Justice Reinvestment

By Alison Lawrence and Donna Lyons

A growing number of states are using “justice reinvestment” to curb corrections costs, reduce offender recidivism and maintain public safety. The data-driven reforms have been bipartisan, cross-governmental and impactful. Policies aim to reduce spending on corrections and reinvest the savings in strategies that increase public safety and hold offenders accountable.

Justice reinvestment involves:

• Analyzing data and criminal justice trends related to jail and prison populations.

• Developing and adopting policies that manage corrections resources, spending and investments in order to increase public safety and improve offender accountability.

• Measuring the fiscal and criminal justice effects of these reforms and reinvestments to ensure that projected results and benefits are achieved.

State Reforms

• **Texas** In 2007, a bipartisan team of lawmakers developed policies to address the growing number of probation violators being sent to prison; their need for substance abuse and mental health treatment; and the low parole rate. Rather than spend $500 million on new prisons, the Legislature allocated $240 million for the 2008-2009 biennium to expand in-prison, residential and outpatient treatment, establish maximum parole caseloads, limit the length of probation for drug and property crimes, and provide funding to local corrections agencies for probation and parole supervision. Savings of $443 million in that biennium allowed funding for other areas of the budget that contribute to reducing crime and recidivism. Parole revocations have declined substantially and prison populations are at a five-year low. For the first time in the state’s history, Texas closed a prison in 2012. See 2007 HB1, HB1678, HB3736 and SB166.

• **Kansas** Reforms in 2007 reduced the number of probation and parole violators sent to prison and allowed the state to reinvest funds to expand successful community supervision programs. The Legislature created state-local incentive funding to keep probation violators in the community, increased the amount of good time that nonviolent inmates can earn and established additional earned
time for completing education or treatment programs. Reinvestment of $7 million has supported implementation of expanded community corrections and in-prison programs, and training in risk-reduction offender supervision. Building on these reforms, Kansas lawmakers created a work group in 2012 to consider ways to further reduce recidivism and corrections costs. Recommendations from the work group—including use of swift and certain sanctions for probation violations and the opportunity for early discharge from supervision for compliant probationers and parolees who are low-risk and have paid restitution in full—were adopted by the Legislature in 2013. The law is expected to reduce the prison population allowing for the delay in construction of two prison units until at least FY2015. See 2007 SB14, 2012 HB2684, and 2013 HB2170.

- **Vermont** Faced with a high and unsustainable rate of prison population growth, including high rates of released offenders returning to prison, a bipartisan, cross-governmental Justice Reinvestment Working Group was launched in 2007. A 2008 act expanded screening and assessment of offenders for substance abuse and mental health needs and established intensive treatment programs. The law also allows reduced probation terms for some compliant offenders; furloughs in some circumstances; reentry plans that include community treatment services; and electronic monitoring and other steps to improve supervision of and target resources on those offenders at highest risk. One facility was closed, and another was converted to a therapeutic work camp. The reforms, expected to yield about $54 million in savings between 2009 and 2018, were backed by a $3.9 million reinvestment in assessment, treatment and supervision services, including transitional housing. The General Assembly has since expanded eligibility for alternatives to incarceration, such as house arrest and furlough, and reinvested an additional $6 million in prison and community-based treatment and reentry services. As of January 2013, the prison population, which was expected to grow by more than 20 percent, has declined by nearly 5 percent. See 2008 HB859 and 2010 SB292.

- **South Carolina** The Omnibus Crime Reduction and Sentencing Reform Act of 2010 was the result of an analysis of the state’s sentencing guidelines, parole system and options for alternatives to incarceration. Enacted reforms restructured criminal offenses and penalties; addressed diversion, treatment, good time and community supervision; and also established oversight to monitor and evaluate the reforms. The law is projected to save up to $175 million in construction costs and $66 million in operating costs in the first five years. A report to the General Assembly in late 2011 found that the state had saved $4.2 million in prison expenditures due to a nearly 20 percent decrease in the number of probationers and parolees sent to prison for committing a new crime or breaking the rules of their supervision. The prison population has been steadily declining and in 2012 two prisons were closed. See 2010 SB1154.
• **New Hampshire** The 2010 Justice Reinvestment Act was developed and enacted with bipartisan support. The act focuses resources on offenders who are at the highest risk for returning to prison. It created risk-based supervision levels and allows short, swift jail sanctions for minor probation violations. The law created a nine-month term of post-prison supervision for all offenders granted release by the parole board. By 2021, the state expects to have saved up to $10.8 million and averted $179 million in new construction and operating costs, with savings providing future reinvestment opportunities. See 2010 SB500 and 2011 SB52.

• **Arkansas** The Public Safety Improvement Act of 2011 used recommendations from a bipartisan work group that analyzed sentencing and community supervision policies. The act reserves prison space for the most dangerous offenders and strengthens community supervision. It revises penalties for some drug and theft crimes, requires risk and needs assessments of probationers, and sets sanctions for breaking supervision rules. An analysis shows that during 2011, parole revocations fell 30 percent, probation revocations fell 15 percent and the state prison population declined 7 percent. The state expects to save $875 million in prison construction and operating expenses through 2020. See 2011 SB750.

• **Kentucky** The 2011 Public Safety and Offender Accountability Act was enacted following work of a task force that examined the state’s fast-growing prison population. The law addresses many aspects of drug-crime sentencing and treatment, risk and needs assessments in community corrections, graduated sanctions for probation and parole violations, and evidence-based practices for community supervision. These changes are projected to save Kentucky taxpayers $422 million by 2021. For FY 2013-14, the General Assembly has reinvested savings of nearly $6.8 million in new substance abuse treatment programs and provided nearly $9 million through FY 2014 for local correctional facilities and programs. See 2011 HB463.

• **Ohio** A bipartisan work group considered probation policies and crowded prisons, leading to a 2011 law designed to expand and improve community supervision. The law requires probation and treatment for some first-time property and drug offenders; establishes statewide requirements for community corrections and prioritizes placement of offenders in certain programs; and creates statewide probation standards. The Legislature appropriated $10 million in FY 2012-2013 to improve local supervision of felony probationers, with additional “Probation Improvement and Incentive” grants being offered for FY 2014-2015. See 2011 HB86.

• **North Carolina** A bipartisan, interbranch work group developed policies to improve sentencing, supervision and treatment options. The 2011 Justice Reinvestment Act expands felony drug diversion, requires supervision of all felony offenders released from prison, allows short jail stays to be used for violations of
community supervision, and focuses supervision and treatment resources on offenders who present the highest risks and needs. The budget act that same year included closure of four prisons. A 2013 report of the Sentencing Policy and Advisory Committee found that a combination of factors, including justice reinvestment reforms, has contributed to a nearly 9 percent decrease in the prison population over the last 18 months. The state expects to save $290 million over the first five years, and to be able to reinvest at least $4 million to expand community-based treatment programs. See 2011 HB200 and HB642.

- **Louisiana** In 2008, the state redefined the mission of its sentencing commission to provide comprehensive review and recommendations on sentencing policy, community supervision and alternatives to incarceration. The commission identified technical violations that result in prison time and a decreasing parole grant rate as major contributors to the state’s rising prison population. Recommendations made by the commission were adopted by the Legislature in 2011 and 2012. These included permitting judges to waive some mandatory minimum sentences; authorizing non-prison sanctions for technical violators; use of a risk assessment for parole release decisions; establishing earlier parole eligibility dates for some nonviolent, non-sex first- and second-time offenders; and increasing the amount of earned-time and good-time inmates can earn. The sentencing commission continues work to implement reforms and recommend system improvements. See 2008 HB246, 2011 HB106, HB414, HB615, HB416, SB202; and 2012 HB432, HB512, HB518, HB521, HB994, HB1026, HB1068.

- **Georgia** In 2012, the General Assembly enacted a law based on recommendations of a Special Council created by legislation a year earlier. The council found that the state prison population had more than doubled in the last 20 years, and projected another 8 percent growth in the next five years, absent policy reform. The act focuses on providing prison space for serious offenders, and strengthens probation and court supervision. It also creates graduated degrees of penalties for burglary and forgery, raises felony theft thresholds, revises penalties for drug possession to be based on drug weight, expands use of electronic monitoring, requires evidence-based corrections practices and establishes procedures for risk and needs assessments. The legislation is expected to avert prison population growth of about 5,000 inmates during the next five years, with projected savings of at least $264 million. Lawmakers reinvested $17 million in accountability courts and residential programs for FY2013. A second set of recommendations from the Special Council was adopted by the legislature in 2013 that included relaxing mandatory sentences for some drug trafficking, violent and sex offenses. Reforms were also made to the juvenile justice system using a justice reinvestment process. See 2011 HB265; 2012 HB1176, HB742; and 2013 HB242, HB349.
• **Missouri**  The 2012 Missouri Justice Reinvestment Act strengthened community supervision to address the significant number of probation and parole violators who were being sent to prison. By providing earned-time compliance credits, it offers incentives for offenders who are on probation or parole to comply with rules. For those who violate rules, sanctions may include placement for up to 120 days in a treatment setting. A 13-member Sentencing and Corrections Oversight Commission is monitoring implementation and expects to identify ways to reinvest cost savings. The act is projected to save Missouri more than a half-million dollars through FY 2015 by reducing the prison population. See 2012 HB1525.

• **Oklahoma**  A law adopted in 2012 is designed to strengthen community supervision and enhance public safety. It requires that assessment of substance and mental health needs of offenders be considered in sentencing and creates intermediate revocation facilities for probation or parole violators and those who are supervised in the community under terms of a drug court agreement. The act requires a period of post-prison supervision for all offenders and allows intermediate revocation settings for those who violate conditions of release. It is expected that the legislation will avert approximately $120 million in additional corrections spending by 2021. See 2012 HB3052.

• **Hawaii**  The Hawaii Legislature also passed comprehensive reforms in 2012. The law includes a requirement that risk and needs assessments be conducted for parolees being considered for release and requires that inmates identified as low risk be released on supervision after completing the minimum sentence. The law limits length of incarceration for a first parole rule violation and improves the system for collecting victim restitution. Pretrial detainees also will receive risk assessments under the new law. The law is projected to save Hawaii as much as $130 million over five years, including a $3.4 million reinvestment in FY 2013 for improved supervision and treatment programs. The law and reinvestment plan, developed by a bipartisan, interbranch justice reinvestment work group, included analysis of victimization, supervision and incarceration rates. See 2012 HB2514 and SB2776.

• **Delaware**  Lawmakers in Delaware adopted justice reinvestment recommendations in an act that focused on reducing recidivism and concentrating prison and supervision resources on the high-risk offenders. The 2012 law requires that offender case plans be based on risk and needs assessments and that risk assessments be used to determine conditions of pretrial release. Probationers are eligible to earn time off their sentence for complying with case plans and inmates can receive additional good time credits for successfully completing rehabilitative programs in prison. The task force that developed the recommendations estimated a prison population drop of 740 inmates and a savings of $27 million over the next five years. See 2012 SB226.
• **Pennsylvania** A comprehensive reform package in Pennsylvania aims to keep low-level offenders out of state prison and reimburse counties a portion of the costs to supervise them in local communities. The 2012 legislation also provides community options for technical parole violators, administrative sanctions for probation violations, and improved reentry services. These measures are expected to save $142 million over the next five years, with a portion of the savings to be reinvested in crime victim services and improvements in probation and policing. *See 2012 SB100 and HB135.*

• **West Virginia** Facing a prison population that is growing three times faster than the national average and high rates of substance abuse among probationers and parolees, West Virginia lawmakers adopted a set of data-driven reforms in 2013. The new law strengthens community supervision by requiring supervision of probationers and parolees based on the results of risk and needs assessments and authorizing the use of graduated sanctions for technical violations of supervision. It also prioritizes the use of treatment and day reporting resources for offenders who are assessed as high risk and high need and requires a period of post-prison supervision for all offenders. The Division of Justice and Community Services will oversee implementation of the risk and needs assessment and will evaluate the impact of other changes made to community supervision. *See 2013 SB371 / HB2726.*

• **South Dakota** Legislation approved in South Dakota in 2013 was the result of a bipartisan, interbranch work group looking to avert projections of a 25 percent prison population growth by 2022. Enacted reforms focus prison space on violent and career criminals by revising sentences for several nonviolent offenses while enhancing penalties for drug trafficking crimes and aggravated felonies. The act requires legislative fiscal impact analysis of any proposed legislation that increases prison terms. An oversight council was created to monitor performance measurement, training of court and corrections staff and parole board members, and funding to local counties for probation supervision. Reinvestment of savings generated was authorized for recidivism reduction strategies that include substance abuse and mental health interventions and improved collection of restitution. It is projected that the law will save taxpayers around $200 million in prison costs over the next 10 years. *See 2013 SB70.*

• **Oregon** The most recent state to engage in justice reinvestment, Oregon’s Commission on Public Safety put forth recommendations for consideration during the 2013 legislative session. As of July 15th, the Legislative Assembly had enacted a bill that was awaiting the governor’s signature. The bill would amend penalties for marijuana possession based on the weight of the drug; permit judges to order sentences for certain repeat drug trafficking that are below the presumptive ranges; and reduce the presumptive prison sentence for certain robbery and identify theft crimes. The bill would improve community supervision by requiring development of best practices for specialty courts and allowing probationers to earn time off their sentence for complying with supervision requirements. A justice reinvestment fund would be established to provide grants
to counties for offender assessments and operation of community-based sanctions. See 2013 HB3194.

Public-Private Partnership

A public-private partnership of the Bureau of Justice Assistance (BJA) in the U.S. Department of Justice and the Public Safety Performance Project (PSPP) of The Pew Charitable Trusts leads national efforts in justice reinvestment. BJA administers funds that support a number of state efforts. The PSPP provides technical assistance. Phase I assistance involves key officials and stakeholders, includes a comprehensive analysis of criminal justice data and evaluation of the cost-effectiveness of corrections spending, and recommends strategies to reduce costs and increase public safety. In Phase II, states may continue to receive technical assistance and are eligible for seed funding that includes training and other help in establishing community supervision practices that improve offender accountability. Phase II also assists states with measuring results and making reinvestments in programs that enhance public safety.

There are 18 states and 17 localities currently receiving justice reinvestment support and assistance from the Bureau of Justice Assistance. Additional Phase I and II state assistance will be provided later this year.

Throughout state government, lawmakers are interested in results-based policies. Justice reinvestment reforms have come about in states as a result of interbranch efforts and strong leadership. State reforms highlighted demonstrate how data-driven approaches can strategically target corrections resources, improve offender accountability and maintain public safety.

Resources

Justice Reinvestment Initiative:

Bureau of Justice Assistance  www.bja.gov/topics/justice_reinvestment.html


Council of State Governments, state level  http://justicereinvestment.org/

Urban Institute, local level  http://www.urban.org/center/icc/justicereinvestment

Vera Institute of Justice  http://www.vera.org/project/justice-reinvestment-initiative

NCSL’s Criminal Justice Program:

Justice Reinvestment resources  http://www.ncsl.org/issues-research/justice/justicereinvestment.aspx

NCSL’s Criminal Justice Program is located in Denver, Colo, at 303-364-7700 or email cj-info@ncsl.org