

Cutting Correctly: New Prison Policies for Times of Fiscal Crisis

I. INTRODUCTION

Corrections was one of the fastest growing line items in state budgets during the 1990's.¹ It cost nearly \$40 billion to imprison approximately two million state and local inmates in 2000, up from \$5 billion in combined prison and jail expenditures in 1978.² Twenty-four billion of that was spent on the incarceration of nonviolent offenders.³

Although the 1990's were witness to the largest prison population increase in U.S. history,⁴ state prison populations around the country began to show signs of decline in the first year of the new millennium. A report by the U.S. Department of Justice, Bureau of Justice Statistics showed that, while prison roles grew nationwide by 1.3 percent in 2000, during the last six months of 2000, the nation's state prison populations actually *declined* by 6,200 inmates, the first such decline since 1972. Overall, 13 states saw declines in their prison populations in 2000.⁵

16 States and Jurisdictions had no growth, or saw their prison population declines in 2000

States with Prison Population Declines

- Maine
- Massachusetts
- New Jersey
- New York
- Kansas
- Ohio
- Delaware
- District of Columbia
- Kentucky
- South Carolina
- Tennessee
- Texas
- Wyoming
- Connecticut

States with No Prison Population Growth

- California
- New Hampshire

Source: *Prisoners in 2000*, U.S. Dept. of Justice, Bureau of Justice Statistics, 2001

Despite the modest recent decline in state prison populations, the massive growth in state prisoners over the past two decades continues to have a significant impact on state and local government expenditures. On average, corrections consumed 7 percent of state budgets in 2000.⁶ This means that one out of every 14 general fund dollars spent in 2000 was spent on prisons.

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While state government officials may have felt they could afford incarceration largess during the boom years of the 1990's, state budgets are now groaning under the weight of the recent

recession compounded by the revenue loss associated with the September 11 terrorist attacks. According to the National Association of Budget Officer's (NASBO) *Fiscal Survey of States*, states around the country expect \$40 billion in shortfalls for fiscal year 2002.⁷

NASBO reports that the last time states were facing significant budget shortfalls was during the early 1990's, but those deficits were nowhere near what states are facing today. For example, by way of comparison, in 1991, states had to cut their budgets by \$7.6 billion, less than one-fifth the cuts estimated for next fiscal year.⁸ According to the Bureau of Economic Analysis, over the last 12 months, state and local tax revenue growth was the slowest since the Bureau began keeping track of such data in the late 1950's.

For example, when California Governor Gray Davis announced *this year's* spending cuts, he stated, "California is facing the steepest decline in state revenue in more than half a century. California's economy, which was beginning to slow before the September 11 tragedy, has been dramatically affected by the results of the terrorist attacks. The extraordinarily rapid decline in state revenues requires additional reductions in current year spending."⁹ According to NASBO's analysis, California anticipates a budget shortfall of \$8 to \$14 billion next fiscal year.

California is facing the steepest decline in state revenue in more than half a century

Despite significant state expenditures on corrections growth, the connection between prison population increases and crime reduction remains elusive. For example, during the 1990's, Texas added more prisoners to its prison system (98,081) than New York's entire prison population (73,233) by some 24,848 prisoners. This means that the number of prisoners that Texas added during the 1990's was 34 percent higher than New York's entire prison population. While Texas had the fastest growing prison system in the country during the 1990's, New York had the third slowest growing prison population in the U.S. Over all, during the 1990's, Texas added five times as many prisoners as New York did (18,001). Yet from 1990 to 1998, the decline in New York's crime rate was 26 percent *greater* than the drop in crime in Texas. Texas' 1999 incarceration rate (1,014 per 100,000) was 77 percent higher than New York's (574 per 100,000), yet Texas' 1998 crime rate (5,111 per 100,000) was 42 percent higher than New York's (3,588 per 100,000). In 1998, Texas' murder rate was 25 percent higher than New York State's rate.¹⁰

Some states around the country have already responded to the fiscal crisis with prison closures and/or downsizing. Confident that closing prisons will not pose any great risk to public safety, and struggling to bridge their budget gaps, Republican governors in four states have decided to close prisons.

In **Ohio**, under Governor Bob Taft (R), a sustained decline in the state's prison population has made closing one or more prisons an easy, attractive target in the state's belt-tightening efforts (as will be discussed in more detail below). Department of Corrections officials have decided to close the century-old 1,724-bed Orient Correctional Institution, saving \$41.9 million in annual operating costs, and averting \$16 million in needed renovations, to help make up for a \$1.5 billion deficit in the biennial budget.¹¹

Governor George Ryan (R) in **Illinois** has announced the closure of the 141-year-old Joliet prison that will cut the prison budget by \$41 million.¹² **Michigan** Governor John Engler's (R) efforts to bridge a \$500 million deficit with budget cuts included closing the maximum-security prison at Jackson, the Pontiac Correctional Center, Camp Pellston and most housing units at the Michigan Reformatory at Ionia, wringing a total of \$55 million from the \$1.6 billion DOC budget.¹³ And in **Florida**, Gov. Jeb Bush plans to close the Hendry Correctional Institution, one of the state's older, more labor-intensive facilities, saving \$1.8 million in salary costs.¹⁴

Obviously, closing entire prisons (or entire sections of prisons) saves far more than simply reducing overall prison system populations. For example, in **California**, the average annual cost per inmate is estimated at \$25,607,¹⁵ whereas the *marginal* per prisoner cost savings from removing some portion of the population from an otherwise overcrowded prison is only \$13,476.¹⁶

Other states have put prisons on the chopping block in the face of budget deficits. In Kansas, Governor Bill Graves (R) has proposed to close minimum-security prisons in order to deal with a \$426 million FY2003 budget deficit. The Oregon Department of Corrections, under Governor John A. Kitzhaber, M.D. (D), was considering closing six minimum-security prisons, while plans for construction of new medium security prisons are under hot political debate across the state. California officials are talking about closing five small community corrections facilities that house minimum-security prisoners (while, ironically, still considering constructing a new, ironically, still considering constructing a new, \$335 million prison in Delano, California).

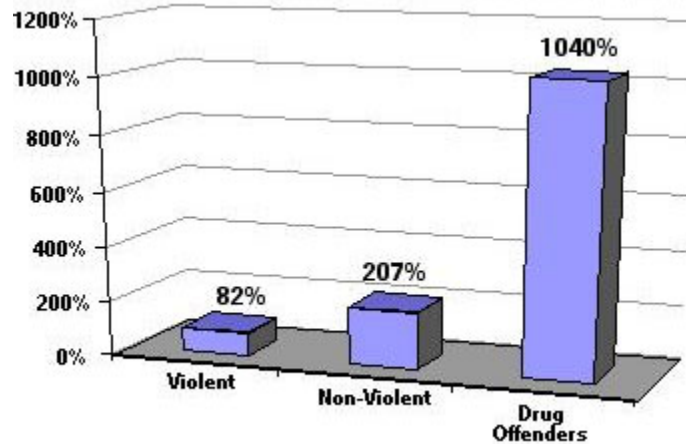
In **Missouri**, the state spent \$168 million to build a new prison in the eastern Ozarks, but cannot now afford the \$12 million needed to equip it for business, or the \$45 million needed every year for staffing the facility. New prison construction is off the table in many states where prison population growth trends have slowed, or even reversed. Some of those states may fall into line with **Florida, Illinois, Michigan and Ohio** as the reality of the post-September 11th decline in state tax revenues settles into state budget processes.

In the face of severe state budget shortfalls, this monograph is designed to offer state policy makers strategies and approaches that can reduce corrections spending without jeopardizing public safety. The remainder of this report will be divided into three sections: (1) the nature and makeup of state prison populations; (2) what the latest surveys show the public thinks about imprisonment; and (3) policies that can be adopted *this year* to reduce prison expenditures without jeopardizing public safety.

II. WHO GOES TO PRISON?

The expansion of America's prisons has been largely driven by the incarceration of nonviolent offenders.¹⁷ The percentage of violent offenders held in state prisons has actually declined from 57 percent in 1978¹⁸ to 48 percent in 1999.¹⁹ However, the prison and jail population has tripled over that period, from roughly 500,000 in 1978, to two million today. From 1980 to 1997, the number of violent offenders committed to state prison nearly doubled (up 82 percent), the number of nonviolent offenders tripled (up 207 percent) while the number of drug offenders increased 11-fold (up 1040 percent).²⁰ Nonviolent offenders accounted for 77 percent of the growth in intake to America's state and federal prisons between 1978 and 1996.²¹

Figure 1: From 1980-1997 the number of people entering prison for violent offenses doubled, while non-violent offenses tripled and drug offenses increased 11-fold



Source: Gilliard, Darrel K. *Trends in U.S. Correctional Populations, 1992*. Washington, D.C.: U.S. Dept. of Justice Statistics, 1992, and Mumola, Christopher J. and Beck, Alan. *Trends in U.S. Correctional Population, 1997*. Washington, DC: U.S. Dept. of Justice, Bureau of Justice Statistics, in press.

According to data from the U.S. Department of Justice, 51 percent of state prison inmates, 74 percent of jail inmates, and 87 percent of federal inmates were imprisoned for offenses that involved neither harm, nor the threat of harm, to a victim.²² It is estimated that, by yearend 2001, there were 472,000 nonviolent jail inmates, 629,100 nonviolent state prison inmates, and 138,000 nonviolent federal prisoners locked up in America, for a total of 1,240,000 nonviolent prisoners.²³

A snapshot of changes occurring in states throughout the country confirms the national data. From 1980, the number of persons incarcerated for drug offenses in California increased 25-fold, with incarceration for simple possession outstripping incarceration for sales.²⁴ Between 1993 and 1998, 50 percent of all inmates entering Washington, DC's prisons had no prior felony conviction, and 86 percent of DC new prison commitments had no or low prior assaultive histories.²⁵ Fifty-five percent of Texas inmates close to 90,000 prisoners - are incarcerated for nonviolent offenses, making Texas' nonviolent prisoner population the third largest prison system in the U.S., all by itself. Until recently, about two out of every three Texas prisoners enter on a violation of probation or parole.²⁶ Nearly two thirds of prisoners sent to New York State's prison system in 1997 were nonviolent offenders.²⁷

This is not meant to imply that there are no serious or chronic offenders occupying state prison beds. However, these data confirm what many correctional professionals and members of the public believe, which is that, in most state prison systems, there are populations of offenders who could safely be diverted from incarceration at a cost savings to strained state budgets.

III. WHAT THE PUBLIC THINKS

For states looking to reign in mushrooming prison costs by reducing the use of incarceration for nonviolent offenders, there is plenty of public support for carefully designed efforts to do so, and in fact, corrections is increasingly the preferred line item to cut. While complex, public opinion about the use of imprisonment generally supports diverting nonviolent offenders from imprisonment into other forms of punishment and rehabilitation. In several state-based polls, the public was more willing to cut corrections funding than other state departments. Importantly, in a poll set for release next week commissioned by the Open Society Institute and conducted by Peter D. Hart Research Associates²⁸, Hart found that public attitudes have become increasingly supportive of diverting nonviolent offenders from imprisonment, and that those attitudes have not changed since the September 11 attacks.²⁹

From January 5 through 22, 2001, pollsters Belden, Russonello, and Stewart (BR&S), conducted a survey of 2,000 respondents nationwide about their attitudes towards imprisonment and community-based sanctions. BR&S found that the public believes that laws should be changed to reduce the incarceration of nonviolent offenders, that rehabilitation should still be the number one purpose of the justice system, and that various community sanctions and programs, such as drug treatment, community service, and restitution are preferable to simple imprisonment. The more the public knows about such community-based sanctions, the more supportive they are of them.

Although 52 percent of respondents felt that nonviolent prisoners were not punished enough, substantial majorities favored reducing imprisonment for nonviolent offenders, suggesting that the public does not see prisons as the sole means of punishing offenders or holding them accountable. Sixty-two percent of respondents agreed with the statement, "We need to change the laws so that fewer nonviolent crimes are punishable by prison terms" versus 33 percent who disagreed with that statement. Seventy-seven percent of respondents found the following argument convincing: "Many people in prison today are nonviolent drug addicts who need drug treatment, not a prison sentence" versus 20 percent who did not find that argument convincing. Sixty-one percent of respondents felt that mandatory sentences are not fair, versus 36 percent who felt that they are fair.³¹ These findings hold true in state-by-state surveying as well. Polling research in Oregon³², Washington State, North Carolina, and Vermont³⁵ show that the public holds a strong commitment to alternatives to incarceration.

Increasingly, when given a choice over which budget items to cut, the public is choosing corrections over education, transportation, health and welfare and other state departments. Even at the height of concern over crime in California a few months before the passage of California's "Three Strikes and You're Out" law, 72 percent of respondents to a *Los Angeles Times* poll stated that they would not support taking funds from California's university system to fund "Three Strikes."³⁶

More recently, a Field Poll conducted in December 2001 found that Californians are more willing to cut spending on corrections to balance the state budget than to cut any other state program. In fact, more than four times as many respondents were willing to cut corrections (34 percent) as education (8 percent).³⁷

A poll taken in December 2001 by researchers at Pennsylvania State University yielded results that were very similar to the Field Poll. Eighty-one percent of those polled indicated that they would rather have their tax dollars go towards early intervention programs than the construction of new prisons.³⁸

Crime ranked last amongst voter's concerns. Penn State pollster Barbara Simms had expected crime to be on top of the list. "I was a bit surprised that Pennsylvanians, in light of Sept. 11 and such, weren't overly concerned with crime," she said.

Californians and Pennsylvanians are more willing to cut prison spending than any other state program

Similarly, crime ranked lowest as a concern of Connecticut voters in a December 2001.³⁹

A series of more intricate surveys conducted around the country support the findings of the BR&S poll that show that the more the public is educated about non-incarcerative options, the more supportive they are about such options. Public support for more emphasis on rehabilitation and treatment along with a greatly expanded use of nonincarcerative sanctions is neither new nor limited to the east and west coasts. Public Agenda studies directed by John Doble in Alabama⁴⁰ and Delaware⁴¹ and 1995 Doble Research studies in North Carolina and Oklahoma found that when people learned more about nonincarcerative sanctions, they overwhelmingly favored using

them with an array of nonviolent offenders and some carefully selected and screened violent offenders. Support is both broad and deep. In Oklahoma, for example, nearly 9 in 10 *strongly* favored much greater use of restitution and 8 in 10 *strongly* favored much greater use of community service and intensively supervised probation. Moreover, consensus-level majorities in both Oklahoma and North Carolina wanted to use community sanctions for a variety of offenders who are currently being incarcerated.

Moreover, in North Carolina, large majorities favored drug and alcohol and psychiatric treatment for *all* offenders in need, as well as job training and education for *all* prison inmates, *even if that meant more state spending*. North Carolina residents also favored structured sentencing even after learning that it would mean shorter prison sentences in a great many cases. Finally, in a new Doble Research pilot study, people in Vermont called for a dramatic increase in the amount of psychiatric treatment the state now provides for sex offenders who are incarcerated and in a community program.

Figure 2: Wardens Approve of Alternatives to Prison



Source: U.S. Senate Subcommittee on the Constitution (1994)

State corrections officials and prison wardens - precisely the people one would expect to hold the toughest attitudes on crime - generally share the opinions expressed by the public. According to a national survey conducted in 1994 by the U.S. Senate's Subcommittee on the Constitution, prison wardens preferred a balanced approach to public safety, one that relies less on the use of incarceration. Eighty-five percent of wardens surveyed said that elected officials are not offering effective solutions to America's crime problem and 92 percent believed that greater use should be made of alternatives to incarceration. Wardens felt that, on average, half of the offenders under their supervision could be released without endangering public safety.⁴² These findings are even more impressive when one considers that they came in 1994, when a higher percentage of state prisoners were incarcerated for violent offenses, and public opinion was less supportive of alternatives to incarceration.

In addition to survey findings showing public support for community sanctions and programs, voter initiatives have passed in Arizona and California that have confirmed these polls at the ballot box. In 1996, voters in Arizona approved an initiative that diverted from prison, nonviolent offenders convicted of drug possession. Disturbed by what they considered an irresponsible initiative, Arizona's legislators forced a second vote on the same issue and, in 1998, the Drug Medicalization, Prevention and Control Act was again passed. Those acts established the Drug Treatment and Education Fund to create drug treatment slots for offenders who would be diverted

from prison under the act. According to the Administrative Office of the Courts in Arizona, the initiative is producing savings of more than \$6 million a year.

In the presidential election of 2000, California voters overwhelmingly approved Proposition 36, the Substance Abuse and Crime Prevention Act, modeled after the Arizona initiative. Prior to passage of Proposition 36, the California Legislative Analyst's Office projected that implementation will save \$100-150 million in annual reduction in prison costs; avoid construction of at least one \$450-550 million prison; and divert as many as 36,000 offenders from jail and prison and into treatment programs annually.⁴³ Early indications are that implementation is closely tracking the expectations and assumptions of the LAO projections.⁴⁴ A Field Poll conducted in Spring 2000 found that 64 percent of California poll respondents favored the initiative.⁴⁵ The Field Poll proved remarkably prescient when Proposition 36 was approved by 61 percent of California voters in November 2000.

Buoyed by the success of the Arizona and California initiatives, the Campaign for New Drug Policies intends to launch similar campaigns in three states in the 2002 election season -- Florida, Michigan, and Ohio.⁴⁶ According to the Ohio-based Buckeye State Poll, which surveyed 793 randomly selected adults in 2001, 74 percent of Ohio voters favor such an initiative.⁴⁷

While the public clearly believes offenders should be held accountable for their crimes, the "lock 'em up and throw away the key" dictum is far from sacrosanct. In several state polls, corrections was the state line item the public preferred to cut above all others. Public opinion favors laws that reduce the imprisonment of nonviolent offenders and exchanges imprisonment for drug treatment, community service and restitution. When they are educated about community-based sanctions, the public's support for such options increases. Bottom line - there is plenty of room for elected officials to enact balanced public safety approaches in this disastrous fiscal year that hold offenders accountable and make responsible use of scarce and expensive prison space.

IV. MANAGING PRISON POPULATION LEVELS WITHOUT BREAKING THE BANK

"Every dollar spent on imprisonment is a dollar not available for a different public investment. We cannot speak about increased investment in corrections today without allowing that those dollars will have to come from policing, teen pregnancy prevention programs, pre-natal and peri-natal programs and, increasingly, public education."

Martin Horn,
New York City Commissioner of Probation
Former Secretary, Pennsylvania Department of Corrections

In the context of recent shifts in public attitudes about the criminal justice system, the current state budget crises offer an unusual opportunity for state policymakers to take steps to address this problem. Many state government leaders and legislators have concluded that operating their prison system in its current configuration is too costly. Some of them are already moving to cut wasteful spending in the corrections budget by embracing new policy directions that seemed unthinkable just a few years ago. They are revising, and in some instances reversing, inefficient correctional policies that would otherwise gobble an even greater share of the shrinking state budget pie.

This section will describe public policy changes that have been enacted or are proposed around the country to reduce prison populations, and costs, without jeopardizing public safety. It is meant to serve as a menu of sorts for state policy-makers to review as they make difficult funding decisions in the coming legislative session. These policy options will be broken down into the following categories:

[A. Returning Discretion to Judges and Reducing Nonviolent Prisoner Populations](#)

[B. Drug Policy Reform](#)

[C. Comprehensive Sentencing Reform](#)

[D. Parole Reform](#)

[E. Policy Reforms under Consideration around the Country](#)

A. Returning Discretion to Judges and Reducing Nonviolent Prisoner Populations

A large portion of the current U.S. prison population is comprised of low-level, low-risk, nonviolent prisoners. Of 1,189,800 prisoners held in state prisons at the end of 2000, fewer than half (570,000) were sent to prison for a violent crime. About one fifth of state prisoners were sentenced for a drug crime, and another 31 percent were committed for nonviolent property or public order offenses.⁴⁸

Further evidence that prisons in the U.S. hold large numbers of low-risk prisoners comes from prison classification data. Classification of prisoners is a management tool that allows prison administrators to identify prisoners that present little or no risk of violent behavior or danger to public safety. Classification by known risk factors allows more prisoners to be housed at lower custody levels without increasing the incidence of misconduct or escapes. *Upwards of 40 percent of all prisoners are estimated to fall into the minimum risk category.*⁴⁹

The cost-benefit ratio produced by incarcerating these types of offenders is extremely unfavorable. Moreover, public support for imprisonment of low-risk, nonviolent offenders is growing thin. As cited above, 61 percent of Americans are opposed to mandatory prison sentences for nonviolent offenders and 75 percent prefer treatment to imprisonment for drug users.⁵⁰

Americans believe that drug treatment interventions can curb criminal behavior as well as reduce substance abuse by criminal offenders. Recent research findings support their views. The RAND Corporation has determined that for heavy users of cocaine, treatment costs one-seventh as much as the traditional criminal justice approach (arrest and incarceration) to reduce drug use.⁵¹ The Drug Treatment Alternatives to Prison program run by the District Attorneys Office in Brooklyn, New York reports that the recidivism rate for "DTAP" graduates is less than half of the rate for offenders in a comparison group that received traditional prosecution and incarceration.⁵² Quality treatment does not come cheap, but the California Legislative Analysts Office has determined that even after accounting for an additional \$120 million a year that will be spent to expand treatment program slots for offenders diverted under Proposition 36, the new law will save taxpayers as much as \$1.5 billion over five years by reducing prison costs.

i. State-by-State innovations

No two states will be alike in their approach to modifying the use of imprisonment for nonviolent, non-serious offenders.

Policymakers in some of the most conservative states in the U.S. are already moving in a more moderate direction, revising sentencing and correctional policies so as to better reflect the overall state government policy priorities of their citizens. Spurred to action by **Louisiana's** Republican Governor Mike Foster, the Louisiana legislature abolished mandatory minimum sentences for

dozens of nonviolent offenses during the 2001 session. Louisiana's adult prison population had increased 50 percent in the past six years to 38,000 and in 2000, Louisiana had the highest per capita incarceration rate in the country. With the population projected to reach 46,000 by 2004, the Department of Public Safety and Corrections was facing a \$5.1 million budget cut.

Senate Bill 239 removed mandatory minimum sentences for simple drug possession and many other nonviolent offenses, and cut minimum sentences for drug distribution in half. The possibility of parole, probation, or suspension of sentence was restored for a wide range of nonviolent crimes - from prostitution to burglary of a pharmacy. The bill allowed for already-sentenced prisoners to apply for early release.

Louisiana's (Three Strikes) law was amended to require that both of the convictions that would count for the first two (strikes) be for violent crimes. Senator Charles Jones, the sponsor of SB 239, estimates that these reforms will save about \$60 million a year in prison costs.

Louisiana's sentencing reforms will save over \$60 million.

Louisiana corrections officials have set up "risk review panels" to determine whether offenders sentenced to prison under the old mandatory terms can be released to save the costs of incarceration. Some 6,000 prisoners are now serving mandatory minimum sentences for minor drug offenses or low-level nonviolent offenses that make them eligible to apply for "risk review." Those who pass the review will receive a recommendation for early release by the pardon or parole boards.⁵³ Early release of prisoners eligible for "risk review" will save as much as \$10 million annually.

For many years, **Alabama** prisons have been crowded with hundreds of offenders serving life sentences for nonviolent crimes under the state's habitual offender law. In September 2000, Governor Don Siegleman signed new legislation that directs the Alabama Department of Corrections staff to evaluate the public safety risk presented by each prisoner in this category to determine whether their case should be reviewed by a judge from their sentencing court and the state parole board for a possible sentence reduction. The Alabama Sentencing Institute estimates that between 550 and 1,400 prisoners might be affected by the change.

In **Mississippi**, legislators amended the sweeping Truth In Sentencing law they had passed in 1995 that abolished parole for all prisoners. Under the new law, nonviolent first offenders would regain eligibility for parole after they serve one-quarter of their prison sentence. By the end of 2001, more than 2,000 of the state's prisoners became parole-eligible under the reform.

During 2001, a number of other states made efforts to revamp their drug laws to allow for a more "treatment-oriented" handling of drug cases in their court systems. Mandatory minimum sentences that were required in many drug cases have been repealed in **Indiana** under Governor Frank O'Bannon (D). Under the old law, anyone arrested with three grams or more of cocaine faced a 20-year mandatory sentence for dealing drugs. The mandatory sentencing law packed the state's prisons with small-time addict/dealers who only sold enough drugs to support their habit. The reform gives judges discretion on an individual case-by-case basis to determine whether drug treatment or a community corrections program might be more appropriate than incarceration. Many of Indiana's prosecutors supported the reform, which increased penalties for dealing methamphetamine while eliminating mandatory sentences for cocaine.

North Dakota, under Governor John Hoeven (R), repealed a one-year mandatory minimum prison sentence for first offenders convicted of drug possession. They also turned down a request

for funds for construction of a new women's prison, voting instead to fund a study of the state's correctional needs and possible sentencing alternatives.

In **Connecticut**, a Republican Governor (John G. Rowland) working with a Democratically-controlled legislature teamed up to relax mandatory minimum sentencing requirements for some drug felons. The provision affects manufacture, sale, or possession of a drug or drug paraphernalia, including crimes within 1,500 feet of a school, day care center, or public housing unit. Under the new law, a judge may impose less than the mandatory minimum provided that no weapon was involved and no one was hurt during commission of the crime. And the state Department of Corrections is planning to open four new Community Justice Centers to provide treatment instead of prison for probation and parole violators as an alternative to imprisonment.

Working with a Republican Governor (Michael O. Leavitt) and Legislature in **Utah**, corrections officials have shuttered two small correctional facilities and have used some of the savings to hire more parole agents and increase parole releases. Urged to send fewer parolees back to prison cells, probation and parole staff are using intermediate sanctions to deal with technical violations.

Governor Thomas J. Vilsack (D) and the **Iowa** legislature amended the state's criminal code to downgrade the status of certain third-degree burglary offenses from a felony to a misdemeanor; to allow mitigation of the mandatory sentences required for certain Class D felonies; and to lengthen the period of time to one year during which a judge may return a prisoner to court to reconsider whether the prison term originally imposed should be modified. It is estimated that the projected impact of these changes would save the state \$1 million in correctional costs.

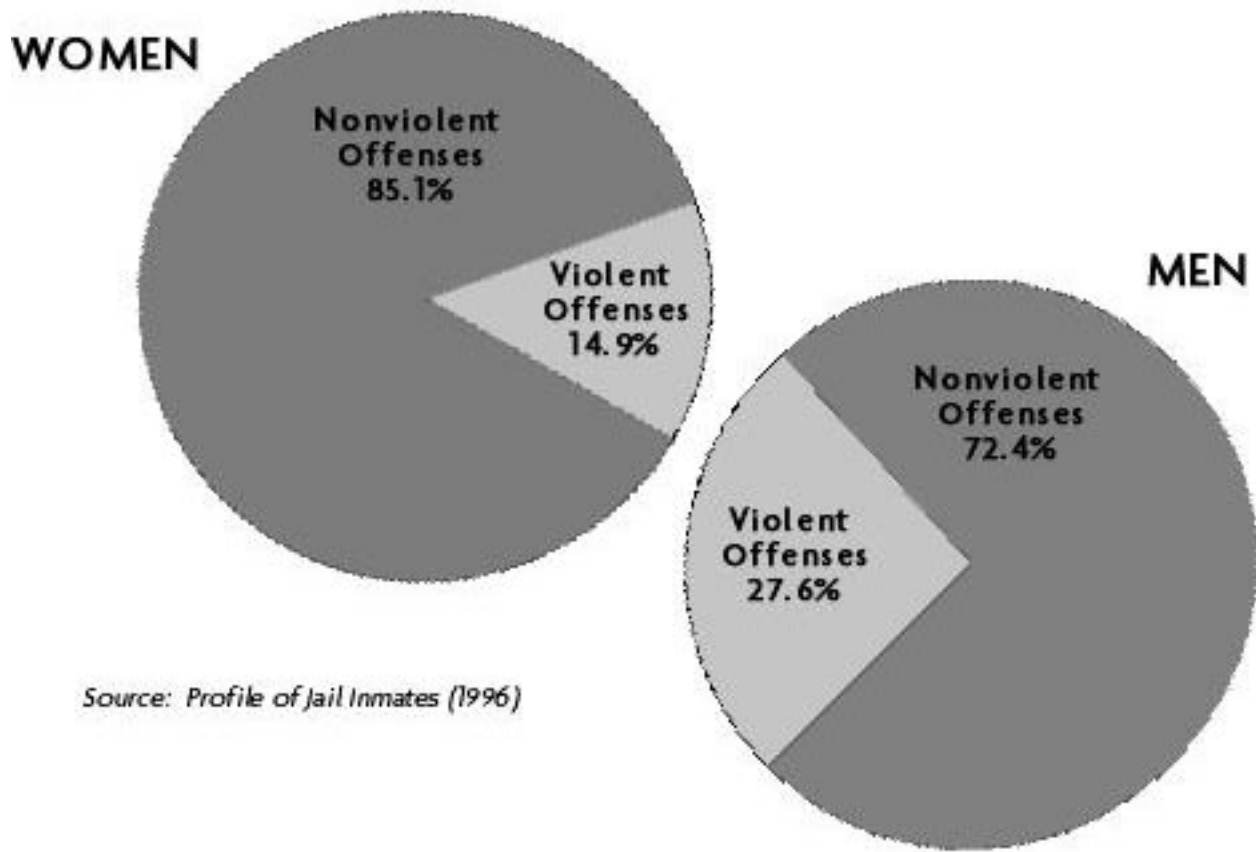
The **Arkansas** Board of Corrections and Community Punishment, under Governor Mike Huckabee (R), invoked the state's emergency powers act to grant early release from prison for 552 prisoners.

In addition to these state level innovations, two especially nonviolent and costly prisoner populations - women and elderly prisoners - warrant special consideration.

ii. Women Prisoners

At the end of 2000, there were 83,668 women incarcerated in U.S. prisons. Women prisoners are a group that warrants especially close examination by policymakers who are looking for ways to reduce correctional costs for four reasons:

Figure 3: Women are Fastest Growing, Least Violent Prisoners



Source: Profile of Jail Inmates (1996)

- Women constitute the most rapidly growing segment of the U.S. prison population. Their rate of imprisonment grew by 88 percent between 1990 and 1998. During the decade after passage of mandatory drug laws in 1986 the number incarcerated for drug offenses rose by 888 percent.⁵⁴
- Women offenders -- frequently themselves the victims of violent crime -- are mostly imprisoned for nonviolent and drug offenses. Just 29 percent are in state prison for a violent crime, compared to 49 percent of male prisoners. The greatest proportion (34 percent) of women in prison are serving a sentence for a drug crime. Almost all female prisoners are classified as low-risk.⁵⁵
- The recidivism risk of women after release from prison is quite low as compared to men. A New York Department of Correctional Services study followed both male and female ex-prisoners for three years. The recidivism rate for women was 27 percent, compared to 41 percent for men.⁵⁶
- The public costs associated with imprisonment of women are spread far beyond the prison budget.⁵⁷

The incidence of criminal violence perpetrated by women is relatively low. According to victim surveys, just one in seven victims describes a female assailant.⁵⁸

Non-Violent Offenders Behind Bars, Yearend Projections, 2000

State Prisoners:	629,100
Local Jails:	472,000
Federal Prisons:	138,000
Total Non-Violent	1,240,000

Source: Justice Policy Institute Project, based on U.S. Dept. of Justice, Bureau of Justice Statistics Data. See footnotes for methodology.

While the great majority of women prisoners are serving sentences for nonviolent property and drug crimes, research indicates that most of them have been victims of serious violent crime in the past. In New York, a state where about 70 percent of all incarcerated women are serving time for nonviolent or drug-related offenses, a substantial majority of women in prison report having been, themselves, the victims of severe violence or sexual molestation prior to their incarceration.

Women prisoners are less likely to be imprisoned for violent offenses and to get arrested after prison.

Interviews with women entering Bedford Hills, the women's prison in New York that serves as the reception center for all women entering the state's prison system, indicated that over half of them experienced some form of sexual abuse during childhood or adolescence. Over the course of their lives, 38 percent of these women have experienced violent assaults; one third have been the victim of a violent sexual assault; and 28 percent have been knifed or shot at.⁵⁹

Furthermore, the economic and social costs of incarcerating women offenders are much higher than those associated with incarcerating men. Data reported by the Bureau of Justice Statistics indicates that while more than half of all prisoners have minor children who may be affected by their incarceration, women prisoners are more likely than men to have children (65 percent compared with 55 percent) and they are much more likely (64 percent compared with 44 percent) to have been living with their dependent children when they were arrested.

Ninety percent of prison fathers report that their children are residing with their other parent, but this is true for only 28 percent of prison mothers. In most cases, incarceration of a mother serves to destroy an already-fragile family unit. The majority of children of women prisoners are cast for care on her extended family and friends, but these arrangements too often prove unstable. At least ten percent of prison mothers report that their children have been placed in non-kin foster-care homes or agencies.⁶⁰

A team of researchers at the University of Chicago have undertaken a new project to fully explore the situation of women prisoners and their children in Illinois, and to assess the full economic and social costs of the state's sentencing policies on this population. Preliminary findings from the study indicate that these costs may be far greater than expected, especially for women admitted to prison from Cook County (Chicago).

In fiscal year 2000, 1,707 women from Cook County entered state prison. More than half of them were sentenced for a drug offense. Eighty-five percent of these women were mothers and more than half had three or more children. One-third had four or more. More than 5,000 children in Cook County lost their mother to prison in that single year. Statewide, the number rose to more than 7,500.

Using average estimates of annual costs for pre-trial detention in Cook County and for imprisonment in Illinois, the researchers estimate that direct costs for all female inmates total \$147.5 million. But the reported costs of incarcerating women do not include the immediate associated costs of child welfare services.

Expenditures for foster care in Illinois are \$25,000 per child annually. Using the BJS figure that 10 percent of incarcerated mothers have children in foster care, Susan George, the principal research affiliate for the University of Chicago study, estimates that about 750 children of newly incarcerated women would have entered the child welfare system in 2000 alone, for an added cost of nearly \$18.8 million. Her preliminary estimate is that with these costs added in, the total average annual expense of incarceration could be as much as \$58,000 per prison mother.

This estimate does not take account of the predictable economic and social costs that often follow as a consequence of disrupting the family unit. The literature on child development suggests that there may be very substantial developmental deficits suffered by these children because of separation from their mother and the disruption of alternative or foster care placements. The children of incarcerated parents are said to be six times more likely to be incarcerated themselves as adults. Sentencing these mothers to community supervision instead of prison and providing preventive services for her and her children can help to break the otherwise predictable intergenerational cycle of crime and incarceration.⁶¹

One opportunity already exists to save state dollars required to incarcerate prison mothers, and to shift the costs of supporting them in the community to a federal funding stream. When Congress passed the 1996 welfare reform act, they created a block grant to states called Temporary Assistance for Needy Families (TANF) to replace the old Aid to Families with Dependent Children (AFDC) program.

In addition to providing cash benefits to custodial parents who have not exceeded a five-year lifetime limit for receiving benefits, the TANF block grant program allows states broad flexibility to determine how to allocate the money for provision of appropriate services to specific categories of persons in need, as long as they have a child who is eligible for TANF. Allowable services include counseling, case management, family reunification services, parenting skills training, peer support, childcare, transportation, and employment assistance. Room and board, counseling, and most "wrap-around" services of drug and alcohol treatment can be funded through TANF.

Many states have large surpluses of TANF funding in reserve. In New York one of the states that opted out of the ban on using TANF funding for individuals convicted of drug felonies -- \$5 million of unspent federal TANF funds has been allocated on an annual basis to divert from prison, offenders who are parents of dependent children, and to expand and improve the services available to help them gain stable employment in the community.

Programs supported in New York with TANF funding include the Woman's Prison Association - the oldest, largest, and most diversified agency in the country that provides social services to women in the criminal justice system, and the Center for Employment Opportunities - a program that delivers comprehensive employment services for offenders: pre-employment training; paid transitional employment; and job placement. In Washington, DC, the Our Place program uses TANF funds to help women offenders reunite with their families, resettle in the community, and find decent housing and jobs.⁶²

iii. Elderly Prisoners

Another group of prisoners for whom the costs of imprisonment often outstrip the benefits are the elderly. At the end of 2000, there were about 44,200 prisoners in state or federal prisons aged 55 or older. Their number has more than doubled over the past decade.⁶³ With more and more

prisoners serving longer prison sentences, this population will expand rapidly unless something is done to reverse the trend. The Census Bureau estimates that, within the next decade, this age group will make up 20 percent of the U.S. prison population, and 30 percent by 2030.⁶⁴

As offenders age, beyond a threshold at least, they "age-out" of their crime-prone years. A survey of state and federal prisons conducted by the National Center on Institutions and Alternatives found that the majority of elderly prisoners (52 percent) are incarcerated for nonviolent offenses.⁶⁵ The costs for incarceration of older offenders, estimated at \$69,000 per year, are three times the \$22,000 average it costs to keep younger, healthier offenders in prison.

The primary reason for the higher cost is the greater health care needs of older prisoners, many of whom require intensive medical services and constant bed care. Even if originally sentenced to prison for a violent crime, physically debilitated, aged prisoners obviously present little current risk to public safety. NCIA staff estimate that a conservative prison release policy that would target only nonviolent offenders over the age of 55 who have served at least one-third of their sentence would save more than \$900 million in annual prison costs.⁶⁶ As a release valve for costly elderly offenders, NCIA has recommended that states consider compassionate release and/or home detention options for nonviolent offenders beyond a certain age. Recently, the state of **Virginia** has initiated a release program for elderly inmates called the Conditional Release of Geriatric Inmates provision.⁶⁷

B. Drug Policy Reform

Efforts to reform drug policy and abolish mandatory sentences have received support across the political spectrum. The 1996 drug law initiative in Arizona was supported by a phalanx of conservatives including former U.S. Senator Barry Goldwater who, as the Republican nominee for President in 1964, inveighed against "crime in the streets" More recently, President George W. Bush stated, I think a lot of people are coming to the realization that maybe long [mandatory] minimum sentences for first-time users may not be the best way to occupy jail space and/or heal people from their disease. And I'm willing to look at that."⁶⁸

Prison Reduction Estimates from Drug Policy Reforms

California:	36,000
Florida:	10,200
Ohio:	3,100

Source: Legislative Analysts' Office (1999); Campaign for New Drug Policies (2001)

i. The Campaign for New Drug Policies

As was mentioned above, California voters put drug law reform squarely in the center of the national criminal justice policy map in November 2000 as they voted 61 percent approval for Proposition 36 - a sweeping measure sponsored by the Campaign for New Drug Policies that removed prison as a sentencing option for most offenders convicted of nonviolent drug possession. Petty drug offenders are now being sent to community-based treatment in lieu of incarceration in a jail or prison facility. Likewise, most probationers and parolees who violate a drug-related condition of community release are now being sent for treatment instead of incarceration. Proposition 36 allocated an annual budget of \$120 million to the state's Department of Alcohol and Drug Programs for expansion of substance abuse treatment services. Prior to passage of Proposition 36, the California Legislative Analyst's Office projected that implementation would save \$100-150 million in prison costs annually, avoid construction of at

least one new prison, and divert as many as 36,000 new prisoners and probation and parole violators to treatment programs annually.⁶⁹

The California reform was modeled on Proposition 200, a diversion-to-treatment initiative approved in 1996 by 65 percent of the popular vote in the conservative state of Arizona. A recent assessment of Proposition 200 by the Arizona Supreme Court reports high treatment success rates (62 percent successfully complied with the requirements of their treatment program). Nearly \$7 million was saved during fiscal year 1999 by diversion of Arizona drug offenders from incarceration.⁷⁰

The Campaign for New Drug Policies plans to spread the success of the California and Arizona initiatives by mounting ballot initiatives in three new states in 2002. The CNDP has been building on a string of electoral drug reform victories since California voters approved a CNDP-sponsored (medical marijuana) initiative in 1996. Initiative campaigns are underway in Ohio and Florida, and one is about to be launched in Michigan. Opinion polls in these states indicate that voters strongly support substitution of substance abuse treatment for incarceration.

In fiscal year 2000, more than 20,000 people in Florida were convicted of felony drug possession. While more than half of these offenders were placed on probation, about 10,000 were incarcerated. More than 2,000 were sentenced to prison and thousands more were jailed.⁷¹ The Florida initiative, which requires 488,000 valid voters signatures to be placed on the November 2002 ballot, is modeled closely on California's Proposition 36, mandating treatment for first and second-time convictions for simple possession of drugs or drug paraphernalia.

More than 3,000 offenders are incarcerated on felony possession charges each year in Ohio. Eighty-five percent of them were sentenced to state prison. The Ohio initiative, also closely modeled on Proposition 36, requires substance abuse treatment instead of incarceration for nonviolent offenders convicted of drug possession. Those who fail in treatment could be re-sentenced to prison.⁷² The drive to obtain the 335,422 signatures necessary to place the measure on the November 2002 ballot is about to begin.

The CNDP is kicking off an effort to roll back mandatory minimum drug laws in Michigan that will build upon earlier successes by another organization, Families Against Mandatory Minimums (FAMM). The Michigan initiative would amend the state constitution to provide treatment instead of jail for nonviolent users convicted of drug possession, but it would also revise the prison sentences now required for low- and middle-level dealers. A new sentencing commission would be established to revamp the current guidelines for sentencing drug offenders and for handling drug-related probation and parole violations. The initiative would also require funding (\$120 million over six years) to support the work of the commission and establish new drug treatment programs.

Impact estimates compiled by CNDP staff indicate that these drug reform initiatives would have the greatest impact in Florida, where 10,184 offenders would be diverted from a jail or prison sentence. In Ohio, the total diverted is estimated to be 3,135. No estimate can be made for Michigan because the proposed sentencing commission's work would first need to be completed before the impact of new guidelines could be modeled.⁷³

ii. Drug Courts

Steven Belenko, Senior Research Associate at the National Center on Addiction and Substance Abuse, says that while relatively few drug courts have been evaluated, the results to date provide evidence that both drug use and criminal activity are reduced while offenders are under drug court supervision.

Processing of cases through drug courts lowers criminal justice costs compared with traditional handling, primarily due to less reliance on pretrial incarceration. It is less clear how drug courts affect long term changes in the lives of participants (due to deficient quality in research design and data collection) but there is initial evidence from drug court evaluations of lower rates of drug use and less recidivism after leaving the drug court program.⁷⁴

While there is evidence that drugs courts save local pretrial jail space by speeding up court processing of drug cases, there is no solid information about whether drug courts are diverting offenders to treatment who would otherwise be sentenced to prison. Moreover, if offenders who fail in treatment are punished with long prison terms, any correctional cost savings produced by diverting them to treatment may be eroded.

Still, the drug court concept has been widely embraced by judges across the U.S. since 1989 when then-State's Attorney Janet Reno sponsored the first drug court in Dade County. By January 2000, there were 449 drug courts in the U.S. If the positive track record reported by Belenko holds up in more in-depth research, eligibility for drug courts should be broadly expanded to target offenders with more serious criminal records, including those charged with more serious drug-related crimes.⁷⁵

C. Comprehensive Sentencing Reform

Simply providing resources for drug courts and community treatment programs will not necessarily have a major impact on crime rates or state prison population levels. These ambitious goals require that state policymakers think long and hard about who really should be sent prison, and for how long - and then take effective steps to address the twin problems of prison sentences that are too long, and offenders who are unnecessarily recycled back to prison after release.

A study recently completed by researchers at the Vera Institute of Justice, looked at the effects of different elements - crime patterns, economic and demographic factors, sentencing policies, and criminal justice politics - on state incarceration rates, prison admission rates, and average sentence length in 1997. They found that factors that lie outside the realm of sentencing policy (crime rates; the proportion of African Americans in the population; and the ideologies favored by a state's citizens) have had a greater influence on incarceration rates than two decades of sentencing policy reforms that were deliberately designed to do so: determinate sentencing, mandatory sentencing, and truth-in-sentencing laws.

Just one sentencing policy reform was found to be consistently associated with *lower* rates of prison admissions and incarceration rates: presumptive sentencing guidelines. This type of reform was estimated to lower a state's incarceration rate by 72 per 100,000 residents and to lower the prison admission rate by 55 per 100,000.⁷⁶

As the federal experience shows, sentencing guidelines can be designed to produce precisely the *opposite* effect - increasing the incarceration rate -- if they are intended to incorporate a strategy to increase reliance on incarceration, rather than to control prison populations. But experience with guidelines in the state of North Carolina provides a good example of how a sentencing structure that is expressly linked to prison capacity can reverse patterns of over incarceration.

State sentencing guidelines went into effect in North Carolina in 1994. By June of 1995, more than half of the courts' caseload were "new law" cases. The impact of this law has diverted 10,000 to 12,000 offenders each year from prison sentences to non-custodial penalties involving treatment and/or strict community supervision. Before the reform was introduced, 44 percent of sentenced felons were receiving a prison term. After implementation, that rate fell sharply to just 29 percent.⁷⁷

In 1980, North Carolina had the highest incarceration rate in the South. Today the state has the second lowest rate in the region. North Carolina is the only state in the U.S. that has achieved a steady decline in its rate of incarceration over a period of years. Between 1995 and 1999, the state's incarceration rate fell every year. By 1999, the rate of decline reached 10 percent. During this same period the incarceration rate grew by 14 percent in the Southern U.S., by 16 percent for the U.S. as a whole, and by 31 percent for the federal prison system under the more punitive federal guidelines system.⁷⁸

While drug law reform continues to be hotly debated across the U.S., North Carolina's sentencing policy has quietly been shifted away from incarceration of drug offenders in favor of treatment in the community. 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. Sentencing data from the courts in subsequent years (1997-99) show that the proportion of drug offenders imprisoned fell to 17 percent, while the number of months imposed dropped to nine.⁷⁹

North Carolina Success: Change in Incarceration Rate, 1995-99

North Carolina:	-10%
Southern States:	+14%
Federal Prisons:	+31%
U.S. Average:	+16%

Source: Bureau of Justice Statistics, (2000)

Felons convicted of serious violent crimes are now substantially more likely to receive prison terms and the average length of the sentences served by these offenders has increased, yet North Carolina's prison population remains within the state's institutional capacity by a comfortable margin. At the end of 1999, the prison system maintained an operating capacity of 32,344, and held 31,086 prisoners.⁸⁰

This small miracle was accomplished without producing a crime wave. North Carolina has - along with the rest of the country - enjoyed a reduction in crime rates since 1991, with a 12 percent drop in violent crime and a nine percent drop in property crime.

Crime policy has been largely de-politicized in North Carolina since the reform was introduced. Sentencing guidelines have brought a great deal of stability to the system. The impact of proposed sentencing reforms can be projected with confidence; sentencing debates are generally focused on the fiscal impact of any proposed changes; proposals to "get tough" have largely faded while the dollars saved in correctional costs are shifted to the education budget.

Crime policy has been largely de-politicized in North Carolina since the reform was introduced.

D. Parole Reform

As *get tough* policies have shaped correctional practice in the criminal justice system, use of parole release has sharply declined. By the end of 2000, 15 states had abolished parole release and five other states had placed restrictions on parole release for prisoners sentenced for certain violent offenses. Elimination of parole release fit nicely with conservative's demands that the system "get tough" on offenders. It also spoke to the dismay of liberals who believed that the system was arbitrary and discriminatory in its impact on prisoners. But whatever the shortcomings

of discretionary parole release, its retention has always provided a primary mechanism for control of prison population levels - a safety valve to avert inhumane and dangerous levels of prison overcrowding.

From a policy maker's standpoint, parole reform options can be attractive as a prison population control mechanism because they can often be implemented without the need for legislation. "The major advantage to reforms that rely upon parole board decision-making is that they are administrative," stated James Austin, Director of the Institute on Crime, Justice and Corrections at George Washington University, "That means that they can be implemented easily this year, without the need for lengthy legislative battles."⁸¹

Parole Reforms can be implemented quickly, without the need for lengthy legislative battles.

i. Reforming Parole Release

For states that have retained discretionary parole release, increasing the rate at which parole is granted to low-risk prisoners can unlock immediate reductions in correctional costs, provided the increase in paroles is large enough to allow for shutting prison housing units - or even closing prisons.

The **Texas** Parole Board first adopted parole guidelines in the late 1980's, but patterns of parole decision-making indicate that these guidelines had little or no impact. In 1991, the board approved about 80 percent of the prisoners who came up for parole. By 2000, that rate had fallen to around 20 percent. That year, the Texas Department of Criminal Justice projected a need for more prison beds, but key legislative leaders indicated that a revamping of parole policies would be preferable to new construction.

According to Tony Fabelo, Director of the Texas Criminal Justice Policy Council, the Texas Parole Board, under Governor Rick Perry (R), began making more systematic use of their release powers, identifying more prisoners who were good candidates for parole. By September 2000, the parole approval percentage rate had risen to the upper 20's. Even before these steps were taken, parole agents had been urged to make more use of effective alternatives to parole revocation, utilizing intermediate sanction facilities and other preventive measures to handle parolees who were doing poorly under community supervision. The rate of parole revocations fell sharply, from a monthly average of 1,062 parolees revoked prior to the new system of reliance on intermediate sanctions, to an average of just 781 since mid-summer 2000.

The impact of these new parole policies has been dramatic. In September 2000, the prison population in Texas had reached 151,000. By the end of December 2001, the prison population was just 143,302. Fabelo says that most of the decline in the state prison population is due to changes in the state's parole policies. With 6,000 empty prison beds, the prison system is now operating with plenty of reserve capacity. The reduction in state parole revocations has more than made up for a recent increase in local probation revocations (a system not under the control of state officials). New parole guidelines were formally introduced in September 2001 that are intended to stabilize and perpetuate the systemic improvements begun in 2000.⁸²

In **Ohio** a combination of sentencing and parole guidelines has served to stabilize and reduce the state's prison population. On July 1, 1996, Ohio's judges were introduced to a sweeping sentencing reform. The state's legislators adopted sentencing guidelines that embraced the concept of "truth in sentencing" and ended parole release and "good time." Senate Bill 2 prodded judges to impose long prison sentences for repeat violent offenders. But at the same time, it encouraged them to use community sanctions instead of prison for many less-serious nonviolent offenders.

After SB2 was implemented, there were noticeable shifts in sentencing patterns that seem to conform to the intended effect: admissions to prison of offenders convicted of theft crimes dropped from 22 percent to 16 percent, while admissions for violent crimes rose, from 26 percent to 38 percent. There was an overall decline in prison admissions at first (from 19,556 in 1996 to 17,681 in 1998) but then admissions rebounded and by 2001, prison intake had returned to 1996 levels.⁸³

But then a second factor came into play when in 1998, in line with the new sentencing guidelines, the state adopted new parole guidelines to govern release of "old-law prisoners" who had been sentenced to prison before the SB2 reforms. The parole guidelines did not simply mirror the SB2 approach to sentencing offenders. They embodied a finely graded, risk-management approach. Offenses were ranked on a "seriousness scale" of one to thirteen. Prisoners also received a "risk score" that placed them in one of four levels according to the predicted likelihood of re-offending. On the basis of offense and risk, each offender would fall into one of 52 grid boxes, each with a presumptive term to be served before gaining parole release.

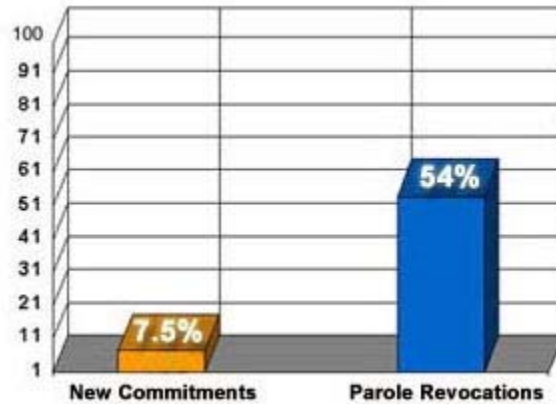
While the most serious, high-risk offenders would end up serving more time before parole, most prisoners fell into the relatively low-seriousness, low-risk category. The average time served for "old law" (pre-SB2) prisoners was expected to decline by as much as six months. The new guidelines were put into practice in the summer of 1998. By 1999 the number of prisoners that were paroled (6,150) had almost doubled over the number paroled in 1995 (3,224). The average number of prisoners paroled per month declined after 1999, but remains well above pre-guidelines levels.

Since 1998, Ohio has stood out in contrast to the steady growth of state prison populations in the Midwest region of the U.S. Against the region's average growth rate of 3.8 percent by the end of 2000, Ohio enjoyed a 5.7 percent decline in prison population. While it is not possible to pinpoint the precise role played by each reform, it is clear that deliberate shifts in criminal justice policies have helped Ohio officials gain a more firm control over Ohio's prison population.

ii. De-escalating Parole Violations

But parole release decisions are just part of the complex parole system. Parole *supervision* - some form of which remains in place even in most states that have abolished discretionary parole *release* - has become a major contributing factor in hiking prison population levels. Nationally, between 1990 and 1998, the number of "new sentence" offenders sent to prison rose by just eight percent, while the number admitted for a parole violation shot up by 54 percent.⁸⁴

Figure 4: Changes in Admissions to Prison, 1990 to 1998



About 40 percent of state prison admissions around the country are offenders returned to prison for a violation of parole.⁸⁵ In **California**, parole *release* is denied to all prisoners but those few with "indeterminate life" sentences. But all prisoners are placed under post-release parole *supervision* after completing their prison terms. In 1997, 104,000 offenders were under parole supervision in California, but nearly 80 percent were failing to meet the terms and requirements of parole. As a consequence, 65 percent of all prison admissions that year were for violation of parole.⁸⁶ While the vast majority (76 percent) of California's parole revocations involved some kind of underlying criminal charge, many of these crimes are relatively minor events and relatively few parolees are returned to prison with a new prison sentence.

When revoked to prison for technical violations, California parolees spend an average of just 5.3 month's time before they are re-released to the streets. Even including those returned for new crimes, the average time served behind bars is just 8.5 months. These short revocation periods suggest that many of these revoked parolees are being returned to prison for fairly minor acts.

These high rates of return to prison in California are also very expensive. Parolees returned for technical violations *alone* comprise about 17 percent of California's 158,759 prisoners. Parole violators with sentences for new crimes comprise another 25 percent. By far the major cost burden of the parole supervision system shouldered by California taxpayers is the expense of incarcerating parole violators. This cost totaled almost a billion dollars in fiscal year 1999.⁸⁷

To avoid this waste of correctional resources, many community supervision agencies responsible for correctional management of probationers and parolees are working to revamp their responses to violations of supervision conditions. Studies of the reasons that cause supervision agents to file motions to revoke community supervision indicate that failed drug tests and failure to participate in treatment programs account for almost half of these violations. Another ten percent are filed simply for "failure to report."

To reduce the cost burden of incarcerating technical violators and provide more effective responses to the problems that underlie most supervision failures, application of intermediate, "graduated" sanctions short of prison and reducing parole terms for low-risk parolees is a combination that makes good sense. Experience with implementation of such reforms shows that it is possible to reduce admissions to prisons and jails, speed the placement of offenders in need of treatment in community programs, and unburden busy court and parole board dockets by sharply cutting the number of actual revocations.⁸⁸

In 2000, **Kansas** legislators mandated that probation and parole violators be sanctioned within the state's community corrections system rather than sent to prison. They also reduced the length

of community supervision for offenders convicted of low-level offenses, in many cases cutting supervision time by half. Senate Bill 323 also broadened the target ranges for community corrections under the state's sentencing guidelines; provided additional funding to establish three new day-reporting centers; and provided extra funds to target probation and parole violators. The Kansas Sentencing Commission estimates that 774 prison beds have been held open for more serious offenders through these reforms.

In Kansas, 774 prison beds have been saved through parole reforms.

iii. Personal Responsibility Parole

Martin Horn, New York City's Probation Commissioner and the former head of Pennsylvania's Corrections Department and New York State's Parole Division, has proposed a yet more radical solution to the problems associated with parole supervision and revocation. Horn questions the capacity of the parole supervision system to "fix" parolee behavior. While he insists that prisons should teach skills (reading, sobriety, job-readiness) essential to post-prison success, he argues that prisoners themselves should be responsible for keeping a promise to obey the law after release (the classic sense of "parole").⁸⁹

Horn advocates abolishing parole altogether. He would require judges to fix the exact terms of the sentence up front - a prison term if warranted, followed by a set period of half-way house residence or community release under a "diminished liberty status." Under Horn's system, the responsibility for obtaining post-release services would pass to offenders themselves, through a grant of vouchers for purchase of substance abuse treatment, job assistance, education, family counseling, etc. Responsibility for enforcing law-abiding behavior would be transferred to local police authorities.

Horn points out that the parole-supervision system is costly (\$190 million per year in New York) and drains resources from more socially useful purposes. Providing a \$2,000 service voucher for each released from New York's prisons would free up \$130 million annually for re-investment in more fundamental services that can prevent crime and promote public safety. And that's not counting the huge additional savings from averting re-imprisonment for failure to meet parole reporting requirements and other technical *housekeeping* rule violations.

While states might not be willing to entirely eliminate parole supervision, as Commissioner Horn suggests, placing a portion of lower risk parolees on "summary" (unsupervised) parole might be more attractive. According to an analysis by California's Legislative Analyst, "direct discharge" eliminating post-release supervision for non-serious, nonviolent, non-drug sale offenders would save the state \$98.5 million in fiscal year 2003.

E. Policy Reforms Under Consideration around the Country

As state legislators begin again to grapple with "Post 9/11" budget deficits, criminal justice officials and policy advocates in many states have already formulated proposals for new reforms designed to address inefficient allocation of correctional resources.

i. Policy makers proposals

Washington

Governor Gary Locke (D) instructed Washington State agency heads to anticipate 15 percent cuts as they prepare budget plans for the coming fiscal year. The Department of Corrections

proposed a raft of sentencing policy changes that would shorten the average length of stay in prison for nonviolent offenders, and reduce or eliminate their community supervision after prison:

- All Level 8 drug offenses (requiring 21-27 months in prison under Washington's sentencing guidelines) should be reduced to Level 6 (requiring 15-20 months), and a provision -- "triple scoring" -- that nearly doubles the prison term for each prior drug offense, should be eliminated.
- "Double scoring" under the guidelines should be eliminated for offenders convicted of Burglary 2 and Residential Burglary, thereby reducing sentence lengths.
- Potential "earned time" off prison sentences should be increased from one-third to fifty percent for drug and nonviolent property offenders, allowing prisoners to "earn" their way out of prison sooner.
- Low and medium-low risk prisoners should be released when they reach their earned release date.
- Pre-sentence investigation reports should be eliminated for all offenders except those convicted of sex offenses.
- Post-prison supervision for low and medium-low risk prisoners should be eliminated.
- Post-prison supervision for the purpose of collecting legal financial obligations should be eliminated.
- "Community custody" should be eliminated for offenders that receive non-prison sentences, excepting those serving a sex offender sentencing alternative, or a drug offender sentencing alternative.

Taken together (with changes affecting prison sentences applied retroactively), these policy changes would have broad impact, reducing the state's prison population by 1,872 (allowing for facility closures) and the community supervision caseload by 53,000, and producing an estimated overall budget savings of \$74.7 million.

Secretary of Corrections Joseph Lehman worked with the state's prosecutors to develop these proposals. The King County Prosecutor, Norm Maleng, participated in drafting legislation to reduce the base sentence range for drug offenses last year. SB5419 passed the state Senate, but failed to win approval in the House. Maleng continues to support the DOC proposals.

Prosecutors in Washington State support legislation to reduce imprisonment of nonviolent offenders.

Some of the state's largest professional organizations are demanding an end to the drug war in Washington. A King County Bar Association report that recommends treatment instead of prison for drug users has also won endorsement by the Washington State Bar Association, the Washington State Medical Association and the Washington State Pharmacy Association.⁹⁰

California

The California prison population peaked at 162,000 in 1999, when it began to decline to the current level of 158,900. As discussed above, since last July, thousands of people arrested for drug possession have been diverted to treatment programs under Proposition 36. Corrections officials are forecasting a continued population decline to 155,721 by the middle of 2003 - but they claim that by 2007 the population will have increased again to more than 164,000.⁹¹

The California Legislative Analysts Office⁹² has put 10 different correctional cost-saving options on the table for consideration by legislators as they downsize the state budget during the upcoming session:

- **Early release of inmates from prison** - reductions of one to 13 months in the time served by nonviolent, non-serious prisoners (FY2003 savings estimates range from **\$20.8** million for a one-month reduction, to **\$270** million for a 13 month reduction).
- **Rejection of short-term commitments** - nonviolent, non-serious offenders with less than three to 12 months to serve in prison would be sent directly to parole supervision instead (FY2003 savings range from **\$1.8** million for those with 0-3 months to serve, to **\$81.7** million for those with 0-12 months to serve).
- **Increase "Work Time" credits** - two-for-one day credits for nonviolent, non-serious prisoners assigned to work camps, day-for-day credits for such prisoners in reception centers or those who are involuntarily unassigned (FY2003 savings of **\$15.3** million; **\$11.8** million; and **\$6.7** million respectively).
- **Remove state prison as an option for minor felony offenses** - eliminate a prison sentence for some property and drug offenses such as "petty theft with a prior," forgery/fraud; receiving stolen property; grand theft (FY2003 savings at **\$79.3** million). Such offenders would still be jail eligible.
- **Direct discharge without parole** - eliminate post-release supervision for non-serious, nonviolent, non-drug sale offenders (FY2003 savings of **\$98.5** million).
- **Home detention for specified elderly inmates** - release of non-serious, nonviolent offenders aged 60 and older to home detention with electronic monitoring (FY2003 savings of **\$1.4** million).
- **Early discharge from parole** - terminate post-release supervision for non-serious, nonviolent, non-drug-sale offenders who have 1 to 12 months of (violation-free) "clean time" on parole (FY2003 savings range from **\$88.7** million for those with one "clean" month to **\$23.4** million for those with 12 "clean" months).
- **Release to parole for specified elderly inmates** - parole of non-serious, nonviolent offenders aged 60 and older (FY2003 savings of **\$3.4** million).
- **Reject civil narcotics addicts** - civil narcotic addicts would not go to prison (no saving estimate available)

- **Allow nonviolent parole violators to remain in the community** - parolees with nonviolent parole violations would remain in the community pending their revocation hearings (no savings estimate available).

Each year, the California Legislative Analysts Office and Department of Corrections conduct this type of analysis of corrections cost savings options as a sort of "prison cost savings audit" for policy maker's review. State officials around the country would do well to require such analyses, so that they can evaluate a broad range of possibilities when considering annual prison expenditures, particularly during difficult fiscal times such as these.

States should have their budget analyst prepare annual "prison cost savings audits" for policy maker's review.

Nelson Rockefeller launched the U.S. drug war in 1973 when he pushed a program of mandatory minimum sentencing 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 is 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 mandatory prison terms allowed under conviction for Class B drug offenses (minimum 3 years to life). But the Second Felony Offender law (enacted in tandem with the Rockefeller Drug Laws) mandates a prison sentence for a person convicted of two felonies within ten years, no matter the circumstances, or whether either or both offenses were nonviolent. Taken together, the effect of these harsh sentencing laws has flooded New York's prisons with petty drug and nonviolent offenders, helping to swell the prison population from 21,829 in 1980 to 70,198 in 2000.

About 30,000 people are charged with a drug felony each year in New York. More than a third of the state's prison population is made up of drug felons, most of who have never been convicted of a violent crime. The drug laws fall particularly harshly on women and people of color. Sixty percent of New York's women prisoners were sentenced for a drug crime. Ninety-four percent of those incarcerated in New York for drug crimes are African Americans and Latinos.⁹³

Last year the Legal Action Center published a report that looked at the impact of various proposals for reform of the Rockefeller Drug Laws and the Second Felony Offender Law.⁹⁴ Using prison admission data for 2000, the LAC researchers provided estimates of the number of individuals sent to prison for drug offenses and other nonviolent crimes that might have been eligible for diversion if judges were given greater discretion in sentencing.

A relatively conservative proposal put forth by the New York State Assembly would have made most of those convicted of a nonviolent drug offense diversion-eligible. If it had been enacted, this reform might have averted a prison sentence for as many as 4,872 offenders. Another long-standing proposal favored by many criminal justice reform advocates would have extended eligibility for diversion to *all* those convicted of nonviolent crimes. Under this plan, as many as 8,672 offenders might have been sentenced to drug treatment or other appropriate forms of community supervision.

Efforts to amend or repeal the Rockefeller Drug Laws recently received a boost from an unexpected source, the law's Republican, tough-on-crime author, former Senator John Dunne. In a 2000 article in *US News and World Report*, Dunne stated "We have been left with something that is not only unjust, but also horrendously expensive."⁹⁵

Two other legislative proposals have been introduced that would impact the state's prison population. The proposed New York State Geriatric and Older Prisoners Act would provide "geriatric parole," electronic detention, and nursing home care for elderly prisoners who no longer

pose a threat to public safety. A second bill would provide for discretionary awards of "merit time" for prisoners that maintain a good behavior record in prison.

Michigan

Of the almost 10,000 drug cases disposed in Michigan courts in 1999, 2,512 resulted in a prison sentence and 1,452 resulted in jail. In 1998, Families Against Mandatory Minimum's Michigan Project successfully won a reform of Michigan's "650 Lifer" law, which required a mandatory sentence of life without parole for individuals convicted of delivery of 650 grams or more of cocaine or heroin. This was one of the harshest drug laws in the nation. The new law requires judges to impose a sentence of "life or any term of years, but not less than 20." In addition, the "650 Lifers" already in prison became eligible for parole at 15, 17 1/2, or 20 years (depending on whether they were repeat offenders, and/or cooperated with law enforcement).

Families Against Mandatory Minimums has been working since the changes were made in the "650 Lifer" Law to educate Michigan policymakers and the public about the need for comprehensive drug law reform. Two bills currently under review, HB5394 and HB5395, sponsored by Representative Bill McConico, Minority Vice-Chairman of the House Criminal Justice Committee, would allow judges to use the state's current sentencing guidelines if a mandatory minimum falls above or within the sentencing range applicable to the defendant. In addition, the use of mandatory consecutive sentencing ("stacked sentences") would be limited to major drug dealers. The bills also repeal "lifetime probation" for the lowest-level drug offenders.

Kansas

The Drug Policy Subcommittee of the Kansas Sentencing Commission is proposing a "Proposition 36" style reform that would divert nonviolent offenders convicted of possession offenses from prison sentences to mandatory drug treatment. They also propose to end a current policy under the Kansas sentencing guidelines that requires enhancing the offense severity classification level for second, third, and subsequent possession convictions. The effect of these reforms would be to increase prison bed savings from about 400 beds in the first year, to more than 800 beds over ten years.

Drug policy reforms in Kansas will save an estimated 800 beds.

New Mexico

In New Mexico, Governor Gary Johnson (R) expects that the state's legislators will be responsive to proposals to ease the state's drug laws. Johnson will support legislation he first proposed last year that would legalize medical marijuana; decriminalize possession of small amounts of the drug; and eliminate mandatory minimum sentences for some drug crimes. The following three bills have been introduced this session by Democrats in the Legislature, all with the Republican Governor's support:

- A Proposition 36-style diversion to treatment law that would apply to first and second-time offenders who possess two grams or less of cocaine, heroin, or other "hard drugs," or one to eight ounces of marijuana. The bill would reduce such offenses to a misdemeanor, requiring a sentence of conditional discharge, with a referral to treatment.
- A law that would make possession of less than one ounce of marijuana punishable by a fine of \$100.
- A repeal of the mandatory sentence enhancement required if a prosecutor charges an offender as an habitual offender. The enhancement would become

discretionary, allowing judges to determine whether or not it would be appropriate.⁹⁶

Massachusetts

The Massachusetts Sentencing Commission has proposed new guidelines, incorporated in Senate Bill S1004 sponsored by Senator Marian Walsh, a member of the Senate Judiciary Committee. Under the bill, a judge could "depart" below a statutory mandatory minimum sentence under limited circumstances, although prosecutors could appeal this departure. These reforms have received support from groups ranging from Families Against Mandatory Minimums to the Massachusetts Taxpayers Foundation. Michael Widner, President of MTF recently testified before the state legislature, saying, "The increased use of intermediate or alternative sentences, which range from placement in a halfway house to financial restitution, will enable the state to hold people accountable for their actions without imposing an unreasonable financial burden to the Commonwealth."

Last fall the House passed a more limited reform, and the Senate is expected to act on the issue in the spring of 2002. Prior to the introduction of S1004, reform efforts had stalled because the state's district attorneys opposed restoring a modest measure of discretion to judges.

ii. Policy Advocate's Proposals

Michigan

While Governor John Engler moves to close prisons in Michigan, the state's prison population is growing at a rate of 120 prisoners each month. With 47,255 prisoners confined in 44 prisons and 11 prison camps, annual correctional costs of \$1.6 billion account for 17 percent of the state budget - about twice the national average and up from just 3 percent in 1980. Michigan's prison population is expected to continue trending up to nearly 53,000 by 2005.⁹⁷

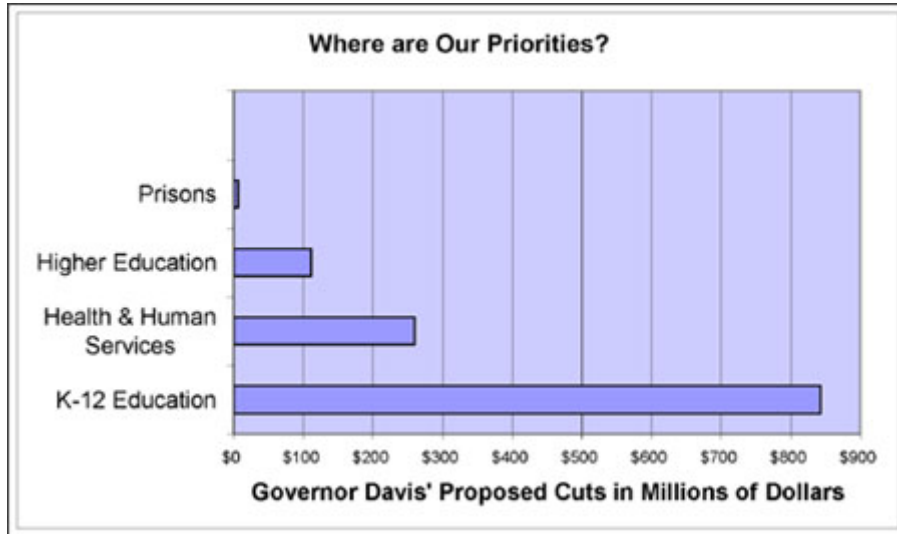
Barbara Levine, Director of the Citizens Alliance on Prisons and Public Safety (CAPPS) points out that as it stands, Michigan's prison closings will just shuffle the prisoners around to other prisons where they will be double-celled. Forty-four percent of the state's prison population consists of offenders who either are being held in prison past their parole eligibility date, or who have been returned to prison on a parole violation. The rate of parolees returned for technical violations has risen from 7 percent in 1980, to 23 percent in 2000.

CAPPS proposes that Michigan's parole guidelines be revamped to create a presumption of parole release at a prisoner's date of eligibility, and that returns to prison not be allowed for technical violations unless intermediate sanctions (increased supervision, substance abuse treatment) have been tried and have failed.

California

Governor Gray Davis has asked that state agencies present plans to reduce their budgets by 15 percent, but he has yet to back away from a long-planned 5,000-bed maximum-security prison slated for construction in Delano, California. In August 2000, a broad coalition of environmental and civil rights groups - including state chapters of the NAACP; the Center on Race, Poverty and the Environment, Critical Resistance, and the California Prison Moratorium Project -- filed a lawsuit to halt construction at Delano. The judge who heard the case ruled that the CDC's environmental review process had been inadequate -- not considering the cumulative impact of the prison given other past, present and future development projects in the area and he ordered that a new review be conducted.

Figure 5: California Governor Davis' Recommended Budget Reductions 2001/2002



Source: *Prison Expansion in a Time of Austerity*, The Justice Policy Institute, 2002

The California Department of Corrections recently received more than 1,000 responses to a request for comment on its revised environmental review of the planned \$335 million prison. Complaints were lodged by the City of Delano, the Delano Joint Unified School District, and the California Department of Transportation that the impact of the prison on the local schools and traffic patterns have not been sufficiently explored or mitigated. But far more fundamental questions were raised by prison reform advocates like Rose Braz, Director of Critical Resistance, who disputes the need for a new prison when the state is considering closing down existing prisons, and cutting state support for education and health care. According to a report by the Justice Policy Institute, by not constructing and filling the Delano prison, the state would save \$335 million in construction costs, \$300 million in interest on construction bonds, and \$129 million in annual operating costs.⁹⁸

Oregon

Ballot Measure 11, approved by Oregon's voters in 1994, mandated longer prison terms for most serious violent offenders and set the state's corrections budget on a collision course with previous ballot initiatives that had slashed tax revenues across the state. Measure 11, which can only be modified by winning super majorities (3/5ths) in both houses of the state legislature, has fueled millions of dollars of prison construction already, and will require thousands more prison beds over the next few years. But at the same time, the state is facing a huge budget shortfall, and the budget must be balanced. Governor Kitzhaber has asked DOC officials to absorb a 6 to 7.5 percent budget cut. Department of Correction officials have proposing cutting the prison budget by \$70 million by cutting medical services, education programs, work programs, and food for prisoners and cutting training for newly-hired prison staff. Yet at the same time, DOC plans for new medium- and minimum-security prisons are moving forward. In this context, prospects for funding operation of the new prisons now on the state's drawing board due to Measure 11 are far from clear.⁹⁹ In the face of these developments, The Oregon Criminal Justice Reform Coalition has proposed an immediate moratorium on all new prison construction as well as on the opening of newly constructed prison housing units at existing prisons.

The Coalition favors keeping the minimum-security facilities in operation. Instead of building new prisons and making program cuts, the Coalition proposes increasing "earned-time" provisions that could shorten the time served for offenders now in prison, and confining prisoners with less than 18 months to serve in local community corrections facilities, nearer to their families. The group also proposes that a new "blue-ribbon" commission be established to study the state's "hodgepodge" of sentencing laws and guidelines, and to make recommendations about ways Oregon could focus correctional resources on preventing crime and promoting public safety.

V. Conclusion

The current budget crisis is compelling state officials to consider the effects of a quarter-century of "get-tough" criminal justice policies and to adopt more pragmatic, effective approaches to preventing crime and dealing with criminal offenders. Three major categories of reforms merit careful consideration as policymakers look for ways to reduce state prison population pressures and correctional costs:

- Repealing mandatory sentencing laws and restoring judge's discretion to determine which criminal offenders truly warrant long prison sentences, and which can be safely and effectively punished and rehabilitated in the communities where they live.
 - Replace prison terms with alternatives such as treatment and intensive supervision for those convicted of drug possession and other petty drug-related offenses.
 - Repeal "Three Strikes" and other habitual offender legislation so that judges can mete out just punishment in response to crime that is commensurate with the harm done to victims and to the community.
 - Create a sentencing presumption for treatment and/or supervision in the community for nonviolent offenders who bear primary responsibility for care of their children.
- Establishing new structures for reviewing and revising state sentencing policies and guiding judges toward the most efficient, effective utilization of available correctional options -- ranging from imprisonment to community supervision, substance abuse treatment, and financial penalties.
 - Appoint a sentencing commission to review the laws and policies that govern the sanctioning of criminal offenders.
 - Collect and analyze criminal justice data to examine the results of current laws and policies and require that the full impact of any proposed reforms be projected before action is taken.
 - Conduct a *prison cost savings audit* to create a menu of savings options for policy makers to consider.
 - Create structured sentencing guidelines that will shape sentencing practices within a system of efficient, effective sentencing options chosen by state policymakers to provide community justice and public safety.
- Creating a new system of post-prison responsibilities and supports for offenders after they are released from prison that will reduce the likelihood of reoffending, and promote stronger public safety nets and healthier economies in the communities to which they return.
 - Sharply reduce or eliminate parole supervision for nonviolent offenders.
 - Use intermediate sanctions to address technical parole violations rather than returning offenders to prison.
 - Create a presumption for parole release to healthcare services and/or supervision in the community for nonviolent offenders over the age of 55 who have served a substantial portion of their prison sentence.
 - Promote community re-investment initiatives that will target a portion of the resources saved by these reforms to reduce criminogenic conditions and promote public health and economic well being for families living in high-risk urban neighborhoods.

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