

Criminal Justice Trends

Key Legislative Changes in Sentencing Policy, 2001–2010

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FROM THE CENTER DIRECTOR

For much of the 1980s and 1990s, state legislators and policy makers who addressed sentencing were primarily interested in increasing penalties and the proportion of sentences served in prison. The impact of those policies became evident when huge numbers of people returned to communities after long periods of incarceration and failed to reintegrate successfully. This resulted in community hardship and a surge in state prison populations as many individuals were reincarcerated for technical parole violations or new offenses. Officials responded by focusing on “back-end” measures to improve rehabilitative programs in prison and determine ways that inmates might return to the community more expeditiously and with better outcomes.

As described in this report, states have more recently turned their attention back to the front end of the system, concentrating on decisions about who goes to prison in the first place and for how long. In 2003 and again in the past few years, budgetary shortfalls propelled officials to reexamine punitive laws enacted more than two decades ago. Informed by 20 years of research and evidence, they began creating commissions and task forces to reconsider the larger purposes of their sentencing policies. They have also found it increasingly difficult to justify using the most expensive intervention—prison—for people convicted of low-level property and drug offenses, because evidence shows that incarceration does little to prevent future offending.

During the past decade, Vera’s Center on Sentencing and Corrections has helped many states bring about desired, effective reforms. We look forward to assisting others in the years ahead.



Peggy McGarry
Director, Center on Sentencing and Corrections

Executive Summary

The past decade marks a time of significant change in how states approach their criminal sentencing policies. The “tough on crime” political mantra that drove sentencing legislation 30 years ago has transformed into talk of being “smart on crime,” with increasing reliance on research and data to drive and substantiate policy decisions. This willingness to adopt less punitive, more rational sentencing policies is driven, in part, by budget concerns that have emerged and remained prominent in recent years.

This report reviews state sentencing policy from 2001 through 2010. The beginning and end of this period coincided with economic recessions and spikes in criminal justice reform legislation. During this roughly 10-year period, three distinct themes in state sentencing legislation emerge:

- > States redefined and reclassified criminal offenses, often resulting in a reduction in offense severity and sentence length.
- > States strengthened alternatives to incarceration, with an emphasis on increasing investment in substance use treatment, specialty courts, and community supervision.
- > States took steps to reduce prison terms, from rolling back mandatory minimum sentences to enhancing mechanisms designed to accelerate sentence completion.

Under these overarching themes, the report identifies and discusses more than 55 pieces of state legislation that chronicle the decade’s most important sentencing reform policies.

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Introduction

The population in state prisons in the United States rose 360 percent between 1980 and 2010.¹ States' corrections spending grew almost as much, up 275 percent between 1988 and 2008.²

Yet, near the turn of the century a confluence of factors helped shift the national discourse on criminal justice, and the 2001–2002 legislative session marked a change in how states approached criminal justice policy.³ By 2001 the combined jail and prison population had reached 1.9 million people, and many officials worried about the potential impact of the estimated 600,000 inmates released from prison annually, of whom more than half would be back in prison within three years.⁴ Crime rates had dropped nearly 18 percent during the preceding decade, and innovations like specialty courts and treatment-integrated supervision were taking hold.⁵ In addition, a new period of economic uncertainty had begun that would eventually evolve into a full-blown recession.⁶

Legislative reform began occurring on many fronts. States began revising “truth in sentencing” laws that had limited inmates' chances for early release. They also began repealing mandatory minimum sentences, implementing evidence-based supervision practices, and directing new funds into treatment to address substance use. (Although most reforms have focused on relaxing sentencing policies, state legislatures have targeted certain categories of offenders for heightened punishment, particularly sex offenders, violent offenders, and repeat offenders.⁷) In 2009, for the first time in nearly 40 years, the U.S. state prison population decreased.⁸

The 2009–2010 legislative session brought yet another round of criminal justice reform.⁹ This time legislators were persuaded by the substantial body of research on how to modify inmates' behavior. Research had also generated new sentencing policy models and evidence-based corrections practices. In addition, a focus on collecting criminal justice data had made it possible for policy makers to develop detailed projections of the impact that their proposals would have on outcomes and budgets.

This report reviews key legislation enacted during the 10 years spanning these two periods of reform. Although not exhaustive, the information provided here highlights

legislation that exemplifies trends focused on protecting public safety, holding offenders accountable, and controlling corrections costs. The authors have included estimates of the impact specific legislation would have on prison populations and spending, when available. This information is presented as a guide to policy makers facing similar choices today.

The most widely adopted statutes fall into three categories: redefining and reclassifying criminal offenses, strengthening alternatives to incarceration, and reducing prison terms. Each of these is discussed below.

Redefining and Reclassifying Criminal Offenses

Several states have modified how they define or classify criminal offenses in ways that affect sentence lengths. Some legislatures have targeted certain categories of offenses, such as sex crimes, for heightened status and punishment. Most, however, have revised definitions or classifications to reduce the severity level of offenses and the length of sentences they bring. This latter type of reform has typically focused on low-level, nonviolent felonies.

In addition, a few states have gone beyond such piecemeal changes and established sentencing bodies to review entire criminal codes and make recommendations for broad revisions.

CRIMINAL CODES

Many states have created or reinvigorated sentencing bodies charged with reviewing and revising criminal sentencing laws. Recent legislative mandates of this type range from calls to reorganize and clarify existing laws to directives requiring substantive examination of the criminal code and wide-ranging recommendations for reforming it. These newest sentencing bodies are often given more targeted instructions than was true for the previous generation of sentencing commissions.

SOUTH CAROLINA: Revised Criminal Code (SB 1154, 2010)

- > The legislature made substantial changes to the criminal code: revised a number of offenses (e.g., common law assault and battery, certain mob and lynching offenses); increased the monetary values of property crimes (e.g., increasing the threshold for felony malicious injury to animal or property from \$5,000 to \$10,000); changed offense definitions; modified sentence terms (e.g., eliminated certain mandatory minimum sentences); reclassified certain offenses as violent offenses; modified the two/three strikes law; changed geriatric and medical parole provisions and work release provisions; and established post-release mandatory supervision for certain offenders.

IOWA: Created Criminal Code Reorganization Study Committee (HF 2377, 2372, 2010)

- > The Iowa Criminal Code Reorganization Study Committee (HF 2377) introduced a number of successful bills, including one allowing judges to extend probation sentences when hearing probation revocation cases. Another bill (HF 2372) modified the elements of assault causing serious injury to create a lesser assault charge. Under the new law, a person who commits an assault without the intent to inflict serious injury would be guilty of a non-forcible Class D felony and subject to up to five years in jail and a fine of \$750 to \$7,500.

KENTUCKY: Created Penal Code Drafting Committee (HCR 250, 2010)

- > The legislature created the Kentucky Penal Code and Controlled Substance Drafting Group to review criminal laws and provide recommendations for the legislature's consideration in 2011.

ILLINOIS: Created Sentencing Policy Advisory Council (SB 1320, 2009)

- > This law established the Sentencing Policy Advisory Council, a body charged with examining sentencing policies and practices with the goal of increasing proportionality and promoting rehabilitation in corrections, as well as controlling state corrections spending. Duties include collecting and analyzing data about the

criminal justice system, identifying crime trends, projecting inmate population growth, and examining the effect of new penalty enhancements and other sentencing practices.

COLORADO: Directed Colorado Commission to Study Sentencing Reform (SB 286, 2009)

- > This law instructed the Colorado Commission on Criminal and Juvenile Justice to study sentencing reform with a specific focus on sentences related to drug crimes and the offense of driving under restraint (license denied, revoked, or suspended). It also instructed the commission to study whether parole should be included as part of the sentence or separately; alternatives to incarceration for first-time nonviolent offenders; and the efficacy and consequences of mandatory minimum sentences. The commission was established in 2007 with a broad research and policy mandate (HB 1358).

ILLINOIS: Revised Sections of the Criminal Code (SB 1300, 1325, 2009)

- > The legislature adopted the first set of the Criminal Law Edit, Alignment and Reform (CLEAR) Commission's revisions to the Criminal Code and Code of Corrections. These changes streamlined and reorganized the criminal and corrections law, revising Criminal Act and Mental State, Kidnapping, and Second Degree Murder (SB 1300) and Forfeiture (SB 1325). The revisions did not change criminal law practice, but merely clarified ambiguous terms—for instance, providing a definition of the term “criminal act” using Illinois case law.

LOUISIANA: Revived and Restructured Sentencing Commission (HB 246, 2008)

- > This law reinstated the Louisiana Sentencing Commission, broadening its research mandate and placing a greater emphasis on outcomes. It requires the commission to examine sentencing policy and law and the relationship of both to the use of correctional programming designed to facilitate offender reentry. The commission submitted its first report to the legislature on March 1, 2010.

SOUTH CAROLINA: Created Sentencing Reform Commission (SB 144, 2008)

- > The legislature established the South Carolina Sentencing Reform Commission to review, study, and recommend legislation for sentencing guidelines, the parole system, and alternative sentencing procedures for nonviolent offenders.

DRUG CRIMES

Many states have lowered classification levels for offenses involving possession of controlled substances and even more have reduced the severity of marijuana offenses. The following changes in state laws focus on changes made to the classification or definition of drug offenses, excluding changes to mandatory minimums.

COLORADO: Reclassified Drug Offenses (HB 1352, 2010)

- > For the second time in the past decade, Colorado lowered the classification levels for possession of controlled substance crimes (other than marijuana, which the bill addressed separately). For example, possession of Schedule I or II controlled substances was lowered from Class 3-4 to Class 4-6; threshold quantity demarcations for possession of controlled substances were increased from one gram to four grams; possession of Schedule III and IV controlled substances were reclassified from felonies to misdemeanors. The law substantially changed offenses related to marijuana with regard to the amount required to constitute a crime and lowered associated penalties.

IMPACT >

According to the fiscal impact statement, the law is projected to save \$1,468,196 in FY 2010–2011, and \$6,156,118 in FY 2011–2010. The legislation required these savings to be reinvested in the Drug Offender Treatment Fund.¹⁰

MASSACHUSETTS: Decriminalized Marijuana Possession (Ballot Question 2, 2008)

- > Reduced possession of one ounce or less of marijuana to a civil infraction carrying a \$100 fine; conviction is

not recorded in Criminal Offender Record Information Report (CORI).

COLORADO: Reclassified Drug Possession (SB 318, 2003)

- > Reclassified possession of less than a gram of Schedule I or II drugs to Class 6 (lowest felony class) for first offenders; and
- > Downgraded possession of less than a gram of Schedule I or II drugs from Class 2 to Class 4 for repeat offenders.

INDIANA: Established Affirmative Defense to “Drug-Free” Zone Law (HB 1892, 2001)

- > Established an affirmative defense for individuals charged with possessing or selling drugs in a drug-free zone. This defense requires those charged to assert that they were within a drug-free zone only briefly or were lured there by police.

ARKANSAS: Reclassified Drug Paraphernalia Violations (HB 2313, 2001)

- > Reduced penalty for possession, use, or distribution of drug paraphernalia (such as syringes) from a Class C felony to a Class A misdemeanor.

PROPERTY CRIMES

A number of state legislatures have passed bills that raise threshold dollar amounts for property crimes, although these changes often have limited impact on the corrections population or spending. This type of legislation has usually targeted low-level property crimes, offenses that frequently carry sentences served in the community and not in jail or prison. The most effective legislation in this area bases new threshold dollar amounts on sentencing data and takes into account the revised threshold’s effect on the lower-level criminal processes, such as misdemeanor courts and county jails.

DELAWARE: Raised Felony Property Crime Threshold Dollar Amounts (HB 113, 2009)

- > Increased the threshold for certain Class G felony computer crimes from \$500 to \$1,500;

- > Increased the threshold for Class G felony shoplifting and theft from \$1,000 to \$1,500;
- > Increased the threshold for Class G felony criminal mischief crimes from \$1,500 to \$5,000;
- > Increased the threshold for a conditional discharge for issuing a bad check to \$1,500; and
- > Increased the threshold for Class F felony unlawful use of a credit card and “infirm adult” theft crimes from \$1,000 to \$1,500.

MONTANA: Raised Felony Property Crime Threshold Dollar Amounts (SB 476, 2009)

- > Increased threshold dollar amounts for a number of felony property crimes from \$1,000 to \$1,500.

The fiscal impact statement based on recent corrections figures indicated that the law would have no impact on spending.

OREGON: Raised Felony Property Crime Threshold Dollar Amounts (HB 2323, 2009)

- > Raised the threshold for Third Degree Theft from \$50 to \$100;
- > Raised the range for Second Degree Theft from \$50-\$750 to \$100-\$1,000; and
- > Raised the threshold for Theft in the First Degree to \$1,000 or more.

The fiscal impact statement based on recent corrections figures indicated that the law would have no impact on corrections spending.

CALIFORNIA: Raised Property Crime Threshold Dollar Amounts (SBX3 18, 2009)

- > Amended more than 30 sections of the Penal Code, Military and Veterans Code, Business and Professions Code, and Financial Code by increasing the monetary thresholds for numerous theft offenses and additional property crimes. In many cases the amendment doubled the minimum threshold. For example, in the Business

and Professions Code, the threshold dollar amount for felony of unlawfully selling or secreting supplies was increased from \$450 to \$950.

WASHINGTON: Raised Felony Property Crime Threshold Dollar Amounts (SB 6167, 2009)

- > Increased the monetary threshold amounts of two classes of property felonies for the following offenses: theft; malicious mischief; unlawful issuance of a bank check; theft of rental, leased, lease-purchased, or loaned property; and possession of stolen property.
- > Increased the minimum threshold of Class B felony property crimes from \$1,000 to \$5,000; and
- > Increased minimum threshold of Class C felony property crimes from \$250 to \$750.

IMPACT >

According to the fiscal impact statement for SB 6167, the law will result in fewer Class B felony convictions, leading to a reduction in prison sentences and average daily population. Taking into account the shift in resources from superior court to district and municipal courts, the estimated savings is projected to be greater than \$50,000.¹¹

ALABAMA: Raised Felony Theft Threshold Dollar Amounts (HB 491/SB 348, 2003)

- > The legislature enacted the Alabama Sentencing Commission’s recommendation to raise the Class C felony theft threshold from \$250 to \$500, and to \$2,500 for a Class B felony.

IMPACT >

The Alabama Sentencing Commission projected that the change would result in a prison bed savings of 3,000 over a five-year period.¹² The state has not published data demonstrating the impact of the legislation.¹³

IOWA: Reduced Burglary Offense (SF 543, 2001)

- > Downgraded burglary offenses involving cars and boats by creating a new Class D felony and aggravated misdemeanor (attempt).

Strengthening Alternatives to Incarceration

During the past decade, many state legislatures have attempted to address high recidivism rates by strengthening supervision and services for people on probation, parole, and other forms of supervised release and investing heavily in rehabilitative treatment, transitional services, and enhanced supervision. Legislatures have directed the greatest attention toward the nexus between community supervision and substance abuse treatment, resulting in large financial investments in drug courts, mandatory drug treatment, and evidence-based supervision strategies. If these initiatives are implemented well, they promise to yield significant cost savings for states over time.

In the past few years, states have experimented with incentive funding, financially rewarding agencies or counties that are able to produce desired outcomes such as reduced recidivism. This type of legislation almost always specifies that evidence-based practices should be implemented.

ENHANCING SUBSTANCE ABUSE TREATMENT

Most states have moved away from the “war on drugs” philosophy of the 1980s and moved toward rehabilitative substance abuse treatment. In some jurisdictions, this focus on treatment has culminated in mandatory drug treatment policies for drug offenders as part of their criminal sentence. More often, however, legislatures have increased funding for services, expanding states’ capacity to provide inpatient and outpatient substance abuse treatment.

TEXAS: Increased Treatment Resources (Justice Reinvestment Initiative, 2007)

- > This initiative reinvested \$241 million from averted prison growth to expand substance abuse treatment and transitional reentry programs:

- Prison/jail substance abuse treatment: 500 beds for in-prison treatment targeting DWI offenders; 1,200 slots for intensive substance abuse treatment in state jail system
- Reentry transition: 300 beds in halfway houses for parole reentry; 1,000 slots for in-prison to post-prison substance abuse treatment program
- Community substance abuse treatment: 800 inpatient beds and 3,000 outpatient slots for probationers; 1,500 inpatient beds for the Substance Abuse Felony Punishment, a program that provides six months secure inpatient treatment and three months nonsecure residential transitional treatment to probationers and parolees who have violated their supervision terms.

IMPACT >

Texas immediately saved \$210.5 million for the 2008–2009 fiscal biennium. From 2006 to 2008, probation revocations to prison declined by 4 percent and parole revocations decreased 25 percent. The parole board’s rate of approvals for supervised releases rose 5 percent.¹⁴

KANSAS: Authorized Mandatory Drug Treatment (SB 123, 2003)

- > The law mandates up to 18 months of drug treatment and probation for nonviolent drug possessors who have no prior felony convictions for person crimes or drug trafficking. The law also requires that technical violators be subject to non-prison sanctions (rather than program discharge and revocation to prison), that risk-needs assessments be implemented, and that treatment providers be certified by the Department of Corrections.

IMPACT >

The Kansas Sentencing Commission estimated that 1,400 people would be diverted to mandatory treatment every year, roughly 475 of whom would have gone to prison absent the legislation.¹⁵

HAWAII: Authorized Mandatory Drug Treatment (SB 1188, 2002)

- > Modeled after Arizona and California, the law mandates treatment and probation for first-time, nonviolent offenders convicted of drug possession or use (instead of prison).¹⁶ Mandated diversion to treatment also applies to probation and parole violators, if their first violation involves possession or use of drugs.

ESTABLISHING PERFORMANCE INCENTIVE FUNDING

Statistics show that 67 percent of people released from prison nationwide are rearrested within three years, many for new crimes.¹⁷ As a means of driving down high re-incarceration rates, a number of legislatures have passed criminal justice bills tying funding to desired state outcomes. For instance, many states offer financial rewards to probation agencies that reduce the recidivism rates of people under their supervision. These bills often contain a reinvestment mechanism, mandating that the cost savings generated from prison diversions be redirected into a fund that supports evidence-based supervision reforms and human services such as substance abuse treatment.

CALIFORNIA: Established Incentive Fund for Evidence-Based Probation Reform (SB 678, 2009)

- > The state established the Community Corrections Performance Incentives Fund to reward counties that reduce the failure rate (e.g., recidivism, revocation, unsuccessful termination) for adult probationers. Two funding mechanisms are available:
 - Probation failure-reduction incentive payments, which calculate payments to probation departments by multiplying the number of probationers prevented from being incarcerated by 40 to 45 percent of the cost of incarceration or parole; and
 - High-performance grants that use 5 percent of cost-savings funds to reward county probation departments that have adult probation failure rates more than 50 percent below the statewide average in the most recently completed calendar year.

- > The legislature allocated \$45 million to fund up-front, evidence-based reforms necessary to achieve the failure reduction. The law also has a provision for performance measurement, requiring counties to use at least 5 percent of what is refunded to them to evaluate the effectiveness of their recidivism-reduction programs.

ILLINOIS: Created Adult Redeploy Illinois Program (SB 1289, 2009)

- > The Crime Reduction Act of 2009 created the Adult Redeploy Illinois program, which uses state funds to expand evidence-based practices in the local supervision of offenders. The law requires participating counties to pledge a 25 percent reduction in the number of eligible nonviolent offenders committed to state facilities. The funds will serve as incentives for counties to keep otherwise prison-bound offenders under community supervision and to increase the success rates of probationers and parolees. The law also requires each county to develop a performance-measurement system that uses enumerated key indicators to evaluate its success annually.

COLORADO: Established Incentive-Funded County Recidivism Reduction Program (HB 1022, 2009)

- > The program established three-year implementation grants (maximum of \$100,000 for one year or \$200,000 for three years) to reduce recidivism rates among people who are mentally ill or have co-occurring disorders and are on probation or parole. No funding was appropriated for this bill; funding is dependent on gifts, grants, and donations.

ARIZONA: Created Performance Incentive Funding Program (SB 1476, 2008)

- > The law established an Adult Probation Services Fund for counties and awards them 40 percent of any costs they avoid by reducing the percentage of probationers who return to prison for technical offenses or new convictions. The law authorizes counties to direct these cost savings toward three areas:
 - increasing the availability of substance abuse treatment programs for probationers;

- increasing the availability of risk-reduction programs and interventions for probationers; and
- providing grants to nonprofit victims services organizations.

IMPACT >

The Council of State Governments Justice Center projected a gross savings of \$11.8 million for the Arizona Department of Corrections.¹⁸

KANSAS: Established Incentive-Funded Community Corrections Reforms (SB 14, 2007)

- > This legislation created a grant program awarding funds to counties and requiring those that apply to set a goal of reducing their revocation rate by 20 percent. (The legislature set a goal of similarly reducing this rate statewide.) The legislation authorizes the secretary of corrections to oversee the grant program and develop additional program requirements. County community corrections programs that apply for these funds are required to submit strategic plans for reducing revocations, using the 2006 rate as a baseline. The statute also requires applicants to include an implementation plan for a number of evidence-based practices.

MANDATING EVIDENCE-BASED SUPERVISION

Rising recidivism and revocation rates among people sentenced to probation, parole, or other community supervision has resulted in public scrutiny of supervision practices.¹⁹ As the proportion of offenders incarcerated for supervision violations has increased, so has the pressure to implement strategies that succeed at safely transitioning people to and maintaining them in the community.²⁰ Consequently, many state legislatures have passed bills requiring state parole, probation, and other community corrections agencies to redesign their supervision practices and include risk and needs assessments, individualized case-management plans, treatment, and other services that will improve related outcomes.

ALABAMA: Expanded Community Corrections (SB 570, 2010)

- > This law made offenders convicted of selling controlled substances eligible for community corrections supervision. These individuals had previously been eligible only for probation and/or prison.

NEW HAMPSHIRE: Established Evidence-Based Reform of Community Supervision (SB 500, 2010)

- > This law mandates that all offenders on probation and parole receive a risk and needs assessment and that the resulting risk classification be used to determine the length of active supervision. It also directs the commissioner of corrections to establish an intermediate sanctions program that can be offered to probation and parole violators in lieu of a revocation hearing. Although the written intent of the legislation is to reinvest a portion of cost savings in community-based treatment and sanctions programs, the statute does not include a reinvestment formula or instructions.

IMPACT >

The governor's office says the law is expected to reduce the state's prison population by an estimated 18 percent and is projected to save the state between \$7.8 million and \$10.8 million over the next five years.²¹

ILLINOIS: Required Evidence-Based Practices (SB 1289, 2009)

- > The Crime Reduction Act of 2009 also calls for evidence-based reforms in supervision. It creates a Risk, Assets and Needs Assessment Task Force to plan the implementation of a tool that assesses risk, needs, and assets. The law requires the use of a standardized, validated risk and needs assessment on 75 percent of the incarcerated and parole populations within five years. It also mandates individualized case planning, substantive programming, and staff training on evidence-based practices.

VERMONT: Established Evidence-Based Reform of Community Supervision (HB 859, 2008)

> The law requires that felony drug and property offenders' substance abuse treatment needs be assessed prior to release and that the assessment inform reentry planning. The Department of Corrections is required to review offense severity and assess risk for all probationers and to assign them to one of four levels of supervision. Caseload caps were established for each of the four supervision loads. Probationers convicted of certain nonviolent felony offenses must be assigned to an administrative caseload, the lowest level of supervision.

IMPACT >

The law is projected to result in a bed savings of 436 by 2018 yielding up to \$54 million in net savings from 2009 to 2019. From cost savings over the first two years, \$3.9 million will be reinvested and applied to:

- > expanding institutional and community treatment; and
- > implementing evidence-based practices.²²

EXPANDING COURT-MONITORED TREATMENT

In the past decade, drug courts have become more widely accepted as an effective forum for adjudicating drug cases. With more than 1,151 drug courts established between 2000 and 2009, the institutionalization of drug courts has been accompanied by relaxed eligibility criteria and dramatic increases in funding.²³ Their success has resulted in the creation of mental health courts and other specialty courts in many states.

INDIANA: Authorized the Creation of Statewide Problem-Solving Courts (HB 1271, 2010)

> The law created a state framework for the establishment and certification of seven problem-solving court models: drug court, mental health court, family dependency drug court, community court, reentry court, domestic violence court, and veterans court. Prior to the bill's passage, the state had authorized the creation of only drug courts and reentry courts.

KENTUCKY: Established the "Recovery Kentucky" Initiative (SB 4, 2009)

> The law required the DOC to establish a drug treatment facility with the capacity to house 200 felony offenders; the facility must be located within a maximum security facility, but must have minimum security standards. The law authorizes sentence credit for time spent in the DOC treatment facility, and grants judges discretion to credit time in non-DOC inpatient treatment facilities (after successful completion). It also expanded eligibility for prison diversion programs to include certain Class C offenders who successfully complete pretrial substance abuse treatment. The law increased judicial authority to order drug treatment by:

- authorizing judges to order substance abuse treatment as a condition of pretrial release; and
- instructing judges to order a substance abuse screening before releasing an offender pretrial if the individual has a documented history of substance abuse problems.

IMPACT >

The bill's fiscal statement estimated resulting cost savings at \$1,474,885, assuming that each offender housed in the state-operated residential treatment facility would have otherwise been incarcerated.²⁴

NEW JERSEY: Expanded Drug Courts (SB 233/504, 2008)

- > Expanded eligibility criteria to include persons with two or more third-degree felony convictions, subject to a prosecutor's veto;
- > Replaced a requirement of six-month inpatient treatment with judicial discretion to use other options (such as inpatient or outpatient treatment, drug education, etc.); and
- > Allows for early release from five years of special probation if a person is considered to have made exemplary progress, completed treatment, served at least two years of probation, has not committed a substantial violation of probation terms, and is unlikely to commit an offense if supervision ceases.

ILLINOIS: Created Framework for Mental Health Courts (SB 677, 2007)

> The Mental Health Court Treatment Act established a framework for creating mental health court programs that includes individual or group therapy, medication, drug testing, drug education, vocational training, incentives, and sanctions (such as fines, court fees, restitution, or jail time). The law excludes most violent offenses and mandates that the prosecutor, defendant, and court officials must agree to a potential participant's inclusion in the mental health court program.

Reducing Prison Terms

States have used a number of strategies to reduce the length of criminal sentences over the past 10 years. In some cases, legislatures simply shortened criminal sentences—for example, by repealing mandatory minimum sentences or reducing sentence lengths for supervision revocations. In other instances, legislatures have created sentence acceleration mechanisms, such as behavioral credits that reward prisoners with double or triple time served for completing risk-reduction programs.

RELAXING MANDATORY MINIMUM LAWS

In the 1980s and 1990s, at a time of heightened concern about drugs and violent crime, many states viewed mandatory minimum sentences as the most effective weapon in the “war on drugs.” As the impact of these longer sentences has become clear and as the public has gained a more sophisticated understanding of the complexity of drug-related problems, states have become increasingly willing to revise or repeal mandatory minimums for drug offenses.

NEW JERSEY: Reformed Mandatory Minimums for “School Zone” Cases (SB 1866, 2009)

> The legislature amended a law that had required judges to sentence drug offenders to a mandatory minimum of three years in prison for distributing, dispensing, or possessing with intent to distribute a controlled dangerous

substance within 1,000 feet of a school. The revised law authorizes the court to waive or reduce a mandatory minimum sentence or to place a school-zone offender on probation after considering certain enumerated mitigating factors.

MINNESOTA: Removed Mandatory Minimum for Low-Level Drug Cases (SF 802, 2009)

> The law allows courts to sentence, without regard to the mandatory minimum, individuals convicted of fifth-degree felony controlled-substances sale or possession.

RHODE ISLAND: Removed Mandatory Minimum Sentences for Drug Offenses (SB 39aa, 2009)

> The legislature removed mandatory minimum sentences for two categories of offenses involving the manufacture, sale, or possession of a controlled substance and reduced maximum sentences from 50 years to 20 years and from life to 30 years.

NEW YORK: Reformed the Rockefeller Drug Laws (S 56-B, 2009)

> The state eliminated mandatory minimums and restored judicial discretion in low-level drug cases. Prison is no longer mandatory for:

- first-time, nonviolent Class B, C, D and E felonies;
- second-time, nonviolent Class C, D, and E felonies; or
- second-time, nonviolent Class B felonies in which the offender is deemed by a drug treatment counselor to be drug-dependent or to have abused alcohol or drugs.

> Additionally, the reforms:

- reduced the minimum penalty for Class B felonies from three years to two years;
- sealed records for drug offenses and some non-drug, non-violent offenses—upon successful completion of treatment;
- invested \$71 million to expand drug treatment and alternatives to incarceration;

- authorized judges to retroactively resentence approximately 1,500 incarcerated offenders;
- left intact mandatory minimums for second-time Class B felonies if defendant was convicted of, or had pending, a violent felony in the previous 10 years; and Class A-I and A-II felonies.
- added an A-I felony “kingpin” provision carrying a mandatory minimum of 15 years to life; added Class B felony of selling to a minor under 17.

NEVADA: Narrowed Definition of “Habitual Offender” (AB 239, 2009)

- > The law limits “habitual offender” status, which carries a mandatory minimum of five years, to felony offenders with prior felony convictions. Previously, this status was applicable to certain current and prior misdemeanor charges.

DELAWARE: Reformed Mandatory Minimum Sentences (HB 210, 2003)

- > The revisions in the state law:
 - decreased mandatory minimum sentences for drug trafficking offenses;
 - doubled quantity threshold for drug trafficking to 10 grams;
 - made convicted drug traffickers eligible for transitional community programs during the last 180 days of a prison term; and
 - eliminated a 15-year mandatory minimum prison term for second-offense selling or possession with intent to sell.

MICHIGAN: Repealed Mandatory Minimum Sentences (PA 665,666,670, 2002)

- > The revisions eliminated most mandatory minimum drug laws and folded sentencing of drug offenders into the state’s sentencing guidelines. (Drug offenders had previously been sentenced under a separate sentencing scheme.) In addition to eliminating mandatory minimums, the revisions:

- eliminated mandatory consecutive sentences on multiple charges;
- replaced lifetime probation for the lowest-level drug offenses with five years of probation; and
- revised drug weight thresholds. (Weight no longer determines sentences but is instead a sentencing factor subject to downward departure; this means that possession of lower quantities may be used to justify lesser sentences.)

IMPACT >

The law was projected to produce cost savings of \$41 million in 2003 and had the following impact on the prison population:

- > Approximately 1,200 Michigan prisoners sentenced under the old mandatory minimum laws became immediately eligible for earlier parole consideration; and
- > An estimated 7,000 low-level drug offenders became eligible for discharge from lifetime probation once they served the standard term of five years.²⁵

INDIANA: Reformed Mandatory Minimum Sentences (HB 1892, SB 358, 2001)

- > The reforms eliminated mandatory minimums for certain nonviolent drug offenses and granted judges discretion to sentence offenders to home detention or work release. The laws also grant judges discretion to divert (from prison) offenders who sell drugs to support their personal use (HB 1892);
- > The state’s reforms exempt drug offenders with no other types of convictions from the “three strikes” law, unless they possess more than one trafficking conviction (SB 358).

EXPANDING DISCHARGE OPTIONS

Many state legislatures have reduced the length of criminal sentences by expanding opportunities for release from prison or community supervision. States have used myriad strategies, such as authorizing “good time” credits that accelerate prison releases and advancing parole eligibility dates.

GEORGIA: Expanded Release Options for Violent Offenders (SB 193, 2009)

- > The law allows violent offenders to be released to work release and transitional centers during their final year of incarceration. Violent offenders do not earn early-release credit, “good time,” or any other sentence-reducing measures.

COLORADO: Increased “Good Time” Credits (HB 1351, 2009)

- > The law increased the number of “good time” days an inmate can earn per month and allows the Department of Corrections to deduct up to 60 days from the sentence of a nonviolent inmate who has remained program-compliant and free of major violations.

IMPACT >

Officials project that this revision will save almost \$12 million in the first three years of enactment; cost savings are to be reinvested in recidivism-reduction programs beginning in FY 2012.²⁶

WISCONSIN: Established Recidivism Risk-Reduction Incentive (AB 500, 2009)

- > The legislature granted judges the option of sentencing offenders to an early “risk reduction” release date, which allows offenders who successfully complete required prison programs to be released prior to the expiration of their sentence. Following an intake assessment, the Department of Corrections determines which prison programs are required.

VERMONT: Requires Early Discharge for Certain Probationers (SB 292, 2009)

- > The legislature authorizes the Department of Corrections to discharge offenders sentenced to an unlimited term of probation on a nonviolent misdemeanor conviction upon the completion of two years if the probationer has completed all court-ordered programs. The law also authorizes the discharge of nonviolent (felony or misdemeanor) probationers who have less than six months remaining on their sentence.

PENNSYLVANIA: Created Recidivism Risk Reduction Incentive (HB 4, 2008)

- > These laws grant judges the option of sentencing certain nonviolent offenders to an early “risk reduction” release date upon successful completion of prison programs. For offenders with a minimum sentence of three years or less, the risk-reduction release date is three-fourths of the minimum sentence; for offenders with a minimum sentence of three years or more, the risk-reduction release date is five-sixths of the minimum sentence. The parole board maintains the authority to deny parole at the risk-reduction release date if the individual is considered a threat to public safety.

WYOMING: Extended “Good Time” to Parolees (SF 32, 2008)

- > The law extends “good time” credit to parolees, trimming their minimum sentences by a certain number of days per month if they maintain good behavior. The statute also allows parole officers to use intermediate sanctions in lieu of revocation for parolees who commit technical violations.

ARIZONA: Authorized “Earned Time Credit” for Probationers (SB 1476, 2008)

- > The legislature authorized the court to reduce the term of an offender’s probation by up to 20 days per month, provided the offender has met certain measures of probation compliance.

MISSISSIPPI: Advanced Parole Release Dates (SB 2136, 2008)

- > The legislature advanced the parole eligibility date for nonviolent offenders, from 85 percent of sentence served to 25 percent, to be applied retroactively.

IMPACT >

Through August 2009, about 3,100 Mississippi prisoners had been paroled an average of 13 months sooner than they would have been under the old law. The bill is projected to prevent prison-population growth and preclude the need for 5,000 prison beds over the next 10 years.²⁷

NEVADA: Increased “Good Time” Sentence Deductions (AB 510, 2007)

> This law increased “good time” deductions for prisoners and parolees. Prisoners can earn up to 30 days of “good time” credit per month (up from 20 days); parolees and probationers can earn up to 20 days of “good time” credit per month (up from 10 days). Parolees and probationers who are current with supervision fees and restitution are eligible for the credit of 20 days. Prisoners, parolees, and probationers are also eligible for the following sentence credits:

- a deduction of 60 days for completing substance abuse treatment (up from 30);
- a deduction of 60 days for earning a GED (up from 30);
- a 90-day deduction for earning a high school diploma (up from 60); and
- a deduction of 120 days for completing their first associate’s degree (up from 90).

KANSAS: Authorized Earned Time Credit for Program Completion (SB 14, 2007)

> The law makes parolees and prisoners eligible for a 60-day earned credit upon successfully completing one of four programs: substance abuse treatment; a general education diploma; a technical or vocational training program; or any program the secretary of corrections believes will reduce inmates’ risk of violating the conditions governing their eventual release.

IMPACT >

The program has resulted in a 35 percent decrease in crime among participating parolees and is forecasted to save the state \$3.6 million annually.²⁸

SHORTENING SENTENCE LENGTH

States have enacted many types of legislation that reduce the length of criminal sentences. Some legislatures have focused on judicial sentencing, while others have passed

bills that focus on reducing sentence length on the back end, such as modifying the rules governing supervision revocations.

SOUTH CAROLINA: Reduced Penalties for Drug Possession (SB 1154, 2010)

> As part of a comprehensive criminal justice reform package, the state eliminated mandatory minimum sentences for a conviction of simple drug possession; allowed the possibility of probation or parole for certain drug-offense convictions; and added a “knowledge element” applicable to school-zone drug offenses (i.e., prosecution must prove beyond a reasonable doubt that defendants knew they were selling controlled substances in a designated school-zone area). It also removed sentencing disparities for crack and powder cocaine possession and expanded eligibility for work-release programs.

IMPACT >

Forecast models estimate that South Carolina’s comprehensive reform package will reduce the need to build and operate prison space by 1,786 inmates over the next five years, saving up to \$241 million in operating and capital savings.²⁹

COLORADO: Limited Sentences for Technical Parole Violations (HB 1360, 2010)

> The law mandates that revocations of parole will last for periods of less than 180 days for nonviolent offenders with technical violations. If a risk and needs assessment instrument finds the nonviolent parolee is at a high risk of recidivating, parole can be revoked for no more than 90 days. The bill also sets guidelines authorizing substance abuse treatment for parolees.

IMPACT >

According to the fiscal impact statement, the law is projected to result in a net bed savings of 59,400 per year, amounting to annual cost savings of \$4,738,823. A portion of the law’s annual cost savings will be reinvested in reentry services for parolees.³⁰

ALABAMA: Reduced Probation Revocation Sentences (SB 325, 2010)

- > The law limits sentences for revocations based on technical violations of probation to not more than 90 days incarceration for nonviolent offenders who have met the conditions of probation for an entire six-month period. The law is retroactive and could affect approximately 1,500 offenders who are in Alabama Department of Corrections facilities because of technical violations of probation.

SOUTH DAKOTA: Authorized the Suspension of Prison Sentences (HB 1073, 2010)

- > The law permits the sentencing court to suspend any portion of a prison sentence.

KENTUCKY: Authorized “Street Time” Credit for Time on Parole (HB 372, 2009)

- > The legislature authorized time served on parole to be credited toward a total sentence, except for individuals classified as violent offenders, registered sex offenders, or parole violators convicted of a new felony. The law also allows nonviolent offenders convicted of a Class D felony and sentenced to one-to-five years in prison to become eligible for parole after serving 15 percent of their sentence or two months in prison.

FLORIDA: Eliminated Prison Sentences in Certain Cases (SB 1722, 2009)

- > The law requires that offenders convicted of a third-degree felony and scoring under a certain point threshold on a sentencing worksheet (an instrument that takes into account myriad factors, including offense severity, criminal history, victim, legal status, etc.) receive a non-prison sentence unless a judge makes a specific written finding of public endangerment. It also grants judicial discretion to impose non-prison sanctions for third-degree felony offenders who score higher on the worksheet.

LOUISIANA: Authorized House Arrest in Lieu of Incarceration (HB 225, 2009)

- > The legislature increased from two years to four years the period that a felony offender can be sentenced to house arrest. The law authorizes judges to sentence offenders to house arrest in lieu of incarceration.

WASHINGTON: Implemented Special Drug Sentencing Grid (HB 2338, 2002)

- > This law expanded sentencing options by creating a special treatment-oriented drug grid (a sentencing guideline) for drug offenders and made most of them eligible for drug-court sentences. Prison cost savings are to be deposited in a state-operated Criminal Justice Treatment Account that funds court-supervised treatment and other services.

ENDNOTES

- 1 Bureau of Justice Statistics Bulletin: Prisoners in 1994. Washington, DC: U.S. Dept. of Justice, Bureau of Justice Statistics; Pew Center on the States Public Safety Performance Project, *Prison Count 2010: State Prison Population Declines for the First Time in 38 Years* (Washington, DC: Public in 2001. Washington, DC: U.S. Dept. of Justice, Federal Bureau of Investigation.
- 2 *State Expenditure Report 2009*, National Association of State Budget Officers (Washington, DC, 2009); *State Expenditure Report 1990*, National Association of State Budget Officers (Washington, DC, 1990); Christine S. Scott-Hayward, *The Fiscal Crisis in Corrections: Rethinking Policies and Practices* (New York: Vera Institute of Justice, July 2009).
- 3 Ryan S. King and Marc Mauer, *State Sentencing and Corrections Policy in an Era of Fiscal Restraint* (The Sentencing Project: Washington, DC, 2002), p. 1.
- 4 *Ibid.*; Bureau of Justice Statistics Bulletin: Prisoners in 2001. Washington, DC: U.S. Dept. of Justice, Bureau of Justice Statistics; Ryan S. King and Marc Mauer, *State Sentencing and Corrections Policy in an Era of Fiscal Restraint* (The Sentencing Project: Washington DC, 2002); Hughes, T., & Wilson, D.J. (2003). *Reentry trends in the United States: Inmates returning to the community after serving time in prison*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
- 5 *Crime in the United States, 2001*. Washington, DC: U.S. Dept. of Justice, Federal Bureau of Investigation.
- 6 Daniel F. Wilhelm and Nicholas R. Turner, *Is the Budget Crisis Changing the Way We Look at Sentencing and Incarceration?* (New York: Vera Institute of Justice, June 2002); Jon Wool and Don Stemen, *Changing Fortune or Changing Attitudes? Sentencing and Corrections Reforms in 2003* (New York: Vera Institute of Justice, March 2004).
- 7 Tracy Velasquez, *The Pursuit of Safety: Sex Offender Policy in the United States* (New York: Vera Institute of Justice, September 2008).
- 8 Pew Center on the States Public Safety Performance Project, *Prison Count 2010: State Prison Population Declines for the First Time in 38 Years* (Washington, DC: Public in 2001. Washington, DC: U.S. Dept. of Justice, Federal Bureau of Investigation.
- 9 Scott-Hayward, 2009.
- 10 Jessika Shipley, *Staff Fiscal Note on House Bill 1352* (Denver: Colorado Legislative Council, July 2010) available at http://www.leg.state.co.us/clics/clics2010a/csl.nsf/fsbillcont3/F0B440D0C733A91C872576B40000FF89?Open&file=HB1352_f1.pdf (accessed September 13, 2010).
- 11 Adam Aaseby, *Multiple Agency Fiscal Note on Senate Bill 6167* (Olympia: Washington Office of Financial Management, April 2009).
- 12 The term “prison bed savings” refers to a reduction in the need for a specified number of prison beds.
- 13 Alabama Sentencing Commission, *Recommendations for Reform of Alabama’s Criminal Justice System: A Rational Approach to Sentence Reform* (Montgomery: Alabama Sentencing Commission, March 2003).
- 14 Council of State Governments Justice Center, *Justice Reinvestment in Texas: Assessing the Impact of the 2007 Justice Reinvestment Initiative* (New York: Council of State Governments Justice Center, April 2009).
- 15 Don Stemen and Andres Rengifo, *Kansas Senate Bill 123: A Process and Implementation Evaluation* (New York: Vera Institute of Justice, July 2006).
- 16 California enacted its mandatory drug treatment policy in 2000 with the passage of Proposition 36. A 2008 evaluation conducted by the University of California, Los Angeles, found that the law—which required treatment instead of incarceration for first- and second-time nonviolent drug possession offenders—resulted in cost savings of two to four dollars for every dollar invested. Darren Urada, *Evaluation of Proposition 36: The Substance Abuse and Crime Prevention Act of 2000* (Los Angeles: University of California Los Angeles, 2008).
- 17 Hughes, T., & Wilson, D.J. (2003). *Reentry trends in the United States: Inmates returning to the community after serving time in prison*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
- 18 Martin Lorenzo and Jon McAvoy, *Fiscal Note on Senate Bill 1476* (Phoenix: March 2008) available at <http://www.azleg.gov/legtext/48leg/2r/fiscal/sb1476.doc.pdf> (accessed September 13, 2010).
- 19 Patrick A. Langan and David J. Levin, *Bureau of Justice Statistics Bulletin: Recidivism of Prisoners Released in 1994* (Washington, DC: U.S. Dept. of Justice, Bureau of Justice Statistics, June 2002); available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf> (accessed September 13, 2010). Roger Roots, “When the Past Is a Prison: The Hardening Plight of the American Ex-Convict,” *Justice Policy Journal* 1, no. 3 (Fall 2004);
- 20 Thomas P. Bonczar and Lauren E. Glaze, *Bureau of Justice Statistics Bulletin: Probation and Parole in the United States, 2006* (Washington, DC: U.S. Dept. of Justice, Bureau of Justice Statistics, December 2007); Peggy Burke, *A New Look at Violations of Community Supervision* (Silver Spring: Center for Effective Public Policy, 2006).
- 21 New Hampshire Office of the Governor, *Governor Lynch Joins State Leaders, Law Enforcement in Signing Corrections Reforms Aimed at Strengthening Public Safety and Reducing Costs to Taxpayers*. June 2010 available at <http://www.governor.nh.gov/media/news/2010/063010-corrections-reforms.htm> (accessed September 13, 2010).
- 22 Council of State Governments Justice Center, *Justice Reinvestment State Brief: Vermont* (New York: Council of State Governments Justice Center, 2008).

- 23 Reginald Fluellen and Jennifer Trone, *Do Drug Courts Save Jail and Prison Beds?* (New York: Vera, 2000); Ryan S. King and Jill Pasquarella, *Drug Courts: A Review of the Evidence* (The Sentencing Project: Washington, DC, 2009).
- 24 Commissioner of Kentucky Department of Corrections, *Department of Corrections Impact Statement for Senate Bill 4 (2009)* available at www.lrc.ky.gov/RECORD/09RS/SB4/CI.doc (accessed September 13, 2010).
- 25 Judith A. Green, *Positive Trends in State-Level Sentencing and Corrections Policy* (Washington DC: Families Against Mandatory Minimums, November 2003). http://www.famm.org/pdfs/82751_Positive%20Trends.pdf (accessed September 13, 2010); Norman Sinclair, "Dad of 4, 1,249 Other Drug Prisoners See Freedom," *The Detroit News*, January 20, 2003.
- 26 Jessika Shipley, *Staff Fiscal Note on House Bill 1351* (Denver: Colorado Legislative Council, June 2009) available at http://www.leg.state.co.us/clics/clics2009a/csl.nsf/fsbillcont3/0E25F6511D550D928725759A0051EBEB?Open&file=HB1351_f1.pdf (accessed September 13, 2010).
- 27 *Reforming Mississippi's Prison System*, (JFA Institute, 2009) available at <http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/PSPP/MDOCPaper.pdf?n=8407> (accessed September 13, 2010); Ward Schaefer, "Behind Barbour's Prison Rhetoric," *Jackson Free Press* February 17, 2010.
- 28 Alison Lawrence, *Cutting Corrections Costs: Earned Time Policies for State Prisoners* (Washington, DC: National Conference of State Legislatures, July 2009).
- 29 *South Carolina's Public Safety Reform: Legislation Enacts Research-based Strategies to Cut Prison Growth and Costs* (Washington, DC: Pew Center on the States, June 2010).
- 30 Jessika Shipley, *Staff Fiscal Note on House Bill 1360* (Denver: Colorado Legislative Council, July 2010) available at http://www.leg.state.co.us/clics/clics2010a/csl.nsf/fsbillcont3/E1BCEF14BFB7AE6D872576BF0075BAAA?Open&file=HB1360_f1.pdf (accessed September 13, 2010).

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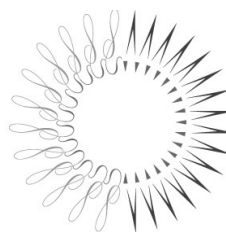
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