-free zone face a two-year mandatory minimum term that are served on top of any penalty imposed for the underlying offense. Massachusetts prosecutors, however, often drop the drug-free zone enhancement in exchange for a guilty plea. (The enhancement does not apply to simple drug possession charges.)

Research on the impact of the Massachusetts school zone law was conducted by a Northeastern University research team at the request of Judge Sydney Hanlon, an ex-federal prosecutor who presides in the Dorchester District Court in Boston.¹³ Judge Hanlon was concerned that African American and Hispanic defendants in her court seemed much more likely to be charged with a drug-free zone offense and face the two-year mandatory prison sentence than whites were.

Researchers examined police records and found that while roughly 80 percent of all drug arrests took place within a school zone, only 15 percent of whites were charged with an eligible offense (distribution or possession with intent) compared to 52 percent of nonwhite defendants. They found many instances of what appeared to be disparate treatment. For example, two-thirds of nonwhites described as the driver of a car involved in a drug transaction were charged with distribution, while three-quarters of whites described as drivers were charged with simple possession. And nonwhites identified as carriers were more than twice as likely to be charged with a school-zone eligible offense. For those arrested with less than 1/8th of a gram of cocaine, the likelihood of being charged with delivery or possession with intent was nearly four times as great for nonwhites as for whites. Defendants without a prior record were four times more likely to be charged with eligible offenses if they were nonwhite. When researchers interviewed police

¹² Gutierrez, Scott “Need for new jail questioned as inmate numbers drop.” *Seattle Post-Intelligencer*, April 15, 2009

¹³ Keough, Robert. “The Color of Justice,” *Commonwealth Magazine*, 2000, Vol. 5, No. 3. Online at http://www.massinc.org/index.php?id=349&pub_id=1029

officers about their charging practices, they were told repeatedly, “it has to do with whether it’s a good kid or a bad kid.”

Judge Hanlon shared the research findings with Boston’s police commissioner and the Suffolk County District Attorney’s Office. The Northeastern University research team decided that rather than publicly releasing the report, they would meet with police officials and prosecutors quietly over several months to discuss their findings and work with them to institute change. Both police and prosecutors developed guidelines for fairer handling of school zone cases.

The Prosecution and Racial Justice Program

The Vera Institute of Justice is assisting district attorneys to monitor and guard against racial bias in prosecutorial decision making. Launched in 2005, the Prosecution and Racial Justice (PRJ) program uses data collection and analysis tools to track and manage prosecutorial discretion at critical decision-making stages of case processing to determine whether any unwarranted disparities are resulting.¹⁴ PRJ is working with partnership with chief prosecutors in Milwaukee County, Wisconsin; Mecklenburg County, North Carolina; and San Diego County, California to develop statistical tools and analytic protocols capable of identifying patterns that suggest where race or ethnicity are inappropriately influencing prosecutors’ decisions, particularly in regard to African Americans and Latinos – two groups that are disproportionately represented in jails and prisons across the nation.

Prosecutors’ exercise of discretion operates with minimal external oversight, yet has more impact on case outcomes than the decisions made by any other actor in the criminal justice process. Decisions made by prosecutors about whether to charge defendants, what charges to bring against them, whether to allow diversion to alternative programs, and what dispositions to seek in plea bargaining, as well as recommendations they make to judges about bail and use of available sentencing options, can play a key role in promoting racial fairness and justice.

PRJ helps its partners adapt their electronic case management systems to be able to track and monitor critical variables and related indicators, and to devise analytic tools and routine reports so that when racial disparities are detected, they can determine whether racial bias is a factor. Through ongoing internal monitoring of discretionary decisions at critical points, district attorneys can guard against the influence of racial bias and implement corrective policies and procedures whenever they are needed.

The systems development work required to introduce and implement the PRJ process can take considerable time and effort, but early results from Milwaukee show that the PRJ process can have a significant impact on racial disparity. Analyses showed that relatively junior prosecutors were filing drug paraphernalia charges (rather than declining prosecution) at a much higher rate against non-whites (in 73 percent of cases, compared to just 59 percent in cases with white defendants). By stressing diversion to treatment or dismissal and requiring junior staff to consult

¹⁴ McKenzie, Wayne, Don Stemen, and Derek Coursen. “Using Data to Advance Fairness in Criminal Prosecution.” March 2009 Online at <http://www.vera.org/otherwork/prj-pubs.html>

with their supervisors prior to filing such charges, the district attorney was able to quickly eliminate the evident disparity.

The Maricopa County Spanish-Speaking DUI Court

Research indicates that the most effective criminal justice interventions target current factors that influence behavior, are aimed toward a specific offender population, and provide learning skills specific to their culture, thereby increasing community safety by reducing recidivism. To close a gap in the deficiency in services available to the Spanish-speaking population in Phoenix, Arizona, Barbara Rodriguez Mundell, Presiding Judge of the Superior Court worked with the Maricopa County Adult Probation Department to establish a Spanish-language component of the Driving under the Influence (DUI) Court.¹⁵

First established in 1998, the DUI Court was designed to reduce drinking and driving for people convicted on felony DUI charges and sentenced to probation. The DUI court judge, prosecutor, public defender, probation officer and treatment professional work as a team to assist the rehabilitation of participants. Under the supervision of the adult probation department, participants meet with a DUI court judge at least once a month, attend support group meetings, enroll in substance abuse treatment, and participate in victim impact panels. Preliminary research findings suggest an overall effectiveness of the DUI court, with more than 80% of participants successfully completing their requirements and recidivating (defined as and new traffic-related offense, including a DUI offense) at half the rate of a control group that was placed on standard probation.

A Spanish-language version of the DUI court was established in 2002. Participants may choose the most appropriate DUI Court for their language needs, and translation technology is available for non-Spanish speakers who attend the Spanish language sessions. Outcome data for participants in Spanish-speaking DUI Court show significant improvements over participants in the regular DUI Court during the same period

- 10% higher in abstinence from alcohol
- 36% higher in employment or education
- 200% higher in stability in permanent housing

Racial Impact Statements

A few states are adopting new policies to provide racial and ethnic impact statements for proposed sentencing legislation. Similar to fiscal impact statements, they are designed to inform and enrich debates about crime policy and sentencing reform proposals by projecting the effects of new laws on racial disparity before they are adopted, rather than after the fact.

¹⁵ Materials describing the operation of the Spanish-speaking DUI Court can be obtained by contacting the Maricopa County Adult Probation Department.

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In 2008 Iowa and Connecticut enacted measures requiring objective information about racial and ethnic impact for proposed sentencing legislation. That same year, the Minnesota Sentencing Guidelines Commission began to produce assessments for legislators of the potential racial impact of proposed legislative changes.

For many years Minnesota has had the dubious distinction of being one of the leading states in the nation in regard to the persistent disparities between the number of people of color in the state's population and the number in the prison population. Members of the Minnesota legislature have frequently expressed concern about the problem.

In 2006, staff at the Minnesota Sentencing Guidelines Commission created a collaborative with professors Kevin Reitz and Richard Frase at University of Minnesota Law School and with researchers at the Center on Race and Poverty and the State Court Administration to design a large-scale research effort to better understand the problem. Professor Reitz had proposed the introduction of racial impact statements in his initial work in 2002 to revise the American Law Institute's Model Penal Code for sentencing, and the commission began the practice of reporting the potential racial impact of new crime bills to the legislature during the 2007 legislative session.

Initially, comments on racial disparity were added to legislative fiscal notes for bills that commission staff believed to have the potential for creating a disparate impact. More recently, a racial impact statement is sent to each bill's authors, the relevant committee chairs, and legislative staffers for consideration alongside the bill.

Racial Impact Statements are not intended to be definitive comments on whether a particular bill should be enacted. Rather, they present objective facts that explain how a proposed bill may affect some racial groups more than others. This is usually accomplished by examining the racial composition of the particular segment of state residents who are expected to be unfairly affected by the legislation. This analysis informs consideration of alternatives that can enhance public safety without exacerbating racial disparity in the criminal justice system.¹⁶

The Wisconsin Racial Justice Commission

The Commission on Reducing Racial Disparities in the Wisconsin Justice System was established with the goal of determining whether racial disparity is present in the criminal justice system at any stage – from arrest to parole – and to recommend strategies and solutions to reduce racial disparity.

African Americans comprise just six percent of the overall population in Wisconsin, yet they comprise 43 percent of the state's prison population. Spurred by concern about this, and at the urging of the legislature's Black and Hispanic Caucus, Governor James Doyle, Jr. created a 24-member Commission on Reducing Racial Disparities in the Wisconsin Justice System by executive order in March 2007. The commission held informational meetings and public hearings across the state and reviewed relevant research and documents submitted by a wide

¹⁶ For more information about racial impact statements, contact the Minnesota Sentencing Guidelines Commission.

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range of interested parties including citizens, policymakers, police, and prisoners.

While believing that some disparity is due to differences in involvement in crime as well as social and economic factors that are external to the criminal justice system, commission members concluded that racial disparity in the criminal justice system is a serious problem that should be addressed regardless of its cause. They determined that specific policies and practices, particularly in enforcement of the state's drug laws, produce disparate impacts on people of color, most heavily on African Americans. They cited evidence that African Americans are more likely than whites to be sentenced to prison for similar drug offenses, particularly in less serious cases. They also found a high rate of disparity in probation revocations and parole.

The commission issued a report in February 2008 that included more than 50 specific recommendations. Among them are the following:

- Collect data on race and ethnicity at all points of the criminal justice system process.
- Create a statewide process or entity to monitor and track progress in resolving issues related to racial disparity.
- Convene a conference of law enforcement executives to highlight and discuss the problem of racial disparity, including the “elevation of risks associated with introduction into the criminal justice system.”
- Adopt model prosecutorial guidelines designed to address racial disparity.
- Establish local community justice councils to develop community-based solutions to low-level offenses.
- Extend treatment-oriented responses to crack cocaine users, who are typically African American, as is now common practice with methamphetamine users, who are typically white.
- Establish a review process for discretionary decisions related to revocation.

To address the findings and recommendations of the Racial Justice Commission, Gov. Doyle issued Executive Order #251, creating the Wisconsin Racial Disparities Oversight Commission.¹⁷ The executive order also set forth a number of directives specifically designed to address disparity, including:

- Directing all state agencies “with relevant information and capability to develop reporting mechanisms to track traffic citation, arrest, charging, sentencing and revocation patterns by jurisdiction and race.”
- Developing curricula for professional training in each discipline that addresses factors contributing to racial disparity consistent with the Commission's recommendations.
- Directing the Department of Corrections to maintain and expand re-entry programs to assist inmates in successfully returning to their communities; and community re-entry.
- Directing the Department of Corrections to maintain and expand measures to reduce probation and parole revocations.

¹⁷ The commission's report is available online at www.EqualJustice.wi.gov and Executive Order 251 is online at: http://www.wisgov.state.wi.us/journal_media_detail.asp?locid=19&prid=3360

CHAPTER III: California's amazing experiments with incentives for prison population control

Recent reforms in several states' juvenile justice systems have involved financial incentives for reducing reliance on large state-level correctional institutions. Efforts such as "Redeploy Illinois" and "Reclaim Ohio" have reversed traditional policies that made it cheaper for local juvenile justice officials to send young people to state-operated secure facilities. In California the effect of "realignment" has dramatically reduced population levels at institutions run by the Division of Juvenile Justice (DJJ, formerly the California Youth Authority).

Before the reform was introduced, California ran the largest system of youth incarceration in the world, confining more than 10,000 youths. Counties paid a flat monthly fee of \$25 for each youth they committed to a state institution. The state institutions were crowded, and increasingly plagued with violence.

Under the new "disincentive" scheme, counties must pay the state a monthly fee set according to a formula that is based on the relative seriousness of the offenses (current and prior) a youth has committed. The amount of the fee increases as the seriousness level decreases. After the imposition in 1996 of new sliding scale fees intended as a disincentive for counties using state juvenile beds, the population dropped dramatically. By January 2007 the system held just 2,647 youths.

Few people involved with California's juvenile justice reform effort are aware that it resembles an earlier experiment with a comprehensive approach to funding community corrections at the local level. Seeking to better balance the state-county correctional relationship in California, lawmakers established a special probation supervision subsidy in 1966. Policymakers were concerned with the increased cost of incarceration in *both* state prisons and juvenile institutions, and they were impressed with promising concepts for supervision and treatment in the community. Studies had established that substantial numbers of people could be safely re-directed from the state prison system to local community corrections if financial incentives for doing so were provided.

California's subsidy program was a cost-sharing program designed to improve community supervision and expand program services. Counties that volunteered to participate were reimbursed in proportion to the number of cases they kept in the community and out of state institutions. The rate of payment was set to reflect a substantial share of the cost of maintaining prisoners in state custody. The amount paid to each county depended on the number of reduced commitments, measured against the yardstick of its average rate of commitment per hundred thousand residents during a prior five-year baseline period. The goal was to reduce commitments by 25 percent overall, but no individual county was held to this level of achievement.

The state encouraged counties to use the subsidy to fund a wide range of programs to strengthen probation supervision – from mental health services to educational and vocational programs, family services and job placement. The intent was to support local innovation and flexibility.

Changes in state commitment rates during Ronald Reagan's first gubernatorial term were

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dramatic. Adult commitments to prison leveled off almost immediately while juvenile commitments plummeted. The state's goal of a 25-percent reduction in commitments was achieved by the end of the second year. By 1969 the proportion of superior court commitments to prison had dropped to 10 percent from 23 percent just four years earlier.¹⁸

By the end of its first decade participating counties had received more than \$160 million and state officials deemed the program a resounding success, claiming a fiscal savings of over \$120 million.¹⁹



Evaluators of the subsidy program were quick to point out that not all of the decline could be attributed to the incentive structure. They cited a variety of other factors that likely were in play – from improved legal representation for indigent defendants to growing judicial disillusionment with the results of imprisonment. Analysts at the California Department of Finance offered a conservative assessment of the subsidy's impact. They estimated that at least 46 percent of commitment reductions could be directly attributed to the subsidy program, an impact on both adult and juvenile commitments they termed "substantial."²⁰

In Los Angeles County, by far the state's most populous and diverse urban area, the level of reduced commitments was well above that for the state as a whole. By 1972 the commitment rate had declined by 52 percent in Los Angeles, while the average decline for all counties was 38 percent.

Prior to introduction of the subsidy program California's rate of commitments to state institutions had far exceeded the national average. In 1964 California's rate was 64.8 per 100,000 residents, compared to the national rate of 39.4 (excluding California). Over the first five years

¹⁸ Smith, Robert. "A Quiet Revolution: Probation Subsidy." Washington, D.C.: U.S. Department of Health, Education and Welfare. 1971.

¹⁹ Lemert, Edwin M. and Forrest Dill. *Offenders in the Community: The Probation Subsidy in California*. Lexington, MA: Lexington Books. 1978.

²⁰ "A Management Review of the State's Probation Subsidy Program." Sacramento, CA: California Department of Finance. 1972.

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of the subsidy program, while California's rate declined to a low of 37.5, the national rate first stabilized and then began to increase, reaching 46.1 in 1971. By 1975 California's commitment rate had risen again to 45.9 – but the national rate had soared to 54.7.²¹

The subsidy program played a substantial part in reducing state commitments of both adults and juveniles, and had kept many in the community who earlier might have been committed for some minor offense or a technical violation of probation:

If something firm is to be learned from probation subsidy experience, it is that offenders previously thought to require incarceration can be kept in the community with increased surveillance, better methods of internal accountability, and more communication between probation officers and police.²²

California's probation subsidy program continued throughout the 1970s, but introduction of California's determinate sentencing law in 1976 marked a sea change in the state's sentencing and correctional policies that eventually swamped the subsidy's incentive power, sending prison population levels through the roof. The rest, unfortunately, is California history.

²¹ Improvements Needed in the Probation Subsidy Program, California Youth Authority. Report 293” Sacramento, CA: Office of the Auditor General. 1977

²² Lemert and Dill, *Offenders in the Community*

CHAPTER IV: Justice reinvestment blazes a new path to safer, healthier communities

Concerns that more and more people return from prison to their home communities each year without adequate support or resources to help them remain crime free and assume responsibility for themselves and their families has spawned a national movement to address their “reentry” needs. The enactment of the Second Chance Act by Congress in 2008 signaled the support of policymakers on both sides of the aisle.

Sustaining substantial improvements in critical public safety outcome measures over time will require a sustained focus on social and economic conditions in the communities that people reenter. Correctional authorities in a number of states are working to improve outcomes for people in reentry within a comprehensive strategy called justice reinvestment – developed at the Open Society Institute – for shifting and often reducing spending on corrections, increasing public safety, and improving conditions in the “high stakes” neighborhoods from which most people are sent to prison and to which they return when they are released.

The idea of justice reinvestment springs from a realization that mass incarceration impacts many urban neighborhoods in ways that serve to perpetuate cycles of crime and incarceration. The millions of dollars that are spent each year to imprison large numbers of people from impoverished neighborhoods in places like Hartford, Phoenix, and Wichita provide relatively little in terms of public safety when compared with the positive benefits of providing substance abuse treatment, housing, education, and jobs. Proponents of justice reinvestment urge that steps be taken to reduce spending on prisons and invest a portion of the savings into the infrastructure and civic institutions of high impact neighborhoods to empower the residents and improve the quality of their lives.

The concept of justice reinvestment has theoretical grounding in research findings that show how the policy of mass incarceration is itself a generator of the crime problems policymakers intended to eliminate with “get tough” laws and tighter restrictions on parole. Groundbreaking research has documented the effect of sending so many people to prison for such long terms. Dina Rose and Todd Clear examined crime statistics in Tallahassee neighborhoods and found that in neighborhoods where incarceration rates shot up the most, crime rates increased more there than in other neighborhoods in the following year. And when crime dropped in Tallahassee overall, it fell the least in the high-incarceration zones.²³

These experts argue that when too many people are pulled from their neighborhoods, incapacitation reaches a “tipping point” that can send crime rates spiraling up. Simply churning large numbers of young people from the inner city through the prison system destabilizes neighborhoods already stressed by poverty and crime. Networks of informal social control in such locations, imperfect as they are, may still serve to keep the level of crime within limits. Those involved in low-level non-violent criminality may still provide support and care for their children and other important pro-social supports for their neighbors and friends. Viewed purely

²³ Todd R. Clear, Dina R. Rose, Elin Waring, and Kristen Scully, “Coercive Mobility and Crime: A Preliminary Examination of Concentrated Incarceration and Social Disorganization” (*Justice Quarterly*, vol. 20 no. 1, March 2003)

as an economic asset, each prisoner represents a net financial loss to his or her family and home community.

Connecticut pilots justice reinvestment and reduces probation violations

In Connecticut, the Council of State Governments provided *Building Bridges*, a report authored by James Austin, Michael Jacobson, and Eric Cadora, three national experts on parole and re-entry.²⁴ *Building Bridges* called for various changes to the state parole and probation systems to greatly reduce admissions to prison for technical violations of supervision and reduce the prison population.

Eric Cadora prepared maps that graphically displayed the disproportionate representation of residents of just a handful of low-income neighborhoods within the state prison system. Cadora's "justice mapping" technique has revealed that many urban neighborhoods in the U.S. contain "million dollar blocks" – places where so many residents are sent to prison that the total cost of their incarceration is more than \$1 million.

The maps helped to illustrate the high incarceration rates in certain New Haven neighborhoods that were incurring significant prison expenditures: \$19.9 million for residents from The Hill, \$15.3 million for Fair Haven, and \$8.6 million for Newhallville. Four neighborhoods in Hartford account for almost half of the flow of prisoners from that city into state prisons: Northeast, Asylum Hill, Barry Square, and Frog Hollow. Incarcerating Hartford's prisoners was costing the state \$64 million each year.

Responding to the call for reform, lawmakers embraced a comprehensive approach to cut down on the number of people who are sent to prison for technical violations of both probation and parole. Parole and probation officials were asked to submit plans to the legislature explaining how technical violations could be reduced by 20 percent.

At the same time, legislators appropriated \$13.4 million to provide expanded supervision and program services. More than \$7 million of this amount was provided for contracts for new residential beds, including \$2.4 million for 130 drug treatment beds targeted to people diverted from pretrial incarceration, \$500,000 for people enrolled in alternative to incarceration programs, and \$4.4 million for 310 new halfway house beds for returning prisoners.

The appropriation also included new probation and parole staff positions to improve supervision and support services, including \$4.2 million for 68 new probation officers, \$450,000 for 12 new community release officers, and a new a job development coordinator to work with people nearing release from prison. One million dollars was earmarked for creation of Building Bridges pilot projects in New Haven and Hartford to provide housing and aid re-entry for parolees.

According to a Legislative Program Review Committee assessment of the implementation of HB 5211 (now Public Act 04-234), in 2003 one of every four prison admissions in Connecticut was

²⁴ James Austin, Michael Jacobson, and Eric Cadora, "Building Bridges: From Conviction to Employment; A Proposal to Reinvest Corrections Savings in an Employment Initiative" (Council of State Governments, Criminal Justice Programs. January 15, 2003. Online at <http://www.csgeast.org/pdfs/justicereinvest/BuildingBridges.pdf>)

for a violation of probation. More than half were triggered by a technical violation, not a new crime.²⁵ To address the problem, HB 5211 provided funds for two new probation programs:

- **Probation Transition Program (PTP)**
People sent to prison to serve a “split sentence” are released to probation supervision once the prison component of their sentence has been served. To assist their reentry, people assessed as “high risk” are referred to the PTP unit, operated in partnership with Community Partners in Action, a nonprofit agency based in Hartford. Probation officers and CPA staff members meet with split-sentenced prisoners within 90 days of release to provide them with information about their obligation to report to probation, to collect information about where they plan to reside after release, and to identify their needs for specific re-entry services. A service plan is developed that might cover housing, employment, substance abuse treatment, and mental health services. Once released, a PTP participant receives an average of four months of intensive case management before being transferred to a standard probation caseload. Each PTP officer carries a caseload of just 25 participants.²⁶
- **Technical Violation Unit (TVU)**
People who are failing under standard probation supervision are referred by their probation officer through the chief probation office of their unit. As with PTP, caseloads are capped at 25 people. For the next 30 to 60 days, participants receive services from contract providers under tightened supervision requirements. During a second phase the person’s progress to stabilization is assessed. If the result is positive, the person will be prepared for transfer back to a standard probation caseload.²⁷

The Legislative Program Review report found that decreases in the number of probation violations since initiation of these programs had reduced the number of prison admissions for such violations. The success of these interventions has since been documented by a research team at Central Connecticut State University.²⁸ Three years after release from prison, the technical violation rate for the PTP participants (20 percent) was significantly lower than for a PTP comparison group (38 percent), indicating that PTP has exceeded the 20 percent goal set for reduction of technical violations. The rates of violation that involved a new arrest (39 percent for PTP participants and 42 percent for PTP comparison group) indicate that the lower technical violation rate in the PTP did not result in increasing new arrests.

The total violation rate for people referred to the TVU (counting both technical violations and those involving a new arrest) was 70 percent. The program’s evaluators say that in theory all of

²⁵ Public Act 04-234 “An Act Concerning Prison Overcrowding, Final Implementation Monitoring Project Status Report, January 2008.” Hartford, CT: Legislative Program Review and Investigations Committee.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Stephen M., Cox, Kathleen Bantley, and Thomas Roscoe, “Evaluation of the Court Support Services Division’s Probation Transition Program and Technical Violation Unit” (State of Connecticut, Judicial Branch, December 2005. Online at http://www.jud.ct.gov/CSSD/research/PTP-TVU_Final.pdf) and “Third Addendum to the Final Report of the Court Support Services Division’s Probation Transition Program and Technical Violation Unit” (August 2008)

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them would have actually been violated in the absence of the TVU alternative. If this is correct, the reduction they report in violations is encouraging.²⁹

Since 2004, when the justice reinvestment concept was first introduced in Connecticut, the idea has spread. Planning efforts have since taken root in a number of other states, including Arizona and Kansas.

Justice reinvestment in Arizona

Correctional managers in Arizona struggle with unbridled prison population growth. Recent projections indicate that if current trends continue the state prison population will grow by 52 percent over the next ten years, twice the rate of increase projected for the state's general population, costing taxpayers billions of dollars. Analysis of population growth reveals the high rate of failure among people on community supervision as the primary driving factor behind prison growth: parole and probation revocations account for 17 and 26 percent of admissions respectively.

As in Connecticut, geographical analysis showed that a handful of neighborhoods contribute a greatly disproportional share of the people who go to prison and return upon release. South Phoenix contains just 1 percent of state residents yet accounts for more than 6 percent of the prison population. The cost of incarcerating residents from a single Phoenix zip code mounts to \$70 million annually.³⁰

The Arizona Governor's Office and the Department of Corrections are collaborating with Maricopa County (Phoenix) and experts at the Council of State Governments to develop a plan to reduce crime and incarceration rates in such high-risk neighborhoods. To begin, they decided to focus on parole and find ways to change lives. The Legacy Project, a pilot program in South

²⁹ From inception in October 2004 through August 31, 2008, 2,358 people were released from prison through the PTP. During the same period probation officers referred 2,842 people to the TVU in lieu of violation. The research involved tracking outcomes of participants in three study groups over a period of three years. The PTP and TVU groups were made up of all participants admitted to each program from inception in October 2004 to May 1, 2005. A PTP comparison group was made up of all split-sentenced probationers from the courts where PTP units were initiated and whose cases were closed during June, July, and August 2004. The data comparisons are presented here:

New Arrests and Probation Violations Across Study Groups*			
PTP (n=397)	PTP Comparison (n=134)		TVU (n=349)
Violations of Probation and New Arrests Within One Year			
New Arrests	82 (21%)	24 (18%)	69 (20%)
Technical Violations	78 (20%)	51 (38%)	122 (35%)
New Arrests and Tech. Violation	70 (18%)	32 (24%)	53 (15%)
Totals	230 (58%)	107 (80%)	244 (70%)

*Study group differences were statistically significant at $p < .05$

³⁰ "Reducing Crime & Generating Savings: Options for Arizona Policymakers" (New York: The Council of State Governments Justice Center, February 2008. Online at <http://justicereinvestment.org/states/arizona/pubmaps-az>)

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Phoenix's 85041 zip code area, is changing the way that parole officers supervise recently released prisoners.³¹

Zip code 85041 has concentrations of poverty, crime, and delinquency that have spanned decades, with half of the area's families receiving public welfare, food stamps, and/or state-funded health benefits. More than 200 people returned to the neighborhood from prison over the past year.

Prior to release, people who will return to 85041 are housed together for "transition-specific planning." They meet the social workers and parole agents who will work with them after release to help them and their families achieve stability.

The effort is to move the focus away from a "zero tolerance" approach to technical rule violations toward assessment of criminogenic factors such as poverty, unemployment, substance abuse, and mental illness. Supervision agents are teaming up with state social workers, sharing office space and facilitating access to needed services such as health insurance, unemployment or disability benefits, and food stamps. They assist people coming out of prison to secure drug treatment and job training.

To further advance the principles of justice reinvestment and reduce the rate of probation violation, last year the Arizona Legislature enacted the "Safe Communities Act," a measure that created incentives for success for those sentenced to county-based probation supervision. Probationers are eligible to have their supervision term reduced by 20 days for each month of compliance with probation conditions, performance of community service, and payment of restitution to victims. Any county probation agency that sees a reduction in recidivism and revocations will receive 40 percent of the prison bed savings to provide greater access to drug treatment and training programs, and to expand services to victims of crime.

Justice reinvestment in Kansas

The most ambitious experiment with justice reinvestment is taking shape in Kansas. Before the effort got underway, two-thirds of people admitted to Kansas prisons were sent for violation of community supervision, 90 percent of which were technical violations. State officials, as part of a justice reinvestment strategy, have made a concerted effort to cut these violations in half. Key stakeholders realize that lasting reductions in recidivism will depend on neighborhood revitalization and the provision of substance abuse, mental health, employment, and housing services in the communities where people return to from prison.

Maps provided by Eric Cadora and the Justice Mapping Center are helping them to understand the problems in "high stakes" communities. Northeast central Wichita is the neighborhood with the highest incarceration rate in Kansas. Council District 1 accounts for \$11.4 million of the funds spent on prison commitments over the course of a single year. The annual price tag for

³¹ Amanda J. Crawford and Yvonne Wingett, "Ending a Cycle of Crime: Ex-cons Get a Helping Hand." (*The Arizona Republic*, June 15, 2008)

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imprisonment of probation and parole violators is \$5.5 million. People from District 1 occupy almost 600 prison beds, more than twice the number used by any other council district.³²

Nearly a third of those released from prison in Kansas are homeless or lack appropriate housing options. A Department of Corrections' collaboration with the Kansas Housing Resources Commission and the Department of Social and Rehabilitation Services is working to address housing and related needs. A reentry specialist is working in Wichita to expand access to affordable housing opportunities.

A community advisory committee has been formed that includes members of the city council and the state legislature along with representatives of the local housing department, police department, and faith community. The committee is charged with the development and implementation of a neighborhood-based housing development project. They plan to target a neighborhood in Council District 1 that is currently peppered with hundreds of abandoned, boarded-up houses and blighted properties.

The Kansas justice reinvestment project is focused on redevelopment of neighborhood housing. Prisoner labor could contribute to improving the housing stock while prisoners learn construction skills. Richard Baron, partner in McCormick Baron Salazar – an experienced developer of economically integrated urban neighborhoods in St. Louis – traveled to Wichita last year to meet with local officials, local developers, and the heads of state agencies. Plans are underway in Wichita to create a city redevelopment authority empowered to acquire abandoned properties and prepare them for development.

Members of the Governor's Health and Human Services Cabinet have toured the neighborhood and are formulating a plan for integration of state resources now being expended for Medicaid, TANF, child welfare and foster care, parole, and probation to create a more neighborhood-focused model for service delivery. Last year, leaders of several banks, hospitals, private foundations, schools, and universities joined government officials in Wichita to announce commencement of the New Communities Initiative. Urban Strategies, McCormick Baron's non-profit partner organization, is facilitating the development of social capital and public services in the target area.

Corrections Secretary Roger Werholtz has championed the justice reinvestment concept. He says that the effort is working well, with the number of parolees being returned to prison dropping from 203 a month in 2003 to 103 a month in 2007, and convictions for new crimes by people on parole plummeting from 424 a year in the late 1990s to 280 a year in the past three years.³³

³² Michael Thompson, Tony Fabelo and Eric Cadora, "Building Community Capacity to Reduce Crime and Save Prison Space" (Council of State Governments PowerPoint presentation to the Wichita Summit, April 18, 2005).

³³ Editorial, "Kansas a Leader on Parole Reform" (*The Wichita Eagle*, May 27, 2008).

Conclusion

This report has focused on a broad array of strategies for reducing reliance on incarceration, downsizing prison population levels, addressing the critical problem of racial disparity, and building stronger, healthier and safer communities.

The nation's prison system has mushroomed in size due to wasteful, ineffective laws and policies. Declining prison population figures in your state indicate that progress is being made, but correctional costs continue in an upward spiral. The situation – given the current economic crisis – cannot continue. Proven models for reform are available. I hope the information contained in this report will prove useful to you as you evaluate and implement strategies for reform.

ABOUT THE AUTHOR

JUDITH GREENE is a criminal justice policy analyst and a founding partner in Justice Strategies. Over the past decade she has received a Soros Senior Justice Fellowship from the Open Society Institute, served as a research associate for the RAND Corporation, as a senior research fellow at the University of Minnesota Law School, and as director of the State-Centered Program for the Edna McConnell Clark Foundation. From 1985 to 1993 she was Director of Court Programs at the Vera Institute of Justice. Ms. Greene's articles on criminal sentencing issues, police practices, and correctional policy have appeared in numerous publications, including *The American Prospect*, *Corrections Today*, *Crime and Delinquency*, *Current Issues in Criminal Justice*, *The Federal Sentencing Reporter*, *The Index on Censorship*, *Judicature*, *The Justice Systems Journal*, *Overcrowded Times*, *Prison Legal News*, *The Rutgers Law Journal*, and *The Wake Forest Law Review*.

