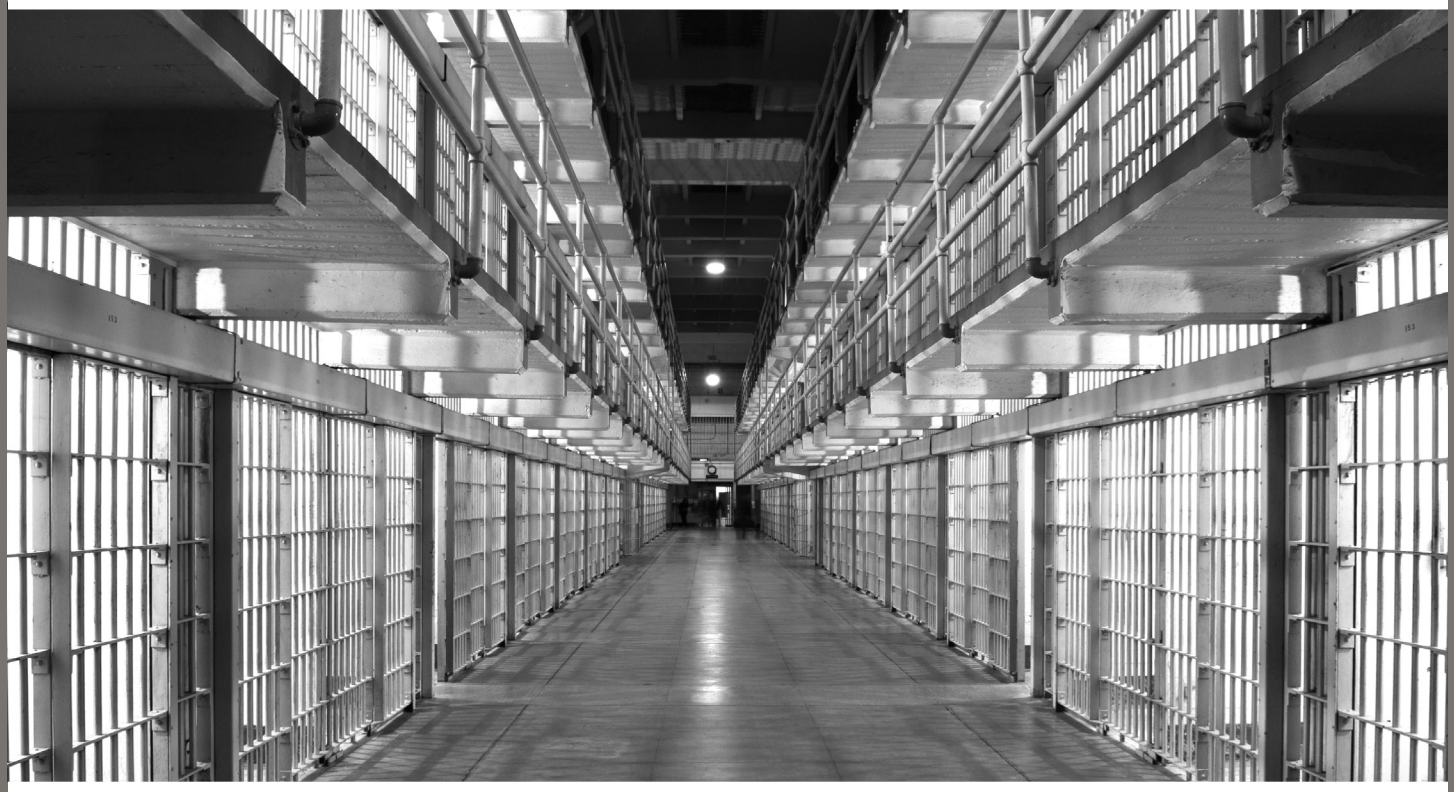
# SMART REFORM IS POSSIBLE

## States Reducing Incarceration Rates and Costs While Protecting Communities



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**AUGUST 2011**

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# Introduction

Since President Richard Nixon first announced the "War on Drugs" forty years ago, the United States has adopted "tough on crime" criminal justice policies that have given it the dubious distinction of having the highest incarceration rate in the world. These past forty years of criminal justice policymaking have been characterized by overcriminalization, increasingly draconian sentencing and parole regimes, mass incarceration of impoverished communities of color, and rapid prison building. These policies have also come at a great expense to taxpayers. But budget shortfalls of historic proportions are finally prompting states across the country to realize that less punitive approaches to criminal justice not only make more fiscal sense but also better protect our communities. This report details how several states with long histories of being "tough on crime" have embraced alternatives to incarceration, underscoring that reform is not only politically and fiscally viable, but that other states must also urgently follow suit.

Between 1970 and 2010, the number of people incarcerated in this country grew by 700%. As a result, *the United States incarcerates almost a quarter of the prisoners in the entire world* although we have only 5% of the world's population.[1] At no other point in U.S. history—even when slavery was legal—have so many people been unnecessarily deprived of their liberty. Too often, lawmakers have devised criminal justice policy in emotional response to a highly publicized crime or perception of a crime trend. This misguided lawmaking has resulted in both overly punitive laws that cast too wide a net and inhumanely long prison sentences that have little to do with maintaining public safety. The massive explosion in our prison population has caused federal and state governments to dramatically escalate their spending on corrections. States have been spending an ever-increasing percentage of their budgets on prison related expenses, cutting into scarce dollars for public education and other vital services.

The racial disparities resulting from this system have been staggering. Black individuals are imprisoned at nearly six times the rate of their white counterparts—and Latinos are locked up at nearly double the white rate. Most of this racial disparity is a result of the War on Drugs. While these groups engage in drug use, possession, and sales at rates comparable to their representation in the general population, the system disparately impacts people of color. For example, black individuals comprise 13% of the U.S. population and 14% of drug users, yet they are 37% of the people arrested for drug offenses and 56% of those incarcerated for drug crimes.[2]

For decades, the ACLU has been litigating and advocating to reform our criminal justice system into one that is both fair and effective. There are simply too many people in prison who do not need to be there, and whose long imprisonment does not serve society. Putting an individual behind bars should be an option of last resort, rather than a first response to social problems. Incarceration is often not necessary and can be detrimental to the widely shared goal of keeping our communities safe.

In the past few years, the public and policymakers across the political spectrum have started to recognize that criminal justice reform is both necessary and politically viable. Lawmakers have steadily become interested in alternatives to incarceration that have proven to produce more effective public safety outcomes ("evidence-based" policies). "Get tough on crime" politicians are talking instead about being "smart on crime" and legislators are enacting bills supporting evidence-based programs—like diverting people charged with lower-level drug offenses into treatment instead of incarcerating them and imposing non-prison sanctions on those who violate the technical terms of their probation and parole instead of simply returning them to prison.

Most recently, the U.S. Supreme Court has also weighed in on the debate. In May 2011, in *Plata v. Brown*, the Supreme Court recognized the dangers of overcrowded prisons, mandating that the state of California enact reforms to reduce its prison population in order to alleviate unconstitutional overcrowding.

Reforms that rely less on incarceration have long made economic sense, but dramatically declining state revenues are making changes to the criminal justice system more urgent. The state budget crunch has forced many to finally realize the economic necessity of and reasoning behind reducing this country's unnecessary overreliance on prisons. Fiscal prudence has produced new allies who agree that the nation's addiction to incarceration is bad public policy. The need for financial austerity has created an unprecedented opening for advocates to promote fair and more effective criminal justice policies that protect public safety, reduce recidivism, keep communities intact, and move away from our overreliance on incarceration, all while saving taxpayer dollars.

Recent reform efforts in several states have undermined the erroneous and misguided notion that mass incarceration is necessary to protect our public safety. States like New York, which depopulated its prisons by 20% from 1999 to 2009, and Texas, which has stabilized its prison population growth since 2007, are presently experiencing the lowest state crime rates in decades.

This report offers a selection of recommendations for legislative and administrative reforms that states should implement to reduce their incarcerated populations and corrections budgets, while keeping our communities safe. These recommendations cover: systemic reforms to the criminal justice apparatus as a whole; "front-end" reforms that focus on reducing the number of people entering jails and prisons; and "back-end" reforms that increase the number of people exiting and staying out of prison. These recommendations are by no means exhaustive, but aim to provide advocates and lawmakers with a few key evidence-based and politically-tested reforms from which to craft a state-specific legislative agenda for criminal justice reform.

This report documents bipartisan criminal justice reforms in six states—Texas, Kansas, Mississippi, South Carolina, Ohio, and Kentucky—and ongoing efforts in four more—California, Louisiana, Maryland, and Indiana. Several other states have also recently enacted reforms but this report

deliberately focuses on states that have long had reputations for being "tough on crime." Each state profile describes how and why state lawmakers moved from escalating prison growth and costs to significant reforms that either have already or are projected to reduce the incarcerated population and save scarce public funds. These profiles are intended to provide lawmakers and advocates with a practical "how to" guide to reform state prison systems. This report describes each of the major legislative and administrative reforms adopted in the profiled states and identifies additional states that are on the cusp of significant reforms. While lowering costs, these reforms increased or had no detrimental effect on public safety in the states profiled.

While this report highlights more rational, evidence-based criminal justice policymaking, it does not suggest that the reforms enacted in the profiled states are sufficient. Indeed, to return to the nation's incarceration rates of 1970, we would have to release four out of every five current prisoners in the United States. Instead, this report offers the examples of these states to inspire further reform in those states, as well as to provoke reform in other states and the federal system.

Though the highlighted enacted reforms are steps in the right direction, advocates and legislators must be vigilant about the potential for later policies to undermine further reforms or full implementation of existing ones. This report identifies some of the disturbing trends that might undercut the potential for long-term success of reforms passed with bipartisan support. For example, too many states are rejecting important reforms that require some short-term investment of resources. Over the long-term, these programs will be extremely cost-effective for states, keep families and communities intact, and allow otherwise incarcerated individuals to contribute to society and the economy.

If states as varied as Texas, Mississippi, and Ohio can engage in more rational criminal justice policymaking and recognize that mass incarceration is not necessary to protect public safety, there is no reason for other states not to follow suit. As we commemorate forty years of a failed experiment in the War on Drugs, it is time for reason, rather than politics and emotion, to guide criminal justice policymaking.

# Recommendations for Reform

As highlighted by the significant success of criminal justice reforms discussed in this report, it is more than possible for a state to limit its reliance on prisons, reduce its corrections budget, and promote public safety and fairness. As states across the country are realizing that reducing prison populations and corrections budgets is a necessity, they can look to the examples in this report as ways to reform their criminal justice systems with promising results.

Some of the states discussed in this report—Texas, Kansas, Mississippi, South Carolina, Kentucky, and Ohio—have implemented *partially or fully* the following selection of reforms. These reforms are "evidence-based," i.e., backed up by social science and economic evidence proving their success, and show that mass incarceration is not necessary to protect public safety.

**Systemic Reforms.** These reforms affect criminal justice policies at large, undertaking a holistic evaluation or reform of a state's criminal justice system.

- ***Require Evidence-Based Criminal Justice Practices and Risk Assessment Instruments.*** Criminal justice policies are more effective when crafted based on criminology or science rather than fear and emotion.
    - States should implement policies grounded in research proving that those policies actually achieve their stated goals. States should commission periodic evaluations of new or existing criminal justice policies and require affected state agencies to report progress on the implementation and success of programs.
    - States should incorporate the application of risk assessment instruments to individuals throughout the criminal justice process—including in the pre-trial process, sentencing process, and parole and probation decisions. These instruments should sort individuals into low, medium, or high risk of recidivism based on social science factors. States should choose instruments that have been peer-reviewed and validated, and proven not to have any racially discriminatory effects. States should also train actors and agencies—like judges, law enforcement officers, and pre-trial agency and corrections staff—to use these instruments in decisionmaking. Examples: Mississippi (2009); Kentucky (2011); Ohio (2011).

- ***Form Oversight Commissions.*** Most states currently have sentencing commissions tasked with reviewing and proposing recommendations to the criminal justice system. However, many of these commissions are not active or lack the necessary authority from the legislature to implement their recommendations and evaluate results.

- States should create or resurrect legislative committees to explore and recommend reforms. They should give these committees power to identify drivers of the prison population, propose reforms, oversee implementation, and evaluate successes. Examples: Kentucky (1976); Texas (2007); Kansas (2007); South Carolina (2011).

- ***Require Accurate Fiscal Impact Statements.*** Most state legislatures require proposed legislation to undergo a fiscal impact analysis that assesses the expenditures and cost savings for state and local budgets of any proposed changes to current law. Unfortunately, many states perform these fiscal impact analyses incorrectly by overestimating costs and underestimating cost savings. Frequently they completely ignore potential cost savings resulting from a policy change that would reduce the state's prison population. They also often only include impacts for the following fiscal year, ignoring impacts for later years—which are often where cost savings are realized. These fiscal impact analyses are given incredible weight in state legislatures and often criminal justice bills that would actually save states money are killed by incorrect fiscal analyses.
    - States should require accurate and complete fiscal impact analyses for criminal justice bills. They should provide detailed factors that fiscal note writers must take into consideration and create a system of accountability and transparency for the writers. Example: South Carolina (2011).

**"Front-End" Reforms**. These reforms reduce the unnecessary incarceration of individuals in jails and prisons in the first instance. They focus on changes in criminal, drug, and sentencing laws and recognize that prison should be an option of last resort, reserved only for those who really need to be incarcerated.

- ***Reduce Reliance on Pre-Trial Detention.*** About three quarters of a million people are locked up in crowded jails across the country. Nearly two-thirds of those in jails—costing roughly $9 billion in taxpayer dollars to house—are awaiting trial, meaning they have not been convicted of any crime and are presumed innocent. Many individuals in jails are charged with nonviolent, low-level crimes like traffic violations, petty theft, or public drug use. A disproportionate number of them are poor and forced to remain in custody simply because they cannot afford to post the bail required—very often, just a few hundred dollars. Other defendants languish in jails because prosecutors or courts have not promptly scheduled arraignment hearings. Most of these individuals can be released without creating risks of endangerment to our communities or flight from justice.
    - ***Make Pre-Trial Release the Default.*** States should enact laws that mandate pre-trial release as the default and limit pre-trial detention only to those individuals who pose high threats to public safety. Examples: Kentucky (1975, 2011); California (2011).
    - ***Limit Use and Amount of Bail.*** States should limit the use of monetary bail to those cases where a court believes that bail is the only way to reasonably assure a defendant's future appearance in court. States should also require courts to be more cognizant of individuals' financial situations and set viable bail amounts, and to require

cash deposits with the court instead of compensated sureties. States should advance legislation that more strictly regulates the commercial bail bond industry. Examples: Kentucky (1975, 2011).

- ***Limit Time to Arraign***. States should set and abide by a specific time limit—such as 24 hours—between arrest and arraignment.

- ***Reduce Penalties for Drug Offenses.*** A quarter of the people in state and federal prisons are incarcerated for drug offenses. In 2009 alone nearly 1.7 million people were arrested in the U.S. for nonviolent drug charges.[3] Marijuana arrests comprise more than half of all drug arrests in the United States, and nearly 90% of those are charges of possession only.[4] These policies drain billions of taxpayer dollars and millions of law enforcement hours, with little benefit to public safety. Incarceration is not a proper solution to drug offenses; prison does not treat addiction and often makes individuals more prone to drug use.[5]

  - ***Decriminalize/"Defelonize" Drug Possession.*** States should decriminalize simple possession of all drugs, particularly marijuana and for small amounts of other drugs. States could also legalize drugs like marijuana, setting up a system to tax and regulate sales. As an alternative to decriminalization, states can convert drug possession crimes to misdemeanors or civil penalties, which carry non-prison sanctions. Examples: California (2010); Kentucky (2011).

  - ***Provide Non-Prison Sanctions for Drug and Other Low-Level Offenses.*** States should mandate non-prison alternatives, such as drug treatment, community service, or probation, for those convicted of low-level drug offenses. Additionally, states should offer drug treatment to all people with drug convictions who have substance abuse problems. States should also mandate similar alternatives for those convicted of other low-level offenses like property crimes or violations such as public intoxication. Examples: Kansas (2003); Texas (2003, 2007); Mississippi (2009); South Carolina (2010); Kentucky (2011); Ohio (2011).

  - ***Eliminate the Crack/Cocaine Disparity***. States should eliminate disparate sentences for crack and powder cocaine offenses. Last year, the federal government took steps to reduce the disparity, recognizing that the sentencing disparities fly in the face of science and logic and have devastating racially disparate effects, as the substances are pharmacologically identical.[6] All states and the federal government should take further steps to completely eliminate sentencing disparities between crack and powder cocaine offenses, bringing our laws into line with science. These changes should be applied retroactively to those already in prison. Examples: South Carolina (2010); Ohio (2011).

- ***Eliminate Mandatory Minimum Sentences.*** In the 1950s and 1960s, our criminal sentencing laws gave too much discretion to judges. This structure resulted in judges sentencing individuals to vastly disparate sentences for similar offenses often due to racial biases. Since the mid-1970s, however, federal and state governments have implemented strict, inflexible,

and often irrational sentencing guidelines that have swung the pendulum too far in the opposite direction—mandating unnecessarily long prison sentences and tying judges' hands. These laws often require disproportionate mandatory minimum prison sentence lengths for offenses, particularly drug offenses. Those committing drug offenses often pose very little risk to public safety and incarcerating them prevents them from receiving treatment and rehabilitation, which would enable them to return to society.

    - States should eliminate mandatory minimum sentence lengths for crimes and provide judges with slightly more discretion, particularly when it comes to downward departures from sentencing guidelines when appropriate. Examples: South Carolina (2010); Ohio (2011).

- ***Eliminate "Three strikes" and Habitual Offender Laws.*** In the 1990s, many states implemented "three strikes, you're out" laws that mandated long sentences, often life in prison, for individuals convicted of three crimes on a selected list. States enacted these policies with no grounding in science and in reaction to fear drummed up by anecdotal stories. Like mandatory minimum laws, habitual offender laws overcrowd our prisons with individuals who have committed multiple low-level offenses like drug possession and pose little threat to public safety.

    - States should eliminate three strikes and other habitual offender laws that allow for automatic sentence enhancements based on prior convictions, especially those based on low-level offenses. Examples: South Carolina (2010); Texas (2011).

- ***Reclassify Low-Level Felonies to Misdemeanors.*** State laws often classify low-level crimes—like drug possession and low-level property crimes—as felonies instead of misdemeanors. This unnecessary bump up in classification imposes disproportionately harsh prison sentences and later consequences (like the inability to vote or a creation of a felony criminal record) on individuals who have committed minor offenses and pose little safety risks. States should reclassify low-level felonies, such as simple drug possession and nonviolent low-level theft, into misdemeanors with no prison time. Examples: South Carolina (2010); Kentucky (2011); Ohio (2011).

**"Back-End" Reforms.** These reforms shrink the current and returning incarcerated population and focus on parole and probation reforms. They are grounded in an understanding that our current and past sentencing policies often mandate extremely harsh prison sentences disproportionate to the crime committed. The availability of parole at an earlier date is a back-door method to ensure that individuals serve only the appropriate amount of time in prison.

- ***Eliminate "Truth-in-Sentencing" Laws.*** In the late 1980s and 1990s, states began to implement "truth-in-sentencing" laws, which required individuals to serve at least 85% of their prison terms before becoming eligible for parole.

- Recognizing sentencing laws are already too harsh, states should eliminate truth-in-sentencing laws, particularly for people convicted of nonviolent offenses. This increased eligibility for parole will allow individuals to leave prison when they no longer deserve to be there. Example: Mississippi (2008).

- ***Grant/Expand "Earned Credits" for Prison, Parole, and Probation.*** Individuals can spend exorbitant amounts of time in prison, but prisons often fail to provide prisoners with any sort of programming to rehabilitate them or help them successfully reenter society, often releasing them with only the clothes on their back. Prisons also use fear and punishment to get prisoners to follow the rules, instead of offering positive incentives. It should be of little surprise that these individuals often end up back in prison, as they have no support to assist them upon release.

    - States should provide positive incentives to those in prison to follow the rules and complete treatment, educational, vocational, and other reentry programs. States should also implement day-for-day earned credit for exemplary time served in prison—for example, by providing 30 days of time off an individual's prison sentence for every 30 days served in prison with a clean disciplinary record. States should also provide credit time—such as four months—for completion of each reentry program and ensure that these programs are offered in prisons. By participating in these programs, individuals are less likely to recidivate and can more successfully reenter society.[7]

    - States should also extend earned credit programs to those on parole or probation. These credit programs will shorten time spent on parole and probation, providing incentives to individuals to follow the conditions of their parole and probation without being sent back to prison. Examples: Mississippi (2004, 2009, 2010); Kansas (2007); South Carolina (2010); Texas (2011); Kentucky (2011); Ohio (2011); Louisiana (2011).

- ***Use Non-Prison Alternatives for Technical Parole and Probation Violations***. Over one-third of prison admissions in this country are for individuals who have committed technical parole and probation violations—such as missing a parole meeting or failing to perform community service—not because they committed new crimes.[8] In some states, like California, as much as two-thirds of prison admissions are due to these technical violations.[9]

    - States should implement non-prison alternatives for technical parole and probation violations. These programs—often called "graduated sanctions," "intermediate sanctions," or "swift and certain sanctions"—offer timely and proportionate responses to rule violations. They require officers to impose consequences on individuals that fit the violation committed. For example, a missed meeting could result in community service, a failed drug test in a mandated drug treatment program, and a new violent crime in prison time.

    - States can also provide performance-based financial incentives to counties to encourage reductions in parole and probation revocations due to violations. States can provide monetary sums to counties who prove they can reduce their parole or probation

revocation rates by a certain percentage within a certain time period. Examples: Texas (2007); Kansas (2007, 2011); Ohio (2011); California (2011); Louisiana (2011); Maryland (pilot 2011).

- ***Increase Transparency, Oversight, and Training of Parole Boards***. In most states, the governor appoints members to the parole board. Often, individuals on these boards lack training and make decisions about parole release based on instinct instead of evidence. This results in an unfair execution of justice with little transparency or accountability for parole decisions.
    - States should mandate the use of risk assessment tools and require training for parole boards. They should also mandate that parole boards consist of members with different and varied experience and backgrounds and require boards to periodically report results to the legislature to determine whether they are making evidence-based decisions. Examples: Louisiana (2011); Ohio (2011).

- ***Create Parole Eligibility for the Elderly.*** Our harsh sentencing laws have led to an increasingly aging and ailing prison population. Nationally, over 35,000 people over the age of 60 are in prison—2.3% of the total prison population.[10] Many of these individuals have been incarcerated for too long and take a significant toll on the states' budgets. Further, the inverse relationship between age and involvement in crime is one of the oldest and most widely accepted phenomena in criminology—and exists at ages as early as 50. Continued incarceration of these individuals is inefficient, inhumane, and does little to protect public safety.
    - States should create parole eligibility for individuals based on age. States should grant individuals over the age 50, who have already served specific periods of prison time, the right to a hearing before a parole board. If the board determines that the individual no longer poses safety risks, it can release that individual. Example: Louisiana (2011); Ohio (2011).

- ***Reinvest Savings in Programs Reducing Crime.*** As states implement these recommended reforms, they will begin to see drops in their prison populations and corrections budgets, while continuing to protect public safety.
    - States should take part of the budget savings from these reforms and reinvest them into programs proven to reduce recidivism and improve communities. These programs can include reentry programs for prisoners (providing education, substance abuse and mental health treatment, and vocational skills) and programs preventing individuals from coming into contact with the criminal justice system in the first place (providing housing, education, counseling, and employment assistance to high-risk individuals). Examples: Texas (2007); Kentucky (2011); Ohio (2011).

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For more information on the ACLU's Safe Communities, Fair Sentences Initiative, please visit http://www.aclu.org/combating-mass-incarceration.

# I. States Implementing Successful Bipartisan Reforms

## TEXAS (2007)

*"We're in the process of sharply turning the ship . . . to focus more on treatment of peoples' problems so they can do their time and return to society as productive citizens. . . . In 10 years, we may look back on this as one of the most significant changes we've made."*

**~State Representative Jerry Madden (R), 2007**[11]

**Reduction in Incarcerated Population: Stabilized population & 11% reduction in prison growth by 2012.**

- 2007 Incarcerated Population: 155,345 in prisons; 67,885 in jails.
- 2010 Incarcerated Population: 155,022 in prisons; 69,731 in jails.
- Projected 2012 Incarcerated Population: 156,986 in prisons (would have been 168,166 without reforms); plus jail population.

**Reduction in Corrections Costs: Over $2 billion saved by 2012 in averted prison growth.**

- 2007 Corrections Costs: $2.96 billion (including $2.3 million on prisons).
- 2010 Corrections Costs: $3.11 billion (including $2.5 million on prisons).

**Key Bipartisan Reforms:**

- **Front-End**
  - **HB 2668 (2003):** Mandated probation for low-level possession of many drugs.
- **Back-End**
  - **HB 1 (2007):** Reinvested $241 million to create treatment programs for those on parole and probation and non-prison sanctions for those committing technical violations.
  - **SB 166 (2007):** Gave financial incentives to local probation departments to provide non-prison sanctions for technical probation violations.

- **HB 2649 (2011):** Increases earned credit eligibility to up to 20% of sentence length for nonviolent offenses.
- **HB 1205 (2011):** Expands earned credit program for probation.

- **Juvenile Reforms**
  - **SB 103 (2007):** Eliminated prison sentences for juvenile misdemeanors; set minimum periods of detention as the default for other offenses.
  - **HB 1 (2009):** Closed three juvenile prisons and reinvested partial savings into juvenile probation.

**Effect on Public Safety:** Since 2007, the crime rate in Texas fell more than 8%; Texas now has its lowest crime rate since 1973.

## A. Escalating Prison Growth & Costs

In 2007 Texas's incarcerated population numbered 226,901 prisoners,[12] making Texas the state with the fourth highest incarceration rate in the country. Texas had an astronomical corrections budget (including funding for prisons, parole, and probation programs) of almost $3 billion annually.[13] That year, the Texas nonpartisan Legislative Budget Board estimated that by 2012 the state would need an additional 17,000 prison beds, projected to cost the state $2 billion to build plus approximately $290 million per year to operate the additional prisons.[14] After many small attempts at reform, this budget projection finally shocked legislators into enacting large reforms to move away from the state's overreliance on prisons.

## B. Political Momentum for Change

### *2001-2003: Litigation Brings Awareness and Reform Attempts*

A highly publicized set of drug cases triggered an initial round of reforms to the Texas criminal system. In 2001, dozens of African-Americans in the town of Tulia were charged and convicted of false, very low-level cocaine offenses. They were sentenced to 20, 40, 60 and even 90 years. After intense litigation, the defendants established that their convictions were based on false and uncorroborated law enforcement testimony.[15] Texas Governor Rick Perry (R) then pardoned the Tulia defendants in 2003.

In 2001, in response to public attention to the Tulia arrests, the Texas legislature passed HB 2351 (which required corroboration of confidential informants' testimony),[16] SB 1074 (which prohibited racial profiling by police officers),[17] and SB 7 (which set requirements for public legal defense for indigent defendants).[18]

Many of the legislators supporting these laws formed an unlikely coalition of Democrats and Republicans united by the growing strain on the budget and overflowing prisons. The Chair of the Corrections Committee, Representative Ray Allen (R), spearheaded the reform effort and collaborated with the ACLU of Texas and the Justice Policy Institute (a think-tank committed to reducing incarceration rates) to identify potential reforms that would decrease prison populations without endangering Texas communities.

In 2003, the coalition successfully passed HB 2668 in furtherance of these goals, which:

- **Mandated probation for first-time, low-level drug possession** of small amounts of marijuana, cocaine, and other drugs, offering a suspended sentence instead of prison time.[19]

### *2005: Attempted Comprehensive Reform*

Representative Allen then sought a more comprehensive overhaul of the criminal justice system in 2005, working with Senator John Whitmire (D) and Representative Jerry Madden (R) to garner bipartisan support.[20] Groups like the ACLU of Texas continued to work with the legislators. The bill would have reduced probation lengths, expanded drug courts to more counties, and expanded earned time credits for those on parole and probation. Of the 181 state legislators, 72 Democrats and 82 Republicans voted to pass HB 2193.[21]

Governor Perry then vetoed the bill, supporting the "tough on crime" position taken by law enforcement.

### *2007: High Prison Costs Make Reform a Necessity*

By 2006, faced with growing prisons that would cost the state over $2 billion, Governor Perry began to realize that change to the prison system was a necessity. The Texas legislature worked with the Council for State Governments (CSG) (a national nonpartisan organization that fosters state government collaboration) to identify factors driving the prison growth.[22] CSG found three influential factors: increased probation and parole revocations, fewer individuals receiving parole, and a reduced capacity for residential treatment programs for individuals on parole and probation.

In 2007, after Representative Allen's departure from the legislature, Senator Whitmire and Representative Madden quickly revived and revised the 2005 attempted reforms. As Representative Madden stated, the plan was to turn the debate from one that says "be tough on crime to one that says be smart on crime."[23] The ACLU, the Texas Criminal Justice Coalition (a state policy research group advancing criminal justice reforms), and the Texas Public Policy Foundation (a nonprofit libertarian research institute) worked to pass the reforms. Governor Perry also took a seat at the reform table.

## C. Bipartisan Legislative Reforms

### *2007 Reforms: Expanded Drug Courts and Treatment on Parole and Probation*

In May 2007, the legislature passed several bills, with strong bipartisan support, packaged together as the Whitmire/Madden Correctional Treatment and Diversion Plan. This package aimed to reduce the state's soaring prison population and provide smoother reintegration into society, which would eventually lead to lower revocation rates, increased public safety, and huge cost savings.

One key difference between the 2005 bill and the enacted 2007 reform package was a budgetary provision allocating funds to the keep the programs alive (discussed as HB 1 below).[24] Of 181 Texas state legislators, 49 Democrats and 90 Republicans voted to pass this key part of the package.

The combined laws did the following:

*Systemic Reforms*

- Created the Criminal Justice **Legislative Oversight Committee** to oversee and evaluate the reforms' successes (SB 909).[25]

*Front-End Reforms*

- **Expanded the drug court system** by adding drug courts in more counties, increasing funding, and expanding specialty court jurisdiction to include more crimes (HB 530).

*Back-End Reforms*

- Budget "Reinvestment" Funding (HB 1) -
    - Allocated $241 million from the budget to create **parole and probation treatment programs** and **incarceration alternatives** for technical violations, including:
        - More residential and out-patient beds for substance abuse treatment for those on probation;
        - New beds in halfway houses providing reentry services for those on parole;
        - Additional beds in non-prison residential facilities for those committing technical probation and parole violations;
        - More substance abuse treatment programs in prisons and jails.[26]

- Probation Reforms -
    - Shortened probation terms. It **reduced the maximum probation term** for drug and property felony offenses (from 10 years to 5 years),[27] mandated judges to review probation lengths after two years or half the probation term (whichever is earlier), and provided earned credit for probation drug treatment programs (HB 1678).[28]
    - Created **financial incentives** to local probation departments to create a **graduated sanctions program for probation** providing non-prison sanctions for technical probation violations (SB 166).[29]
    - Increased judicial discretion to **impose probation for low-level drug offenses** and required judges to impose probation for certain state jail felonies (HB 1610).[30]
- Parole Reforms -
    - Required parole officers to annually identify prisoners eligible for parole and release them (SB 909).[31]
    - Created a **medical parole program** allowing release of mentally or terminally ill prisoners to supervision in a medical facility (HB 431).[32]

*Juvenile Reforms*

- Mandated that judges sentence juveniles convicted of **misdemeanors to non-prison residential programs** and provided counties with $57.8 million to handle these youth (SB 103).[33]
    - The law also mandated that local facilities **justify why juveniles should be detained beyond the prescribed minimum**. The law passed almost unanimously with only one Republican voting against it.

As noted below, these programs were tremendously successful. However, legislators knew continued success would require uninterrupted funding and support for further reforms.[34]

### *2009 Additional Reforms: Expanded Parole and Juvenile Probation*

In 2009, the legislature continued funding for the 2007 programs and, working with the Texas Criminal Justice Coalition, passed several bills furthering criminal justice reforms that:

- Allowed **earned-compliance credit to be suspended** instead of being completely forfeited if the individual violated a prison rule (HB 93).[35]
- Closed three juvenile prisons and **reinvested $45.7 million of the savings into juvenile probation programs**, providing financial incentives for departments to reduce commitments to youth institutions (HB 1).[36] HB 1 was passed unanimously.

## D. Sizeable Success & Savings

Together these reforms achieved overwhelming success in Texas. The 2003 reform of HB 2668 shifted up to 4,000 individuals per year out of prison and onto probation. With a cost per individual of $40 per day in prison and only $2 on probation, this program alone saved Texas $51 million between 2003 and 2005 and the savings continue to grow.[37]

From 2007 to 2009, the Texas prison population stabilized instead of increasing by 5,141 prisoners as projected.[38] In 2009 alone, direct sentences to prison fell by 6%.[39] Without the 2007 reforms, Texas's 2012 prison population was projected to climb to 168,166 but is now projected to be 156,986,[40] only a slight increase from the 2007 population of 155,345.[41]

Instead of needing 17,000 new beds by 2012, Texas now has more than 2,000 empty beds.[42] The year 2011 marks the first time in history that Texas closed a state prison—Sugarland's Central Unit—which saved $50 million in the budget and freed up valuable land that could sell for up to $10 million.[43]

Much of this reduction in the prison population is due to the lowered rate of probation and parole revocations. Instead of sending these individuals back to prison for technical violations, the state has implemented the 2007 reform programs to provide treatment and other non-prison alternatives. The rate of parole revocations declined from 14.8% in 2004 to 8.2% in 2010 even though about 2,000 additional individuals are paroled annually in the more recent years. Texas now has its lowest rate of parole revocation. Additionally, probation departments receiving financial incentives reduced their revocations by 4%. The SB 103 juvenile reform of 2007 also contributed to the drop in population—within just the first year, 90% of juveniles were exiting prison after serving minimum sentences.[44]

In the first year, the 2007 reforms saved $210.5 million by reducing the original projected prison budget.[45] The reforms will save an additional $2 billion by 2012 that would have been incurred had the state simply constructed the prisons as projected.[46] The incarceration budget stabilized in 2010 at $3.11 billion without the state having to spend additional funds on new prison construction.[47]

Texas has also seen a drop in crime rates due to these smart reforms. In the two years after the 2007 reform package, the crime rate in Texas fell nearly 3%.[48] With an additional 6% drop from 2009 to 2010, Texas now has its lowest crime rate since 1973.[49] Serious property, violent, and sex crimes have declined by 13% from 2003 to 2009.[50]

These programs continue to reduce prison populations, revocation rates, and state costs. Right on Crime (a coalition of conservative leaders formed in 2010 to push for smart prison reform) has been an avid supporter of Texas's reforms and pushed for similar reforms as a model for other states.

## E. Moving Forward

### *2011 Reforms Undermining Past Progress*

2011 saw the introduction of a number of bills threatening to undermine Texas's success in criminal justice reform. The legislature passed HB 26, which:

- Requires prisoners to pay a $100 annual health care fee and allows emergency care fees.[51]

These types of attempts to raise revenue by collecting small fees from prisons are pennywise and pound-foolish. They do little to save states money or protect public safety in the long run, and harm those who need assistance the most. States should instead focus on reforms that cut large amounts of money from prison budgets by removing individuals from prison who do not deserve to be incarcerated.

Several other attempts to undermine progress fortunately did not pass the legislature. For example, HB 3386 would have added additional fees on prisoners, increasing fees for doctor's visits, medications, and phone minutes.[52] Additionally, the first version of a House appropriations bill proposed cutting up to $162 million in funding to the 2007 treatment and diversion programs.[53] These cuts would have increased the state's prison population. Fortunately, the legislature left the funding for the 2007 programs intact.

### *2011 Reforms: Small Sentencing Reforms and Expanding Earned Credit*

The legislature did, however, successfully pass three reform laws with strong bipartisan support that:

- Provide that state jail felony offenses **cannot be used to enhance sentences** in most cases (HB 3384).[54]
- **Expand earned credit** programs for individuals in prison to up to 20% of their sentences for completing treatment, educational, and vocational programs.[55] This is projected to save $49 million by 2013 (HB 2649).[56]
- **Expand earned credits for probation** by allowing judges to reduce or terminate probation after individuals serve one-third of their sentence or two years, whichever is shorter (HB 1205).[57]

The 2011 legislature proposed several bills that would have provided non-prison sentencing alternatives for drug offenses, expanded earned credit for those on parole, created an elderly parole program, and reduced and reviewed the use of solitary confinement in prisons. Unfortunately, these bills did not pass.[58]

Texas has gained nationwide acclaim for its 2007 reforms and the ongoing bipartisan efforts to reduce reliance on prisons. But Texas, like all states, still has more work to do. For the last several years, Texas's reforms have focused on parole and probation, addressing an individuals' exit from prison. Texas would be justly served to focus on front-end reforms like decriminalizing low-level drug and property offenses, reducing sentences for some crimes, and mandating alternatives to incarceration for low-level crimes. Texas is still facing a serious budget shortfall between $15 and $27 billion over the next two years and would be prudent to continue to cut back on its prison spending.[59]

## KANSAS (2007)

*"We've got a broken corrections system. Recidivism rates are too high and create too much of a financial burden on states without protecting public safety. My state and others are reinventing how we do business."*

**~Then U.S. Senator, now Governor Sam Brownback (R), 2004**[60]

**Reduction in Incarcerated Population: 14.6% reduction in prison growth as of 2009.**

- 2003 Incarcerated Population: 9,046 in prisons; plus jail population.
- 2009 Incarcerated Population: 8,610 in prisons (would have been 9,927 without reforms); plus approx. 7,000 in jails.
- 2011 Incarcerated Population: 9,156 in prisons (due to cutbacks undermining progress); plus jail population.

**Reduction in Corrections Costs: Over $133 million saved by 2012 in averted prison growth.**

- 2003 Corrections Costs: $318 million (including $219.9 million on prisons).
- 2009 Corrections Costs: $383 million (including $214.7 million on prisons).
- 2011 Corrections Costs: $379 million (including $272 million on prisons).

**Key Bipartisan Reforms:**

- **Front-End**
  - **SB 123 (2003):** Mandated drug treatment for some nonviolent drug offenses.
- **Back-End**
  - **SB 14 (2007):** Provided financial incentives for counties to reduce parole and probation revocations; expanded earned credits to education and treatment programs.

**Cutbacks Undermining Past Progress:** Since 2009, budget cuts to the 2007 programs have increased the incarceration rate back to the 2003 level and increased parole and probation revocation rates.

**Effect on Public Safety:** From 2003 to 2009, crimes rates dropped approximately 18%.

## A. Escalating Prison Growth & Costs

In 2003, Kansas's prison population was growing at nearly double the national rate. Since the 1990s, it had increased by 49%, to a record 9,046 prisoners in 2003.[61] This unprecedented growth was due largely to harsh prison sentences for low-level drug possession. For example, between 1997 and 1999, the number of individuals sent to prison for first-time, low-level drug possession increased by 65%.[62]

A staggering increase in statewide corrections spending accompanied the rising incarceration rate. Between 1985 and 2003, Kansas's annual spending on prisons consistently increased, rising from $60 million to $220 million.[63]

## B. Political Momentum for Change

As a result of a looming budget crisis, in 2002 the newly elected Governor Kathleen Sebelius (D) sought to cut $6.8 million from the Kansas Department of Corrections (DOC) budget. The Kansas Sentencing Commission ordered a statewide poll to assess how the public felt about drug policy. The Council for State Governments (CSG) and the University of Kansas conducted the poll.[64] The results revealed that more than 85% of those surveyed believed the state should provide treatment to those who used drugs and 72% supported drug treatment over prison for drug possession crimes.[65]

Emboldened by the poll results and realizing that the *status quo* was untenable, the Sentencing Commission and the DOC supported reforms to the state's drug sentencing laws. Specifically, they sought alternatives to "address more effectively the revolving door of drug addicts through the state prisons, which should be reserved for those convicted of serious, violent offenses."[66]

## C. Bipartisan Legislative Reforms

### *2003 Reform: Treatment for Drug Possession*

In 2003, legislators quickly passed SB 123.[67] Of the 165 Kansas legislators, 51 Republicans and 49 Democrats voted to pass the legislation, which:

- Mandated that judges impose **treatment or probation for first or second-time nonviolent drug possession** instead of prison[68] and provided $5.7 million in funding for these programs.[69]
- Gave judges discretion to impose treatment instead of incarceration for repeat low-level felonies or convictions.[70]

As detailed below, this reform was successful in temporarily stopping the state's prison explosion.

### *2005: Prison Populations Rise Again*

In 2005, the prison population once again began to creep up and reports projected that without major reforms Kansas would soon need to build 1,300 new prison beds. Unclear as to how to stem the tide, the Sentencing Commission sought technical assistance from CSG to identify factors driving the prison growth.

### *2007 Reform: Reduced Probation and Parole Revocations*

The state discovered that the staggering increase in incarceration was driven by the high rates of parole and probation revocations sending individuals back to prison for technical violations.[71] Over half of prison admissions (57%) in Kansas were due to probation and parole revocations, not commission of new crimes.

The legislature established a bipartisan task force to work toward a solution and in May 2007, the legislature passed a criminal justice reform package with SB 14[72] as the centerpiece. Of the 165 Kansas legislators, 80 Republicans and 51 Democrats voted to pass SB 14, which:[73]

- Appropriated $4.5 million from the state budget to provide **financial incentives to counties** committing to cut the number of individuals returning to prison for probation and parole violations by at least 20%.[74]
- Re-established and allocated $2.4 million from the budget for **earned credit programs** for individuals convicted of nonviolent offenses, giving 60 days of credit for completing educational or drug treatment programs.[75]

### *2009 Reforms: Medical Parole and Shortened Jail Stays*

Encouraged by the success of the previous reforms, Kansas passed HB 2412 in 2009 addressing the needs of elderly and ailing prisoners and:

- Created a **medical parole program** making terminally ill prisoners who no longer pose significant public safety risks eligible for parole.[76]

In the same year, the Kansas DOC ran a pilot project with the Johnson County Jail **releasing prisoners serving short-term jail sentences.** The project released prisoners within fourteen days of their release date instead of sending them to state prison to serve out the remaining few days.[77]

## D. Sizeable Success & Savings

These reforms combined to decrease Kansas's prison population by 5% from 2003 to 2009.[78] Since the 2003 SB 123 reform took effect, incarceration rates for those convicted of drug possession have plummeted, with more than 70% of those individuals entering probation and treatment programs funded under the law.[79] Additionally, among SB 123 participants, probation revocations dropped from 25% to 12%[80] and parole violations dropped by 44%.[81] The law is estimated to have saved $52.9 million in averted prison construction and operation through 2010.[82]

While SB 123 succeeded in saving money for Kansas, it did not solve the underlying problem causing the staggering growth in the incarceration rate. SB 14 took this additional step in 2007. Two-thirds of all Kansas county agencies have surpassed SB 14's goal of a 20% reduction in individuals sent to prison for parole or probation violations. This reduction is projected to save $80.2 million in additional prison costs by 2012.[83]

Additionally, while Kansas's crime rate has decreased steadily from its peak in 1991, it has decreased at a greater rate since the passage of the reform bills in 2003 and 2007[84]—crime rates have dropped approximately 18% from 2003 to 2009.[85]

## E. Moving Forward

### *2009-2011: Cutbacks Undermining Past Progress*

Despite the huge success of the reforms, as the economy declined and the state budget shrunk, Kansas began to cut funding for many of the 2007 reentry programs it once championed.[86] State Representative Pat Colloton (R), a supporter of the programs, explained the cuts, saying "[t]he legislature didn't have the political will to protect the budget for parole supervision."[87] As has been proven time and time again, cuts to successful programs are shortsighted and create more harm in the long run. States may save small sums of money now, but will inevitably find themselves footing much larger bills for prison stays in the long run.

As the legislature cut treatment and programming funding necessary for the reforms,[88] the prison population burgeoned. The rate of new commitments in 2010 rose 13%, a stark contrast to the steady decrease seen from 2006 through 2009.[89] Additionally in 2010, overall prison admissions in the state exceeded prison releases for the first-time in the past five years.[90] Prisons are once again over capacity, with 9,156 prisoners,[91] and the state was forced to reopen a facility it had closed.[92] State recidivism rates also rose back up to 2007 levels.[93]

In 2011, despite prison operations costs rising notably,[94] drug treatment programs continue to lack funding[95] and the state has proposed an additional $7.2 million in cuts for 2012.[96] The state projects that the prison population will further rise by nearly 24% by 2020.[97]

### *2011: Hope for Progress*

In 2011, Governor Sam Brownback (R) took office. This year, he signed into law SB 60,[98] which:

- Gives municipal judges discretion to sentence individuals to **house arrest for minor crimes** (like ordinance violations) instead of incarceration;[99] and
- Gives judges discretion to place individuals under **house arrest for violations of parole conditions** instead of imprisoning them.

For the past decade Governor Brownback has been a national leader of conservative voices calling for smart prison reform. There is strong hope that he will put Kansas back on the map as a state advancing smart criminal justice reform.

## MISSISSIPPI (2008)

*"We've got all these needs, education, health care, and spending all this money on corrections. We've got to decide who we're mad with, and who we're afraid of."*

**~ Mississippi Department of Corrections Commissioner Christopher Epps, 2011**[100]

**Reduction in Incarcerated Population: 22% reduction in prison growth as of 2011.**

- 2008 Incarcerated Population: 22,646 in prisons; plus approx. 11,000 in jails.
- 2011 Incarcerated Population: 20,925 in prisons (would have been approx. 26,000 without reforms); plus jail population.

**Total Reduction in Corrections Costs**: **$450 million saved by 2012 in averted prison growth.**

- 2008 Corrections Costs: $348 million (nearly all on prisons).
- 2011 Corrections Costs: $332 million (nearly all on prisons).

**Key Bipartisan Reforms:**

- **Back-End**
  - **HB 686 (2004):** Increased earned credits in prison for exemplary time served.
  - **SB 2136 (2008):** Retroactively reinstated parole eligibility for nonviolent offenses after 25% of sentence served (partial repeal of truth-in-sentencing law).

**Effect on Public Safety:** Since 2008, the crime rate has continued to decrease and has now fallen to the lowest level since 1984.

## A. Escalating Prison Growth & Costs

By 2007, Mississippi's incarcerated population had grown to 29,096 prisoners, making it the state with the second highest incarceration rate in the country.[101] State prisons were operating at 99% of capacity and the cost of the corrections system was consuming an ever-increasing portion of the state budget. In 1994, the Mississippi Department of Corrections (DOC) budget was $109.6 million, but by 2008 it had more than tripled to $348 million.[102]

If incarceration rates kept growing at that pace, the state would need to add 5,000 more prison beds in the next ten years. The community impact of this mass incarceration was equally striking, with seven of every ten Mississippi prisoners having a relative in prison.[103]

Much of Mississippi's overincarceration problem could be traced to 1995, when the legislature passed one of the harshest "truth-in-sentencing" laws in the country.[104] The law mandated that all individuals convicted of felonies must serve 85% of their sentence before they could even be considered for parole.[105] Mississippi's law was harsher than other states because it applied to all prisoners, regardless of whether they had been convicted of a violent or nonviolent offense.

## B. Political Momentum for Change

Faced with the fiscal and human consequences of a corrections system running over capacity, legislators slowly began to think about prison reform.

### *2004: Small Parole Reforms*

In 2004, the state enacted several small reforms with bipartisan support that:

- **Expanded the earned credit program**, allowing individuals 30 days of credit applied toward their sentences for every 30 days of time served with a clean disciplinary record in prison (HB 686).[106] Of 174 Mississippi state legislators, 44 Republicans and 88 Democrats voted to pass this bill.[107]
- Created a **medical parole program** allowing terminally ill prisoners to apply for parole (HB 654).[108]

As explained below, HB 686 has been a great success, particularly when combined with later expansions to the program noted below. While successful, these reforms on their own proved ineffective in decreasing the booming prison population or the costs to the state.[109] Lawmakers and advocates continued to seek ways to reform the prison system.

### *2006: Litigation Paves the Way for Reforms*

The ACLU's National Prison Project had been litigating against the DOC to improve the deplorable conditions at Parchman Farms, the state's supermax prison.[110] During the litigation, DOC Commissioner Christopher Epps began to work in partnership with the ACLU and the JFA Institute (a nonpartisan research agency) to examine and reform conditions at Parchman. In 2006, Commissioner Epps entered into a legal agreement with the ACLU to improve the prison's conditions.[111] Understanding that the scope of the prison problem required more extensive reform, Commissioner Epps began thinking about ways to reduce Mississippi's prison population.[112]

## C. Bipartisan Legislative Reforms

### *2008 Reform: Significantly Expanded Parole*

In 2008, a coalition led by Commissioner Epps, Senator Willie Simmons (D), and Governor Haley Barbour (R) came together to pass SB 2136, which partially repealed the 1995 truth-in-sentencing law.[113] Many lawmakers on the fence supported the reform after learning that there are no significant findings showing that shorter incarceration leads to increased recidivism.[114] Of 174 state legislators, 23 Republicans and 83 Democrats voted for the law, which:

- Reinstated **parole eligibility for individuals committing nonviolent offenses**[115] **after serving 25% of their sentences** or one year, whichever is longer.[116]
- Removed the prior conviction limitation on eligibility.
- Provided parole eligibility to individuals sentenced to 30 or more years after they had served 10 years.
- Applied its provisions **retroactively** to those already in prison.

Notably, the law did not mandate the automatic release of individuals from prison upon eligibility; it merely gave individuals the right to go before a parole board at an earlier date to ask for release.

The law was retroactive so that it could immediately decrease the size of the prison population. As soon as Governor Barbour signed the bill into law, 3,000 new individuals became eligible for parole. As Senator Simmons said, the state capitalized on "an opportunity to begin to stabilize the growth in the Department of Corrections because the Parole Board will have an exit valve they can use to get more offenders out."[117]

### *Overcoming a Potential Obstacle: Regulating Parole Board Discretion*

The law's design placed a large amount of discretion in the hands of the parole board. If the parole board chose not to release prisoners, or even worse, if the board began to decrease its rate of parole approval, the law would have no impact. State reformers recognized the need to provide guidelines to the parole board when deciding who to release from prison.

Commissioner Epps called on his relationship with JFA and asked it to design a **risk assessment instrument** for the parole board**.** Members of the board were then able to use an evidence-based tool to identify which individuals were best suited for parole, rather than leaving parole decisions up to their individual "gut" as they had been doing in past years.[118] Case managers also began to prescreen parole applicants using the new risk assessment categories and passed on evidence-based parole recommendations to the board to speed along the review process.

### *2009 & 2010 Reforms: Non-Prison Alternatives for Low-Level Drug Offenses & Expanded Earned Credit*

Building on the 2008 reforms, the legislature enacted several additional reforms in recent years that:

- Gave judges discretion to impose **house arrest or electronic monitoring for drug sale** offenses instead of incarceration (SB 2880, 2009).[119] The law had previously only provided this alternative for those convicted of simple possession.[120]
- **Removed the cap on earned credits** of 180-days and gave the DOC discretion to grant **earned credit for programs** in education or vocation (SB 2039, 2009).[121]
- **Extended earned credit eligibility** to those convicted of most drug sale offenses (HB 1136, 2010).[122]

## D. Sizeable Success & Savings

These reforms have been incredibly successful in Mississippi.[123] Instead of growing by the projected 5,000 beds, the state's prison population growth stalled.[124] The number of current prisoners has also begun to decline, from 22,646 in prison in 2008 to 20,925 in 2011.[125] From 2008 to 2011, the DOC released a total of 6,817 individuals onto parole.[126] An astonishing 4,061 of these individuals—who the DOC decided did not pose safety risks—would have remained in prison prior to SB 2136's passage in 2007.[127] This reduction in population is projected to save the state $6 million by 2012. JFA continues to monitor the success of those released under SB 2136 and will release actual cost saving numbers in the coming months.

As in other states, many individuals returning to prison in Mississippi do so because of technical violations rather than new crimes. Even with the increase in the size of the parole population,[128] the rate of parole revocations has remained constant.[129] For example, out of the nearly 3,100 prisoners the DOC released in 2009, only 121 have been returned to custody.[130] Of those, all but five returned for technical parole violations.

The reforms implemented in Mississippi between 2004 and 2010 will save a total of $450 million by 2012.[131] This includes not only the savings of SB 2136, but also the savings of the 2004 earned credit program reform ($31.4 million), the 2004 medical parole law ($5 million), the 2009 electronic monitoring expansion ($2.6 million), and averted prison construction ($400 million).[132]

Furthermore, Mississippi's crime rate, which has been decreasing steadily from its peak in 1994, has continued to decrease after the reforms and has now fallen to its lowest level since 1984.[133]

## E. Moving Forward

While progress and the savings to the state from these reforms are significant, the major players in Mississippi realize that they need to build on past reforms to continue their successes.

The DOC continues to explore methods to decrease reliance on needless incarceration. It is considering an earned credit program for those on parole, under which individuals can continue to receive the same earned credit for exemplary time served on parole as they did in prison.[134] The DOC is also testing a new electronic monitoring device to move individuals from prison to house arrest.[135]

Commissioner Epps remains committed to reducing costs and the prison population while upholding public safety. He has identified a number of priorities for further reform in 2012, including: easing the standard for medical parole; extending the eligibility for earned credit to individuals convicted of drug possession offenses;[136] reducing parole violation penalties; and creating a non-prison unit to house those committing technical parole violations.[137]

In April 2011, the ACLU of Mississippi and Justice Strategies (a research group advocating for criminal justice reform) released a report calling for additional reforms including: replacing mandatory minimums with flexible sentencing standards; lowering and narrowing the prescribed sentencing range for drug offenses; and limiting the use of life without parole to violent crimes.[138]

Additionally, the ACLU and JFA continue to monitor conditions in Mississippi's prisons and work to move juveniles out of adult facilities. The DOC continues to collaborate with the ACLU, and in June 2011 it agreed to shut down Unit 32 at Parchman Farms—the facility that sparked the original lawsuit[139]—and to reform conditions and reduce the use of solitary confinement in other maximum-security facilities.

Mississippi is a good example of a "tough on crime" state that is on the path toward significant reform. Mississippi had the second highest incarceration rate in the country and still managed to reform its prison system with the support of the Governor, DOC Commissioner, bipartisan legislators, and key advocates. As much of Mississippi's past reforms have focused on back-end parole reform, the state would be well served to examine some reforms to its sentencing laws that would reduce prison admissions while protecting public safety.

## SOUTH CAROLINA (2010)

*"This approach is . . . soft on the taxpayer because it will reduce the need to build more prisons. It is smart on crime because community-based alternatives such as restitution and drug courts entail more accountability and have been proven to reduce recidivism."*

**~State Senator George Campsen III (R), 2010**[140]

**Projected Reduction in Incarcerated Population: 7.3% reduction in prison growth by 2014.**

- 2009 Incarcerated Population: 24,612 prison; approx. 13,000 in jails.
- 2014 Projected Incarcerated Population: 26,111 in prison (would be 27,903 without reforms); plus jail population.

**Projected Reduction in Corrections Costs: $241 million saved by 2014 in averted prison growth.**

- 2009 Corrections Costs: $400 million (including $265.4 million on prisons).

**Key Bipartisan Reform - S.1154 (2010):**

- **Systemic**
  - Required fiscal impact statements for criminal justice legislation.
- **Front-End**
  - Eliminated mandatory minimum sentences for drug possession; eliminated the crack/cocaine disparity; provided non-prison alternatives for some drug sale offenses.
- **Back-End**
  - Created medical parole program; expanded parole eligibility for certain offenses; created earned credit program for probation.
- **Undermining Progress**
  - Expanded list of violent crimes; added three strikes law.

**Effect on Crime Rate:** Projected to increase public safety; drop in crime rate expected to continue.

## A. Escalating Prison Growth & Costs

By the end of 2009, South Carolina's prison population stood at 24,612, a nearly 270% increase over 25 years.[141] Adding to this problem were the 3,200 new individuals expected to enter the state's prisons by 2014.[142] South Carolina's taxpayers had been shouldering increasingly heavy burdens to house these prisoners; the state's corrections expenses ballooned to $394 million in 2008—over a 500% increase from 1983.[143] This was certainly bad news for a state facing an $877 million budget gap.[144]

Due to the state's extreme sentencing policies, people convicted of nonviolent offenses constitute a large portion of South Carolina's prison population. In 2009, almost half of individuals in prison were incarcerated for nonviolent offenses and 66% of those who violated parole or probation returned to prison due to technical violations not constituting new crimes.[145]

Despite these increases, South Carolina's crime rate, while steadily declining for the past decade, remained high compared to other states. In addition, the state's recidivism rate actually increased over the decade of increased incarceration.[146]

## B. Political Momentum for Change

Faced with the overwhelming cost of housing an ever-increasing prison population, South Carolina's political leaders recognized the need for action. Chief Justice Jean Toal of the Supreme Court of South Carolina went so far as to call the severity of the prison growth a "national scandal."[147] Legislators became concerned that using the state's prisons to house individuals convicted of nonviolent offenses would leave no room in prisons for those committing violent crimes. Building and operating new prisons just to cover violent offenses would cost the state roughly $500 million.[148]

Recognizing the problem, the state established the bipartisan South Carolina Sentencing Reform Commission in 2008[149] to recommend changes to the state's laws.[150] The commission consulted the Pew Center on the States to identify drivers of the state's prison growth.

Gerald Malloy (D), chair of the Sentencing Reform Commission, was concerned about space for violent offenders and wanted to free up resources for law enforcement efforts to prevent crime in the first place.[151] Newt Gingrich, a leader of the national conservative organization Right on Crime, agreed: "Low-level violations, as well as certain nonviolent drug-related crimes, can be punished in other ways that aren't as expensive as prison. We build prisons for people we're afraid of. Yet South Carolina has filled them with people we're just mad at."[152]

Groups from across the spectrum joined these leaders in supporting reform, including the ACLU of South Carolina, Right on Crime, and the Crime and Justice Institute (a nonpartisan criminal

justice reform think-tank). The ACLU of South Carolina supported efforts to reduce reliance on prisons and cautioned against any changes to the laws that would unnecessarily increase criminal penalties.

## C. Bipartisan Legislative Reform

### *2010 Reform: Reduced Drug Sentences, Expanded Parole, and Enhanced Some Penalties*

The Sentencing Reform Commission ultimately produced a set of recommendations enacted as S. 1154.[153] The law passed the legislature almost unanimously, with only four legislators dissenting. The reforms were mostly progressive in that they provided for alternatives to incarceration in many cases, though several provisions actually created more prison time for certain offenses.

The law contained many provisions; foremost it:

*Systemic Reforms*

- Required a **fiscal impact statement for criminal justice legislation** revising existing or creating new criminal offenses.[154] In this way, the law sought to provide the legislature with information about the long-term costs of incarceration before it acts to possibly increase the prison population.
- Created an **oversight committee** with discretion to shift up to 35% of the savings resulting from these reforms away from prisons and toward probation and parole.[155]

*Front-End Reforms*

- **Eliminated mandatory minimum sentences for simple drug possession**, restoring discretion to judges.[156]
- Gave judges discretion to impose **non-prison alternatives for first or second non-trafficking drug offenses** like probation, suspended sentencing, work release, and good conduct.[157]
- **Eliminated the crack/cocaine disparity**.[158]
- **Restricted enhanced penalties** for prior marijuana possession convictions when sentencing for a subsequent possession conviction.[159]
- Added **intent elements** for drug crimes near schools.[160]
- **Increased the felony property crime threshold** from $1,000 to $2,000.[161]
- Decreased the maximum sentence for nonviolent burglary from 15 years to 10 years.[162]

*Back-End Reforms*

- Created a **medical parole program** for terminally ill or ailing prisoners to apply for parole.[163]
- **Expanded parole eligibility** and provided work release for individuals convicted of certain felonies in the last three years of their sentences.[164]
- Mandated that people convicted of **nonviolent offenses be released to mandatory supervision** 180 days before their release date after serving at least two years in prison.[165]
- Gave parole officers and the board discretion to make **individualized parole decisions** based on risks and needs instead of using a one-size-fits-all approach.[166]
- Created an **earned credit program for probation** giving individuals up to 20 days off of their supervision period for every 30 days of time on probation without violations or arrests.[167]
- Requires the state to transition individuals from parole to **administrative monitoring** if all parole conditions are completed except financial ones.[168]

*Reforms Undermining Progress*

- Added twenty-four new crimes to the list of "violent" crimes,[169] unnecessarily increasing already stiff penalties for such crimes. It has been applied retroactively.
- Mandated life without parole for some violent crimes (such as murder or kidnapping) if an individual had two or more prior convictions for "serious offenses" (such as aggravated assault).[170]
- Added punishments for repeated motor vehicle offenses.[171]

## D. Success and Projected Savings

S. 1154 is expected to reduce the state's prison population by 1,786 prisoners by 2014.[172] It is also projected to save South Carolina $241 million by 2014, including $175 million in construction costs and $66 million in operating costs saved from avoided prison construction.[173]

In February 2011, the State Budget and Control Board held a hearing evaluating the effects of the new law.[174] The Board reported that since June 2010, the prison population is down by 600—providing hope that the new law is starting to have an effect.[175] Because not all of the provisions of the law have gone into full effect yet, we will need to wait a few years to realize the projected savings.[176]

The reforms are not expected to lead to an increase in the crime rate; rather, they are expected to make South Carolina safer by reducing recidivism. The crime rate is expected to decline at a faster rate.[177]

### *Potential Obstacle: Judicial Behavior*

The law has come under criticism not only due to the provisions increasing prison sentences, but also because most of its provisions are discretionary and not mandatory. For more dramatic decreases in the prison population and the subsequent savings, judges must take advantage of the new provisions and choose to sentence people convicted of nonviolent offenses to alternatives to incarceration.[178] Critics claim judges are still handing down sentences that favor incarceration, but Chief Justice Toal remarked that judges are responding positively to the new guidelines and may increase their use of alternatives as time passes.[179] Toal went on to say that substantial changes will take at least another year, and that South Carolina still needs to develop some of the resources that provide alternatives to incarceration.[180] South Carolina's judiciary is working to educate judges about the new law and how to implement it.[181]

## E. Moving Forward

South Carolina has taken a step toward criminal justice reform with S. 1154. But lawmakers and advocates are wise to realize their work to reform the system is hardly done.

In 2011, Governor Nikki Haley (R) and the Senate introduced a proposal to merge the state's probation, parole, and county corrections agencies under one authority.[182] The proposal did not pass this year, and the legislature is set to take it up next year.

Local advocacy groups continue to keep a close eye on the legislature to ensure it does not make shortsighted cuts or reforms that would peel back any of the 2010 reforms aimed at reducing prison populations. These groups must also ensure that the legislature, Department of Corrections, and judges fully implement these reforms. The state legislators and advocates must continue to come together to enact further reforms to reduce the state's reliance on unnecessary incarceration, with a particular eye toward decreasing its pre-trial detention population in county jails.

## KENTUCKY (2011)

*"We were very cautious with this. [The reform bill isn't] soft on crime. It's smart on crime."*

**~ State Senator Tom Jensen (R), 2011**[183]

**Projected Reduction in Incarcerated Population**: **18.4% reduction in prison growth by 2020.**

- 2010 Incarcerated Population: 20,763 in prison; 18,800 in jails.
- 2020 Projected Incarcerated Population: 18,308 in prison (would have been 22,132 without reforms); plus jail population.

**Projected Reduction in Corrections Costs: $422 million saved by 2020 in averted prison growth.**

- 2010 Corrections Costs: $468.8 million (including $289.6 million on prisons).

**Key Bipartisan Reform - HB 463 (2011):**

- **Pre-Trial**
  - Eliminates pre-trial detention for many drug offenses; mandates citations instead of arrests for some misdemeanors.
- **Front-End**
  - Reclassifies marijuana possession to a misdemeanor; presumes probation for simple possession of many drugs; reduces sentences for other drug crimes; offers non-prison alternatives for felony possession.
- **Back-End**
  - Expands earned credit programs for prison and parole.

**Projected Effect on Public Safety:** Projected to maintain public safety; drop in crime rate expected to continue.

## A. Escalating Prison Growth & Costs

Over the past 20 years, Kentucky's corrections expenses grew from $117 million in 1989 to $513 million in 2009—a 338% increase that is well above the national average.[184] This is a result of Kentucky's burgeoning prison population[185]—one that has grown by 45% over the past decade, more than triple the national average.[186]

However, Kentuckians were not safer as a result of the runaway prison spending; recidivism actually increased by 6% from 1997 to 2006.[187] Despite this, Kentucky's crime rate was still below the national average.[188] This is an example of how the growth in the prison population was not driven by an increase in criminal activity, but rather by several inefficient corrections policies. Kentucky sentenced individuals to prison time instead of to probation, treatment, or other non-incarceration punishments at a far higher rate than other states.[189] Violations committed on parole accounted for nearly one-fifth of prison admissions, nearly double the amount in 1998,[190] and 25% of Kentucky's prison population was incarcerated for drug offenses.[191]

Kentucky was on an unsustainable path. With existing policies in place, Kentucky was projected to take in an additional 1,400 prisoners over the next 10 years[192] at a total cost of an additional $161 million.[193]

## B. Political Momentum for Change

### *1975: A Past Model for Pre-Trial Reforms*

The recent burst in Kentucky's prison population came as a surprise to some familiar with Kentucky's criminal justice system. Starting in 1976, the state had instituted some of the most sensible and efficient pre-trial detention reform laws in the nation. The 1976 pre-trial detention reforms:

- Established **pre-trial release as the default** "unless the court determines in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required."[194]
- **Abolished commercial for-profit bail bondsman**.[195]
- Gave the Supreme Court power to establish a **uniform bail schedule** for nonviolent, low-level felonies, misdemeanors, and violations.
- Returned bail deposits to defendants when they were found innocent or the charges dropped or dismissed.[196]
- Required courts to offer substance abuse counseling for drug offenses.[197]

- Implemented a statewide uniform Pre-trial Services Agency to use a **risk assessment tool to release low-risk, low-level defendants** prior to trial instead of incarcerating them.
    - The law limited release to individuals accused of committing violations (like shoplifting, marijuana possession, public intoxication, and criminal trespassing) and allowed courts to impose supervision conditions (like phone-reporting, drug testing, home incarceration, or in-person reporting) for these crimes.[198]

To date, the Pre-Trial Services Agency has saved the state millions of dollars in corrections costs by reducing court dockets through release and subsequent dismissal of charges. This program has been a huge success, with 71% of defendants released showing up for their court dates and refraining from committing new violations.[199]

Although this reform was successful in many ways, Kentucky's prison population spiked after the 1980s due to harsh drug laws. The state's increasing number of arrests for drug violations and its unnecessarily long sentences for those convicted of felony drug possession led to large recent increases in prison population and corrections spending.

### *2005 & 2006: Additional Pre-Trial Reforms*

In 2005 the Pre-Trial Services Agency implemented the Monitored Conditional Release (MCR) program in 48 of the 120 counties in the state. The program:

- Required that pretrial officers interview defendants with a risk assessment tool to make **recommendations of pre-trial release for lower risk defendants.**
- Targeted counties struggling to pay the costs of housing individuals in county jail before trial.[200]

MCR has saved Kentucky nearly $31 million since its inception. It has had an extremely high success rate with nearly 90% of participants appearing for trial and 90% of participants not committing new crimes during their release.[201] In 2007 alone, MCR saved 540,709 jail beds.

Realizing that even more could be done to save money and reduce recidivism, the legislature enacted budget bill HB 380 (2006) which:

- Allotted $172,000 to create a Social Work Pilot Project for the Department of Public Advocacy to place a **social worker in the pre-trial process** in select public defender offices to offer treatment and counseling.[202]

After just one year, the pilot program cut recidivism rates to less than half of those in counties where the program was not used.[203] In the first year, the pilot saved almost $1.4 million in incarceration costs. For every $1 invested in the social workers' salaries, the state saved $3.25 in incarceration costs. In 2005, the Department of Public Advocacy implemented the program statewide,[204] and annual savings are projected at $3.1 to $4 million per year.[205]

### *2005 and 2008: False Starts*

In 2005 and 2008, Kentucky launched two attempts at reform, commissioning legislative task forces to make recommendations. However, legislators largely ignored the recommendations due to a political misconception that relaxing sentences would compromise public safety and a desire for lawmakers to appear "tough on crime."[206] Indeed, prosecutors opposed an earned credit bill in 2008[207] because they thought defendants should continue to serve time in prison even though they no longer pose risks to public safety.[208]

### *2010: Budget Woes Necessitate Reform*

For the next few years, legislators remained reluctant to change the penal code due to the mistaken belief that relying less on prisons would compromise public safety. Finally, due to the state's budget crisis, legislators began to understand that Kentucky's high incarceration rates were largely the result of unnecessarily harsh laws that could be reformed without affecting public safety.[209]

In 2010, the legislature established the Task Force on the Penal Code and Controlled Substances Act to recommend an overhaul to the criminal justice system.[210] Senator Tom Jensen (R) and Representative John Tilley (D) chaired the Task Force, reflecting the diversity of political interests pushing for reform.[211] They looked to the Pew Center on the States to identify the specific drivers of the prison population.

## C. Bipartisan Legislative Reforms

### *2011 Reform: Limits Pre-Trial Detention, Reduces Drug Sentences, Expands Earned Time*

The legislature passed the recommendations of the Task Force as HB 463, a reform of the penal code signed into law by Governor Steve Beshear (D) in March 2011.[212] The legislature voted almost unanimously in favor of the law, with only one legislator voting against it.[213]

HB 463 builds on Kentucky's already successful pre-trial detention reforms and includes additional front-end and back-end reforms, but unfortunately does nothing to chip away at Kentucky's high juvenile incarceration rate. The law does the following:

*Additional Pre-Trial Reforms*

- Mandates police officers use **citations instead arrests for most misdemeanors** committed in the officer's presence.[214]
- Mandates judges to **release individuals without bail for drug crimes** that could result in probation.[215]

- Mandates judges to **release individuals posing low flight risks and low threats to public safety**.[216]
- Requires that **courts limit bail amounts for nonviolent misdemeanors**, such as possession of some drugs, so that bail does not exceed the fines and court costs that would result if the individual was convicted of the highest misdemeanor possible.[217]
- Grants individuals charged with most crimes a **$100 credit toward bail for each day in jail**.[218]

*Front-End Reforms*

- Makes **simple possession of marijuana a low misdemeanor** with a maximum jail term of 45 days.[219]
- **Decreases maximum sentences for possession**[220] **or trafficking**[221] of certain drugs to three years from five years.
- **Decreases sentences** for trafficking smaller amounts of drugs.[222]
- Grants individuals **automatic presumptive probation for the simple possession** of many drugs.[223]
- Gives judges discretion to impose **treatment for felony possession of some drugs** other than marijuana, and makes this alternative the preferred sentence for first offenses.[224]
- Mandates that judges use **risk assessment tools** during sentencing.[225]

*Back-End Reforms*

- Requires probation and parole departments to **use evidence-based practices**.[226]
- **Expands earned credits**, crediting individuals with 90 days for completing educational or drug treatment programs, or 10 days per month of exemplary time served.[227]
- Requires subsequent parole hearings for individuals convicted of nonviolent felonies two years after a parole denial.[228]
- Creates **earned credit for parole** and directs the DOC to set procedures governing time earned.[229]
- Requires that individuals sentenced to jail simply for failure to pay fines earn a credit of $50 toward the fine for each day in jail or up to $100 if the individual performs community service during the sentence.[230]

## D. Success and Projected Savings

The reforms in HB 463 are expected to be a massive relief on both Kentucky's prison system and taxpayers. In the first year of implementation the reforms are expected to reduce the prison population by 3,218, a figure that jumps to a 3,824 decline by 2016.[231]

The law is also projected to save approximately $422 million by 2020, including $160 million in averted prison construction and operation costs.[232] Even after the additional costs of probation and parole caseloads and increased pre-trial services are taken into account, Kentucky will net approximately $30 million in savings in the first year of implementation, with savings increasing in subsequent years.[233] A portion of the projected savings will be used to strengthen Kentucky's parole and probation systems in an effort to further reduce recidivism.[234]

Crime rates are expected to decline, as they have been doing since the mid-1990s.[235]

## E. Moving Forward

HB 463 is a major step toward reform, but the Task Force realizes it has more to do. In June 2011 it solicited additional recommendations to reform its penal laws and criminal justice system. Several local advocacy groups including the ACLU of Kentucky, the Kentucky Equal Justice Center (a nonprofit poverty law group), the Catholic Conference of Kentucky, and the Department of Public Advocacy (the state public defender organization) have called for additional reforms, including reducing days spent in pre-trial detention, increasing the use of reentry programs modeled on those in Texas, and expunging criminal records for low-level offenses.

The state has taken a huge step forward but there is still much more to be done. Local advocates must be vigilant in ensuring that the reforms are implemented as passed and that HB 463 is just the cusp of the reform movement in Kentucky.

## OHIO (2011)

*"It is not because crime has gone up. . . . It is, rather . . . [d]ozens of sentencing enhancement bills that have added to the average length of sentence . . . . I'd hate to get to the point where, like many other states, we are spending more on prisons than we are on higher education."*

**~State Senator Bill Seitz (R) (2011)**[236]

**Projected Reduction in Incarcerated Population: 13.8% reduction in prison growth by 2015.**

- 2011 Incarcerated Population: 50,857 in prisons; approx. 20,500 in jails.
- 2015 Projected Incarcerated Population: 47,000 in prisons (would have been 54,000 without reforms); plus jail population.

**Projected Reduction in Corrections Costs**: **$1 billion saved by 2015 in averted prison growth.**

- 2011 Corrections Costs: $1.77 billion (nearly all on prisons).

**Key Bipartisan Reform - HB 86 (2011):**

- **Front-End**
  - Eliminates crack/cocaine disparity; reduces mandatory minimum sentences for some drug crimes; mandates non-prison alternatives for misdemeanors and low-level felonies; increases property crime thresholds.
- **Back-End**
  - Expands earned credit programs; expands parole eligibility; gives prisoners over the age of 65 additional parole hearings; provides financial incentives for counties to reduce technical violation revocations.
- **Juvenile**
  - Gives judges more discretion to keep juveniles out of the adult system.

**Reform Undermining Progress** – HB 153 (2011): sold six state prisons.
**Projected Effect on Public Safety:** Projected to maintain public safety; drop in crime rate expected to continue.

## A. Escalating Prison Growth & Costs

From 2000 to 2008, the number of people entering Ohio's prisons had increased by 41%. If existing policies remained unchanged, the state would need to spend $829 million by 2018 to build and operate new prisons to house the increasing population.[237] As it was, Ohio's prisons were already at 133% capacity, holding 51,722 prisoners in a system built for only 38,655. Ohio's jails were just as overcrowded, holding over 20,000 prisoners. With the system bursting at the seams, the state was already spending about $1.8 billion on its corrections system.[238]

## B. Political Momentum for Change

Recognizing that the state could no longer support the growing budget strain of excessive prison growth, Ohio legislators created a committee to review the problem. Senator Bill Seitz (R) and Representative Mike Moran (D) chaired the committee to seek solutions. The Council of State Governments provided technical assistance to identify factors driving the prison growth. Several groups also advocated for comprehensive reform including the ACLU of Ohio, the Buckeye Institute (a state coalition promoting economic freedom), and the Ohio Chamber of Commerce.

Ohio was able to identify three factors responsible for the increase in prison population. First, almost half of individuals in Ohio prisons were serving sentences of less than a year, cycling in and out for low-level crimes like personal drug use and property crimes. After serving their short sentences, 72% were released back into the community with no supervision or support programs. Second, judges had no tool with which to decide whether an individual would benefit from a diversion program or should go to prison.[239] Third, Ohio's probation departments lacked uniformity and training.[240]

## C. Bipartisan Legislative Reforms

### *2010: Attempted Reform*

Having identified these key problems with Ohio's criminal justice system, the committee packaged its recommendations into SB 22 in 2010. Republicans and Democrats alike led the charge to support the bill, which was introduced by Senator Seitz. In August 2010, the ACLU of Ohio released an extensive report in support of SB 22 revealing Ohio's criminal justice system's inefficient policies and proposed recommendations.[241]

SB 22 could have been a huge leap toward fixing Ohio's bloated system of excessive incarceration for nonviolent offenses. Although the bill started off with much support and passed the Senate Judiciary Committee, it got stymied by opposition from prosecutors and Democratic leadership and eventually died.

### *2011 Reform: Reduced Drug Sentences, Expanded Parole, Protected Juveniles*

Criminal justice advocates in Ohio refused to give up. In 2011, bipartisan legislators reintroduced comprehensive reform very similar to SB 22. Of the 132 state legislators, 49 Democrats and 77 Republicans voted to pass HB 86. Governor John Kasich (R) signed the bill in June 2011. The law does the following:

*Systemic Reforms*

- Mandates use of a uniform **risk assessment tool** by all state courts, probation and parole departments, and correctional institutions to assess an individual's risk of reoffending.[242]

*Front-End Reforms*

- **Eliminates the crack/cocaine disparity** and gives judges discretion to sentence individuals convicted of possession of less than 10 grams to halfway houses or drug treatment.[243]
- **Reduces mandatory minimum sentences for marijuana and hashish** offenses.
- **Increases monetary thresholds for property crimes** that are felonies from $500 to $1,000 and for other property crimes by 50%.[244]
- Mandates **alternatives to incarceration for misdemeanor offenses**, including halfway houses, treatment centers, and educational facilities.[245]
- Mandates **alternatives to incarceration for nonviolent low-level felony** offenses (like certain drug possession or property crimes) including halfway houses, community service, probation, and outpatient treatment programs.[246]
- **Expands judicial discretion to impose non-prison alternatives for some felonies.**
    - Judges can sentence individuals convicted of low-level felonies to non-residential alternatives (like day reporting, intermittent confinement, house arrest, drug and alcohol monitoring, curfews, or community service) and those convicted for higher-level felonies to non-prison residential facilities (like halfway houses, substance abuse treatment centers, or educational and vocational training facilities).[247]

*Back-End Reforms*

- Provides **financial incentives to county probation departments** to reduce their probation revocation and return to prison rates.[248]
- Requires the Department of Rehabilitation and Corrections to **personalize reentry plans** for most individuals in prison[249] to prevent recidivism.[250]
- **Expands earned credit programs,** allowing five days of credit for each month of participation in educational, vocational, or treatment programs.[251]

- **Expands parole eligibility** for certain prisoners who have served at least 80% of their sentences.[252]
- **Provides an additional parole hearing for those over age 65** who have already had their first parole hearing.[253]

*Juvenile Reforms*

- **Eliminates transfer requirements** mandating that judges transfer children to adult court.[254]
- Gives **judges discretion over whether to incarcerate** a child found to commit an act that would have been a felony if committed by an adult.[255]

### *2011 Counterproductive Reform: Sale of Prisons*

Unfortunately, Governor Kasich also proposed a plan to sell some state prisons in the biennial budget, HB 153. Despite strong opposition, the legislature passed the bill with votes split sharply along party lines.[256] While two state-owned prisons are already run by private operators, the law[257] actually requires the state to sell six other state prisons to private companies.[258]

Ohio's move to sell prisons is one of several examples where state efforts to reduce prison populations in 2011 were often accompanied by unwise attempts to privatize or sell prisons. Prison sales and privatization pose serious threats to fiscal efficiency, public safety, and accountability.

Supporters of prison privatization argue that private companies can run more efficiently than public ones and will therefore save the state money.[259] Ohio Department of Rehabilitation and Corrections Director Gary Mohr argues the state's sale will generate $200 million in revenue.[260] But the assertion that private prisons reduce the costs of incarceration is both unfounded and dangerous. Private prisons have not been proven to reduce prison budgets[261]—and sometimes they even cost more than state operated prisons.[262] Private prisons also have direct financial incentives to keep prisons filled to maximum capacity, especially when paid per head, and have admitted this motive.[263] For example, the sale contract in Ohio legally binds taxpayers to pay the private company a certain cost per prisoner per day between $53.11 and $62.88.[264] Misguided financial arguments can lure states into building private prisons or privatizing existing ones rather than doing the real work necessary to reduce incarceration rates and rein in corrections spending.

Further, conditions and rates of violence in private prisons are often significantly worse than in publicly run prisons.[265] When faced with deplorable prison conditions, prisoners can become more violent, which may have psychological repercussions and undermine their ability to later reintegrate into society. For example, the five states with the highest percentage of private prisons—New Mexico, Montana, Alaska, Vermont, and Hawaii—have higher recidivism rates than Ohio, which has a far lower share of private prisons.[266]

In this way, Ohio's prison sale is primed to undermine the crucial reforms accomplished in HB 86. Instead of reforming the criminal justice system by taking shortcuts for one-time infusions of cash from prison sales, the legislature must maintain its focus on holistic reforms eventually leading to less reliance on prisons. Legislators must keep their eyes on the prize—the ultimate goal is to reduce prison budgets and prison populations by allowing individuals who do not deserve to be in prison to remain in their communities. Simply selling or privatizing prisons for purported cost savings makes no progress toward this goal and can often detract from and work against positive prison reform.

## D. Success and Projected Savings

Once fully implemented, the package of reforms in HB 86 is projected to save about $1 billion over the next four years.[267] This includes $925 million in savings in avoided prison construction and operation costs and $78 million in additional budget savings.[268]

The law is also projected to reduce the total number of prison beds by over 2,000 in the next four years, with a projected 2015 prison population of about 47,000 prisoners[269] (the population was projected to be 54,000 without the reforms) compared to the current population of 50,857.[270]

The law is not expected to negatively impact public safety. Ohio's crime rate, which has been on the downslide since 1991, is expected to continue declining.[271]

## E. Moving Forward

Ohio achieved an excellent first step this year in criminal justice reform with HB 86. But it is up to the champions of these reforms and local advocacy groups to ensure the implementation and continued funding of these reforms. These players must be especially vigilant given the plethora of pennywise pound-foolish budget cuts made this year. Ohio's legislators must continue steadily on the path to prison reform, enacting further reforms in future years.

# II. States Working Toward Reform

## California: The Supreme Court Throws Open the Door to Reform

For decades, criminal justice advocates have pushed for reform of California's severely overcrowded prisons.[272] Until recently, they were able to achieve important but limited reforms, like creating a medical parole program for incapacitated individuals,[273] decriminalizing small amounts of marijuana possession,[274] and obtaining a court order to monitor Los Angeles County's overcrowded jails.[275]

However, the next chapter in California's struggle to decrease prison populations will be a massive overhaul of the state's criminal justice system. The U.S. Supreme Court's May 2011 decision in *Brown v. Plata*[276] and the state's extreme budget crisis are combining to create a perfect storm of opportunity for reform. In *Plata*, the high court ordered California to reduce its prison population to alleviate extreme overcrowding. The decision affirmed a lower court ruling in two long-running cases finding that the medical and mental health care provided in California's prisons was so deficient that it endangered the lives of prisoners and violated the U.S. Constitution's prohibition of cruel and unusual punishment. In June 2011, the lower court retaining jurisdiction in *Plata* mandated the state to provide updates on efforts to reduce the prison population.[277]

The *Plata* decision appears to be in line with the views of the people of California. An April 2011 poll found that 72% of Californians supported making low-level possession of drugs a misdemeanor.[278] A July 2011 poll found that a bipartisan majority of citizens supported reducing mandatory life sentences under the three strikes law rather than paying for additional prison costs.[279]

California Governor Jerry Brown (D) proposed and the legislature passed and funded a criminal justice "**realignment plan**" in June 2011 to comply with the high court's order. This law, AB 109, represents the most significant reform of California's criminal justice system in over thirty years. It shifts responsibility from state to local authorities for individuals committing nonviolent, nonserious offenses and for those on parole.[280] The state will provide financial incentives to counties to reduce their jail populations—by using non-prison alternatives (like day reporting centers, treatment programs, and electronic monitoring) for technical parole violations.[281] The law also gives broader discretion to local authorities to devise alternatives to pre-trial detention for those who cannot make bail.[282]

For the plan to accomplish its stated goals, counties must use their broad discretion in implementing the reforms to keep jail populations down while keeping communities safe. The ACLU of California affiliates will soon release a report with implementation recommendations for counties. The ACLU is also proposing a reform to "defelonize" drug possession and low-level property crimes (reclassifying them as misdemeanors).[283] Advocates are also considering potential ballot

initiatives in 2012 to abolish the death penalty, reform California's three strikes law, and legalize and regulate marijuana sales.[284]

California is poised to significantly reduce its prison population and usher in an era of alternatives to incarceration, but it remains to be seen whether and how earnestly California's state and local officials will implement meaningful reform.

## Louisiana: Relief for Some, More Reforms Needed

Louisiana has the unfortunate distinction of being the state with the highest incarceration rate in the nation. Not surprisingly, Louisiana has some of the harshest sentencing laws in the country, imposing sentences of life without parole at four times the national rate[285] and 82% of those in prison are serving time for nonviolent crimes.[286]

Because of these laws, Louisiana's prison population—like the nation's at large—is becoming increasingly elderly and ailing, taking a significant toll on the state's budget. The state spends $19,888 a year to house an average prisoner, but spends about $80,000 a year to house and care for an ailing prisoner.[287] For several years Burl Cain, the warden of the Louisiana State Penitentiary at Angola, has been publicly explaining how the prison has been "turning into a nursing home." In 2011, the ACLU of Louisiana teamed up with Warden Cain and the Louisiana Conference of Catholic Bishops to garner bipartisan legislative support to pass HB 138, creating an **elderly parole program**. The legislation, which Governor Bobby Jindal (R) signed into law in June 2011, gives some individuals age 60 or older the right to a parole hearing to determine whether they no longer pose safety risks and can be released.[288]

The legislature also received technical assistance from the Pew Center on the States to pass five additional bills to **expand the parole system**. The bills were supported by a broad coalition, but legislators modified many bills in response to opposition from sheriffs and prosecutors. These changes negated much of the original reduction in prison population and cost savings. The laws passed impose non-prison sanctions for technical probation and parole violations; mandate training for parole and pardon boards; grant slightly earlier parole eligibility for nonviolent, non-sexual, first-time offenses; and streamline the earned credit programs.[289]

Not all proposed reforms in Louisiana this year were positive. Governor Jindal introduced a proposal that would have sold three state-owned prisons to a private corporation to fill a hole in the budget. The proposal met strong opposition—from people like State Treasurer John Kennedy (R), district attorneys, former Department of Administration Commissioner Raymond Laborde (D), and many Republican and Democratic legislators as an unwise short-term fix that would not help the state in the long run. The proposal ultimately failed.[290]

At the local level, several parishes have been pushing to expand local jails.[291] Jail expansion rarely protects public safety at the expense of increasing parish budgets and taxes. Many individuals in

jails are incarcerated prior to trial—though presumed innocent—or have been convicted of ordinance violations (like public drunkenness or traffic violations). In 2010, a coalition successfully opposed Sheriff Marlin Gusman's attempt to expand the jail in Orleans Parish,[292] which already had the highest jail incarceration rate in the country. Reform advocates hope these other expansion attempts will be similarly defeated.

It seems that at least some lawmakers in Louisiana understand the need to reduce prison and jail populations and budgets. If they are serious about achieving this goal, they will build on the laws passed this year to achieve much more in future years—especially in the area of reducing the state's harsh sentencing laws.

## Maryland: Beginning to Agree on Prison Reform

Since 1980, Maryland's incarcerated population has tripled, with a corrections budget of over $1.3 billion.[293] Like so many other states, Maryland found itself strapped for cash and looking for ways to fix the many gaps in its budget. This year, a bipartisan coalition came together calling for prison reform. A group of Maryland legislators led by Representative Michael Hough (R), Representative Chris Shank (R), and Senator Lisa Gladden (D) sponsored two bills that would take much-needed steps toward reforming the state's criminal justice system and easing its strain on the budget. Groups across the political spectrum, including the ACLU of Maryland, the Justice Policy Institute, Americans for Tax Reform (an organization advocating for low income taxes), the American Legislative Exchange Council (a conservative organization of state legislators), and the Tea Party joined together to support these bills.

SB 801 creates a pilot program in two counties providing for a system of **graduated sanctions** (possibly like day reporting or community services) instead of automatic prison time for those committing technical parole violations (like missing a parole meeting).[294] The law also requires parole officers to report the number of individuals incarcerated for technical violations.[295] Other bills sponsored by this coalition that did not pass this session aimed to reduce recidivism[296] and provide earned credits to those on parole.[297]

A separate group of likeminded legislators also successfully passed another bill to reduce Maryland's prison population. HB 302 **reduces the power of the governor to intervene in parole decisions**. It depoliticizes the process by requiring the governor to take timely action if he wishes to override the parole board's decision that an individual serving a life sentence no longer poses a safety risk and should be released onto parole.[298] Other bills sponsored by this group of legislators that did not pass include efforts to reform mandatory minimum laws and decriminalize low-level marijuana possession.[299]

Many of the bills failing to pass this session would have gone a long way toward reducing prison populations and costs, but met opposition due to shortsighted and inaccurate fiscal cost

assessments conducted by the legislature. Problematically, the calculations for these bills only included the upfront costs of starting such programs but did not include the significant projected cost savings that would be reaped by the state when these individuals receive non-prison alternatives. These types of shortsighted budget calculations may serve the state in the short-term, but compromise larger cost savings in later years.

This year Maryland has taken small but important steps to chip away at the state's incarceration epidemic. This dynamic bipartisan criminal justice reform effort is gaining traction in Maryland and has the potential in upcoming years to have a significant impact on the state's prison growth and budget.

## Indiana: A Missed Opportunity, but Hope for 2012

Recognizing the need for reducing prison populations and costs in Indiana, Governor Mitch Daniels (R) proposed a comprehensive package of criminal justice reforms to save the state more than $1 billion. The proposal, which received technical assistance from the Council of State Governments, aimed to rely less on prisons for nonviolent offenses, thereby freeing up space for individuals who pose the greatest threat to public safety. Bipartisan legislators introduced and championed the reforms, packaged as SB 561.[300]

Unfortunately, using "tough on crime" rhetoric, prosecutors persuaded the Senate to pass an amended version of the bill that turned the original proposal on its head. Had the amended version become law, it would have actually increased prison time, populations, and budgets; the state would have had to build three new prisons, at a cost of $210 million each with an additional $48 million a year to operate them. Governor Daniels rightfully announced that he would veto such a costly and ineffective bill. The legislature then chose to let the bill die rather than send the governor a bill that he would veto.[301]

Governor Daniels and reform groups have already announced they will push another effort for comprehensive reform next year.[302] The state has also formed a study committee to explore marijuana decriminalization and non-prison alternatives for offenses. Indiana remains a state at a crossroads: if state officials are serious about closing the deficit and reducing unnecessary incarceration, they will pass legislation in 2012 that models the Governor's original vision.

# III. 2011 National Legislative Trends in Criminal Justice

Over the last few years, and particularly in 2011, several criminal justice trends have begun to emerge in states across the country. Some are positive, aimed at reducing prison populations and corrections costs while protecting public safety. Others are negative, either misguided or serving to increase prison use and budgets with limited benefit to safety. Below are a few examples of bills in state legislatures in the last couple of years. Unless otherwise noted, these bills passed the state legislatures and are now law.

## Positive Trends

- ***Decriminalizing Drug Possession.*** Individuals imprisoned for drug offenses make up 25% of our national prison population.[303] Law enforcement arrests nearly 1.7 million people a year for nonviolent drug charges.[304] Almost half of all these arrests are for marijuana possession.[305] These policies drain billions of taxpayer dollars and millions of law enforcement hours, with little benefit to public safety. Those who use drugs should receive drug treatment if they have substance abuse problems, not incarceration. Incarceration does not treat addiction and often makes individuals more prone to drug use.[306] Since the 1970s, many states like Maine[307] have realized that they should not be wasting tax dollars and prison beds on incarceration for personal use of drugs and have decriminalized simple possession of marijuana and converted such crimes to civil penalties. Over the last year, more states—and the federal government—have introduced or passed legislation decriminalizing small amounts of marijuana possession.

  **Select Examples:** Massachusetts (2008—low-level marijuana and hashish possession begets a civil fine);[308] California (2010—low-level marijuana possession is an infraction punishable by no more than a $100 fine);[309] Connecticut (2011—low-level marijuana and non-hallucinogenic/narcotic drug possession is subject only to civil penalty and fines);[310] Kentucky (2011—simple possession of marijuana is a low misdemeanor with a 45 day maximum jail sentence);[311] Maryland (2011—bill introduced to decriminalize marijuana);[312] federal (2011—bill introduced to decriminalize marijuana, leaving regulation to the states).[313]

- ***Eliminating or Reducing the Crack/Cocaine Disparity***. The sentencing disparity between crack and powder cocaine has long been an embarrassment to our sense of fairness and decency. In adopting radically different mandatory minimums for pharmacologically identical substances,[314] these sentencing structures fly in the face of logic and science and have devastating racially disparate effects. Many states, and the federal government, have begun to move their laws[315] toward equalizing the sentencing structure for the two drugs,[316] either eliminating the disparity outright or at least reducing it.

**Select Examples:** Connecticut (2005—eliminated);[317] South Carolina (2010—eliminated);[318] federal (2010—reduced to 18-1 ratio);[319] Ohio (2011—eliminated);[320] Missouri (2011—bill introduced reducing 75-1 ratio to 4-1).[321]

- ***Eliminating Mandatory Minimum Sentences.*** Several states have recognized the negative effects of sentencing laws that require judges to sentence individuals to mandatory minimum lengths in prison. Too often, these laws result in nonviolent drug users serving lengthy sentences in prison, even though they do not pose serious threats to public safety, and missing opportunities for treatment. Recognizing these negative effects, several states have recently eliminated mandatory minimum laws.

  **Select Examples:** South Carolina (2010);[322] New Jersey (2010); [323] Massachusetts (2010—partial reform;[324] 2011—bill introduced for full elimination);[325] Ohio (2011—for marijuana and hashish);[326] Florida (2011—bill introduced);[327] Maryland (2011—bill introduced).[328]

- ***Granting Earned Credits for Prison, Parole, Probation.*** As states have sought alternatives to expensive incarceration, many are making the wise decision to incentivize those in prison to earn time credited toward their prison sentences and exit onto parole earlier. Prisoners can earn time off their sentences by maintaining clean disciplinary records while in prison or by participating in educational, vocational, or treatment programs. By participating in these programs, individuals are less likely to recidivate and can more successfully reenter society.[329] Many states have also extended this earned credit program to those on parole or on probation, thereby shortening parole and probation lengths—and decreasing the likelihood of technical violations.

  **Select Examples:** Mississippi (2004, 2009, 2010—for prison);[330] Nevada (2007—for probation and parole); [331] Kansas (2007—for prison);[332] Pennsylvania (2008—for prison);[333] South Carolina (2010—for probation);[334] Kentucky (2011—for prison and parole);[335] federal (2011—for prison),[336] Nebraska (2011—for prison and parole);[337] Texas (2011—expanded prison and probation; bill introduced expansion for parole);[338] Ohio (2011—expanded for prison);[339] Maryland (2011—bill introduced for parole).[340]

- ***Creating Elderly Parole Eligibility*.** The United States has some of the harshest sentence lengths in the world, particularly when it comes to drug crimes. These laws have led to an increasingly aging and ailing national prison population. The inverse relationship between age and involvement in crime is one of the oldest and most widely accepted phenomena in criminology. Nationally, over 35,000 people over the age of 60 are in prison—2.3% of the total prison population.[341] Housing and treating an ailing prisoner can cost the state up to four times as much as an average prisoner does, with little benefit to public safety.[342] Recognizing the inefficiency and inhumanity of the continued incarceration of elderly prisoners, a handful of states have begun to create a back-end release valve by creating parole programs based on age. These laws give prisoners above a certain age, who have already served specific periods of prison time, the right to a hearing before a parole board. If the board determines that an individual no longer poses safety risks, they can be released—a win for justice, public safety, and taxpayer wallets.

**Select Examples:** Wisconsin (2004—age 65 & 5 years served or age 60-64 & 10 years served);[343] Louisiana (2011—age 60 & 10 years served);[344] Ohio (2011—second parole hearing to those over age 65);[345] Texas (2011—bill introduced, age 55).[346]

## Negative Trends

- ***Privatizing or Selling Prisons.*** As states move to reform their criminal justice codes and reduce prison budgets, efforts to privatize or sell prisons to private corporations have become a negative side effect. Oftentimes the very same legislators and think-tanks pushing for comprehensive prison reform simultaneously push for privatization. In some instances, states have proposed sales of state-built prisons to private entities as a shortsighted way to fill a budget gap for the current year. As the ACLU of Ohio's report explains, selling prisons for a one-time profit during a recession is pennywise and pound foolish, takes a toll on taxpayers, creates more dangerous prisons and prisoners, and does not solve the overincarceration problem.[347] Privatization can have the same effects. States should also be wary of how privatization and sale of prisons create perverse incentives to increase incarceration rates for private companies motivated by profits.

  **Select Examples:** Arizona (2009—required privatization of some prisons, but not implemented; & 2011—privatization reintroduced);[348] Florida (2011—privatized prisons in eighteen counties);[349] Ohio (2011—sold six prisons);[350] New Hampshire (2011—established committee to explore privatization);[351] Maine (2011—bill introduced to construct a private prison),[352] Louisiana (2011—bill introduced to sell three prisons),[353] Texas (2011—bill introduced to privatize jails).[354]

- ***Shortsighted Cuts to Successful Programs***. Many states have already created diversion programs and reentry programs that have lowered incarceration and recidivism rates, benefitting both public safety and state budgets. These programs have been successful in states like Kansas and Texas and have saved millions of dollars and even resulted in the closing of prisons. But these programs require funding to succeed and many states have been making budget cuts to these successful and thriving programs for the sake of saving money in the short run.[355] For example, Kansas has been cutting funding[356] since 2009 to its post-release programs and subsequently saw the rate of individuals successfully finishing parole drop and its prison population rise. The state was forced to reopen a facility it had closed.[357] Similar efforts abound in other states.

  **Select Examples:** Washington (2010—cut juvenile parole budget);[358] Kansas (2009-2011—reduced funding for successful 2007 reentry programs);[359] Delaware (2011—cut funding to the parole board budget);[360] Michigan (2011—budget bill introduced with cuts to Michigan Prisoner Reentry Initiative);[361] Texas (2011—bill introduced to cut funding for 2007 reentry reforms);[362] federal (2011—bill introduced to reduce funding for law enforcement and juvenile crime prevention).[363]

- ***Repealing Earned Credit Programs***. Creating and expanding earned credit programs has been a popular justice reform implemented in states across the country in the last few years. However, after highly publicized anecdotal stories of a released prisoner on parole committing a violent crime, the public and prosecutors are starting to call for repeals to what have been coined as "early release" programs. Legislators in some states have succumbed to these efforts and are repealing reforms proven to reduce recidivism on the whole.

  **Select Examples:** Illinois (2010);[364] New Jersey (2011);[365] Wisconsin (2011);[366] New Hampshire (2010—bill introduced);[367] Rhode Island (2011—bill introduced).[368]

# Conclusion

As this report details, there are myriad ways—legislative and administrative—in which lawmakers can take action to lower a state's prison population, save money, protect public safety, and increase fairness in the justice system.

Our overreliance on prisons hurts us all—individually, as a society, and as a nation. Many states, like those detailed in this report, have acknowledged this reality and begun the process of remedying their criminal justice systems. But there is still room for reform in every state in this country. As shown in this report, one set of changes to criminal justice policies is never enough: reform is an ongoing process.

It is possible to formulate criminal justice reforms that will garner bipartisan legislative and governmental support, as well as support within our communities, and achieve reductions in prison populations and budgets without compromising public safety. A state can select reforms from a broad menu of changes, but must first take the step to commit to reform.

The ACLU's Center for Justice looks forward to offering our expertise and assistance to state lawmakers as they move toward a more reasoned and humane approach to criminal justice.

# Endnotes

1 Adam Liptak, *Inmate Count in U.S. Dwarfs Other Nations'*, N.Y. Times, Apr. 23, 2008, *available at* http://www.nytimes.com/2008/04/23/us/23prison.html.

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10 Heather C. West et al., U.S. Dep't of Justice, Bureau of Justice Statistics Bulletin: Prisoners in 2009 (2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf.

11 Justice Ctr., The Council of State Gov'ts, Justice Reinvestment State Brief: Texas 4 (2007), *available at* http://www.pewcenteronthestates.org/uploadedFiles/TX%20State%20Brief.pdf.

12 Pub. Safety Performance Project, The Pew Center on the States, One in 31; The Long Reach of American Corrections, Texas (2009), *available at* http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Fact_Sheets/PSPP_1in31_factsheet_TX.pdf [hereinafter Pew: One in 31]. Jail populations are particularly difficult to ascertain in states since numbers are usually kept only by each county. This report uses 2007 data from Pew unless more recent numbers were available.

13 *Id.*

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15 Scott Gold, *35 Are Pardoned in Texas Drug Case,* L.A. Times, Aug. 23, 2003, *available at* http://www.november.org/stayinfo/breaking/Tulia8-03.html.

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19 H.R. 2668, 78th Leg., Reg. Sess. (Tex. 2003), *available at* http://www.capitol.state.tx.us/tlodocs/78R/billtext/pdf/HB02668F.pdf - navpanes=0.

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funds to probation departments to implement evidence-based tools to monitor the effectiveness of non-prison residential and treatment programs. The vetoed funding would have provided $6.5 million toward Treatment Alternative and Incarceration Programs and provided $19.2 million in for the Department of Criminal Justice to contract 575 beds from county jails because prisons reached capacity.

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24 H.R. 1, 80th Leg., Reg. Sess. (Tex. 2007), *available at* http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=HB1. The $241 million would otherwise have been spent on the construction and operation of new prisons. The budget was for the 2008-2009 fiscal year); *see also* Tex. Criminal Justice Coalition, Impact of Cuts for Certain Criminal Justice Agencies Under Filed Version of H.B. 1, 82nd Texas Legislature, *available at* http://www.criminaljusticecoalition.org/files/userfiles/Impact_of_Cuts_Under_HB_1.pdf.

25 S. 909, 80th Leg., Reg. Sess. § 13 (Tex. 2007), *available at* http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=SB909.

26 Tex. H.R. 1 (2007) (800 new beds for people on probation with substance abuse needs in a residential program; 3,000 slots for people on probation in outpatient substance abuse treatment; 1,400 new beds in intermediate sanction facilities to divert technical probation and parole violators; 300 new beds for people on parole in halfway houses; 500 new beds for people convicted of DWI offenses in an in-prison treatment unit; 1,500 new beds for in-prison substance abuse treatment program; 1,200 new slots for substance abuse treatment programs in the jail system).

27 H.R. 1678, 80th Leg., Reg. Sess. § 1, 6, 7, 8 (Tex. 2007), *available at* http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=HB1678. Further, the bill modified the judge's authority to reduce or terminate the period of community supervision by mandating review of the defendant's record after completion of one-half of the original period and requiring the a showing of good cause before extending a period of community supervision.

28 *Id.*

29 S. 166, 80th Leg., Reg. Sess. § 1 (Tex. 2007), *available at* http://www.legis.state.tx.us/BillLookup/history.aspx?LegSess=80R&Bill=SB166 (requiring a report to be generated every other year regarding the effectiveness and cost-benefits of programs receiving grants).

30 H.R. 1610, 80th Leg., Reg. Sess. § 1 (Tex. 2007), *available at* http://www.legis.state.tx.us/BillLookup/history.aspx?LegSess=80R&Bill=HB1610(requiring community supervision for defendants who committed certain nonviolent state jail felonies under the Controlled Substance Act).

31 Tex. S. 909 § 42 (stating that to be eligible for early release, the individual must not have had any violations of rules for the two years preceding release).

32 H.R. 431, 80th Leg., Reg. Sess. § 1 (Tex. 2007), *available at* http://www.legis.state.tx.us/BillLookup/history.aspx?LegSess=80R&Bill=HB431.

33 S. 103, 80th Leg., Reg. Sess. (Tex. 2007), *available at* http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=80R&Bill=SB103; *see also* Marc Levin, Tex. Pub. Policy Foundation, Texas Criminal Justice Reform: Lower Crime, Lower Cost (2010), *available at* http://www.texaspolicy.com/pdf/2010-01-PP04-justicereinvestment-ml.pdf.

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reform-in-action/state-initiatives/texas/.

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over five years while not posing any threat to public safety due to the exclusion of people convicted of serious violent and sex offenses from the program. H.R. 3538, 82d Leg., Reg. Sess. (Tex. 2011), *available at* http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=HB3538(would have created an elderly parole program giving individuals 55 and older an opportunity for parole hearings); *see also* S. 1076, 82d Leg., Reg. Sess. (Tex. 2011), available at http://www.legis.state.tx.us/BillLookup/history.aspx?LegSess=82R&Bill=SB1076 (would have increased judicial discretion to choose from a variety of non-prison options for people convicted of drug possession offenses such as treatment, vocational training, or counseling).

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69 Greene and Mauer, *supra* note 65, at 51.

70 *Id.* § 1(2). *See generally* Kan. Sentencing Comm'n, Kan. Dep't of Corr., 2010 SB123 Flowchart (2010), *available at* http://www.accesskansas.org/ksc/sb123/2010_SB123_FLOWCHART.pdf (demonstrating the mandatory and discretionary sentencing categories); *see also* Kan. Sentencing Comm'n, Kan. Dep't of Corr., Kansas Sentencing Guidelines Desk Reference Manual, Appendix D: Sentencing Grids (2010), *available at* http://www.accesskansas.org/ksc/2010desk.shtml (detailing the offense classification and severity structures referenced in the law).

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77 The project's goal was to reduce the costs associated with transporting short-term prisoners first to a central correctional facility for processing, then to another for imprisonment. The project was successful, and the DOC planned to expand it in 2010. Kan. Dep't of Corr., 2010 Annual Report 33 (2010), *available at* http://www.doc.ks.gov/publications/2010%20KDOC%20Annual%20Report%20%28Released%20May%202010%29.pdf; Greene & Mauer, *supra* note 65, at 2.

78 Greene and Mauer, *supra* note 65, at 2.

79 Roger Werholtz, Sec'y of Corr., Kan. Dep't of Corr., Alternative Sentencing for Drug Offenders Panel at the National Institute of Justice Conference (2009), *available at* http://nij.ncjrs.gov/multimedia/transcripts/nijconf2009-alternative-sentencing.htm (stating "we have more than 70 percent of simple drug possessors going now to S.B. 123 instead of going to prison.")

80 Kan. Dep't. of Corr., Presentation at the 2003 SB 123 Update Conference 16 (2010), *available at* http://www.accesskansas.org/ksc/sb123/Wichita_June15_2010-SB123_Update_Conf.pdf (parole violations dropped from 2,457 to 1,084).

81 Kan. Sentencing Comm'n, Fiscal Year 2011 Adult Inmate Prison Population Projections 7 (2010), *available at* http://www.accesskansas.org/ksc/documents/FY2011_Prison_Population_Projection_Report.pdf [hereinafter Kan. Sentencing Comm'n. Population Projections]

82 Kan. Sentencing Comm'n, SB 123 Data to June 30, 2010 3 (2010), *available at* http://www.accesskansas.org/ksc/sb123/FY2010_end_of_year_ExpenditureData_11_2010.pdf.

83 Greene & Mauer, *supra* note 65, at 56; *see also Hearing on Justice Reinvestment Before the Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee, U.S. House of Representatives,* 11th Cong. 4 (2009) (statement of Roger Werholtz, Secretary, Kansas Department of Corrections), *available at* http://justicereinvestment.org/files/Roger_Werholtz_04_01_09.pdf.

84 Since 1960, Kansas's crime rate steadily increased until 1981, and then peaked again in 1991 at 5,5534.3 index crimes per 100,000 people. From 1991 to 2003, the rate decreased at a yearly average of approximately 1.7%. Since 2003, Kansas's crime rate has decreased at an average yearly rate of approximately 3%, and in 2009 reached its lowest level since 1973. Fed. Bureau of Investigation, U.S. Dept. of Justice, Uniform Crime Reporting Statistics, *available at* http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm.

85 *Id.* From 2003 to 2009 Kansas had a drop from 4407.9 to 3607.9 index crimes per 100,000 in the population. This is the most recent "crime rate" information from the FBI Part I Index crimes. This crime rate is an approximation of the commission of the following crimes: criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson. While incomplete, the index is used by the FBI for interstate comparisons of criminal activity. *Id.*

86 Press Release, Kan. Dep't of Corr., Kan. Dep't of Corrs. Announces Suspension of Offender Programs Effective Apr. 1, 2009 (Feb. 5, 2009), *available at* http://www.doc.ks.gov/news-room/news-releases/archive/2009-news-releases/Offender%20Programs%20News%20Release%202-5-09.pdf/?searchterm=budget.

87 Kelly MacNeil, *Prison Reform Doesn't Come Free,* KUAR News, Mar. 8, 2011, *available at* http://www.kuar.org/kuarnews/16107-prison-reform-doesn-t-come-free.html.

88 $3.3 million (30%) was cut from convicted persons programs and $2.1 million (11%) cut from the community corrections budget. Len Engel et al., Corrections Today, Reentry and the Economic Crisis: Examination of Four States and Their Budget Efforts (2009), *available at* https://www.aca.org/fileupload/177/ahaidar/Engel_Larivee.pdf.

89 Kan. Sentencing Comm'n. Population Projections, *supra* note 81, at 7.

90 *Id*. at 1.

91 *Prison Beds in Kansas,* Kan. Gov't Information, Oct. 20, 2011, http://ksdocs.blogspot.com/2010/10/prison-beds-in-kansas.html (posting that Kansas had run out of beds for male prisoners).

92 *Budget Proposal Could Reopen Kansas Prison,* KWCH, Mar. 22, 2010, *available at* http://articles.kwch.com/2010-03-22/department-of-corrections-spokesman_24078128.

93 Kan. Dep't. of Corr., Monthly Offender Population Report 1 (2011), *available at* http://www.doc.ks.gov/publications/End%20of%20Month%202010.pdf.

94 2011 DOC and facilities operation costs total approximately $271,956,278. Div. of the Budget, The Governor's Budget Report Fiscal Year 2011 331-59 (2011), *available at* http://budget.ks.gov/publications/FY2011/FY2011_GBR_Volume2.pdf.

95 Kan. Dep't. of Corr., Just the FAQs: Kansas Department of Corrections General Information Handbook 36 (2011), *available at* http://www.doc.ks.gov/publications/KDOC%20FAQ%20Handbook.pdf.

96 Kevin Johnson, *Budget Cuts Slice Programs for Ex-Inmates*, USA Today, Feb. 8, 2011, *available at* http://www.usatoday.com/news/nation/2011-02-09-probationviolators09_ST_N.htm.

97 Kan. Sentencing Comm'n. Population Projections *supra* note 81, at 4.

98 S. 60, 84th Leg., Reg. Sess. (Kan. 2011), *available at* http://www.kslegislature.org/li/b2011_12/year1/measures/documents/sb60_02_0000.pdf.

99 *See* Kan. Sentencing Comm'n., 2011 legislative Bill Tracking 12 (2011), *available at* http://www.accesskansas.org/ksc/documents/2011LegislativeSummary6_13_11.pdf.

100 Steven Gray, *Why Mississippi is Reversing Its Prison Policy*, Time, June 10, 2011, at 1, *available at* http://www.time.com/time/nation/article/0,8599,2077089,00.html#ixzz1PGWO4a7p.

101 Pew Kan., *supra* note 60.

102 *See* JFA Institute with Miss. Dep't. of Corr., Reforming Mississippi's Prison System 2 (2010), *available at* http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/PSPP/MDOCPaper.pdf?n=8407.

103 Gray, *supra* note 100, at 2.

104 Miss. Code Ann. § 47–7–3 (1995).

105 U.S. Dep't. of Justice, State Legislative Actions on Truth-in-sentencing: A Review of Law and Legislation in the Context of the Violent Crime Control and Law Enforcement Act of 1994, at 41 (1995), *available at* http://static.nicic.gov/Library/012259.pdf.

106 H.R. 686, 2004 Leg., Reg. Sess. (Miss. 2004), *available at* http://billstatus.ls.state.ms.us/documents/2004/pdf/HB/0600-0699/HB0686SG.pdf (allowing trusties, prisoners given special status classification based on good behavior, to earn 30 days of good time for every 30 days served as a trusty).

107 JFA Institute with Miss. Dep't. of Corr, *supra* note 102, at 2.

108 H.R. 654, 2004 Leg., Reg. Sess. (Miss. 2004), *available at* http://billstatus.ls.state.ms.us/documents/2004/pdf/HB/0600-0699/HB0654SG.pdf.

109 JFA Institute with Miss. Dep't. of Corr, *supra* note 102, at 2.

110 John Buntin, *Mississippi's Corrections Reform,* Governing, Aug. 2010, *available a*t http://www.governing.com/topics/public-justice-safety/courts-corrections/mississippi-correction-reform.html.

111 *See* Margaret Winter & Stephen F. Hanlon, *Parchman Farm Blues: Pushing for Prison Reforms at Mississippi State Penitentiary,* 35 Litigation 1, 7 (Fall 2008), available at http://www.aclu.org/images/asset_upload_file829_41138.pdf..

112 *Id. at* 6-8.

113 S. 2136, 2008 Leg., Reg. Sess. (Miss. 2008), *available at* http://billstatus.ls.state.ms.us/documents/2008/pdf/SB/2100-2199/SB2136SG.pdf.

114 Moisés Próspero & Mike Tanana, Utah Criminal Justice Ctr., Jail as a Condition of Felony Probation 2 (2009), *available at* http://ucjc.law.utah.edu/wp-content/uploads/Jail-as-a-Condition-of-Felony-Probation.pdf.

115 *See* S. 2136 (excluding individuals sentenced with drug possession, people convicted habitually and people convicted of sex offenses).

116 *Id.* § 1(c). Prisoners with sentences of less than 5 years who have also earned meritorious time allowances may be eligible after serving 9-10 months.

117 *Bill Allows Thousands to be Eligible for Parole*, The Picayune Item, (Feb. 29, 2008), http://picayuneitem.com/local/x2079277333/Bill-allows-thousands-to-be-eligible-for-parole.

118 *See* Buntin, *supra* note 110.

119 S. 2880, 2009 Leg., Reg. Sess. (Miss. 2009), *available at* http://billstatus.ls.state.ms.us/documents/2009/pdf/SB/2800-2899/SB2880SG.pdf. Eligibility for electronic monitoring was later extended to also include juvenile defenders. H.R. 420 2011 Leg., Reg. Sess. (Miss. 2011), *available at* http://e-lobbyist.com/gaits/view/213786.

120 Prior to the 2009 amendment individuals were only eligible for placement in the program within their first year of being in custody. Miss. Code Ann. § 47-5-1003(2) (2004), *available at* http://billstatus.ls.state.ms.us/documents/2004/html/HB/0600-0699/HB0652SG.htm.

121 S. 2039, 2009 Leg., Reg. Sess. (Miss. 2009), *available at* http://billstatus.ls.state.ms.us/documents/2009/pdf/SB/2001-2099/SB2039SG.pdf (provides pre-determined merit time reductions for prisoners who participate in programs approved by the commissioner, such as those with educational or occupational value).

122 H.R. 1136, 2010 Leg., Reg. Sess. § 2 (Miss. 2010) *available at* http://billstatus.ls.state.ms.us/documents/2010/pdf/HB/1100-1199/HB1136SG.pdf (allowing trusty earned time for sale and manufacture of controlled substance offenses, but not trafficking or possession with intent to deliver or sell offenses).

123 With the use of the RAI the parole grant rate increased from 30% to nearly 50%. *See* JFA Institute with Miss. Dep't. of Corr ,*supra* note 102.

124 *See* JFA Institute with Miss. Dep't. of Corr, *supra* note 102, at 6-7 (fig. 1 showing the decline in prison population since S. 2136 and fig. 4 showing S. 2136's impact on projected population).

125 Christopher B. Epps, Comm'r, Miss. Dep't. of Corr., Address at the ACLU Biennial Conference: The Impact of the Financial Crisis and State Budgets on the Criminal Justice System in America 14 (June 12, 2011) (unpublished powerpoint) (on file with the ACLU).

126 Miss. Dept. of Corr., Community Corrections Statistics (2011), *available at* http://www.mdoc.state.ms.us/Research and Statistics/CCStats/2011CC/2011-06 CC Statistics.pdf.

127 Epps, *supra* note 125 (powerpoint at 11).

128 With the use of the RAI the parole grant rate increased from around 30% to nearly 50%. *See* A.B.A., Criminal Justice Section, Texas & Mississippi: Reducing Prison Populations, Saving Money, and Reducing Recidivism (2011), *available at* http://www2.americanbar.org/sections/criminaljustice/CR203800/PublicDocuments/paroleandprobationsuccess.

129 JFA Institute with Miss. Dep't. of Corr, *supra* note 102, at 5.

130 *Id*. at 2.

131 Epps, *supra* note 125 (powerpoint at 16) (combining forecast costs of pre-SB 2136 estimated population growth projections and cost avoidance from subsequent reforms).

132 *Id.*

133 The crime rate in 1994 was 4,837 index crimes per 100,000 population, and has fallen by approximately 33% to its 2009 level of 3,234.6 index crimes per 100,000 population. The crime rate fell from 3244.6 to 3234.6 index crimes per 100,000 population from 2008 to 2009. This is the most recent "crime rate" information from the FBI Part I Index crimes. This crime rate is an approximation of the commission of the following crimes: criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson. While incomplete, the index is used by the FBI for interstate comparisons of criminal activity. Fed. Bureau of Investigation, U.S. Dept. of Justice, Uniform Crime Reporting Statistics, *available at* http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm.

134 JFA Institute with Miss. Dep't. of Corr, *supra* note 102, at 5.

135 The new device combines GPS technology with Advanced Forward Link Trilateration, which allows the DOC to track individuals when they are in the community for authorized activities. The previous house arrest system was only capable of monitoring when individuals where in their home or designated monitoring zone. At a cost of about $13 a day this incarceration alternative is far less expensive than the $41.74/day it costs to house a prisoner. *See* Press Release, Miss. Dep't. of Corrs., Pilot Program Investigates GPS Tracking for House Arrest Offenders (Jan. 7, 2011), *available at* http://www.mdoc.state.ms.us/PressReleases/2011NewsReleases/2011-01-07%20G4S-GPS%20(2).pdf.

136 Currently individuals convicted of drug sale and manufacture are eligible, but not individuals sentenced under possession with intent to sell.

137 The current system calculates the prison sentence from the day a prisoner was released, negating time served on parole prior to the violation. Epps, *supra* note 125.

138 Judith Greene & Patricia Allard, Numbers Game: The Vicious Cycle of Incarceration in Mississippi's Criminal Justice System (2011), available at http://www.aclu.org/prisoners-rights/numbers-game-vicious-cycle-incarceration-mississippis-criminal-justice-system.

139 Press Release, ACLU of Miss., ACLU Strikes Deal to Shutter Notorious Unit 32 at Mississippi State Penitentiary (June 4, 2010), *available at* http://www.aclu-ms.org/news/unit32.htm.

140 The Pew Ctr. on the States, South Carolina's Public Safety Reform: Legislation Enacts Research-based Strategies to Cut Prison Growth and Costs, (2010) [hereinafter Pew SC], at 5, *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/PSPP_South_Carolina_brief.pdf.

141 *Id.* at 2.

142 *Id.*

143 *Id.*

144 Elizabeth McNichol, Phil Oliff & Nicholas Johnson, Ctr. on Budget and Policy Priorities, States Continue to Feel Recession's Impact (2011), *available at* http://www.cbpp.org/files/9-8-08sfp.pdf.

145 Pew SC, *supra* note 140, at 3-4.

146 Pew SC, *supra* note 140, at 3.

147 William J. Watkins, Jr., *Jean Toal Urges Sentencing Reform and Urges Higher Pay For* Judges, S.C. App. L. Blog (Jan. 31, 2006, 7:37 AM), http://southcarolinaappellatelaw.blogspot.com/2006/01/jean-toal-urges-sentencing-reform-and.html.

148 *Senate OKs Sentencing Reform*, The State (Columbia, S.C.), Mar. 26, 2010, *available at* http://www.thestate.com/2010/03/26/1216775/senate-oks-sentencing-reform.html.

149 Pew SC, *supra* note 140, at 3.

150 *Id.*

151 *Id.* at 2.

152 *Id.* at 3.

153 *Id.* at 5.

154 S. 1154, 118th Gen. Assemb., Reg. Sess. § 61 (S.C. 2010), *available at* http://www.scstatehouse.gov/sess118_2009-2010/bills/1154.htm.

155 *Id.* § 62.

156 *Id.* § 38.

157 *Id.* The Act also provided that those convicted of subsequent drug offenses would be eligible for these alternatives under some circumstances. Furthermore, for a person charged with a crime for the first time , a judge may withhold a guilty verdict in favor of probation; if an individual meets all the terms of the probation, the court must discharge the individual and dismiss proceedings.

158 *Id.* § 37-8. Previously, the penalties for the possession of powder cocaine (maximum two years for less than one gram) were less severe than for those for possession of crack cocaine (maximum of five years for the same amount).

159 *Id.* § 41 (no longer considering marijuana possession as a second or subsequent offense if the first offense occurred more than five years before the second conviction; this time period is ten years for all other drugs).

160 *Id.* § 39 (placing a barrier on convicting someone of an intent-to-distribute crime; now, the charged individual must have knowledge that the transaction is within half a mile of a school, park, or playground).

161 *Id.* § 16.

162 *Id.* § 11.

163 *Id.* § 55.

164 *Id.* § 20.

165 *Id.* § 48.

166 *Id.* § 46, 50.

167 *Id.* § 50.

168 *Id.* § 45, 52. Administrative monitoring is a form of supervision in which the only remaining condition is the payment of financial obligations.

169 *Id.* § 26.

170 *Id.* § 20.

171 *Id.* § 18.

172 Pew SC, *supra* note 140, at 1.

173 *Id.* at 2.

174 Yvonne Wenger, *Reviews Mixed 8 Months Into Sentencing Reform*, The Post and Courier (Charleston, S.C.), Feb. 13, 2011, *available at* http://www.postandcourier.com/news/2011/feb/13/reviews-mixed-8-months-into-sentencing-reform/.

175 *Id.*

176 Pew SC, *supra* note 140, at 2. This is due to time needed for the South Carolina judiciary to educate themselves on implementing the Act's provisions and for the Department of Corrections to scale back operations in accordance with the projected decline in prison population.

177 Fed. Bureau of Investigation, U.S. Dep't. of Justice, Uniform Crime Reporting Statistics, *available at* http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm (select South Carolina, "Violent crime rates," "Property crime rates," and "1996 to 2009"). The crime rate in 2009 was nearly 27% lower than when it peaked in 1996. In 1996 the crime rate was 6214.1 index crimes per 100,000 population, and fell to 4559.4 in 2009. In 2009, South Carolina had 53 more index crimes per 100,000 population than Texas did, but had 179.9 more violent crimes per 100,000 population than Texas. This is the most recent "crime rate" information from the FBI Part I Index crimes. This crime rate is an approximation of the commission of the following crimes: criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson. While incomplete, the index is used by the FBI for interstate comparisons of criminal activity.

178 Wenger, *supra* note 174.

179 *Id.*

180 *Id.*

181 *Id.*

182 Ashley Byrd, *Senator Explains Snags in PPP-Corrections Merger*, S.C. Radio Network, June 26, 2011, *available at* http://www.southcarolinaradionetwork.com/2011/06/26/senator-explains-snags-in-ppp-corrections-merger/.

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184 Kentucky's 2010 total corrections spending was $468.8 million. Ky. Office of State Budget Dir., Operating Budget, Vol. I (Part C) 244, *available at* http://www.osbd.ky.gov/NR/rdonlyres/9FFE93E8-44D2-43A2-87A0-86DE7869E44E/0/1012BOCVolumeIC.pdf.

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186 Heather C. West, Bureau of Justice Statistics, U.S. Dep't. of justice, Prisoners in Yearend 2009—Advanced Counts 6 (2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/py09ac.pdf. For data on Kentucky's jail population *see* Ky. Dept. of Corr, Weekly Jail Population Reports (2011), *available at* http://www.corrections.ky.gov/about/WeeklyJailPopReport.htm.

187 Pew KY, *supra* note 185, at 2.

188 *Kentucky Crime Rates 1960-2009*, Disaster Ctr., http://www.disastercenter.com/crime/kycrime.htm (last updated Sept. 14, 2010).

189 Pew KY, *supra* note 185, at 2.

190 *Id.* at 3.

191 *Id.*

192 JFA Institute, Kentucky Department of Corrections Ten-Year Prison Population Projections 2010–2020 (2010).

193 Pew KY, *supra* note 185, at 3.

194 Ky. Rev. Stat. Ann. § 431.520 (2010).

195 Ky. Rev. Stat. Ann. § 431.510 (2010).

196 Ky. Rev. Stat. Ann. § 431.530 (2010).

197 Ky. Rev. Stat. Ann. § 431.518 (2010).

198 A.B.A., Criminal Justice Section, Kentucky: Releasing Defendants While Reducing Recidivism and Saving Money 10-12 (2011), *available at* http://www.americanbar.org/content/dam/aba/events/criminal_justice/dialogpacket.authcheckdam.pdf.

199 *Id.* at 10-11.

200 *Monitored Conditional Release Program,* Ky. Ct. of Justice (Jan. 3, 2009), http://courts.ky.gov/aoc/pretrial/mcr.htm.

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202 H.R. 380, 2006 Leg., Reg. Sess. (Ky. 2006), *available at* http://www.osbd.ky.gov/NR/rdonlyres/F1AD9441-F799-4472-B22E-BB41E398467B/0/0608BOCBudget_In_Brief_Part2.pdf.

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205 Ed Monohan, Public Advocate, Ky. Dep't. of Pub. Advocacy, Presentation at the National Criminal Justice Association Evidence Based Policy and Practice in Action Southern Regional Meeting: Alternative Sentencing Social Work Project (Apr. 28, 2010) (powerpoint at 17), *available at* http://www.ncja.org/CMDownload.aspx?ContentKey=77df8114-cd61-4bcb-9238-3453b80e6eb2&ContentItemKey=36387b68-db9f-4f2d-9e35-33a981457121.

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209 *Id.*

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211 Ronnie Ellis, *Senate Approves Penal Code Changes*, Daily Independent (Ashland, Ky.), Feb. 28, 2011, *available at* http://

dailyindependent.com/local/x186203768/Senate-approves-penal-code-changes.

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213 H.R. 463 Vote History, 2011 Leg., Reg. Sess. (Ky. 2011), *available at* http://www.lrc.ky.gov/record/11rs/HB463/vote_history.pdf. The bill passed 96-1 in House and 38-0 in the Senate.

214 *Id.*, § 46. So long as the officer believes the charged individual will appear for trial and the individual was not uncooperative or violent the officer must believe the individual will appear for trial and the individual must not have been uncooperative or violent. Exceptions may apply if the offense was sexual or involved firearms or driving under the influence.

215 H.R. 463, 2011 Leg., Reg. Sess. (Ky. 2011) § 16, *available at* http://www.lrc.ky.gov/record/11rs/HB463/bill.doc.

216 *Id.*, § 48.

217 *Id.*, § 47.

218 *Id.*, § 48.

219 *Id.*, § 16.

220 *Id.*, § 12.

221 *Id.*, § 11.

222 *Id.* § 9-10. A first offense for trafficking small amounts of some drugs is now a misdemeanor rather than a felony; with other drugs, a first or second offense constitutes a less severe class of felony than previously.

223 *Id.* § 5, 11-12 (applying unless the prosecution can demonstrate a reason for incarceration, e.g., with an individual who presents a public safety threat).

224 *Id.* § 12, 20. Which drugs apply to which provisions can be found in the text of HB 463 and in the Kentucky controlled substance schedules, *available at* http://www.lrc.ky.gov/krs/218a00/chapter.htm; completion of the program will also result in the records being sealed.

225 *Id.*, § 83.

226 *Id.*, § 3, 49-51.

227 *Id.*, § 36 (stating that the education programs can be a GED, high school diploma, college diploma, technical diploma, or civics).

228 *Id.*, § 32.

229 *Id.*, § 55, 57.

230 *Id.*, § 86. $12.50/hour if community service is performed during the sentence, up to $100/day; $50/day otherwise.

231 Ky. Legis. Research Comm'n, H.R. 463 State Fiscal Note Statement, S.11RS-53.2, Reg. Sess., at 2 (2011), *available at* http://www.lrc.ky.gov/record/11rs/HB463/FN.doc.

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236 Laura A. Bischoff, *Sentencing Reform Has Bipartisan Push*, Dayton Daily News, Jan. 30, 2011, *available at* http://www.daytondaily-news.com/news/sentencing-reform-has-bipartisan-push--1068119.html.

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(2010), *available at* justicereinvestment.org/files/ohio_conference_report.pdf [hereinafter Justice Ctr. Ohio]

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provide treatment and assistance addressing convicted persons' needs such as educational, vocational, chemical dependency, and family assistance).

240 Justice Ctr. Ohio, *supra* note 237.

241 Memorandum from Christine Link, Exec. Dir., ACLU of Ohio, to Members of the Ohio Budget Planning and Mgmt. Comm. (Aug. 17, 2010) *available at* http://www.acluohio.org/issues/criminaljustice/CoverLtrToOhioBudgetPlanningMgmtCommittee2010_08.pdf.

242 H.R. 86, 2011 Leg. 129th Sess. § 5120.114 (Ohio 2011), *available at* http://www.legislature.state.oh.us/BillText129/129_HB_86_CH_N.html (requiring all of these entities to use the tool to make informed correctional decisions for all individuals based on the likelihood of re-offending).

243 *Id.* § 2925.03 (mandatory prison is determined on the basis of the amount and is required for any drug offenses committed in the vicinity of a school or a juvenile).

244 *Id.* § 2909.11.

245 *Id.* § 307.932, 2929.26. This is provided that the individual had not previously been convicted for another misdemeanor. The bill also provided for the establishment and operation of community alternative sentencing centers for misdemeanants sentenced directly to the centers under a community residential sanction or an OVI term of confinement not exceeding 30 days.

246 *Id.* § 2929.13.

247 *Id.* § 2929.15 (including those people convicted of high-risk offenses who were convicted of first, second, or third degree felonies or those convicted of fourth of fifth degree felonies but who were found to be a high risk). This only applies to those committing felonies without mandatory prison terms.

248 *Id.* § 5149.311. The Department is required to make annual cost savings calculations and adopt rules that specify the subsidy amounts for successful probation departments. The legislation also authorizes, instead of requires, the Department to discontinue subsidy payments to departments that fails to comply with the terms of the grant.

249 *Id.* § 5120.113 (excluding those prisoners who had been sentenced to life without parole, sentenced to death, or expected to be imprisoned for less than 30 days).

250 *Id.* § 5120.07 (requiring an Ex-offender Reentry Coalition to issue a report including information about the implementation about funding sources for reentry programs).

251 *Id.* § 2967.193 (now allowing prisoners to earn 5 days of credit for each month of participation in a program, so long as the total number of days earned does not exceed 8% of the total days in their prison sentence). It also requires **electronic monitoring** for the first 14 days of release for prisoners who earn 60 days or more of credit to deter recidivism. *Id.* at 86 § 2967.28(D)(2) (providing that monitoring must occur for the first 14 days of release but this does not exclude the imposition of other control sanctions such as probation).

252 *Id.* § 2967.19(B) and (C) (providing that eligible prisoners include those serving terms of a year or more but exclude those who have not yet fully served other consecutive sentences).

253 *Id.* § 5149.36.10

254 *Id.* § 2152.10.

255 *Id.* § 2152.121.

256 H.R. 153, 2011 Leg. 129th Sess. § 9.06 (Ohio 2011) *available at* http://www.legislature.state.oh.us/BillText129/129_HB_153_EN_N.html. Of the 132 state legislatures, 92 Republicans and 0 Democrats voted to pass the law after several conferences between the House and Senate on non-prison related issues.

257 *Id.* § 9.06.

258 Ohio H.R.153. There are hidden costs in private operations that will lead to over-incarceration due to the state's contract which legally binds taxpayers to pay the private company a certain cost per prisoner per day. Studies have also found that private prisons have 50% more internal altercations and of the states currently operating private prisons, they all had higher three-year recidivism rates. The governor vetoed a provision imposing restrictions on the state's ability to execute the sale of the prisons.

259 CCA, *Partnering with CCA,* http://www.cca.com/partnering-with-cca/(last visited July 22, 2011). Corrections Corporation of

America (CCA), the largest private prison operator, for example, states on its website: "With state and federal budgets stretched and public needs always competing with limited dollars, legislators are faced with critical choices on where to spend scare resources. Creating a partnership with CCA to construct, manage and maintain their prisons allows governments to care for hardworking taxpayer dollars, while protecting critical priorities like education and health care."

260 Alan Johnson, *Sale of Prisons, Fewer Inmates Part of Budget Plan*, The Columbus Dispatch, Mar. 22, 2011, *available at* http://www.dispatchpolitics.com/live/content/local_news/stories/2011/03/22/copy/sale-of-prisons-fewer-inmates-part-of-plan.html?adsec=politics&sid=101.

261 Richard A. Oppel Jr., *Private Prisons Found to Offer Little in Savings,* N.Y. Times, May 18, 2011, *available at* http://www.nytimes.com/2011/05/19/us/19prisons.html?scp=1&sq=private%20prison&st=cse; *see* The Auditor, State of Hawai'I, Management Audit of the Department of Public Safety's Contracting for Prison Beds and Services: A Report to the Governor and Legislature of the State of Hawai'i 16 (2010), *available at* http://www.state.hi.us/auditor/Reports/2010/10-10.pdf; *see also* U.S. Gov't Accountability Office, Cost of Prisons: Bureau of Prisons Needs Better Data to Assess Alternatives for Acquiring Low and Minimum Security Facilities (2007), *available at* http://www.gao.gov/new.items/d086.pdf; *see also* James Austin & Garry Coventry, Bureau of Justice Assistance, Emerging Issues in Privatized Corrections 38 (2001), *available at* https://www.ncjrs.gov/pdffiles1/bja/181249.pdf("[I]t may be concluded that there are no data to support the contention that privately operated facilities offer cost savings over publicly managed facilities.")

262 Office of the Az. Auditor Gen., Prison Population Growth 19-20 (2010), *available at* http://www.azauditor.gov/Reports/State_Agencies/Agencies/Corrections_Department_of/Performance/10-08/10-08.pdf. For example, in 2010, the Arizona Auditor General reported that "analysis of private prison and state prison costs indicated that it may be more costly to house prisoners in private prisons." Indeed, "rates paid to private facilities were higher for both minimum- and medium-custody beds – the two categories of beds for which the [Arizona Department of Corrections] contracts."

263 CCA, 2010 Annual Report on Form 10-K 19 (2010), *available at* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDE5MTEwfENoaWxkSUQ9NDMyMjg1fFR5cGU9MQ==&t=1. For example, in a 2010 Annual Report filed with the Securities and Exchange Commission, CCA, stated: "The demand for our facilities and services could be adversely affected by ... leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws."

264 ACLU of Ohio, Prisons for Profit: A Look at Prison Privatization (2011), *available at* http://www.acluohio.org/issues/criminaljustice/PrisonsForProfit2011_04.pdf.

265 Curtis R. Blakely & Vic W. Bumphus, *Private and Public Sector Prisons – A Comparison of Select Characteristics,* 68 Fed. Probation 27, 30 (2004), *available at* http://findarticles.com/p/articles/mi_qa4144/is_200406/ai_n9446513/pg_4/?tag=mantle_skin;content (stating that mounting evidence shows that "the private sector is a more dangerous place to be incarcerated" than a publicly operated prison); *see also* James Austin & Garry Coventry, Bureau of Justice Assistance, Emerging Issues on Privatized Prisons 52 (2001), *available at* https://www.ncjrs.gov/pdffiles1/bja/181249.pdf (stating that a nationwide survey of prisons revealed that "[t]he privately operated facilities have a much higher rate of inmate-on-inmate and inmate-on-staff assaults and other disturbances.")

266 ACLU of Ohio, *supra* note 264 at 15.

267 *See* Laura A. Bischoff et al., *Prison reductions may save $1B*, Dayton Daily News, June 23, 2011, *available at* http://www.dayton-dailynews.com/news/ohio-news/prison-sentence-reductions-may-save-1b-1191462.html; *see also* Ohio Legis. Serv. Comm'n, Fiscal Note & Local Impact Statement, H.R. 86, 129th Sess. 2011, *available at* http://www.lsc.state.oh.us/fiscal/fiscalnotes/129ga/hb0086hp.pdf. The initial study by the Council for State Governments indicated a projected cost savings of $90-$100 million but unfortunately not all of the proposed reforms made it into the final version of the bill, thus it has been difficult to find newer projected cost savings estimates on the legislation as enacted.

268 Andrew Welsh-Huggins, *Kasich signs updated prison bill*, Foxtoledo.com, June 29, 2011, *available at* http://www.foxtoledo.com/dpp/news/ohio/Kasich-signs-updated-prison-bill.

269 *Id.*

270 David Diroll, Ohio Criminal Sentencing Commission, Prison Crowding: The Long View, with Suggestions, (2011), at 6, *available at* http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/Publications/MonitoringReport2011.pdf.

271 Fed. Bureau of Investigation, U.S. Dep't. of Justice, Uniform Crime Reporting Statistics, *available at* http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm. From 1991 to 2009 the rate fell by approximately 28%. The 2009 rate was nearly 34% lower than its highest point, in 1981. The crime rate in Ohio was 5033 index crimes per 100,000 population in 1991, compared with 3603 in 2009, and its highest level of 5447.4 in 1981. This is the most recent "crime rate" information from the FBI Part I Index crimes. This crime rate is an approximation of the commission of the following crimes: criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson. While incomplete, the index is used by the FBI for interstate comparisons of criminal activity.

272 Mary Tiedeman & Daniel Ballon, ACLU Nat'l Prison Project, ACLU of S. Cal., Annual Report on Conditions Inside Men's Central Jail 2008-2009 1 (2010), *available at* http://www.aclu.org/files/assets/2010-5-5-AnnualReport-JailConditionsatMCJ.pdf.

273 S. 1399, 2009-2010 Leg., Reg. Sess. (Cal. 2010), *available at* http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1351-1400/sb_1399_bill_20100928_chaptered.pdf.

274 S. 1449, 2009-2010 Leg., Reg. Sess. (Cal. 2010), *available at* http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1401-1450/sb_1449_bill_20100930_chaptered.pdf.

275 *Understanding L.A. County Jails*, ACLU of S. Cal., http://www.aclu-sc.org/jails/ (last visited July 11, 2011).

276 Brown v. Plata, No. 09-1233, slip op. (U.S. 2011), *available at* http://www.supremecourt.gov/opinions/10pdf/09-1233.pdf.

277 Plata v. Brown, No. C01-1351 TEH (E.D. Cal., N.D. Cal. June 30 2011), *available at* http://www.cdcr.ca.gov/News/docs/2011-06-30-3JC-Monthly-report-order.pdf (order requiring interim reports).

278 Press Release, ACLU of N. Cal., New Poll Finds Strong Majority of CA Voters Believe Too Many People Imprisoned, Favor Reducing Drug Possession Penalty from a Felony to a Misdemeanor (Apr. 11, 2011), *available at* http://www.aclunc.org/news/press_releases/new_poll_finds_strong_majority_of_ca_voters_believe_too_many_people_imprisoned,_favor_reducing_drug_possession_penalty_from_a_fe.shtml.

279 Jack Dolan, *Californians Would Rather Ease Penalties Than Pay More for Prisons,* L.A. Times, July 21, 2011, *available at* http://www.latimes.com/news/local/la-me-poll-prisons-20110721,0,531177.story.

280 A.B. 109, 2011-12 Assemb., Reg. Sess. (Ca. 2012), *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0101-0150/ab_109_bill_20110404_chaptered.html. Later amended by SB 95 and AB 117.

281 *Id.*, § 458.

282 *Id.*, § 455.

283 Allen Hopper, *California Sentencing Reform Should Allow the Time to Fit the Crime,* ACLU Blog of Rights (May 19, 2011, 5:24 PM), http://www.aclu.org/blog/criminal-law-reform/california-sentencing-reform-should-allow-time-fit-crime.

284 *Stanford Three Strikes Project,* Stanford Law School, http://www.law.stanford.edu/program/clinics/threestrikesproject/ (last visited July 11, 2011).

285 Ashley Nellis & Ryan S. King, The Sentencing Project, No Exit: The Expanding Use of Life Sentences in America 3 (2009), *available at* http://www.sentencingproject.org/doc/publications/publications/inc_noexitseptember2009.pdf.

286 Jan Moller, *Louisiana House Approves Sentencing Changes,* Times-Picayune, June 6, 2011, *available at* http://www.nola.com/politics/index.ssf/2011/06/louisiana_house_approves_sente.html.

287 Inimai Chettiar, *The High Costs of Going Gray in Louisiana and Nationwide,* ACLU Blog of Rights, (May 24, 2011, 5:26 p.m.), http://www.aclu.org/blog/prisoners-rights/high-costs-going-gray-louisiana-and-nationwide.

288 H.R. 138, 2011 Leg., Reg. Sess. (La. 2011), *available at* http://www.legis.state.la.us/billdata/streamdocument.asp?did=760442. Unfortunately, the bill passed with numerous restrictions on a prisoner's eligibility for release. Prisoners are restricted from the program if they did any of the following: committed a violent or sexual offense, committed any disciplinary offenses in the year prior to the parole eligibility date, failed to complete one hundred hours of prerelease programming as specified by their facility, failed to complete substance abuse treatment as applicable, failed to obtain a GED or deemed incapable, or failed to obtain a low-risk level designation by the secretary of the Department of Public Safety and Corrections.

289 H.R. 415, 2011 Leg., Reg. Sess. (La. 2011), *available at* http://www.legis.state.la.us/billdata/streamdocument.asp?did=758141 (giving probation and parole officers discretion to impose non-prison sanctions for technical probation and parole violations); H.R. 416, 2011 Leg., Reg. Sess. (La. 2011), *available at* http://www.legis.state.la.us/billdata/streamdocument.asp?did=760474 (granting slightly earlier parole eligibility for nonviolent, non-sexual, first time offenses); S. 202, 2011 Leg., Reg. Sess. (La. 2011), *available at* http://www.legis.state.la.us/billdata/streamdocument.asp?did=760352 (revising procedures and mandates training for parole and pardon boards); H.R. 106, Leg., Reg. Sess (La. 2011), *available at* http://www.legis.state.la.us/billdata/streamdocument.asp?did=760071 (requiring providers of electronic monitoring services for people on probation to report success rates and procedures to the Department of Public Safety); H.R. 414, Leg., Reg. Sess. (La. 2011), *available at* http://www.legis.state.la.us/billdata/streamdocument.asp?did=760095 (consolidating earned compliance credits for exemplary time served and for completing anti-recidivism programs, excluding people convicted of sex offenses).

290 Robert Ross, *Legislators Attack Jindal's Plan to Privatize Prisons*, Pelican Post, Apr. 5, 2011, *available at* http://www.thepelicanpost.org/2011/04/05/legislators-attack-jindal%E2%80%99s-plan-to-privatize-prisons/ (the proposed sale involved prisons in Allen, Avoyelles, and Winn parishes); *see also* Jan Moller, *Gov. Jindal's Plan to Sell State Prisons is Killed by House Committee,* Times-Picayune, June 6, 2011, *available at* http://www.nola.com/politics/index.ssf/2011/06/house_committee_kills_bobby_ji.html.

291 *Rapides Parish Jail Seeks Expansion that Will Make it Largest Per Capita Jail in the State*, The Louisiana Justice Institute (Jan. 10, 2011), http://louisianajusticeinstitute.blogspot.com/2011/01/rapides-parish-jail-seeks-expansion.html.

292 Bruce Eggler, *Smaller Jail is Approved by New Orleans City Council*, Times-Picayune, Feb. 3, 2011, *available at* http://www.nola.com/politics/index.ssf/2011/02/smaller_jail_is_approved_by_ne.html.

293 Md. Dep't. of Budget and Mgmt., FY 2009 Operating Budget Detail II-593 (2009) *available at* http://www.dbm.maryland.gov/agencies/operbudget/Documents/2009/detailpubsafcor.pdf.

294 S. 801, 2011 Gen. Assemb., Reg. Sess. (Md. 2011), *available at* http://mlis.state.md.us/2011rs/chapters_noln/Ch_554_sb0801T.pdf.

295 *Id.*

296 S. 583, 2011 Gen. Assemb., Reg. Sess. (Md. 2011), *available at* http://mlis.state.md.us/2011rs/bills/sb/sb0583f.pdf (aiming to reduce recidivism of those on probation and parole by using risk assessments and other evidence-based practices to identify and direct greater supervision and support to those who most need it).

297 H.R. 1248, 2011 Gen. Assemb., Reg. Sess (Md. 2011), *available at* http://mlis.state.md.us/2011rs/bills/hb/hb1248f.pdf (would have granted earned compliance credits for exemplary time served on parole).

298 H.R. 302, 2011 Gen. Assemb., Reg. Sess. (Md. 2011), *available at* http://mlis.state.md.us/2011rs/chapters_noln/Ch_623_hb0302E.pdf. After the bill goes into effect, the governor must affirmatively act to veto the parole's board decisions to grant parole within 180 days. If he doesn't act, then the board can grant parole. Although the law doesn't remove the governor from the process, it changes the default of inaction.

299 H.R. 353, 2011 Gen. Assemb., Reg. Sess. (Md. 2011), *available at* http://mlis.state.md.us/2011rs/bills/hb/hb0353f.pdf (would have reform harsh mandatory minimum sentences for drug offenses and offer drug treatment as an alternative); H.R. 606, 2011 Gen. Assemb., Reg. Sess. (Md. 2011), *available at* http://mlis.state.md.us/2011rs/bills/hb/hb0606f.pdf (would have made possession of small amounts of marijuana a civil offense subject to a fine instead of prison time).

300 S. 561, 2011 Gen. Assemb., Reg. Sess. (Ind. 2011), *available at* http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2011&session=1&request=getBill&docno=561.

301 Eric Berman, *Daniels Threatens Veto of Sentencing Reform Bill*, WIBC, Mar. 22, 2011, *available at* http://www.wibc.com/news/Story.aspx?id=1389314.

302 Eric Bradner, *Indiana Legislative Committee Studying Criminal Sentences*, Evansville Courier & Press, June 23, 2011, *available at* http://www.courierpress.com/news/2011/jun/23/no-headline---sentencing/.

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306 Mary Carmichael, *The Case for Treating Drug Addicts in Prison*, Newsweek, June 29, 2010, *available at* http://www.drugpolicy.org/facts/drug-facts

307 The Nat'l Org. for the Reform of Marijuana Laws, Marijuana Decriminalization & Its Impact on Use (2010), *available at* http://norml.org/index.cfm?Group_ID=3383.

308 David Abel, *Mass. Voters OK Decriminalization of Marijuana*, The Bos. Globe, Nov. 4, 2008), *available at* http://www.boston.com/news/local/breaking_news/2008/11/question_2_setu.html. In November 2008, state voters approved to decriminalize the possession of marijuana. Any person caught with less than an ounce of marijuana, hash, hash oil, or smoking in public is punishable by a civil fine of $100.

309 S. 1449, 2010 Leg., Reg. Sess. (Cal. 2010), *available at* http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1449&sess=PREV&house=B&author=leno (decriminalizing the possession of up to one 28.5 grams of marijuana and reduces the penalty from a misdemeanor to an infraction).

310 S. 1014, 2011 Leg., Reg. Sess. (Conn. 2011), *available at* http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB-1014# (decriminalizing possession of up to one ounce of marijuana).

311 Ky. H.B. 463, 2011 Leg., Reg. Sess. § 16 (Ky. 2011), *available at* http://www.lrc.ky.gov/record/11RS/HB463.htm (downgraded from an "A" misdemeanor to a "B" misdemeanor).

312 Md. H.R. 606, 2011 Gen. Assemb., Reg. Sess. (Md. 2011), *available at* http://mlis.state.md.us/2011rs/billfile/HB0606.htm (downgraded marijuana possession from a misdemeanor to a civil violation).

313 H.R. 2306, 112th Cong. (2011), *available at* http://thomas.loc.gov/cgi-bin/thomas (allowing states to legalize and tax marijuana without federal interference; sponsored by Reps. Barney Frank (D) and Ron Paul (R)).

314 *It's Not Fair. It's Not Working*, The Sentencing Project, http://www.sentencingproject.org/CRACKREFORM/ (last visited July 13, 2011).

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318 S.C. S. 1154 (began to equalize the disparity in 2005 and fully equalized the sentencing structure for crack and cocaine in 2010).

319 S. 1789, 111th Cong. (2010), *available at* http://www.gpo.gov/fdsys/pkg/BILLS-111s1789enr/pdf/BILLS-111s1789enr.pdf (enacting the Fair Sentencing Act which reduced the federal sentencing disparity from 100-to-1 to 18-to-1).

320 Ohio H.R. 86, § 2925.03 (equalizing the crack-cocaine powder disparity in their state).

321 H.R. 913, 96th Gen. Assemb. (Mo. 2011), *available at* http://www.house.mo.gov/billsummary.aspx?bill=HB913&year=2011&code=R. (debating HB 913 to reduce the current 75 to 1 sentencing disparity between crack and powder cocaine to 4 to 1).

322 S.C. S. 1154 (doing away with mandatory minimums for simple possession).

323 S. 1866, 213th Leg., Reg. Sess. (N.J. 2008), *available at* http://www.njleg.state.nj.us/2008/Bills/S2000/1866_I1.HTM (eliminating mandatory minimums for drug-free school zone convictions).

324 H.R. 4712, 186th Leg., Reg. Sess. (Mass. 2010), *available at* http://www.malegislature.gov/Bills/186/House/H4712 (making those convicted of drug offenses serving less than 2.5 years at a county jail eligible for parole after serving half the sentence).

325 H.R. 2266, 187th Leg., Reg. Sess. (Mass. 2011), *available at* http://www.malegislature.gov/Bills/187/House/H02266 (would be repealing all mandatory minimum drug sentences).

326 Ohio H.R. 86.

327 S. 1334, 2011 Leg., Reg. Sess. (Fla. 2011), *available at* http://www.flsenate.gov/Session/Bill/2011/1334. (would be repealing all mandatory minimum drug trafficking sentences).

328 Md. H.R. 353, 2011, Leg., Reg. Sess. (Md. 2011), *available at* http://mlis.state.md.us/2011rs/billfile/HB0353.htm(grants hearings to modify previous mandatory sentences).

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330 H.R. 686, 2004 Leg., Reg. Sess (Miss. 2004), *available at* http://billstatus.ls.state.ms.us/documents/2004/pdf/HB/0600-0699/HB0686SG.pdf (creating day-for-day credits for completion of pre-approved programs and time spent in trusty status); S. 2039, 2009 Leg., Reg. Sess § 1 (Miss. 2009), *available at* http://billstatus.ls.state.ms.us/documents/2009/pdf/SB/2001-2099/SB2039SG.pdf (removing the cap on how many compliance credits one can earn).

331 A.B. 510, 74th Gen. Assemb. (Nev. 2007), *available at* http://www.leg.state.nv.us/74th/Bills/AB/AB510_EN.pdf (allowing up to 20-days each month to people on parole "whose diligence in labor and study merits such" and deducting 20 days from the sentence for each month a person on probation is infraction free).

332 S. 14, 2008 Leg., Reg. Sess. (Kan. 2008), *available at* http://www.kansas.gov/government/legislative/bills/2008/14.pdf (re-establishing earned compliance credits and creating 60-day program credits for the completion of approved educational and treatment programs).

333 H.R. 4, 2007 Gen. Assemb., Reg. Sess. pt. III (Pa. 2007), *available at* http://www.portal.state.pa.us/portal/server.pt?open=18&objID=895655&parentname=Dir&parentid=236&mode=2. Recidivism Risk Reduction Incentive sets a 15-25% reduced minimum at sentencing that prisoners can earn if they complete prescribed programs and maintaining good conduct).

334 S.C. S. 1154 § 50 (stating that individuals on probation can earn up to 20 days of credit per month).

335 Ky. H.R. 463 (offering earned credits available to people on parole and 90-day credits for the completion of educations programs).

336 U.S. Dep't of Justice, FY 2012 Budget Request, Savings and Efficiencies, *available at* http://www.justice.gov/jmd/2012factsheets/docs/fy12-savings-efficiencies.pdf (proposing to save $41 million in their FY 2012 budget request by increasing good-time credits for federal prisoners).

337 H.R.. 191, 102d Leg., 1st Sess. (Neb. 2011), *available at* http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB191.pdf.

338 Tex. H.R. 2649 (providing prisoners with a 20% sentence reduction after completion of educational or treatment programs); Tex. H.R. 1205 (stating that probation can be cut down after serving one third of a prisoner's sentence or two years).

339 Ohio H.R. 86 (providing for five days credit per month for each vocational, educational, or treatment program completed).

340 Md. H.B. 1248 (grants 20 days off parole for each month of good time).

341 Heather C. West et al., U.S. Dep't of Justice, Bureau of Justice Statistics Bulletin: Prisoners in 2009 (2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf.

342 Michelle Millhollon, *Costs Could Release Inmates*, The Advocate (Baton Rouge, La.), Apr. 17, 2011, *available at* http://webcache.googleusercontent.com/search?q=cache:HEYptwqsSpEJ:www.2theadvocate.com/news/119987069.html.

343 Wis. Stat. § 302-1135, *available at* http://legis.wisconsin.gov/statutes/Stat0302.pdf.

344 La. H.R. 138 (unfortunately the law is restricted only to those who have committed nonviolent, non-sexual crimes and places a number of other unnecessary restrictions on eligibility).

345 Ohio H.R.153 § 5149.36.10.

346 Tex. H.R. 3538 (failing to pass after being introduced in 2010).

347 ACLU of Ohio, *supra* note 264.

348 *Arizona Prison Privatization Plans on Hold*, Corr. Reporter, Nov. 10, 2009, http://www.correctionsreporter.com/2009/11/10/arizona-prison-privatization-plans-on-hold/; *see also* Richard Oppel, *Private Prisons Found to Offer Little in Savings*, N.Y. Times, May 18, 2011, *available at* http://www.nytimes.com/2011/05/19/us/19prisons.html (Az. is expected to sign a deal to double its private prison population).

349 Bill Kaczor, *More Prison Privatization in Fla. Senate Budget,* Bloomberg Businessweek. Mar. 29, 2011, *available at* http://www.businessweek.com/ap/financialnews/D9M93T900.htm (in addition to six existing private prisons).

350 Jim Provance, *Selling Prisons, Cuts to Local Governments, Privatizing Liquor Sales Proposed to Balance Ohio Budget,* Toledo Blade, Mar. 15, 2011, *available at* http://www.toledoblade.com/State/2011/03/15/Ohio-governor-presents-his-first-state-budget.html (two state-owned prisons are already privately run).

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