



Changing Direction?

State Sentencing Reforms

2004 – 2006

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The Sentencing Project works for a fair and effective criminal justice system by promoting reforms in sentencing law and practice and alternatives to incarceration. To these ends, it seeks to recast the public debate on crime and punishment.

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CHANGING DIRECTION? STATE SENTENCING REFORMS 2004-2006

“The principal and underlying reason why . . . prisons are overcrowded, cost a lot, and result in high levels of recidivism at the expense of public safety is that judges are sentencing too many non-violent offenders to prison, and sentencing some of them for too long a term.” – Roger K. Warren, National Center for State Courts¹

Between 2004 and 2006, at least 22 states enacted legislative reforms to their sentencing policies, or adopted policy changes affecting probation and parole revocation procedures.² As seen in the table on page 3, these changes focused on:

- diversion of drug offenders from incarceration through expanded treatment options;
- expansion of alternatives to incarceration for non-violent offenders;
- parole and probation reforms designed either to reduce time served in prison or to provide supervision options to reduce the number of revocations to prison; and,
- broader sentencing reform.

These reforms have been driven by a number of factors, including budget crises at the state level, the development and expansion of a range of programs offering alternatives to incarceration, and the falling crime rate. These state initiatives to limit prison population growth build upon a trend first evident several years ago.³

¹ Testimony before Little Hoover Commission, June 22, 2006.

² Sources for this report include the National Conference of State Legislatures, newspaper accounts, and consultation with various state legislature websites. This report is not intended to be an exhaustive collection of state criminal justice legislation implemented between 2004 and 2006. Rather, it is meant to highlight trends in policy over the three-year period.

³ See Ryan King and Marc Mauer, *State Sentencing and Corrections Policy in an Era of Fiscal Restraint*, 2002, The Sentencing Project; Judith A. Greene, *Positive Trends in State-Level Sentencing and Corrections Policy*, 2003, Families Against Mandatory Minimums; Daniel F. Wilhelm and Nicholas R. Turner, *Is the Budget Crisis Changing the Way We Look at Sentencing and Incarceration?*, 2002, Vera Institute of Justice.

At the same time, both established and newly enacted sentencing policies continue to exert upward pressure on prison populations in many states. These include the mandatory sentencing laws for drug and other offenses in most states, harsher sentencing provisions such as “three strikes and you’re out,” and cutbacks in parole release. During the 2006 legislative session, a number of states adopted harsher sentencing provisions for sex offenders as well, often increasing prison time for offenses already subject to harsh terms.

Thus, despite the many sentencing reforms adopted in recent years, the state prison population has continued to grow, increasing by 7% from 2000 to 2005. State policymakers concerned with escalating prison populations will need to address sentencing and parole policies with a multifaceted approach, incorporating an expanded use of alternatives to incarceration for low-level offenders, increased access to high-quality treatment, better funding for the agencies necessary to deliver vital social services, and a commitment to using incarceration only if other interventions cannot meet the goals of public safety or justice.

While much of the legislation highlighted in this report targets limiting the time served by individuals who have been convicted of low-level offenses, no long-term and sustainable reduction in the prison population will be possible without addressing the sentencing policies that contribute to long-term incarceration as well. Such sentences are too often disproportionate to the crime for which defendants have been convicted, they mandate imprisonment for a period far beyond which any tangible public benefit can be gleaned, and come at a significant fiscal and social cost. Thus, while the developments showcased in this report are encouraging, lawmakers hoping to build upon these successes will need to apply the lessons learned from these initiatives to a broad-scale examination of the use of incarceration.

State Sentencing Reforms 2004 – 2006

STATE	REFORM
Arizona	Expanded community supervision options as alternative to probation/parole revocation (2004)
Arkansas	Authorized early release from prison to community-based housing for certain persons (2005)
California	Expanded community supervision options to reduce probation/parole revocations (2005)
Connecticut	Repealed crack and powder cocaine sentencing disparity (2004); expanded diversion program for certain drug offenses; expedited parole eligibility review; called upon judiciary and corrections to reduce probation and parole revocations by 20% (2005)
Hawaii	Expanded diversion to treatment for certain drug offenses (2004); established a diversion program for persons convicted of a first-time property offense committed in furtherance of a drug addiction (2006); allowed persons convicted of a first-time drug offense before July 2004, who have completed treatment, to petition for an expungement of record (2006)
Illinois	Mandated treatment for certain persons prior to early merit release (2005)
Indiana	Established drug diversion program for certain drug offenses (2004)
Louisiana	Established drug diversion courts that allow for the dismissal of charges upon completion of treatment (2006); capped period of incarceration for first-time technical violation of probation or parole at 90 days (2006)
Maryland	Permitted early release from prison to community treatment for certain persons; established diversion system in which defendant can enter plea, complete treatment, and have entry of judgment struck from record (2004)
Michigan	Established drug court structure, criteria for diversion (2004)
Minnesota	Permitted early release from prison for persons convicted of a crime as the result of an addiction (2005)
Mississippi	Granted discretion to correctional field officers to suspend revocation of community supervision (2004); increased sentence reduction for participation in "trustee" program (2004); allowed conditional release from prison for terminally ill persons (2004); expanded parole eligibility for certain drug offenses (2005)
Montana	Authorized district courts to establish drug treatment programs (2005)
New York	Reformed Rockefeller Drug Laws by revising sentencing structure and permitted resentencing for certain persons currently in prison (2004/2005); declared reintegration into society as goal of sentencing (2006)
North Dakota	Expanded alternative sentencing options for certain drug offenses (2005)
Oklahoma	Authorized prosecutors to use discretion in recommending otherwise ineligible individuals to community supervision (2004); established intermediate sanctions program to reduce revocations of community supervision for technical violations (2005)
Oregon	Established program by which judge must be presented with pre-sentence report analyzing likely impact of disposition on future criminal offending (2005)
Pennsylvania	Authorized Department of Corrections to establish drug treatment program with blended custodial and community components (2004)
Texas	Granted prosecutors the discretion to charge certain state jail felonies as misdemeanors (2005); expanded treatment options for persons processed through drug court system (2005)
Utah	Expanded drug diversion sentencing options (2005)
Virginia	Facilitated the establishment, regulation of drug treatment courts (2004)
Washington	Expanded Drug Offender Sentencing Alternative (DOSA) program to include community supervision option; broadened eligibility requirement to participate in DOSA (2005); authorized study of use of electronic monitoring to expand community supervision options (2005)

DRUG TREATMENT AND DIVERSION

During the last three years, the most common reform undertaken by states to address population pressures in correctional systems was the expansion of options and funding for drug treatment. These reforms were often accompanied by a mandate to divert non-violent drug offenders from incarceration. At least 13 states passed legislation that either expanded the availability of existing treatment and diversion sentencing options or established new pathways for judges to employ alternatives to incarceration.

Nine states passed legislation that either established or expanded sentencing diversion options for drug offenders.

Connecticut

Connecticut expanded its diversion program for persons convicted of crimes involving drug sale or possession by permitting persons who have been diverted in a prior case to be diverted again. Prior to HB 5211, a person who had been diverted to drug or alcohol treatment previously was ineligible for a subsequent diversion. This change creates a second chance for a defendant, while providing expanded sentencing options for judges.

Hawaii

In Hawaii, confusion over past legislation establishing a drug diversion sentencing program resulted in a new bill clarifying the legal ambiguity by expanding the categories of defendants eligible for treatment. Lawmakers passed an omnibus substance abuse bill, which, among other provisions, established a diversion program for certain non-violent drug offenders. HB 2003 was passed despite a veto from the governor, who objected to a number of provisions, including the fact that the diversion program was available for persons convicted of prior non-drug offenses. In 2002, the Hawaii legislature passed a law creating diversion options for first-time, non-violent drug offenders. However, in the years following its passage, confusion arose as to whether persons with prior non-drug convictions were eligible. The

Hawaii Supreme Court ruled that they should be considered ineligible for the diversion option based on restrictions from other repeat offender sentencing statutes. In response to this ruling, HB 2003 was passed with the intention of expanding the availability of diversion to drug treatment for first-time, non-violent drug defendants with prior non-drug convictions. Lawmakers also made treatment available for first-time property offenders for whom the court has determined their offense was committed in response to a substance abuse problem (HB 3256). A person sentenced under this law may petition for an expungement of record upon successful completion of treatment and any other requirements of probation.

In addition to the diversion options that have been made available in the last few years in Hawaii, lawmakers have also addressed the collateral consequences that are frequently associated with a felony conviction. HB 2780 allows a person convicted of a first-time drug offense before July 2004 to apply for an expungement of the record of conviction upon successful completion of treatment.

Indiana

Legislators in Indiana joined the national movement to expand drug treatment options by passing HB 1437, which establishes a forensic diversion program to provide community-based treatment for eligible defendants. Persons convicted of a non-violent misdemeanor or Class D felony drug offense must plead guilty and will be assigned to two or three years of community-based rehabilitation, respectively, rather than incarceration.

Louisiana

Louisiana lawmakers established a new type of drug diversion model, with an emphasis on treatment and a deferment of adjudication. HB 1154 allows certain persons facing a charge for a drug offense to be assigned to treatment without a judgment of guilt being entered. The charge will be dismissed upon successful completion of treatment. In addition, the legislation notes that after dismissal, this charge “shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.” Moreover, any subsequent

criminal charges may not be combined with the dismissed charge to expose a defendant to a habitual offender sentence enhancement.

Maryland

Lawmakers devised a new plea system specifically for certain categories of drug defendants. In passing SB 194, lawmakers crafted a two-pronged approach to address the growing number of drug offenders in the state's prisons. First, the legislation contains a retroactivity provision, by which the Division of Parole and Probation can recommend persons currently serving a sentence for a non-violent offense for release to community treatment if they have served at least one-fourth of their sentence and have been determined amenable to drug treatment.⁴ Secondly, the legislature developed a diversion system in which prosecutors can make a motion (either self-initiated or through a request from the defense counsel) to accept a plea of "*nolle prosequi* for drug or alcohol treatment" for certain categories of eligible defendants. The law establishes a process by which a court may strike the entry of judgment and defer any further proceedings against the defendant upon successful completion of treatment. The bill also permits the defendant to petition for expungement upon the completion of the required treatment.

North Dakota

Senate Bill 2341 expands alternative sentencing options in that state as well. The bill establishes a pilot program to divert first-time defendants convicted for use, possession, manufacture, or sale to an 18-month probation sentence and a suspended sentence of incarceration. A pre-sentence investigation will determine eligibility for treatment, and if recommended, the defendant will be sentenced to treatment and associated aftercare.

Pennsylvania

Lawmakers also took steps to establish a drug diversion program in Pennsylvania. Senate Bill 217 calls upon the Department of Corrections to develop a drug offender treatment program. The program is 24 months in duration, seven of which are

⁴ Certain persons may be released to treatment at any time if they meet certain criteria such as not having been convicted of a violent offense.

required to be within the custody of a correctional facility. The law creates a step-down model of treatment, with a requirement of at least four months of participation in institutional treatment, two months community-based treatment, and six months of outpatient treatment. This is followed by supervised reintegration planning for the remainder of the sentence.

Texas

The Texas legislature passed HB 2791 empowering judges to sentence individuals to community corrections treatment facilities, thereby expanding sentencing options for certain low-level offenders who have engaged in criminal activity in which drugs or alcohol are deemed to have played a contributory role. Prior to this bill, persons who had been processed through a drug court were only permitted to seek treatment in specific programs, and were not allowed to access treatment in programs designed for individuals who had been convicted of an offense. This legislation permits broader access to community supervision treatment programs for persons processed through drug courts.

Washington

The state of Washington expanded its Drug Offender Sentencing Alternative (DOSA) program to include a community-treatment sentencing component. The original DOSA model permitted the court to sentence a defendant convicted of a low-level, non-violent drug offense to a blended sentence. The first half of the sentence was served in a correctional facility where the individual received a substance abuse history assessment and was assigned to an appropriate treatment program. The remainder of the sentence was served in community custody, where the defendant would receive additional treatment and services.

House Bill 2015 expanded the DOSA program to permit judges to sentence eligible defendants directly to a community-based residential treatment program, rather than the blended approach that included a term of incarceration. Judges can now sentence a defendant to a term of community custody for a minimum of two years, conditioned on the defendant spending three to six months in a certified residential chemical dependency treatment program. In addition, eligibility requirements for

both the prison-based and community DOSA programs were broadened to permit persons who have previously been convicted of a violent felony to participate as long as ten years have elapsed since the conviction.

Between 2004 and 2006, a number of states passed legislation intended to expand access to drug courts, while also standardizing their operation.

Michigan

Michigan implemented a process by which circuit and district courts can develop adult drug courts and family courts can create juvenile drug courts. SB 998 creates the drug court structure in the state, while a host of other bills in the package establish the criteria of eligibility for diversion into treatment.⁵

Montana

The state of Montana passed HB 721 to authorize state district courts to create drug treatment programs, although no state funds were appropriated for the establishment or management of these courts.

Utah

Utah passed SB 1004 and SB 135 to develop drug court programs in the state. The Drug Offender Reform Act (SB 1004) creates a pilot treatment diversion program for felony drug offenders in Salt Lake County. The program integrates pre-sentencing screening for amenability to treatment, treatment services upon sentencing, and fosters collaboration between treatment providers and supervising authorities. The bill authorizes \$1.4 million to treat up to 250 people during the three years of the pilot program. This translates into a cost of \$5,600 per client, far below the associated costs of incarceration. The Utah Commission on Criminal and Juvenile Justice estimates that the Drug Offender Reform Act will save \$5.60 for every dollar spent on drug treatment through a reduction in associated costs of victimization, criminal justice resources, and public assistance. The Utah legislature also passed SB

⁵ SB 999, SB 1000, HB 5647, HB 5674, HB 5716, HB 5928, HB 5932.

135, which developed standardized screening criteria for drug court participation, permitted the establishment of drug court programs in any judicial district in the state, and created two county-level pilot programs for intensive drug abuse treatment.

Virginia

In 2004, the Virginia legislature passed HB 1430 to facilitate the establishment of drug treatment courts throughout the commonwealth. The law gives oversight of the commonwealth's drug court system to the Supreme Court, which in turn will handle the disbursement of funds to local drug courts and also provide training and administration.

Finally, some states took steps to augment available treatment options for incarcerated persons.

Illinois

Illinois passed SB 2090 requiring that all persons who have been recommended by a sentencing court to participate in treatment fulfill that obligation prior to being eligible for early release based on good conduct. The law also permits individuals currently on a waiting list to participate in substance abuse treatment while incarcerated to apply for a waiver in order to receive credit for good conduct.

ALTERNATIVE SENTENCING PROVISIONS

In addition to legislation designed to divert certain categories of drug offenders into community-based facilities, some states passed legislation to develop alternative sentencing options for other categories of defendants.

Oklahoma

The Oklahoma legislature also granted greater latitude to district attorneys by passing SB 1174, which allows the prosecutor to refer a case for community sentencing even if the defendant exhibits mental illness, a developmental disability, or a co-occurring disorder that would otherwise place the individual outside of the acceptable LSI-R (Level of Service Inventory-Revised) range used by officials to determine amenability for community supervision.

Texas

The Texas legislature passed HB 2296, which provides the prosecuting attorney the discretion to charge a state jail felony as a misdemeanor, thereby avoiding a sentence of incarceration.

COMMUNITY SUPERVISION REFORMS

There are currently more than 780,000 persons on parole in the United States, with more than one-third of persons leaving parole in 2005 returning to jail or prison. Parole revocations have increased dramatically as a source of admissions to prison over the past two decades. Whereas 17% of admissions to state prisons in 1980 were for a revocation, by 1999 that proportion had doubled to 35%, for a total of 203,000 persons annually.⁶ And of the parole violators returned to prison in 1997, one-third were returned for a technical violation of parole such as failing a drug test or failing to report for counseling or to meet financial obligations.⁷ Many of these revocation processes result in “churning,” in which individuals repeatedly circulate in and out of custody, often experiencing short periods of freedom, punctuated by periods of custody. It has become increasingly clear to correctional administrators and policymakers alike that this is a costly and counterproductive approach and steps must be taken to break this cycle.

Between 2004 and 2006, nine states passed legislation reforming state policies regarding probation and parole policies, with the emphasis on increased use of community supervision, technological innovation such as satellite monitoring, and diminished reliance on sentences to custody.

Arizona

Arizona passed HB 2646, which established a Community Accountability Pilot program to address the increasing number of probation and parole technical violators. Prior to this bill, in the case of a violation of the conditions of community supervision, the Board of Executive Clemency had the option to either revoke supervision and return the individual to custody or increase the restrictiveness of the terms of supervision. This bill permits the Board to assign an individual who has

⁶ Jeremy Travis, *But They All Come Back*, Urban Institute Press, Washington, D.C., 2005, p. 48.

⁷ Joan Petersilia, *When Prisoners Come Home*, Oxford University Press, New York, 2003, pp. 149-151.

violated the terms of parole to a Community Accountability Program. This program will provide intensive supervision and monitoring (GPS tracking, other forms of behavioral oversight), substance abuse training, employment preparation, life skills training, adult education, health care management, and housing assistance. Persons convicted of a violent offense, sex offense, or crime against children are excluded from participation.

California

In response to the increasing number of persons in prison in California for a parole violation (50% on any given day), the legislature passed SB 619 which authorizes county probation officers and the Department of Corrections and Rehabilitation to employ “continuous electronic monitoring” surveillance through GPS tracking for probationers and parolees. The author of the bill believes that the high rates of revocation and recidivism can be reduced through electronic supervision in the community coupled with the intervention of relevant social service agencies providing necessary treatment and programming.

Connecticut

Connecticut passed a sweeping bill, HB 5211, designed to address overcrowding in the state’s prison system. Included among the bill’s provisions is the requirement of parole hearings for all persons who are eligible for parole after serving 50% of their sentence, but have served 75% and have not yet been released. In addition, all persons eligible for parole after serving 85% of their sentence must receive a hearing upon reaching that point in their sentence. The bill also expanded the criteria for administrative parole eligibility, allowed for the transfer of certain persons into a halfway house or other community-based residence once they are within the final 18 months of their release from incarceration, and established a compassionate release program for individuals who are ill or pose no danger to society due to advanced age.

The bill also calls for the creation of an “incremental sanctions system” for persons who violate their terms of parole. In addition, the judiciary and the Board of Parole are to construct a plan by which the number of technical violations for persons on parole and probation is reduced by 20%.

Louisiana

Louisiana lawmakers also took action to diminish the impact of technical violations of community supervision on the prison population. SB 180 caps the length of stay a person convicted of a first-time, non-violent offense can be incarcerated for a technical violation of probation or parole at 90 days.

Oklahoma

The Oklahoma legislature passed HB 1267, which authorized the Department of Corrections to establish an intermediate sanctions program to address technical violations by probationers. The law calls upon the Department of Corrections to develop a matrix to assess the severity of technical violations and determine appropriate responses. A hearing judge will determine whether a technical violation has occurred and, if so, will either order the individual to follow the matrix-recommended intermediate sanction plan or some modified version thereof. Intermediate sanctions include short-term jail sentences, day treatment programs, fines, and community service.

Washington

Washington passed legislation (HB 1136) calling upon the state association of sheriffs and police chiefs to study the use of electronic monitoring as a means of community supervision and to develop a pilot program for a minimum of 100 individuals who have violated the terms of their community custody.

Some states eased the criteria by which eligibility for release from prison to parole is judged.

Arkansas

Arkansas' early release program, SB 385, allows for the assignment of individuals into community-based transitional housing up to one year before their date of parole eligibility.

Minnesota

Minnesota passed legislation, part of an omnibus crime bill of 2005 (HF 1), allowing for the early release of certain non-violent drug offenders who committed a crime as a result of an addiction. Persons petitioning for conditional release must have served the lesser of 36 months or one-half of their sentence, and also have completed a substance abuse treatment program while incarcerated.

Mississippi

Mississippi amended the state's parole eligibility requirements for certain classes of drug offenders. SB 2988 makes first-time drug offenders convicted for possession of a controlled substance since July, 1995 eligible for parole. Mississippi law has an exception for first-time non-violent offenders convicted after July, 2000, making them eligible for parole. The new law expands this eligibility by five years for those persons convicted for a possession offense. SB 2988 comes a year after the passage of HB 652, which granted discretion to correctional field officers to suspend the revocation of a sentence to community supervision in the instances in which the person has violated the terms of release. The officer can now decide, based on the circumstances and severity of the violation, whether a return to custody is warranted. In 2004, Mississippi also passed HB 654, which permits the conditional medical release of terminally ill individuals to community supervision. In addition, HB 686 increases the reduction in sentence due to participation in "trustee" programs to 30 days each month.

SENTENCING LAW REFORM

Between 2004 and 2006, some states enacted reforms to sentencing provisions that had received substantial condemnation in past years.

Connecticut

One drug provision that has faced widespread disapproval, primarily at the federal level, is the disparity between the quantity of crack and powder cocaine necessary to trigger a mandatory sentence. In 2005, the Connecticut General Assembly addressed this issue by passing HB 6975, which repealed the quantity disparity between crack and powder cocaine by raising the threshold necessary to trigger a sale or distribution charge for crack cocaine from one-half gram to one-half ounce and reducing the threshold for powder cocaine from one ounce to one-half ounce. The compromise bill was passed into law after Governor Rell had vetoed an earlier version with different weight triggers.

New York

Perhaps the most notorious state drug policies are New York's Rockefeller Drug Laws, originally passed in 1973. Despite the passage of three decades in which the federal government and all 50 states passed punitive drug sentencing legislation unparalleled in history, the Rockefeller laws have remained some of the most severe. These laws created the model by which other mandatory minimum sentencing provisions were developed across the country, resulting in hundreds of thousands of low-level drug offenders spending years in prison.

After years of criticism about the disproportionate punishment meted out by the Rockefeller laws, and a number of failed efforts at reform by the legislature, lawmakers passed the Drug Law Reform Act of 2004, which addressed some of the concerns with the law. First, the quantity of drugs necessary to trigger a Class A-I felony was doubled (from four to eight ounces), while a Class A-II felony was increased from two to four ounces. The DLRA also allowed persons currently

serving a prison sentence for an A-I felony to petition for resentencing under a revised criminal code. Increases for merit time reductions were also included in the bill. Finally, judges were given the discretion to assign a defendant directly to the state's prison-based Comprehensive Alcohol and Substance Abuse Treatment program. In 2005, the legislature expanded the DLRA, permitting discretionary resentencing of certain categories of Class A-II drug offenders.

An additional area of reform during this period reflected efforts to integrate principles of rehabilitation and reentry at the sentencing phase.

New York

New York developed legislation (SB 7588) that adds the goal of “the promotion of . . . successful and productive reentry and reintegration into society” to the existing sentencing goals of deterrence, rehabilitation, retribution, and incapacitation. This law is fashioned after the Reintegrative Sentencing Model that was developed and promoted by the Center for Community Alternatives as a means of infusing principles of reentry into the sentencing process. Under this model, reintegration into the community is placed in a position of primacy, with the understanding that an individual's transition from custody back to the community must be considered at the time of sentencing, not merely in the months preceding release. SB 7588 calls upon the judge, when crafting a sentence, to consider “what kind of sentence will best help to promote the defendant's reintegration into society and recognizes that such reintegration is the best way to achieve public safety. It also requires an individualized approach to sentencing.”⁸ The belief is that the bill will promote non-custodial sentences to the community because judicial consideration of reintegration principles will inherently acknowledge the damage of incarceration to future life prospects, such as locating housing and employment, and thereby highlight the need to focus upon intermediate sanctions.

⁸ Alan Rosenthal, Marsha Weissman, and Elaine Wolf, *A New Sentencing Model to Meet the Challenge of Reentry and Public Safety*, 2006, Center for Community Alternatives.

Oregon

Oregon took an important step in expanding the goal of rehabilitation at sentencing when it passed SB 914. This legislation requires the submission of a pre-sentence report to the judge that will include the following: the disposition that will be most effective in reducing future criminal offending, why that disposition is likely to be successful, and an analysis of programs, both in the community and in custody, that may achieve those goals. The value of legislation of this type is the effect of bringing issues such as rehabilitation and recidivism to the forefront, prior to sentencing, at a point in the proceedings in which alternative options may still be weighed. Moreover, it allows for the consideration of the long-term needs of the defendant, so that an appropriate, individualized sentencing plan may be devised.

DISCUSSION AND RECOMMENDATIONS

The last three years have witnessed a number of state legislative developments focused on sentencing reform. In addition to the policy changes described in this report, the growth of reentry programs across the country has accelerated over recent years. This momentum indicates both an acknowledgement of the value of pre-release transitional planning, as well the role that its absence in recent decades has played in contributing to high recidivism rates.

As noted above, though, despite the movement toward reform of sentencing and parole policies, prison populations continue to increase even though crime rates are at a level considerably below those of a decade ago. This suggests that lawmakers interested in controlling prison growth will need to expand the range of options and policies under consideration to achieve a broader impact. The following are policy changes that state lawmakers can enact to institute sound, evidence-based criminal justice policies that can better meet the goals of sentencing while also controlling unnecessary and expensive growth in the use of incarceration.

Expand the use of drug treatment as a sentencing option

While there has been a virtual explosion in the use of drug courts since the early 1990s, in far too many jurisdictions available treatment resources fall far short of the need among the defendant population. Drug courts and other diversion options have shown success in reducing drug use and drug-related crime, and can therefore produce long-term cost savings while reducing inappropriate incarceration.

Expand options to reduce probation and parole revocations

Many jurisdictions across the country have adopted programs and policies to reduce the number of violators sent back to prison, while addressing public safety concerns. Beginning in the late 1980s, the Missouri Board of Probation and Parole established a range of supervision strategies for violators – including electronic monitoring,

residential centers, and intensive supervision – that led to fewer returns to prison while also reducing the rearrest rate among people under supervision.⁹ Similarly, the probation department in Macomb County, Michigan implemented a risk assessment system that resulted in greater use of intermediate sanctions for lower risk offenders, resulting in a significant reduction of violators returned to prison.¹⁰

Reconsider policies regarding time served in prison

Over the past fifteen years, the amount of time offenders serve in prison has been steadily increasing. This is the case not only for long-term sentences but for shorter prison terms as well. Research has demonstrated that increasing the length of prison terms produces little in the way of increased deterrence of crime or reduced recidivism, yet contributes significantly to higher costs of corrections. Policymakers should examine time served in prison to determine if the goals of sentencing can be achieved through shorter prison terms for selected offenders.

Repeal mandatory minimum sentencing

A broad range of scholarship has demonstrated that mandatory sentencing produces no impact on crime, but results in unnecessarily lengthy and unjust prison terms in many cases. Judges who wish to incarcerate serious offenders for long prison terms can readily do so under existing sentencing policy in every state. Mandatory sentencing only results in obligating judges to impose such terms on far less culpable offenders as well. The American Bar Association and a broad range of leading policymakers have recommended repeal of such policies, which would result in more rational sentencing practices.

⁹ Peggy B. Burke, “Policy-Driven Responses to Probation and Parole Violations,” National Institute of Justice, 1997, pp. 29-30.

¹⁰ Ibid., pp. 30-31.

Reconsider life and long-term sentences

In states such as Louisiana and Michigan, parole boards have adopted policies of “life means life” for offenders who previously had been eligible for parole. Persons affected by these policies include those convicted of serious violent offenses, but also persons convicted of drug offenses. In all but the most serious cases, parole boards should be free to consider the use of parole for long-term prisoners who no longer present a threat to public safety. Similarly, policies such as “three strikes and you’re out” in California have resulted in 8,000 persons serving terms of 25 years to Life, nearly half of whom have been convicted of a non-violent property or drug offense as their third strike.

Review state sentencing and corrections policies

Policymakers are increasingly recognizing that the size and composition of state prison populations are a function of a variety of policy choices regarding sentencing, time served in prison, and parole supervision practices. Stabilization or reduction of prison populations will only be achieved through a comprehensive examination of contributing factors, whether conducted by a state sentencing commission or other body. Efforts to address these issues include a 2004 Connecticut bill that called upon the judiciary and Board of Parole “to develop a plan to reduce by at least 20% the number of incarcerations due to technical violations” of probation and parole. Kansas established a bipartisan task force, the Criminal Justice Recodification, Rehabilitation, and Restoration Project, “to address growing problems within the Kansas criminal justice system regarding offenders,” and California legislators have recently expressed interest in establishing a sentencing commission to examine the state’s criminal code and recommend reforms.

FURTHER READING

[Distorted Priorities: Drug Offenders in State Prisons](#)

[Incarceration and Crime: A Complex Relationship](#)

[State Sentencing and Corrections Policy in an Era of Fiscal Restraint](#)

[State Sentencing Reforms: Is the "Get Tough" Era Coming to a Close?](#)



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