

January 11, 2012

IMPROVING BUDGET ANALYSIS OF STATE CRIMINAL JUSTICE REFORMS: A STRATEGY FOR BETTER OUTCOMES AND SAVING MONEY

by Michael Leachman, Inimai M. Chettiar, and Benjamin Geare¹

An increasing number of states are considering criminal justice reforms proven to protect the public and produce significant cost savings. For example, some states are offering effective addiction treatment to more people convicted of drug-related crimes instead of incarcerating them. Other states are increasingly turning to sanctions other than prison time for people who violate the technical conditions of their parole, for example, by missing a meeting with their parole officer. The states that have implemented these reforms have seen their crime rates remain at historically low levels or fall further and have saved many millions of dollars in prison construction and operating costs, freeing up revenue they can use to avert or restore some recession-driven cuts to schools and other priorities. By allowing people who pose little threat to others' safety to remain in the workforce and their communities, rather than in prison, these new approaches also pay off for states by providing broader economic and social benefits.

Despite those positives, some states have rejected these types of reforms. In some cases, legislators may have turned them down because they were not given a rigorous assessment of the cost savings that would result. Often, official state estimates of the savings or cost of proposed legislation either lack the information necessary to good decision-making or are not produced at all. By improving these estimates,

Table of Contents

Criminal Justice Fiscal Note Best Practices.....	3
I. Criminal Justice Reforms Can Save Money and Protect Public Safety.....	4
II. Good Fiscal Notes Can Help States Recognize the Value of These Reforms.....	7
III. Fiscal Note Best Practices Explained.....	9
Appendix: 50 State Comparison of Best Practices.....	26
IV. Acknowledgements.....	28

¹ Michael Leachman, Director of State Fiscal Research, Center on Budget and Policy Priorities; Inimai M. Chettiar, Advocacy & Policy Counsel, American Civil Liberties Union; Benjamin Geare, State Fiscal Policy Intern, Center on Budget and Policy Priorities.

known as “fiscal notes,” states can help legislators recognize any cost benefits and better allocate scarce budgetary resources.

Based on an analysis of all the fiscal notes written by states for significant adult sentencing and corrections bills enacted in the past three years² — a total of over 600 bills from 49 states — this report finds that:

- **States did not write fiscal notes for about 40 percent of the bills.** Two states, **Delaware** and **Hawaii**, never write fiscal notes for criminal justice bills. Others, including **South Dakota** and **Vermont**, rarely write them. Without an official certification that a bill would save money, legislators may have less incentive to vote for it.
- **The majority of states failed to examine fiscal impacts beyond a year or two into the future.** Fifteen of the 29 states that wrote fiscal notes finding a significant fiscal impact failed to estimate the impact beyond two years. Some effective criminal justice reforms, including certain drug and mental health treatment programs, require initial modest startup costs but reduce future prison spending significantly. Without an official recognition of the future savings, legislators are less likely to be aware of the long-term fiscal benefits of these reforms, reducing the chances of enactment.
- **About 15 percent of fiscal notes did not estimate a budgetary impact or indicated only that the impact was a generically positive or negative one.** While some of these notes contained some useful information, they failed to accomplish the primary goal of a fiscal note: to provide the best possible estimate of the bill’s impact on the state budget.
- **Few states described the method used to determine fiscal impacts.** Only 13 of the 29 states that wrote fiscal notes finding a significant impact consistently described the method they used to determine the cost or savings of a bill. Without an understanding of the methodology, lawmakers and the public are less able to evaluate the accuracy of fiscal notes, reducing their credibility and usefulness.
- **Some states do little to ensure the credibility of their fiscal notes.** In some states, executive branch agencies produce fiscal notes with no review by nonpartisan analysts. Perhaps worse, in **New York** a bill’s legislative sponsor produces its fiscal note and may use any methodology and sources to estimate the impact. Legislators must believe that fiscal note findings are credible before they can rely on them when deciding how to vote.

This report lays out best practices for writing criminal justice fiscal notes — ways to make these notes maximally useful to lawmakers and the public. A few states, including **Texas** and **Washington**, already produce fiscal notes that meet most of these standards, but no state incorporates all of these best practices. All states could improve their fiscal notes. Achieving these best practices may require states to appropriate a bit more money to the agencies that write fiscal notes (see Text Box). Nearly all the best practices described here apply to all fiscal notes, not just notes for criminal justice bills.

² This report analyzed all fiscal notes locatable for bills identified as “significant state sentencing and corrections legislation” enacted in each state in the 2009, 2010, and 2011 legislative sessions as compiled by the National Conference of State Legislatures, <http://www.ncsl.org/?TabId=20763>. Hence, this pool only includes enacted legislation, and does not include fiscal notes that may have been written for bills that did not become law. This database did not include any fiscal notes from Alaska because that state did not enact any significant adult criminal justice bills in the last three years, according to that database.

Criminal Justice Fiscal Note Best Practices

Our review of all fiscal notes for significant adult sentencing and corrections laws in the last three years found that some states have adopted certain practices that other states could implement to make their fiscal notes more useful. Taken together, they form the following list of “best practices,” which are explained in greater detail in Part III of this report.

All criminal justice fiscal notes should be consistent, properly researched, detailed, and accessible.

Consistent

- Written for all criminal justice bills that receive a committee hearing, or at least all bills that pass out of committee.
- Updated when an adopted amendment may have fiscal impacts.
- Produced in a consistent format, following an established set of guidelines.
- Produced by a source that is trusted, non-partisan, and adequately resourced.

Properly Researched

- Include an estimate of the savings, costs, or revenue gains, and avoid claiming an indeterminate impact.
- In rare cases when an impact estimate is impossible, include a detailed explanation for that conclusion.
- Project the fiscal impact at least five years into the future.
- Analyze the impact against maintaining current policy.
- Include a clear description of the methodology and assumptions.
- Cite the information sources.

Detailed

- Break down the impact of each major provision of the bill, and the impact on each affected government agency or revenue source.
- Break down estimates into one-time and recurring impacts.
- Include some indication of impacts on local governments.
- Include impacts on prison and jail populations.

Accessible

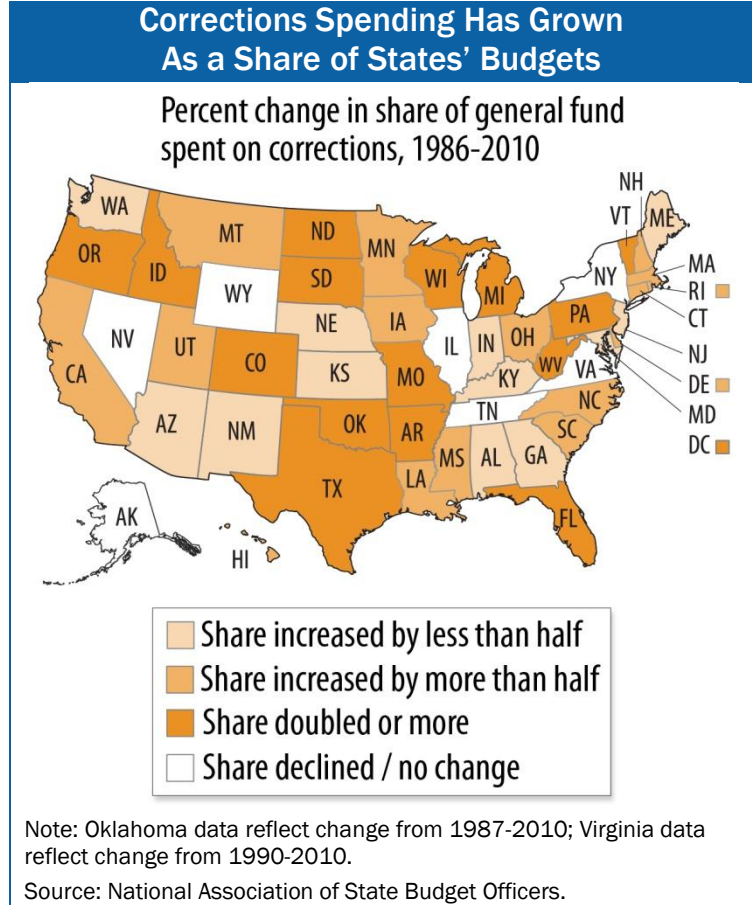
- Easily available on the state legislature’s website.
- Contain basic information about the bill, including bill number and version, sponsor(s), and summary.
- Include contact information for the lead analyst.

To achieve these best practices, many states may need to invest more resources in their fiscal note process, for example by hiring more professional research staff and upgrading the data available to them. But these costs are much lower than the costs of enacting or maintaining expensive criminal justice policies that over-spend on prisons, weaken a state’s economy, and damage its social fabric.

I. Criminal Justice Reforms Can Save Money and Protect Public Safety

In the 1980s and 1990s, many states adopted sweeping criminal, sentencing, and parole laws that greatly increased the number of people in prison. These laws lacked research proving their effectiveness at reducing crime or rehabilitating people. Since 1980 the nation's imprisonment rate — the share of the population in prison — has more than tripled.³ The United States holds nearly a quarter of the world's incarcerated population, but represents only five percent of the world's total population.⁴ State prisons hold the vast majority — about 87 percent — of U.S. prisoners.⁵

As a result, state spending on prisons has risen rapidly. In nearly all states, corrections spending now absorbs a larger share of general fund budgets than in the past, in some cases much more. In 15 states, the share has at least doubled since the mid-1980s, and in 31 states it rose by at least half.⁶ In **Arkansas**, for example, corrections'



³ The “imprisonment rate” is the share of the population serving sentences in either state or federal prisons. It also includes individuals sentenced by state governments to prison who are housed in local county jails, but it does not include individuals housed in local county jails either awaiting trial or sentenced to jail by local jurisdictions. The U.S. imprisonment rate increased from 139 per 100,000 people in 1980 to 497 per 100,000 in 2010. See Bureau of Justice Statistics, U.S. Department of Justice, “Imprisonment Rate, 1980-2009,”

<http://bjs.ojp.usdoj.gov/content/glance/incrt.cfm>, and Paul Guerino, Paine M. Harrison, and William J. Sabol, “Prisoners in 2010,” Bureau of Justice Statistics, Table 1, p. 2, <http://www.bjs.gov/content/pub/pdf/p10.pdf>.

⁴ International Centre for Prison Studies, *World Prison Brief*, “Entire World, Prison Population Totals,” http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poptotal. This “incarceration rate” is based on all people held in U.S. federal and state prisons and local jails as of December 31, 2009. In 2010, the U.S. incarcerated population declined slightly, but it still remains at about 2.3 million people. Lauren E. Glaze, “Correctional Population in the United States,” 2010, Bureau of Justice Statistics, Appendix Table 2, p. 7, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpus10.pdf>. The U.S. and world population estimates are from the Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, *World Population Prospects*. The 2010 Revision can be found at <http://esa.un.org/unpd/wpp/index.htm>.

⁵ Paul Guerino, Paige M. Harrison, and William J. Sabol, “Prisoners in 2010,” Bureau of Justice Statistics, Appendix Table 1, p. 14. On December 31, 2010, there were 1,395,356 people in prison under state jurisdiction and 209,771 in prison under federal jurisdiction. This is based on the imprisonment rate. See footnotes 3 and 4 for more explanation.

⁶ CBPP analysis of data from National Association of State Budget Officers, “State Expenditure Report 2010,” December 2011.

share rose from 2.6 percent of the budget in 1986 to 8.1 percent in 2010. Over the same period in **Vermont**, it rose from 4.2 percent to 16.7 percent of the budget.

This rapid growth in prison spending has left less funding for schools, universities, health care, and other state priorities. If states in 2010 had spent the same share of their budgets on corrections as they did in 1986, they would have had over \$16 billion available to protect these priorities from the harmful spending cuts imposed that year.⁷

In recent years, states increasingly have considered cost-saving alternatives to incarceration that are proven to reduce recidivism and maintain public safety. These policies include offering addiction treatment instead of prison to people convicted of certain drug offenses. Treatment programs are more effective than incarceration in helping people overcome drug addiction and decreasing their chances of committing crimes in the future.⁸ Other examples are laws that sanction — but do not automatically send back to prison — people who violate the technical conditions of their parole by, for example, missing a parole meeting or failing to complete a community service assignment. One-third of state prison admissions in recent years consisted of individuals who committed technical parole violations, not new crimes.⁹ Immediate and predictable sanctions for such violations are more effective in reducing recidivism than putting people back in prison.¹⁰ These alternatives also allow people who pose little threat to the safety of others to remain in or become productive members of the workforce, thereby boosting the state's economic output. Furthermore, they allow people to remain in their communities and with their children, strengthening the state's social fabric and quality of life.¹¹

These lower-cost alternatives to prison are particularly compelling in the aftermath of the recent recession. Since the recession hit, states have absorbed budget shortfalls totaling over \$530 billion. With revenues projected to recover slowly, states face additional shortfalls next year of at least \$44

⁷ CBPP analysis of National Association of State Budget Officers data.

⁸ Redonna K. Chandler et al., "Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety," National Institutes of Health, 2009, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2681083/pdf/nihms101882.pdf>.

⁹ See William J. Sabol and Heather Couture, "Prison Inmates At Midyear 2007," Bureau of Justice Statistics Bulletin, U.S. Department of Justice, June 2008, NCJ 221944, p. 5.

¹⁰ See, e.g., Angela Hawken and Mark Kleiman, "Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE," National Institute of Justice, <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>; "One In 31: The Long Reach of American Corrections," Pew Center on the States, http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf.

¹¹ These kinds of broader costs and benefits of criminal justice reforms are harder to measure than the narrow budgetary impacts that are the focus of this report. In order to capture these larger consequences, states could consider performing a cost-benefit analysis (CBA) on proposed legislation. CBAs monetize the broad economic and social benefits of criminal justice reforms and look at consequences beyond fiscal impacts to governments. No state requires CBAs on all legislation. In the 1980s, Washington's legislature created a non-partisan institute, the Washington State Institute for Public Policy, to perform CBAs at the request of the legislature. Lawmakers can benefit from having the option of requesting a CBA on bills, but they will still need to improve their state's fiscal note process, especially since, unlike CBAs, fiscal notes in some states are required by law for many or most bills under serious consideration by the legislature. For more on how CBAs can improve criminal justice policymaking see Rachel E. Barkow, "Federalism and the Politics of Sentencing," *Columbia Law Review* (2005), pp. 1278-1285; Jennifer Rosenberg & Sara Mark, "Balanced Justice: Cost-Benefit Analysis and Criminal Policy," Institute for Policy Integrity (2011), http://policyintegrity.org/files/publications/Balanced_Justice.pdf.

billion.¹² For the near future, state budgets will remain constrained. Even if state revenues grow eight percent a year (as they did in the 2011 state fiscal year), revenues will not reach pre-recession levels until near the end of the decade.¹³

Consideration of such reforms appears to be spreading. The National Conference of State Legislatures reported that in 2011 at least 23 states took steps both to evaluate the budgetary impact of existing criminal justice policies and to consider alternative approaches.¹⁴ Several states have already enacted reforms based primarily on projections that they would reduce prison populations and costs. In states that enacted these reforms a few years ago, crime rates have remained at historically low levels or declined further. For example:¹⁵

- In 2007, building on earlier reforms, **Kansas** enacted laws that expanded parole eligibility and reduced the number of people sent to prison for technical parole and probation violations. These reforms are projected to save the state \$80 million between 2007 and 2012 and to reduce by about 14 percent its prison population in 2017.¹⁶ After 2007, Kansas' crime rate fell to its lowest level since 1973.
- **Kentucky** enacted a law in 2011 that eliminated pre-trial detention and instituted probation for many drug offenses. The law made marijuana possession a misdemeanor, reduced sentences for some drug crimes, and expanded parole eligibility. This reform is projected to save the state \$422 million by 2020 and reduce its prison population growth by over 17 percent.¹⁷
- In 2010, **South Carolina** enacted a law that required fiscal notes for criminal justice bills, eliminated some mandatory minimum sentences, equalized sentencing for crack and powder cocaine crimes, provided non-prison alternatives for some drug offenses, and expanded parole and probation eligibility. This reform is projected to save the state \$241 million by 2014 and reduce its prison population growth by 7 percent.
- From 2007 to 2011, **Texas** enacted laws that created drug treatment programs, offered non-

¹² Elizabeth McNichol, Phil Oliff, and Nick Johnson, "States Continue to Feel Recession's Impact," Center on Budget and Policy Priorities, January 9, 2012, <http://www.cbpp.org/cms/index.cfm?fa=view&id=711>.

¹³ Ibid, pp. 4-5.

¹⁴ "Studies Prompt Sentencing and Corrections Reforms and Reinvestments," National Conference of State Legislatures, in E-Bulletin: Sentencing and Corrections Policy Updates, September 2011, Issue 5, p. 3, <http://www.ncsl.org/IssuesResearch/CivilandCriminalJustice/IssueinFocusStudiesPromptSentencingandCorrectionsReformandReinvestments/tabid/23555/Default.aspx>.

¹⁵ For a thorough detailed analysis of the reforms and the cost savings in these states see, "Smart Reform is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities," American Civil Liberties Union, 2011, pp. 14, 35, 45, <http://www.aclu.org/criminal-law-reform/smart-reform-possible-states-reducing-incarceration-rates-and-costs-while>.

¹⁶ Statement by Secretary Roger Werholtz, Kansas Department of Corrections, April 1, 2009, <http://justicereinvestment.org/files/Kansas.Werholtz.pdf>. Percent change in prison population estimated from data in graph entitled "Kansas Projected Prison Population (FY2007 & FY2008)."

¹⁷ Impact estimates based on the fiscal note written for the bill can be found at <http://www.lrc.ky.gov/record/11rs/HB463/FN.doc>, and projected prison population without the reforms can be found at Legislative Research Commission, "Report of the Task Force on the Penal Code and Controlled Substances Act," Research Memorandum No. 506, revised April 21, 2011, p. 8.

prison sanctions for technical parole violations, and expanded parole and probation eligibility. Through the current fiscal year, these reforms saved the state an estimated \$2 billion in prison construction costs and reduced its projected prison population by over 11,000 people.¹⁸ After 2007, as in Kansas, Texas' crime rate fell to the lowest level since 1973.

In each of these four cases, legislators were aware of the cost savings of the reforms. They had projections of their fiscal impacts in part thanks to intensive technical assistance provided by the Pew Center on the States.¹⁹ To assess regularly the fiscal impact of future reform proposals, in similar detail and without the support of outside technical assistance providers, these states and others will need to improve their in-house capacity to do this sort of analysis. If all states were able directly and rigorously to evaluate criminal justice reform proposals, they would have more information – on an ongoing basis – to use in improving their sentencing and corrections policies.

II. Good Fiscal Notes Can Help States Recognize the Value of These Reforms

If a state does not account accurately for the fiscal impacts of criminal justice bills, legislators may not realize the significant cost savings of the proposals and may therefore fail to enact them. If legislators lack accurate estimates of the cost of legislation generally, they may be more likely to support criminal justice policies that make matters worse by unnecessarily increasing incarceration rates and costs.

Nearly every state produces, in some form, fiscal notes estimating the costs, savings, or revenue gain of at least some bills.²⁰ Fourteen states establish by law special requirements for fiscal notes written for criminal justice bills — typically those bills that increase sentences or create new crimes.²¹ At least three of these states, **Nevada**, **North Carolina**, and **Virginia**, require specialized criminal justice fiscal notes only for bills that *increase* the length of criminal sentences, not for bills that *decrease* criminal sentences or otherwise reduce costs. It is just as important for legislators to understand when a bill would save the state money as it is for them to understand when a bill would increase costs.²²

¹⁸ However, Texas's prison population has begun to grow again, possibly signaling a need for further reform. From 2009 to 2010, its prison population grew by 2,400. Paul Guerino, Paige M. Harrison, and William J. Sabol, "Prisoners in 2010," Bureau of Justice Statistics, Appendix Table 1, p. 14, <http://bjs.gov/content/pub/press/p10cpus10pr.cfm>.

¹⁹ For more information about Pew Center on the States' technical assistance in this area, see http://www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=31336.

²⁰ Hawaii is the only state that does not produce fiscal notes for any bills. Delaware only produces fiscal notes for bills with a revenue impact, which excludes most criminal justice bills.

²¹ These 14 states are Colorado, Connecticut, Illinois, Iowa, Kansas, Kentucky, Missouri, Nevada, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, and Virginia. "Correctional Impact Statements," National Conference of State Legislatures, August 2011, <http://www.ncsl.org/portals/1/Documents/cj/BulletinSept-2011.pdf>. We do not include Texas in our list, as NCSL does, because Texas' law requires a correctional impact statement only for bills that increase court costs or fees for people convicted of crimes.

²² Some states, like Iowa and Connecticut, have laws requiring racial impact statements for all bills and amendments that would increase or decrease the pretrial or sentenced populations of state corrections facilities. Minnesota's sentencing commission has begun to produce racial impact assessments as part of an internal policy decision. These types of racial impact statements are excellent companions to fiscal notes. They provide additional information on how policies affect communities of color — something a fiscal note typically does not provide — so legislators can better understand the impacts of policies on populations within the state. For more background on racial impact statements see Marc Mauer,

Typically, fiscal notes are produced by staff of the affected state agencies, the legislature, the governor's budget office, or some combination of these. In some states, a professional team of analysts oversees the fiscal note process to ensure accuracy. In a few states, including **Connecticut** and **Virginia**, the state sentencing commission writes or helps write criminal justice fiscal notes.²³

The role of fiscal notes in the legislative process varies by state, but in most states they are highly influential, and the information they contain can determine whether a bill is enacted or not. If a fiscal note finds that a bill will require new state spending, the chances of that bill's passage diminish. Since nearly all states require balanced budgets, new spending requires increased revenue or cuts to other programs. Conversely, if a fiscal note finds that a bill will save the state money, it has a higher chance of enactment.

Good fiscal notes promote an open and rational policy-making process — one conducive to enacting effective criminal justice reforms — and serve other important purposes. More specifically, high-quality fiscal notes can:

- **Help state legislators make rational policy and fiscal decisions, including enacting criminal justice reforms.** With good information about the cost or savings of a bill, legislators can better judge its value and recognize whether it will save money. Introducing more rationality into criminal justice policymaking is especially important given that past policymaking in this area historically has not been grounded in analysis of the benefits and costs of legislation.
- **Help depoliticize the policymaking process.** Accurate fiscal notes can help legislators get beyond politics and find common ground on the state's broader interests. Although some legislators may be wedded to particular policy positions regardless of fiscal impacts, others may be swayed by credible projections of cost savings from criminal justice reforms.
- **Make the budget process more open and transparent.** In some states, a small number of powerful policymakers tightly control the budget process. Good fiscal notes can open up this process by giving all legislators access to valuable, non-partisan information about a budget bill's savings or cost. In addition, easily accessible and readable fiscal notes can help the public engage more meaningfully in legislative policy debates. In these ways, good fiscal notes can create room for fresh ideas and new ways of addressing policy challenges.
- **Reveal long-term budget impacts.** The state budget process often focuses on producing a balanced budget for the upcoming fiscal year and ignores the longer term. Good fiscal notes include estimates of costs and savings in future years, helping legislators see the long-term impact of their votes. This is especially important for criminal justice reforms because some require modest up-front spending in order to achieve significant long-term savings. Good fiscal notes can help legislators see these important benefits to the state's long-term fiscal health.

"Racial Impact Statements: Changing Policies to Address Disparities," The Sentencing Project, http://www.sentencingproject.org/doc/rd_abaarticle.pdf; Marc Mauer, "Racial Impact Statements as a Means of Reducing Unwarranted Sentencing Disparities," *Ohio State Journal of Criminal Law* (2007), p. 19, http://www.sentencingproject.org/doc/publications/rd_racialimpactstatements.pdf.

²³ "Correctional Impact Statements," National Conference of State Legislatures, August 2011, <http://www.ncsl.org/portals/1/Documents/cj/BulletinSept-2011.pdf>.

- **Help assure a balanced budget.** As Oregon’s fiscal note training materials point out, fiscal notes can serve as an “early warning” for the budget process when costly bills gain political momentum.²⁴ They can also help legislative budget committees take into account the fiscal benefits of criminal justice reforms being considered by judiciary and public safety committees, boosting the chances that these reforms will be enacted.

III. Fiscal Note Best Practices Explained

Criminal justice fiscal notes vary widely from state to state. Some states produce useful fiscal impact estimates for a large share of the criminal justice legislation under consideration by the legislature. Others rarely do. Often, states omit key features from their fiscal notes and fail at important practices.

Based on a review of all fiscal notes states prepared for significant adult criminal justice bills enacted in the last three years, this section highlights best practices that meet four main objectives. Criminal justice fiscal notes should be **consistent, properly researched, detailed, and accessible**. This section explains these objectives, their importance, and what states do (or fail to do) to meet them. No state fully achieves all the best practices identified in this report. All states — and lawmakers — stand to benefit from improving their fiscal note practices by following the best practices of their peers. (For a summary of how individual states comport with these best practices, see the Appendix.)

A. Fiscal Notes Should Be Consistent

States can and should produce consistent fiscal notes for criminal justice bills. If they do not, legislators will lack basic information crucial to prudent fiscal management and thoughtful criminal justice policy. Unless all notes contain the same sort of useful and objective information, legislators may favor some bills over others arbitrarily. For example, a cost-saving criminal justice reform bill for which the state produces a fiscal note may have a much better chance of passage than a bill for which the state neglects to produce a fiscal note.

To be consistent, fiscal notes should be:

- **Written for all criminal justice bills that receive a committee hearing, or at least all bills that pass out of committee.** To manage the state’s budget prudently and choose wisely among competing policy options, legislators need to know how much an individual bill, if made law, would save or cost the state. Without an official certification of each bill’s fiscal impact, legislators may have less reason to vote for criminal justice bills that would save money.

Our review found that states did not write a fiscal note for about 40 percent of the adult criminal justice bills they enacted in the last three years. Some states simply never produce fiscal

²⁴ “2011 Legislative Session: Fiscal Impact Statements Frequently Asked Questions,” Oregon State Legislature, Legislative Fiscal Office, p. 1, http://www.leg.state.or.us/comm/lfo/2011_FIS/2011_FIS_FrequencyAskedQuestions.pdf.

notes for criminal justice bills at all. **Hawaii**, for example, does not produce fiscal notes for any bills. **Delaware** writes fiscal notes only for bills with a revenue impact, and thus typically excludes bills that affect criminal justice spending. Other states, including **South Dakota** and **Vermont**, rarely produce fiscal notes for any legislation. Some states, including **Georgia**, **Illinois** and **Mississippi**, produce notes only when legislators request them, and apparently there were no requests on criminal justice bills during this time period. Still other states, including **New Jersey**, often produce fiscal notes but did not produce them for the criminal justice bills we reviewed. The legislative research analysts in these states apparently concluded that the bills did not have sufficient fiscal impacts to warrant a note, but they did not justify this conclusion as the best practices in this report recommend.

Ideally, states should write fiscal notes for every criminal justice bill, helping to level the playing field for bills by providing the fiscal impact of proposals regardless of their initial level of political support. However, given the resource constraints of state legislative researchers, this may not be feasible. In some states, it may be possible to write a fiscal note for all bills that receive a hearing. In others, setting a goal of writing a fiscal note for any bill that passes out of committee is more realistic.

- **Updated when an adopted amendment may have fiscal impacts.** Legislators often amend bills during the legislative process, sometimes changing bill language significantly. These changes may alter a bill's fiscal impact, but states do not always update their fiscal notes. **Kansas** goes so far as to explicitly exempt by statute amendments from fiscal note requirements.²⁵ Without updates, the notes may be useless to legislators considering a bill when an amendment has altered the initial fiscal impact.

Some states require revised fiscal notes for amended bills. **Texas**, for example, requires that the committee chair request an updated fiscal note any time a committee changes a bill (by amending it or substituting a new bill).²⁶ Similarly, **North Carolina** requires that a committee that passes an amended bill with a fiscal impact must obtain a new fiscal note.²⁷

To update fiscal notes when bills are amended, fiscal analysts need resources to act rapidly as bills move through the legislative process. **Oregon**'s legislative fiscal office warns state agency personnel that they "may need to be prepared to respond quickly to [the fiscal office's] requests for revised fiscals on amended bills as this is [the office's] highest priority, and often is work that has less than a 24 hour turnaround."²⁸

Fiscal notes written for earlier versions of a bill are useless to lawmakers if the bill's fiscal impact has been substantially altered. The best practice is to update fiscal notes when amendments to bills are adopted that may have fiscal impacts, especially when those amended bills are likely to advance in committee.

²⁵ Kansas Statutes Annotated § KSA 75-3715a, "Fiscal notes for certain legislative bills."

²⁶ "Guide to Fiscal Notes: Instructions for Legislative Budget Board Staff," Legislative Budget Board, February 2011, http://www.lbb.state.tx.us/Fiscal_Notes/FNS_Instructions_for_Agencies.pdf.

²⁷ North Carolina General Statutes § GS 120-30.45, "Fiscal Note on Legislation."

²⁸ "2011 Legislative Session, Fiscal Impact Statements — Frequently Asked Questions," Oregon Legislative Fiscal Office, p. 2, http://www.leg.state.or.us/comm/lfo/2011_FIS/2011_FIS_FrequencyAskedQuestions.pdf.

- **Produced in a consistent format, following an established set of guidelines.** If states lack written guidelines and an established, consistent process for producing the notes, they will tend to be inconsistent. Notes are produced by multiple analysts and often involve coordination among analysts in numerous agencies and the legislature. Also, agency staff changes over time. The agency primarily responsible for fiscal notes should produce a written set of guidelines and provide training before each legislative session for agency personnel who provide background data and analysis.

A few states produce excellent online guides that describe the details of a consistent process for writing fiscal notes. The following guides are particularly thorough and can serve as a model for other states:

Maine: Office of Fiscal and Program Review, *The Fiscal Note Process: An Overview*, February 2009.

http://www.maine.gov/legis/ofpr/other_publications/fiscalnote_process/overview124.pdf

Texas: Legislative Budget Board, *Guide to Fiscal Notes*, February 2011.

http://www.lbb.state.tx.us/Fiscal_Notes/FNS_Instructions_for_Agencies.pdf

Washington: Office of Financial Management, *Legislative Fiscal Note Instructions*, November 2011.

<http://www.ofm.wa.gov/budget/instructions/other/legislativefiscalnoteinstructions.pdf>

Wisconsin: Legislative Reference Bureau, *2011 Legislative Session Fiscal Estimate Manual*, November 2010.

<http://legis.wisconsin.gov/lrb/pubs/ib/10ib1.pdf>

Additionally, some states, including **Minnesota**, **Texas**, and **Washington**, have developed computerized systems to allow analysts to share their work quickly and produce consistent notes. Some states, including **Texas** and **Washington**, also provide staff with a fiscal note “help desk” for questions. The help desk in **Texas** is available 24 hours a day, 7 days a week during the legislative session.

Written guidelines, computerized systems, and help desks are useful tools for producing consistent and useful fiscal notes. Developing these tools may require an initial investment, but this investment is small in comparison to the large costs of building or maintaining new prisons. States at least should produce guidelines for consistent note writing, and post them online.

- **Produced by a source that is trusted, non-partisan, and adequately resourced.** If lawmakers typically are skeptical of the accuracy of fiscal notes, they will tend to rely on them less, making them useless for most bills. The more lawmakers respect fiscal notes, on the other hand, the more valuable the notes become in the policymaking process. As a document on the fiscal note process in **Minnesota** points out, “Incomplete or inaccurately calculated fiscal notes may be perceived by legislators as a lack of cooperation by an agency, . . . possibly fostering

mistrust in the process.”²⁹

A few states, including **Illinois** and **West Virginia**, allow executive branch agencies to produce most fiscal notes with no oversight by non-partisan analysts working for agencies without interests at stake in particular bills. Perhaps worse, in **New York** the bill’s legislative sponsor is responsible for producing a fiscal note and may use any methodology and sources, a practice that does not foster confidence in a fiscal note’s veracity.

Fiscal notes are most likely to be trusted if they are overseen by a team of independent analysts working for the legislative branch, as happens in states including **Colorado**, **Connecticut**, **Oregon**, and **Texas**. These analysts evaluate the methodology of state agency personnel and request improvements as needed. As **Oregon**’s fiscal note oversight agency writes, independent legislative analysts “add . . . value to the fiscal impact process by ensuring accuracy, integrating information from multiple agencies, challenging agency assumptions and offering different points of view on fiscal analysis.”³⁰ Since these legislative analysts typically work for all members of the legislature, regardless of party affiliation, they could be perceived as more independent and unbiased than analysts working for an executive branch agency. Executive branch budget offices could also be perceived as unbiased if they take steps to establish credibility, such as by allowing a legislative audit of the fiscal note process.³¹

Notably, fiscal analysts, even those in relatively independent legislative agencies, may be exposed to pressure from legislators to produce fiscal notes that would increase the chances of a particular bill passing. States can take steps to diminish this kind of pressure while still allowing legislators and others to supply information that can help analysts produce high-quality fiscal notes. For example, **Missouri** requires by law that a legislator or lobbyist wishing to help shape or appeal a fiscal note must communicate in writing with the agency responsible for fiscal notes.

In general, the legislative staff overseeing fiscal notes will need to rely on budget experts within the corrections department or other executive-branch departments when examining criminal justice reform bills, since these experts typically are more familiar with their departments’ budgets and with the data sources necessary to estimating fiscal impacts. To produce consistent, high-quality fiscal notes over time, these executive branch analysts will need training to play their roles well. **Texas**’ Legislative Budget Board produces a fiscal note training guide specifically for analysts in executive branch departments, conducts in-person trainings, and posts an online video and slideshow for them to use.³² Similarly, **Oregon**’s Legislative Fiscal

²⁹ “Fiscal Note Process,” Minnesota Department of Administration, Policy Number FMR-5D-01, February 4, 2000, p. 2, available at <http://www.admin.state.mn.us/fmr/documents/Policies%20&%20Procedures/Reporting/FMR-5D-01%20Fiscal%20Note%20Process.pdf>.

³⁰ “2011 Legislative Session, Fiscal Impact Statements — Frequently Asked Questions,” Oregon Legislative Fiscal Office, p. 2, http://www.leg.state.or.us/comm/lfo/2011_FIS/2011_FIS_FrequencyAskedQuestions.pdf.

³¹ In 2010, Kansas’ bipartisan Legislative Post Audit Committee, consisting of members of the legislature, conducted an audit of the state’s fiscal note process, which is coordinated by the executive branch’s budget office. The audit found that notes were generally accurate, but recommended some improvements. For the audit report, see http://www.kansas.gov/postaudit/audits_perform/09pa01.pdf.

³² Texas’ training materials can be found at http://www.lbb.state.tx.us/Fiscal_Notes/Fiscal_Notes.htm.

Office posts training materials, including answers to a list of “frequently asked questions” and a slideshow.³³

States cannot produce quality fiscal notes if they do not invest enough in professional staff, assure they have the data they need to make good estimates, and build a system for producing notes that allows this staff to deliver high-quality fiscal notes quickly. Producing accurate and useful estimates of a large number of bills in a time-constrained legislative session is difficult, and therefore requires resources. But investing in good fiscal notes is far less costly than enacting or maintaining criminal justice policies that require more prison spending and weaken a state’s economy and social fabric. The best practice is to make these resource investments.

B. Fiscal Notes Should Be Properly Researched

To be useful, fiscal notes should be properly researched. For example, notes should thoughtfully estimate the fiscal impact several years into the future. Some criminal justice reforms that produce substantial long-term savings require modest up-front costs. If states fail to consider the long-term fiscal impact of legislation, they may miss the savings. Similarly, by omitting long-term impacts, states risk enacting policies with unexpectedly high future costs that may unintentionally squeeze the rest of the state’s budget later on. Notes should also determine the fiscal impact of legislation relative to the cost of maintaining current policy. And, like all good analyses, notes should be transparent about the methods and sources used.

To be properly researched, a fiscal note should:

- **Include an estimate of the savings, costs, or revenue gains, and avoid claiming an indeterminate impact.** To be useful, a fiscal note needs to indicate the magnitude of the fiscal impact, even if the estimate is imprecise. Having an estimate, even if approximate, will allow legislators to understand the possible or probable fiscal impacts of legislation.

Often, however, states produce notes claiming the impact cannot be determined. About 15 percent of the criminal justice fiscal notes states prepared in the last three years provided no estimate of the budget impact, or indicated only whether it would be positive or negative. Most of these notes did include at least some information that could help legislators get a limited sense of the likely impact, but a few provided no information at all except that the impact was unknown.

Indeterminate fiscal notes can be avoided. For example, **Colorado** enacted 29 adult sentencing and corrections bills in the last three years and its final notes *never* reported being unable to estimate the impact. This approach — to make a concrete estimate of every bill’s impact — is the best practice.

- **In rare cases when an impact estimate is impossible, include a detailed explanation for that conclusion.** Fiscal notes that simply conclude a legislative proposal’s impact cannot be determined, without any further explanation, leave lawmakers and other readers with no way to

³³ Oregon’s training materials can be found at <http://www.leg.state.or.us/comm/lfo/>.

assess the accuracy of the note's conclusion. Explaining why a budget impact estimate was impossible improves the transparency of the process, increasing trust. It also allows the public to assess whether the fiscal note author's conclusion is justified.

These explanations also can help identify important data the state should be collecting but is not or demonstrate whether agencies are cooperating by providing fiscal analysts the data needed to produce an estimate. Understanding why fiscal impacts cannot be estimated can help convince lawmakers to devote state resources to collecting more data or convince agencies to institute rules and procedures that improve data collection.

Most states provide an explanation whenever they conclude the fiscal impact is indeterminate, but some do not. Of 19 states that produced indeterminate fiscal notes for adult criminal justice bills in the last three years, six sometimes or always failed to explain why. These six states are **Arizona, Arkansas, California, Indiana, Michigan, and New York.**

The **Texas** fiscal note excerpted on the next page provides an example of the sort of explanation states can provide.

Figure 1

TEXAS, HB 1205, Good Time Probation Credits, 2011

Author: James O'Brien, Director, Legislative Budget Board

IN RE: HB1205 by Turner (Relating to the procedures for reducing or terminating community supervision and the establishment of certain time credits through which a defendant's period of community supervision is reduced.), **As Engrossed**

The probable fiscal impact of implementing the bill cannot be determined due to the unavailability of reliable data or information related to community supervision.

The bill would amend the Code of Criminal Procedure by establishing time credits for certain defendants who have been granted community supervision for certain felonies. The bill specifies the time credits eligible defendants may receive for particular behaviors, such as earning a degree, making full payment of court costs and fines, and successfully completing a treatment program. The bill would require the supervision officer to report to the court when the defendant is entitled to one or more time credits, and the court must then conduct a review of the defendant's community supervision history to determine if the defendant is entitled to a reduction or termination of the community supervision term. The bill would also provide that the court may order that a defendant's time credit may be forfeited under certain circumstances. The bill would also add the defendant's attorney to the list of people to whom notification must be sent before reducing, terminating, or conducting certain reviews of community supervision cases as describe in Section 20(a), Article 42.12, Code of Criminal Procedure.

The bill may have a positive impact by creating an incentive for defendants to pay court costs and fines and decreasing the amount of time they are on community supervision. The bill may reduce the amount paid in community supervision fees as a result of the reduction in the length of community supervision. Additionally, the bill may increase the workload for community supervision personnel and for courts.

Whether the bill would result in a significant amount of savings, or cost, to the State cannot be determined due to a lack of statewide community supervision data in the following areas: 1) a repository of data on conditions of community supervision; 2) the program participation or completion of programs by defendants on community supervision; and 3) data on fees paid to courts by defendants on community supervision. The Office of Court Administration and the Texas Department of Criminal Justice were unable to provide data that would help in providing an estimate of the cost or savings from the bill.

The bill would take effect on September 1, 2011 and apply to persons placed on community supervision on or after the effective date of the Act.

In rare cases where the impact is impossible to estimate, fiscal notes should include a detailed explanation and describe the data that would be needed to produce an estimate.

- **Project the fiscal impact at least five years into the future.** Prudent fiscal management requires state lawmakers to consider the impact of proposed legislation on the state's future fiscal health, not just on the current or upcoming budget cycle.

Taking the long view is particularly essential for some highly cost-effective criminal justice reforms with upfront costs. For example, in 2007 **Texas** faced a rapidly growing prison population that the non-partisan Legislative Budget Board estimated would require at least \$2 billion in new prison building by 2012. In response, the legislature enacted a reform plan that required, in the first two years of enactment, \$241 million in spending on treatment programs and alternatives to prison for technical parole and probation violations. By reducing the need for prison beds over the next five years, the reform package allowed the state to avoid the \$2 billion in new prison spending.³⁴

Despite the benefits of this practice, most states fail to write fiscal notes that examine the impact beyond one or two years, reducing the chances that lawmakers will recognize the long-term fiscal benefits of enacting criminal justice reforms. Fifteen of the 29 states that produced adult criminal justice fiscal notes showing significant fiscal consequences failed to estimate the impact beyond two years, on average.

By contrast, five states, **Louisiana, Minnesota, North Carolina, Texas, and Washington**, wrote fiscal notes that, on average, estimated the fiscal impact of adult criminal justice bills five or more years into the future.

- **Analyze the impact against maintaining current policy.** To be accurate, criminal justice fiscal notes need to assess how a bill would affect a state's finances and its prison population *relative to what will happen under current law*. Without comparing against a baseline of doing nothing, fiscal notes cannot determine accurately the fiscal and prison system impact of changing the law.

For example, if states leave their existing pre-trial, sentencing, and parole laws in place, the prison population likely will continue to grow. Relative to this baseline, reforms relying less on incarceration can reduce prison populations and save states money.

In the example on the next page, a **North Carolina** fiscal note clearly shows how a bill would increase the number of inmates in state prisons, relative to the baseline of current law.

³⁴ "Justice Reinvestment in Texas: Assessing the Impact of the 2007 Justice Reinvestment Initiative," Justice Center, Council of State Governments April 2009. pp. 3, 5, http://www.pewcenteronthestates.org/uploadedFiles/TX_Impact_Assessment_April_2009%284%29.pdf. Although the 2007 reforms reduced the state's then exploding prison population, its prison population has begun to rise in the last year. See "U.S. Correctional Population Declined for Second Consecutive Year," Bureau of Justice Statistics, U.S. Department of Justice, <http://bjs.gov/content/pub/press/p10cpus10pr.cfm>.

Figure 2

NORTH CAROLINA, SB 488, Establish Proportionate Sentence Lengths, 2009

	June 30 2010	June 30 2011	June 30 2012	June 30 2013	June 30 2014
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	42,296	43,165	44,024	44,987	45,998
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	40,014	42,022	42,282	42,282	42,282
3. Projected No. of Beds Over/Under Inmate Population	-2,282	-1,143	-1,742	-2,705	-3,716
4. Projected No. of Additional Inmates Due to this Bill³	<i>N/A</i>	<i>14</i>	<i>66</i>	<i>12</i>	<i>(62)</i>
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	<i>N/A</i>	<i>14</i>	<i>66</i>	<i>12</i>	<i>(62)</i>

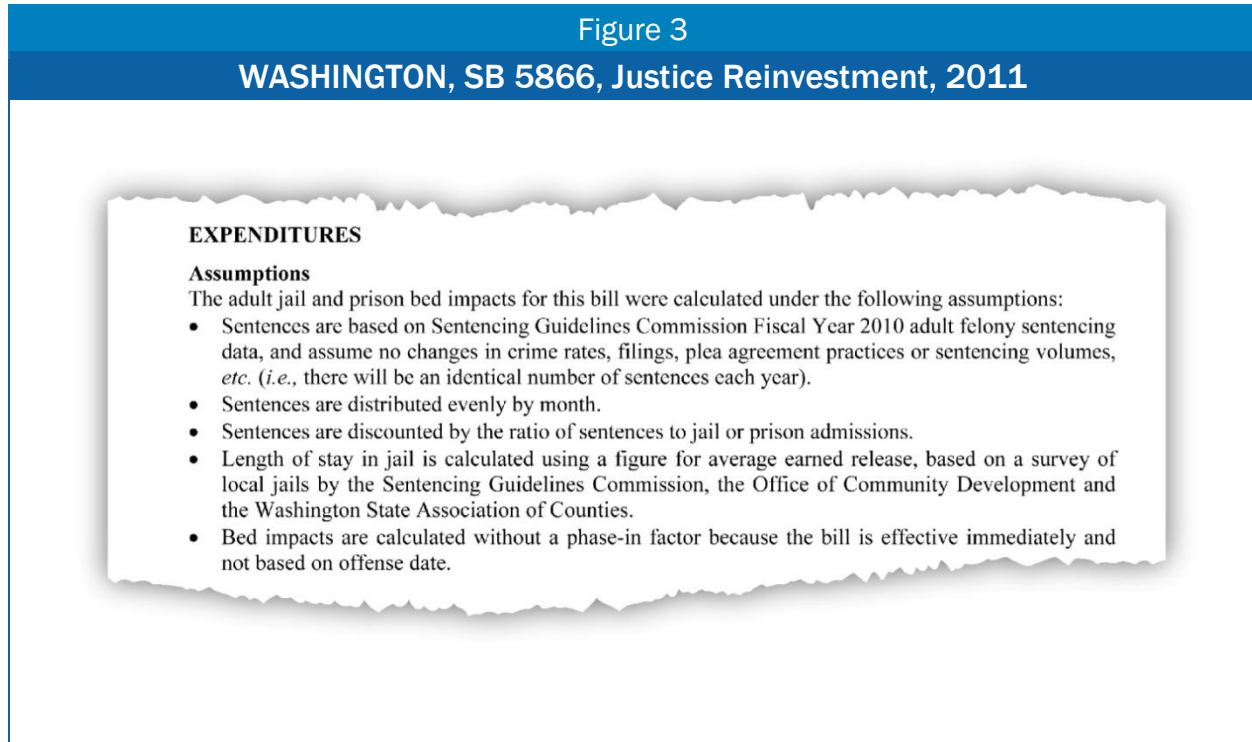
POSITIONS: It is anticipated that by FY 2013-14, approximately 26 fewer positions would be needed to under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined ratio of the DOC and the two of the prisons were studied.

- **Include a clear description of the methodology and assumptions.** States can help protect their fiscal health by requiring fiscal notes to be transparent about the assumptions and methods used to estimate the impact. By insisting on such transparency, states will help assure accurate estimates, improving the state’s ability to manage its finances well.

Most states always or usually described their assumptions or methods when they reported fiscal impacts for adult criminal justice bills in the last three years. **Colorado, Tennessee, Texas, and Washington**, for example, *always* included their assumptions or methods. **Missouri** establishes in statute that notes written for bills that would affect the corrections department *must* include this information.

A few states did poorly in this regard. For example, **California** failed to include information on the assumptions or methods its analysts used for six of the ten bills they concluded would have a significant fiscal impact. **Maryland** and **Utah** did not include this information for four of the five bills with a significant impact, and **Michigan** left it out of all four of its relevant fiscal notes.

In the example below, a fiscal note from **Washington** succinctly describes its assumptions.



- **Cite the information sources.** To produce fiscal impact estimates, analysts must draw on a range of data sources and studies. For example, analysts may need to draw on projections of the state’s future prison population, data on arrest patterns for certain crimes, information from other states on the impact of similar criminal justice policies, studies by the U.S. Department of Justice, and other sources. For this crucial data, they will need to draw on the expertise of budget experts and other staff in executive branch departments and local government agencies, including law enforcement, courts, prosecutors, public defenders, or corrections, parole, and probation departments.

If analysts do not disclose the sources they used in producing their analysis, it is more difficult for others to assess the fiscal note’s accuracy. Including sources is a professional practice that builds trust in the credibility of any research product, including fiscal notes.

Most states include information on the sources used in the adult corrections fiscal notes. **Colorado, Maryland, Tennessee, and Washington**, for example, consistently included source information. In fact, the vast majority of states writing fiscal notes included this information most or all the time. A few states, though, did not. For example, **Utah** left it out of four of five bills for which analysts found a significant impact, and **Oregon** left it out of three of four bills. **Arizona** did not include it for either of the two bills for which analysts reported a significant impact.

C. Fiscal Notes Should Be Detailed

Useful details are often crucial to lawmakers and others trying to understand the impact of pending criminal justice bills, and may make the difference between a minimally helpful fiscal note and a highly valuable one. A fiscal note providing only the total cost or savings is not particularly useful. A good fiscal note should provide a breakdown of the fiscal impact of each major provision of a bill and of the bill's impact on various government agencies and revenue streams, including impacts on local governments. This kind of “disaggregated” information helps legislators make better decisions. For example, it can help lawmakers understand what provisions of a bill they may want to amend to bring down costs. Alternatively, it can help them understand the need to target additional funds to agencies whose costs will increase if the legislation is enacted.

To be detailed, fiscal notes should:

- **Break down the impact of each major provision of the bill, and the impact on each affected government agency or revenue source.** In some cases, certain provisions of a bill may produce costs, while others may produce savings. Breaking out the fiscal impact of each major provision can help legislators understand the bill's impact more clearly and better target amendments to influence the bill's fiscal impact.

Furthermore, changes in criminal justice policy affect a host of government functions under the control of different government agencies — for example, the state's prisons, law enforcement agencies, courts, public defenders, attorney general, parole system, or probation programs. To generate an accurate and thorough fiscal note, states need to consider a bill's impact on all these parts of their budget.³⁵

Some states' fiscal notes include the full impact of criminal justice legislation on various government agencies. **Washington**, for example, typically breaks down the fiscal impact of bills on each state agency directly affected by the legislation. This detail, as shown in the example below, helps assure the note's accuracy by making it easier for legislators, agency staff, and others to understand and verify the estimated impact. It also helps legislators understand that they may need to increase funding for the state agencies projected to bear the brunt of the cost of a bill.

³⁵ The expectation here is that fiscal notes will describe the bill's *direct* impact on all parts of the budget, especially all parts of the criminal justice system. The bill also may impact *indirectly* a broader range of government agencies, but fiscal notes generally do not include such indirect impacts. For example, a bill that offers addiction treatment to people who would go to prison under current law will reduce directly prison costs and increase directly treatment costs — impacts that fiscal notes typically include. The bill conceivably may have additional, indirect impacts outside the criminal justice system. Generally, fiscal notes avoid estimating these kinds of indirect effects unless they are readily supportable and based in rigorous research, and even then they should be incorporated into the fiscal note with caution.

Estimating the direct effects of a bill on the criminal justice system may require analysts to make certain assumptions about the impact of the bill on people's behavior. For example, estimating the impact of bills that increase the opportunities for prisoners to earn time off their sentence with good behavior will require analysts to estimate how many prisoners will earn time off under a new set of incentives. The capacity to perform this sort of analysis is crucial to writing good fiscal notes. States would do well to build statistical models based in rigorous research for analysts to use in developing these estimates.

Figure 4

WASHINGTON, SB 6610, Mental Illness, Version 5, 2010

Estimated Expenditures

Agency Name	2009-11			2011-13			2013-15		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Administrative Office of the Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Office of Attorney General	.1	0	22,238	.1	0	44,476	.1	0	44,476
Department of Social and Health Services	.5	232,000	268,000	1.0	356,000	424,000	1.0	356,000	424,000
Department of Corrections	Non-zero but indeterminate cost and/or savings. Please see discussion.								
The Evergreen State College	.3	9,574	9,574	.0	0	0	.0	0	0
Total	0.9	\$241,574	\$299,812	1.1	\$356,000	\$468,476	1.1	\$356,000	\$468,476
State Gov. Courts *	Non-zero but indeterminate cost. Please see discussion.								

Notes should also break down the impact of the bill on the state general fund and any other specific state funds. This information can help lawmakers produce a balanced general fund budget, as nearly all states require, and properly manage spending from other state funds.³⁶ **Texas** fiscal notes, as shown below, generally break down impacts on different state funds when it is appropriate to do so.

³⁶ State general funds are the portion of a state’s budget that are typically subject to annual appropriations. General funds are typically supported by a state’s major general revenues, usually a state sales tax and a state income tax, that are not targeted for a specific purpose. Typically, general funds provide most of a state’s corrections budget, as well as most state funding for K-12 schools, universities, public health programs, and other public assistance programs. Other state funds may not be subject to annual appropriations and usually are funded from sources that are specifically targeted to that fund. For example, most state transportation funding is supported by a gasoline tax specifically targeted to particular transportation-related services. Within corrections, states maintain a wide variety of funds. Texas, for example, maintains a Judicial Fund that partially funds court-operating costs and is supported by certain court fees.

Figure 5

TEXAS, HB 4833, Judicial Districting and Veterans Courts, 2009

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Savings/(Cost) from Judicial Fund 573	Probable Revenue Gain from Judicial Fund 573	Change in Number of State Employees from FY 2009
2010	(\$455,205)	(\$711,837)	\$443,750	5.0
2011	(\$719,507)	(\$909,476)	\$450,000	8.0
2012	(\$765,472)	(\$1,017,761)	\$525,000	8.0
2013	(\$857,403)	(\$1,159,331)	\$600,000	8.0
2014	(\$857,403)	(\$1,159,331)	\$600,000	8.0

- **Break down estimates into one-time and recurring impacts.** To understand a bill’s impact clearly, lawmakers must understand which impacts are one-time and which are ongoing. For example, developing a new system of parole or a drug treatment program may require one-time investments that pay off with reduced, ongoing costs in the future. In most cases, a fiscal note that does not distinguish between these types of expenses may leave lawmakers unable to properly assess the bill’s value.

Most states produce fiscal notes that at least sometimes break out one-time costs from recurring expenses. **Idaho, Nebraska, and Pennsylvania**, for example, included this distinction in all of the adult criminal justice bills in the last three years that they determined had a significant fiscal impact.

- **Include some indication of impacts on local governments.** Most states usually do not mention in criminal justice fiscal notes whether there may be an impact on local governments, even though changes in state criminal laws can deeply affect local budgets.

Local governments typically fund police forces and local prosecutors, and often fund probation and parole programs or public defenders. They also run county and city jails that house individuals detained before trial, those incarcerated short-term for local violations, and often state prisoners.

State legislatures have a responsibility to ensure that they and local governments are aware of the fiscal implications for counties and cities of proposed changes to criminal justice laws. If states unknowingly impose a significant fiscal strain on local governments, the resulting budget problems likely will reverberate in ways that ultimately will damage the state budget. Conversely, fiscal notes finding that proposed state legislation saves local governments money can build

support for the bill from counties and cities and increase the state's overall fiscal health. If no impact on local governments is expected, the fiscal note should say so.

Of 29 states that produced fiscal notes reporting a significant impact for the state, only 11 indicated an impact on local government in at least half the notes they wrote. **Indiana, Maryland, Oregon, Texas, Utah, and Washington** did particularly well, indicating an impact on local government every time or nearly every time. **Colorado**, by contrast, did not include local government impact for 12 of the 14 bills that it reported would have significant fiscal impacts, and **Florida** left it out of six in eight such bills.

In the example below, a fiscal note from **Texas** describes the impact on local governments.

Figure 6

TEXAS, HB 4833, Judicial Districting and Veterans Courts, 2009

Local Government Impact

The bill would authorize the commissioners court of a county to establish a veterans court program. Harris and Travis Counties reported the costs to establish a program would be significant; however, Williamson County reported no fiscal implication because it is unlikely the county commissioners would authorize a program.

The Harris County Office of Budget and Management reported that to establish a veterans court program on the docket of an existing court, would cost at least \$2.65 million annually (the average cost of a county criminal court), and up to \$3.85 million annually (the average cost of a criminal district court). It is likely the costs would be greater than this because the program described in the bill would have the court taking on certain responsibilities of one of the county probate courts, such as decisions regarding competency to stand trial, civil, or forensic commitment to the state hospital system, etc.

Harris County also stated the county's best estimate is that dedicating a district or criminal court to a veterans court program as required by the provisions of the bill would cost Harris County an estimated \$3.25 to \$4.25 million annually.

Travis County reported that without veteran specific data, the county can only extrapolate from other programs. For example, Travis County reports its drug court costs would be \$774,790 in fiscal year 2008 (information taken from the Travis County fiscal year 2009 budget). This program screened around 3,000 potential participants in a program with a static capacity of 300.

Williamson County reported for felony cases, there would be no fiscal impact on the county budget because the District Attorney's Office would not seek to establish such a program in Williamson County.

Include impacts on prison and jail populations. Much of the fiscal impact of criminal justice legislation results from the effect of these bills on a state's incarcerated population. It is expensive to incarcerate people for long periods of time, so bills that increase or reduce the number of people in prison can have significant fiscal implications for a state.

To explain their estimates, then, fiscal notes often need to describe their assumptions about the legislation's impact on the state's prison and jail populations. Without this information, the fiscal note's accuracy will be difficult for readers to assess.

Moreover, the impact of legislation on a state's prison population is important regardless of the bill's fiscal effects. Incarcerating people has economic and social ramifications that are important to a state's quality of life and to its future. By allowing people who pose little threat to public safety to remain in the workforce and with their children, criminal justice reforms can boost a state's economic health and strengthen its social fabric. By including an estimate of the bill's impact on the number of people in prison, fiscal notes can help legislators and the public assess the bill within this broader context.

The **Michigan** fiscal note excerpted below provides an example of a state including useful information about a bill's impact on the state's prison population.

Figure 7

MICHIGAN, HB 4538, Special Alternative Incarceration, 2010

FISCAL IMPACT

As of June 18, 2010, there were 196 prisoners (171 men, 25 women) and 150 probationers (127 men, 23 women) in the SAI program, for a total program population of 346. If the September 30, 2010 sunset provision is not eliminated, the facility would no longer be authorized to house offenders sentenced to prison, although the facility would be able to continue to serve probationers. Prisoners not served in SAI would likely be sent to another MDOC facility to serve out at least their minimum sentence. Thus, the regular prison population would increase, as would the length of stay of these prisoners, who currently participate for 90 days in the SAI program.

A February 1, 2010 prisoner population projection analysis submitted by the Department of Corrections projects that if prisoner placements in the SAI program were to cease as of October 1, 2010, it would result in an additional 1,285 occupied prison beds by the end of FY 2010-11. In the long run, the prison population is estimated to stabilize with roughly 1,621 additional beds occupied.

Analysis available at <http://www.legislature.mi.gov>

Page 1 of 2

D. Fiscal Notes Should Be Accessible

For fiscal notes to be maximally useful in improving state decision-making, they should be as transparent and usable as possible for lawmakers, legislative and agency staff, advocates, the media, and the public. No one can rely on or assess the accuracy of notes that are inaccessible.

To be accessible, fiscal notes should:

- **Be easily available on the state legislature’s website.** If fiscal notes are not easily available online, anyone interested will have a harder time locating the notes, relying on them, and verifying their information.

Most states put their fiscal notes on the Internet. But seven do not. Two of these states, **Delaware** and **Hawaii**, do not produce fiscal notes or only produce notes for bills with a revenue impact. The other five, **Arkansas**, **Georgia**, **Massachusetts**, **Mississippi**, and **Rhode Island**, produce notes for some spending bills but do not make them available online.

States can greatly improve the transparency and accessibility of their fiscal notes by regularly making them available and easy to find on the state legislature’s website.

- **Contain basic information about the bill, including bill number and version, sponsor(s), and summary.** Fiscal notes that do not include a bill’s number or version create confusion. Legislators voting on a bill may not know if the note was performed on the bill when it was introduced or on the version of the bill up for a vote. This basic information provides clarity and a useful context for readers. All the states in our analysis included the bill number on every fiscal note.

A summary of the relevant bill provisions is also useful. It provides context for readers to make sense of a fiscal note’s findings. It can also be helpful for fiscal notes to include the names of the bill’s sponsor or sponsors. Readers wishing to comment on a fiscal note may wish to contact the bill’s sponsor to discuss the issue. Nearly all states always included a summary of the relevant provisions, and most states identified the bill’s sponsor or sponsors.

- **Include contact information for the lead analyst.** If a sponsor, legislator, advocate, or member of the public has a question about the fiscal note or its methodology, he or she should know how to contact the author of the note. Providing this information improves the transparency of the note, and makes it easier to direct questions, and to challenge inaccuracies.

States are already doing well in this area. Every fiscal note in our review that found a fiscal impact included contact information for the responsible analyst. **Washington’s** fiscal notes even included the name and contact information for every analyst involved in producing the note.

Conclusion

Many states have not implemented rigorous methods for providing legislators the information they need about how criminal justice policy changes can affect their budgets. As a result, legislatures are less likely to enact reforms that might offer cost savings and broader benefits for a state's economic and social health, and they may be more likely to enact costly policies of questionable merit. With states struggling to restore or sustain funding for schools and other public necessities, they cannot afford to miss opportunities to simultaneously improve public policy and save money. And even when state budgets improve, states should, as a matter of sound policy practice, evaluate carefully the fiscal impact of policies they consider.

Drawing on the best practices described in this report, states can improve their fiscal notes, giving legislators, advocates, the public, and the media more useful information about a bill's fiscal impact. These improvements will help states enact more rational and effective criminal justice policy and invest their limited resources wisely.

APPENDIX: 50 State Comparisons of Best Practices

Four Criteria:		Properly Researched ⁴								Detailed ⁶		Accessible			
Number of significant adult corrections bills enacted ¹	Consistent ² Number of bills with fiscal notes ³	Includes estimate of savings, cost, or revenue gain	Claims indeterminate impact	Includes explanation for indeterminate impact	Average years projected	Impact not "minimal" or "zero" ⁵	Describes methodology	Cites sources	Breaks down one-time and recurring costs	Includes impact on local government	Includes summary of bill	Includes bill number	Contact Info for lead analyst	Available on internet ⁷	
Alabama	19	7	4	3	1/3	1.0	2	1/2	1/2	0/2	1/2	2/2	2/2	2/2	Yes
Alaska	0	0	0	0	0/0	0	0	--	--	--	--	--	--	--	Yes
Arizona	10	10	9	1	0/1	2.0	2	0/2	0/2	1/2	0/2	2/2	2/2	2/2	Yes
Arkansas	14	1	0	1	0/1	0	0	--	--	--	--	--	--	--	No
California	25	23	20	3	1/3	1.5	10	4/10	7/10	4/10	6/10	10/10	9/10	9/10	Yes
Colorado	30	29	29	0	0/0	3.3	14	14/14	14/14	9/14	2/14	14/14	14/14	14/14	Yes
Connecticut	5	5	5	0	0/0	2.0	2	1/2	1/2	1/2	1/2	2/2	2/2	2/2	Yes
Delaware	12	0	0	0	0/0	0	0	--	--	--	--	--	--	--	No
Florida	18	17	17	0	0/0	1.4	8	6/8	6/8	4/8	2/8	8/8	8/8	8/8	Yes
Georgia	9	0	0	0	0/0	0	0	--	--	--	--	--	--	--	No
Hawaii	11	0	0	0	0/0	0	0	--	--	--	--	--	--	--	No
Idaho	10	10	9	1	1/1	2.0	3	3/3	2/3	3/3	0/3	3/3	3/3	3/3	Yes
Illinois	7	0	0	0	0/0	0	0	--	--	--	--	--	--	--	Yes
Indiana	14	13	12	1	0/1	1.0	7	5/7	7/7	3/7	6/7	7/7	7/7	7/7	Yes
Iowa	3	1	1	0	0/0	0	0	--	--	--	--	--	--	--	Yes
Kansas	11	3	3	0	0/0	1.0	1	1/1	1/1	1/1	0/1	1/1	1/1	1/1	Yes
Kentucky	12	9	9	0	0/0	2.3	6	4/6	5/6	3/6	1/6	6/6	6/6	6/6	Yes
Louisiana	55	29	15	14	14/14	5.0	4	4/4	4/4	3/4	0/4	4/4	4/4	4/4	Yes
Maine	8	7	7	0	0/0	4.0	1	0/1	0/1	0/1	0/1	1/1	1/1	1/1	Yes
Maryland	24	24	24	0	0/0	4.0	5	1/5	5/5	2/5	5/5	5/5	5/5	5/5	Yes
Massachusetts	3	0	0	0	0/0	0	0	--	--	--	--	--	--	--	No
Michigan	10	7	5	2	0/2	1.0	4	0/4	2/4	0/4	1/4	4/4	4/4	4/4	Yes
Minnesota	5	3	3	0	0/0	5.0	1	1/1	1/1	1/1	1/1	1/1	1/1	1/1	Yes
Mississippi	10	0	0	0	0/0	0	0	--	--	--	--	--	--	--	No
Missouri	2	2	2	0	0/0	0	0	--	--	--	--	--	--	--	Yes
Montana	8	6	6	0	0/0	4.0	1	1/1	1/1	1/1	0/1	1/1	1/1	1/1	Yes
Nebraska	8	7	7	0	0/0	1.8	4	3/4	4/4	4/4	1/4	4/4	4/4	4/4	Yes
Nevada	15	9	9	0	0/0	3.3	6	3/6	3/6	4/6	3/6	4/6	6/6	6/6	Yes
New Hampshire	17	0	0	0	0/0	0	0	--	--	--	--	--	--	--	Yes
New Jersey	4	0	0	0	0/0	0	0	--	--	--	--	--	--	--	Yes
New Mexico	11	5	5	0	0/0	0	0	--	--	--	--	--	--	--	Yes
New York	11	9	8	1	0/1	0	0	--	--	--	--	--	--	--	Yes
North Carolina	22	7	5	2	2/2	6.0	4	4/4	4/4	3/4	0/4	4/4	4/4	4/4	Yes
North Dakota	7	2	1	1	0/1	4.0	1	1/1	1/1	0/1	1/1	1/1	0/1	0/1	Yes
Ohio	1	1	1	0	0/0	2.0	1	1/1	1/1	1/1	1/1	1/1	1/1	1/1	Yes
Oklahoma	13	6	5	1	1/1	1.0	1	0/1	0/1	1/1	0/1	1/1	1/1	1/1	Yes
Oregon	16	15	13	2	2/2	2.3	4	1/4	1/4	2/4	4/4	4/4	4/4	4/4	Yes
Pennsylvania	7	6	6	0	0/0	2.0	3	2/3	3/3	3/3	0/3	3/3	3/3	3/3	Yes
Rhode Island	15	0	0	0	0/0	0	0	--	--	--	--	--	--	--	No
South Carolina	6	0	0	0	0/0	0	0	--	--	--	--	--	--	--	Yes

Four Criteria:		Consistent ²	Properly Researched ⁴							Detailed ⁶		Accessible			
Number of significant adult corrections bills enacted ¹	Number of fiscal notes written ³	Includes estimate of savings, cost, or revenue gain	Claims indeterminate impact	Includes explanation for indeterminate impact	Average years projected	Impact not "minimal" or "zero" ⁵	Describes methodology	Cites sources	Breaks down one-time and recurring costs	Includes impact on local government	Includes summary of bill	Includes bill number	Contact info for lead analyst	Available on internet ⁷	
South Dakota	3	0	0	0/0	0	0	--	--	--	--	--	--	--	Yes	
Tennessee	19	17	17	0/0	1.0	6	6/6	6/6	3/6	1/6	6/6	6/6	6/6	Yes	
Texas	25	21	19	2/2	5.0	4	4/4	3/4	1/4	4/4	4/4	4/4	4/4	Yes	
Utah	18	17	17	0/0	2.6	5	1/5	1/5	4/5	5/5	1/5	5/5	5/5	Yes	
Vermont	8	0	0	0/0	0	0	--	--	--	--	--	--	--	Yes	
Virginia	23	16	13	3/3	1.0	1	1/1	1/1	0/1	0/1	1/1	1/1	1/1	Yes	
Washington	17	14	11	3/3	6.0	6	6/6	6/6	2/6	5/6	6/6	6/6	6/6	Yes	
West Virginia	10	1	1	0/0	0	0	--	--	--	--	--	--	--	Yes	
Wisconsin	3	2	0	2/2	0	0	--	--	--	--	--	--	--	Yes	
Wyoming	2	2	0	2/2	0	0	--	--	--	--	--	--	--	Yes	
Total	616	363	310	53	2.7	115								43 "Yes"	

¹ This appendix reviews all fiscal notes locatable for bills identified as “significant state sentencing and corrections legislation” enacted in each state in the 2009, 2010, and 2011 legislative sessions as compiled by the National Conference of State Legislatures. It can be found at <http://www.ncsl.org/?TabId=20763>. This database does not include bills that were proposed but not enacted and does not include any fiscal notes from Alaska. That state did not enact any significant adult criminal justice bills in the last three years, according to the database.

² We were unable to count the number of states that meet the other three best practices criteria under "Consistent" (These three are that notes should be updated when an adopted amendment may have fiscal impacts, based on an established set of guidelines, and produced by a source that is trusted, non-partisan, and adequately resourced). The data necessary to include these criteria here were not available online and would require a comprehensive survey of state officials, something beyond the scope of this report.

³ In a small number of cases, states may have produced fiscal notes for the bills in question, but we were unable to locate them online or through in-state contacts.

⁴ We were unable to count the number of states that analyze the impact based on the effects of maintaining current policy.

⁵ The figure in this column (the number of notes finding an impact that is more than minimal) is the denominator for all the best practices to the right of this column because fiscal notes that find a significant impact by definition contain some kind of estimate of that impact, making it clearly relevant for the notes to describe the methodology used, cite sources, and include useful details such as the impact on local governments. While fiscal notes finding “minimal” or “zero” impact may in some cases also need to describe the methodology and sources they used, at other times the bill’s minimal or zero impact will be self-evident; therefore, these details will be unnecessary. As such, for the “properly researched” and “detailed” best practices to the right of this column, we evaluated only the notes for bills that had a significant impact. Having chosen to evaluate in detail this subset of notes, we examined this same subset of notes to determine how often states met the “accessible” best practices. Nevertheless, all fiscal notes should meet the best practices for accessibility.

⁶ We were unable to count the number of states that meet the other two best practices criteria under "Detailed" (These two are that notes should break down the impact of each major provision and the impact by agency and revenue source, and that states should include impacts on prison or jail populations).

⁷ In the best practices criteria, we encourage states to place their fiscal notes on the state legislature's website. Most do, but here we assess whether the notes are accessible anywhere on the Internet.

Acknowledgements

The authors wish to thank research assistants Zoë Bunnell, Christine Mai, Frank Mamo, Jon Martin, Geoff Schotter, Hayley Smith, and Alex Stephenson.

Thanks also to: Noah Berger, David Blatt, Amy Blouin, Kate Brewster, Nicole Bucheri, Brenna Burch, Andrew Cannon, Michael Cassidy, Paul Cillo, Mark Cooke, Anna Dey, Alan Essig, Anika Fassia, Rebecca Gasca, Melissa Goemann, Sondra Goldshein, Vanita Gupta, Carol Hedges, Jake Horowitz, Rich Huddleston, Nick Johnson, Larry Joseph, Alison Lawrence, Marine Lowe, Representative Jerry Madden, Nan Madden, Will Mathews, Frank Mauro, Karen McLaughlin, Melissa Merrill, Andrea Meyer, Professor John Mikesell, Rachel Myers, Andy Nicholas, Jean Ross, Matt Simpson, Alexandra Sirota, Ed Sivak, Joy Smolnisky, Becky Straus, Michael Streepey, Chandra Kring Villeneuve, and Shelli Weisberg.