Trends in Sentencing and Corrections
State Legislation

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State legislatures have been pivotal in developing sentencing and corrections strategies that focus on a trio of objectives: protecting public safety, holding offenders accountable, and doing so while making best use of fiscal resources. Significant trends have emerged in legislative leadership and state legislation in meeting these responsibilities. Actions have included expanding eligibility for community corrections and improving supervision, employing the use of diversion and treatment, revising sentence lengths and prioritizing prison resources.

A decade ago, rising prison populations and costs seemed to be an uninterruptable trend. Today, however, many states have seen a decline in the number of individuals under correctional supervision. The U.S. Department of Justice recently reported that state prison populations decreased in 2011 for the second consecutive year, and the probation and parole population decreased for the third consecutive year. Recidivism rates—the number of people who return to prison for a new crime or a community supervision violation—also are declining or have remained steady in many states. These changes have occurred during a decade in which the rates of both property and violent crime have dropped, and been largely unaffected by the nation’s recent economic downturn.

Sentencing and corrections legislation described in this report has been prevalent and impactful. Actions in a growing number of states in recent years have set states on a new course, both with data-driven strategies and with results measured in terms of reductions in crime and recidivism.

Common Denominators

A distinguishing feature of some of the most comprehensive legislation has been cross-governmental planning that involves stakeholders in all branches and at all levels of government. Setting apart the efforts of these groups from that of predecessors has been their ability to collect and make effective use of data. A growing number of states have engaged in a “justice reinvestment” process that involves data collection and analysis of trends that drive prison populations and costs; and development and adoption of policies addressing those factors. At least 27 states have enacted justice reinvestment reforms in recent years. This strategy is characterized by reallocating funds to support effective sentencing and corrections policies and, in some states, by reinvesting a portion of the savings achieved from policy changes in programs proven to reduce recidivism. In addition, states have put ongoing evaluation and oversight into place to ensure that policy choices continue to be data-driven and that the desired results are achieved.

Data-driven decision making has been paired in states with evidence-based corrections practices and programs. These practices include the use of reliable risk and needs assessments to help identify those offenders who are more likely to reoffend and to place offenders in appropriate programs and supervision levels. Improvements and investments in supervision technology are included in legislation that is intended to cost-effectively and safely manage offenders in the community. Policy changes in many states also have included authorizing swift, certain and graduated responses to offenders who break community supervision rules.
Lawmakers in a growing number of states have addressed the drug-crime connection with policies that divert appropriate offenders to treatment; while similar initiatives focus on the mental health needs of some defendants. Other actions have addressed the costs and benefits of certain mandatory sentences for drug offenders and other nonviolent crimes. A significant policy trend trims time served for inmates who participate in and complete programs that will improve their success in the community and reduce recidivism.

Today, a resolve exists throughout state government to adopt results-based policies. Collectively, these trends in sentencing and corrections legislation are meeting states’ goals for public safety, offender accountability and cost-effective use of corrections resources.

**Adjusting Sentences**

In recent years, states have re-examined who goes to prison and for how long. Legislative action has focused on preserving costly prison space for the most dangerous offenders and on authorizing non-prison sanctions when appropriate.

The past few years have seen a steady increase in sentencing policy changes with regard to drug crimes. From 2009 to 2012, 24 states made changes to offense classification and penalties. More than half of those states authorized diversion of lower-level drug offenders into community supervision and treatment. In 2012, New Jersey lawmakers created the requirement that certain defendants who are charged with a crime that has a presumption of prison and are assessed as drug-dependent instead be sentenced to drug court supervision. A 2011 Kentucky law that made a number of changes to drug sentencing policies included a requirement that offenders convicted of first and second time drug possession receive probation or deferred prosecution. Changes to the drug laws are estimated to save the state nearly $7 million in FY 2013 and more than $11 million in FY 2014.

At least 17 states have adjusted drug penalty thresholds and classifications, with significant revisions in Arkansas, Colorado, Delaware, Georgia, Kentucky, Ohio and South Carolina. States have lowered penalties for possession of small amounts of drugs while maintaining or increasing penalties for larger quantities and drug trafficking offenses. Georgia legislation incorporated the weight of drugs into offense classes and based penalties for possession on amounts. The 2012 law also narrowed the drug offenses eligible for repeat offender sentences and reduced mandatory minimum prison terms for some drug offenses.

Georgia is among at least 15 states that have relaxed mandatory minimum sentences since 2009. Legislation in at least 10 of those states eliminated mandatory prison terms or permitted discretion for some low-level or first-time drug offenders. In 2009, Rhode Island removed mandatory minimum terms for manufacturing or selling drugs. A 2010 South Carolina law eliminated mandatory minimum sentences for first, second and some third drug possession convictions.
At least seven states in recent years have adjusted mandatory penalties for certain repeat offenders. In Massachusetts, for example, lawmakers in 2012 reduced the mandatory prison term for repeat drug manufacturing and trafficking crimes. At the same time, a new class of habitual offenders was created; a mandatory sentence applies to those who have been convicted of the most serious crimes on three separate occasions. These policies seek to balance the need to protect the public from dangerous offenders with other, more cost-effective sentencing policies for some lower-risk offenders.

Penalties for selling drugs in school zones have been modified in 11 states. Delaware, Kentucky and Massachusetts decreased the area of the school zone. South Carolina added an intent element to school zone offenses; prosecutors must now prove defendants knew they were selling drugs in school zones. Laws in Arkansas, Hawaii and Texas added additional locations—such as public housing and playgrounds—where selling drugs will now qualify for enhanced penalties.

Since 2009, at least 14 states have adjusted felony theft threshold amounts to keep pace with inflation and the increase in prices of consumer goods. In Nevada, for example, the monetary threshold had not been adjusted since 1989. Lawmakers increased the amount for a felony charge in 2011 from $250 to $650, based on the Consumer Price Index. Higher degrees of theft also were increased according to inflation rates.

Theft threshold amounts vary from state-to-state. Four states—Arkansas, Maryland, Ohio and Oregon—and the District of Columbia set new felony theft thresholds at $1,000; previous threshold amounts ranged from $200 to $750. Delaware, Georgia, Montana and Utah raised their thresholds to $1,500; up from $500 or $1,000. South Carolina increased their felony theft threshold from $1,000 to $2,000 in 2010.

Figure 1 on page 6 shows states that have made changes to their drug penalties, mandatory minimum sentences and theft thresholds.

**Improving Community Supervision**

Effective community supervision strategies can hold offenders accountable, improve results and maximize corrections resources. An emerging trend in states is requiring corrections agencies to employ policies and programs proven to reduce recidivism. In 2003, the Oregon Legislative Assembly pioneered a policy requiring phased-in implementation of evidence-based practices for all state-funded corrections programs. Since 2009, about a dozen states have required that some or all offenders in the community be supervised using practices that research and evaluation have demonstrated can reduce recidivism.

Illinois and Kentucky have adopted laws that gradually require certain programs to be based on research and evidence. The Kentucky corrections department reported that, within one year of enactment, 94 percent of prison programs in the state were evidence-based. Recent laws in Arkansas, Georgia, North Carolina, Pennsylvania, South Carolina and South Dakota require their corrections agencies to develop rules for evidence-based supervision. Reforms in California in 2011 that were designed to maximize criminal justice resources included a requirement that counties develop local plans for use of evidence-based practices.
Figure 1. Highlights of Criminal Sentencing Law Changes, 2009-2012

Amended drug offense classification and penalties

- Arizona
- Florida
- Minnesota
- North Carolina

2009

2010

2011

2012

Modified mandatory minimum penalties or sentence enhancements

- Nevada
- New Jersey
- New York
- Hawaii
- Texas
- Utah

2009

2010

2011

2012

Adjusted felony theft thresholds

- California
- Delaware
- Maryland
- Montana
- Oregon
- Washington

2009

2010

2011

2012

- Arkansas
- Connecticut
- Delaware
- Idaho
- Kentucky
- North Carolina
- Ohio
- Rhode Island

- Georgia
- Hawaii
- Illinois
- Kansas
- Maryland
- Missouri
- New Jersey
- Oklahoma

- South Carolina
- Tennessee

- South Carolina
- Utah

California also is among at least eight states in recent years to have enacted a “performance incentive funding” mechanism. These policies reimburse localities for successfully supervising some offenders in the community rather than sending them to prison. In California, more than $220 million has been distributed over three years to counties who have contributed to the statewide 33 percent decrease in probation revocations to prison. Incentive funding is one way states are avoiding a cost-shift to local jurisdictions.

The use of validated risk and needs assessments is an evidence-based practice that can be an important tool for providing effective community supervision. About one-third of states in recent years have addressed the use of assessments to help tailor supervision based on an offender’s risk of reoffending and treatment needs. Arkansas, Delaware, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, South Dakota and West Virginia recently adopted use of risk and needs assessments as part of justice reinvestment reforms. These states now require that placements, supervision and treatment be based on assessment results. Risk- and needs-based supervision strategies allow agencies to focus community resources on the highest-risk offenders and identify and place others at appropriately lower levels of supervision.

Figure 2 shows states that have engaged in a “justice reinvestment” process.

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**Figure 2. The Justice Reinvestment Process**

Since 2007, 27 states have amended their sentencing and corrections policies through a process known as “justice reinvestment.” This process typically involves:

- Analyzing jail, prison and community corrections data to identify drivers of corrections growth and spending;
- Developing and adopting policies that effectively manage corrections resources, increase public safety and improve offender accountability; and
- Measuring the impact of policy changes on both public safety and corrections budgets to ensure that projected results and benefits are achieved.

A public-private partnership of the Bureau of Justice Assistance in the U.S. Department of Justice and the Public Safety Performance Project of The Pew Charitable Trusts provides states with support and assistance with justice reinvestment initiatives.

States that have engaged in a justice reinvestment process between 2007 and 2013

Responding to Probation and Parole Violations

Offenders who are sent to prison for breaking the rules of their supervision—known as technical violations—have traditionally contributed substantially to prison populations and costs. More than half of state legislatures have taken action since 2007 to address rules violations with options other than return to prison.

More than 20 states have authorized use of graduated sanctions to respond to probation and parole violations. These policies involve clearly established non-prison sanctions that are delivered swiftly and with the severity of the sanction proportionate to the violation. Violators generally remain in the community, continue to work, pay restitution and child support, but still are held accountable for their actions. A 2011 Arkansas law permitted probation and parole officers to impose sanctions in lieu of formal revocation proceedings. The law requires officers to order sanctions—such as electronic monitoring, drug and alcohol testing, community service and treatment programs—according to structured guidelines. Within the first year of implementation, probation revocations to prison decreased by 15 percent, and parole revocations were down by 30 percent. Arkansas is among at least 15 states that now authorize supervision agencies, rather than courts or parole boards, to handle many rule violations.

Figure 3 shows the states that have authorized use of graduated sanctions, including administrative, for community supervision violations.

A growing number of states have authorized short jail stays or specialized violator facilities to provide a secure placement in lieu of sending to prison offenders who violate conditions of community supervision. During the past five years, 17 states enacted laws allowing use of short jail stays. A 2012 Missouri law allows an offender to be sent to jail for up to 48 hours for a technical violation and no more than 360 hours in a year. Delaware, Louisiana, New Hampshire and Washington have adopted sim-
Similar time restrictions for jail sanctions. At least nine states since 2007 have established specialized secure facilities to house and treat probation and parole violators. Colorado, Georgia and Oklahoma created facilities that provide six months of intensive services to probationers and parolees who violate their supervision rules. Services required under Oklahoma’s law include substance abuse, mental health and domestic violence counseling and treatment. Laws in Missouri, New Hampshire and Virginia require treatment and services for specified periods of time.

**Addressing Offender Needs**

State policies continue to address treatment needs and accountability measures for the high proportion of people in the criminal justice system who exhibit mental health and substance abuse disorders. Recent trends in state legislation include appropriately matching offenders with suitable treatment and ensuring that high-quality services are provided in community-based diversion programs.

Identifying an offender’s criminogenic needs—factors that contribute to criminal behavior—can help determine the amount and kind of programs and services necessary to address those needs. Recent laws in at least 13 states require use of this information before sentencing in order to consider appropriate community-based options. Colorado, Delaware, Idaho, Kentucky, Oklahoma, Pennsylvania, Tennessee and Washington now require that the pre-sentence investigation report include assessment results and available rehabilitation options. Assessment tools can help predict the likelihood that an individual will reoffend and identify treatment and program needs to address criminal behavior.

More than 15 states also have addressed offender needs in preparation for release from prison. As part of the 2008 justice reinvestment reforms, Vermont lawmakers required that nonviolent inmates be assessed for substance abuse needs and connected with appropriate treatment services before release. The Joint Legislative Corrections Oversight Committee reported that as of January 2013, the state had allocated nearly $2 million for expansion of substance abuse treatment services; the reinvested money comes from savings achieved due to the declining prison population.

Drug diversion programs and problem-solving courts, prevalent throughout the states, offer an opportunity for offenders to participate in intensive community-based treatment and supervision in lieu of prison. An emerging trend is to ensure that these programs—usually operated by local courts and probation departments—are delivered effectively, have access to state resources and are allowed local discretion. Alabama’s Drug Offender Accountability Act of 2010 requires the Administrative Office of the Courts to identify existing resources, explore funding opportunities and track performance measures. Since 2008, at least 17 states have codified best practices or created state oversight for treatment diversion options.

Responding to the needs of military veterans who become involved with the criminal justice system has been a significant state trend. Legislatures in at least 19 states have authorized diversion of veterans into specialized community-based treatment; 10 of these states created specialized veterans’ courts. These problem-
solving courts often include mental health and substance abuse services tailored to veterans’ specialized needs. Laws in Illinois, Kentucky, Minnesota, New Hampshire and South Dakota require that pre-sentence investigation reports that are provided to judges include diversion options for veteran defendants. A 2012 Tennessee law instructs the state Department of Veteran Affairs to identify veterans and recommend appropriate treatment options. Coordination with state and federal veterans’ agencies to administer assessments, develop supervision plans, and provide treatment and services is a common element in many of the laws designed to divert and provide services to veterans when appropriate.

**Attention to Release and Reentry**

Recent legislation has focused on prison release policies and providing offenders with skills, services and supervision to help them succeed after release. Most inmates will one day be released, and historically more than four in 10 return to prison within three years, according to a report by The Pew Charitable Trusts. Sentence credit policies and post-prison supervision have been key approaches to both keep offenders from returning to prison and keep communities safer.

Sentence credits laws—commonly known as good time and earned time—exist in 45 states and provide opportunities for some inmates to accelerate their release date. At least 32 states offer good-time credits, which generally are granted to inmates who follow prison rules and participate in required activities. Earned time is available in at least 38 states for certain inmates who participate in or complete educational courses, vocational training, treatment, work or other recidivism-reduction programs. Earned-time credits are distinguished from, and can be offered in addition to, good-time credits.

Earned time has been the focus of state attention in recent years; at least 26 states have expanded or created earned-time opportunities since 2007. Five states—Connecticut, New Hampshire, New York, North Carolina and Pennsylvania—have recently established earned-time laws. The Connecticut General Assembly created a program to award time credits to inmates who successfully participate in an individualized prison “accountability” plan. North Carolina and Pennsylvania also now require that inmates participate in a structured prison program plan in order to earn credit. Upon successful completion of the plan, North Carolina allows inmates to be eligible for release after they have served 80 percent of the minimum sentence. Judges in Pennsylvania identify eligible inmates and set special “incentive” minimum sentences that permit an inmate to be released earlier than the minimum set in the sentencing guidelines if the inmate completes assigned programming.

Figure 4 shows states that have recently created or expanded earned-time programs.

Nine states have recently created one-time credits for successful completion of certain programs. Colorado, Illinois and Oregon now allow a 60-day credit for earning educational
certificates or degrees. A 2011 Oklahoma law provides 200 days of sentence credit to inmates who complete a bachelor’s degree and 100 days of credit for those who earn an associate’s degree.

Participation in education, training, treatment and other productive programs can both reduce time served and accompanying costs; it also can improve opportunities for those offenders when they return to the community. A decrease in the North Carolina prison population during the second half of 2011 was partly attributed to a change in awarding earned-time credits, according to the state’s sentencing commission.

Between 2010 and 2013, eight states—Kansas, Kentucky, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina and West Virginia—passed laws requiring a period of post-prison supervision. This supervision provides offenders with a formal link to transitional support services and enables corrections agencies to monitor offenders during their initial return to the community. South Carolina’s Omnibus Crime Reduction and Sentencing Reform Act of 2010 included a requirement that nonviolent offenders serve the final 180 days of their sentences in the community, under supervision; violent offenders already were required to complete a period of post-prison supervision. A South Carolina study commission found that, in 2009, more than half of all inmates left prison without supervision; many chose to “max out” their sentences in prison rather than be paroled. Under the new policy, all offenders must receive supervision upon their release, when risk of reoffending is the highest.

Results

Today, states have available more and better information about what works to reduce crime and control corrections costs. This is reflected in many trends seen in recent state sentencing and corrections legislation. The most ambi-
tious policy changes require time to properly implement and evaluate. This includes developing agency policy, providing for staff training, and establishing measurements and oversight. Projections and early data in a number of states show that results are being achieved in public safety, cost control, decreasing prison populations and reduced recidivism. In some states, declines in prison populations have allowed prisons to be consolidated, closed or repurposed.

In Texas, a 2007 package of laws included adoption of graduated sanctions for technical violations of community supervision, in addition to expansion of and improvement to mental health and substance abuse treatment services for offenders both in prison and in the community. These changes paved the way for closure of a prison in 2012, the first in the state’s history. Facing estimated prison growth of more than 20 percent in 2008, the Vermont General Assembly expanded diversion and treatment opportunities, required risk and needs assessments, and focused resources on high-risk offenders. As of January 2013, the state’s prison population had declined by nearly 5 percent.

Georgia legislation in 2012 is projected to avert prison population growth of about 1,000 inmates during the next five years, with estimated savings of at least $264 million. Six states—Delaware, Georgia, Hawaii, Missouri, Oklahoma and Pennsylvania—that adopted justice reinvestment legislation in 2012 have collectively projected corrections savings of nearly $685 million during the next five to 10 years. These recent trends in state sentencing and corrections legislation represent a significant new direction for more effective and cost-sensitive approaches to crime and safety.
Appendix


Adjusting Sentences


Ala. HB 376 (2012); Ariz. HB 2315 (2009); Ariz. HB 2374 (2012); Ark. SB 736 (2011); Ark. SB 750 (2011); Calif. SB 18 v. 3x (2009); Calif. SB 1449 (2010); Colo. HB 1338 (2010); Colo. HB 1352 (2010); Colo. SB 96 (2011); Conn. SB 1014 (2011); Del. HB 113 (2009); Del. HB 19 (2011); Fla. SB 1722 (2009); Ga. HB 1176 (2012); Hawaii SB 2650 (2012); Hawaii HB 2515 (2012); Idaho HB 225 (2011); Ill. SB 1699 (2011); Ill. SB 3423 (2012); Kan. HB 2318 (2012); Ky. HB 463 (2011); La. HB 43 (2010); La. HB 1068 (2012); Md. HB 66 (2009); Md. HB 517 (2010); Md. SB 214/HB 350 (2012); Md. HB 96 (2012); Mass. SB 2583 (2010); Mass. HB 3818 (2012); Mich. HB 4920 (2010); Mich. SB 2209 (2012); Minn. SF 802 (2009); Mo. HB 1525 (2009); Mo. HB 111 (2011); Mont. SB 476 (2009); Nev. AB 239 (2009); Nev. AB 142 (2011); N.J. AB 2762 (2009); N.J. SB 881 (2012); N.Y. AB 156 (2009); N.C. SB 488 (2009); N.C. HB 642 (2011); N.D. SB 2223 (2011); Ohio HB 86 (2011); Okla. HB 3052 (2012); Ore. HB 2323 (2009); Pa. HB 396 (2011); Pa. SB 100 (2012); R.I. HB 5007/SB 39 (2009); R.I. SB 2253 (2012); S.C. SB 1154 (2010); Tenn. HB 2813 (2010); Texas HB 2467 (2009); Texas HB 3384 (2011); Utah HB 317 (2009); Utah SB 10 (2010); Va. SB 159/HB 968 (2012); Wash. SB 6167 (2009).

Improving Community Supervision


Responding to Probation and Parole Violations


Ala. SB 325 (2010); Ark. SB 750 (2011); Calif. SB 18 v. 3x (2009); Calif. AB 109 (2011); Colo. HB 1360 (2010); Del. SB 226 (2012); Ga. SB 24 (2009); Ga. HB 1176 (2012); Ill. SB 1289 (2009); Ind. HB 1200 (2012); Kan. HB 2170 (2013); Ky. HB 463 (2011); La. HB 415 (2011); Md. HB 919/SB 801 (2011); Mo. HB 1525 (2012); Nev. AB 510 (2007); N.H. SB 500 (2010); N.Y. AB 156 (2009); N.C. HB 642 (2011); Ohio HB 86 (2011); Okla. HB 3052; Pa. HB 4 (2008); Pa. SB 100 (2012); S.C. SB 1154 (2010); S.D. SB 70 (2013); Texas SB 166 (2007); Va. HB 792 (2010); Va. SB 451/HB 1205 (2008); Va. HB 611/HB 682 (2008); Wash. SB 6204 (2012); W.V. HB 2726/SB 371 (2013); Wyo. SB 32 (2008).

Addressing Offender Needs


Ala. HB 348 (2010); Colo. SB 234 (2008); Del. SB 226 (2012); Idaho HB 648 (2012); Ill. HB 2281 (2009); Ky. HB 377 (2010); Ky. HB 463 (2011); Minn. HB 2296 (2008); N.H. HB 295 (2009); Okla. HB 3052 (2012); Pa. SB 1161 (2010); S.D. SB 70 (2013); Tenn. SB 104 (2009); Tenn. SB 3222/HB 2294 (2012); Va. HB 859 (2008); Wash. HB 1791 (2009).

Attention to Release and Reentry


Ark. SB 750 (2011); Calif. SB 18 v. 3x (2009); Calif. AB 2127 (2012); Colo. HB 1263 (2009); Colo. HB 1351 (2009); Colo. HB 1374 (2010); Colo. HB 1223 (2012); Conn. HB 6650 (2011); Del. SB 320 (2010); Del. SB 226 (2012); Ill. SB 2621 (2012); Kan. SB 14 (2007); Kan. HB 2170 (2013); Ky. HB 1a (2010); Ky. HB 546 (2010); Ky. HB 463 (2011); La. HB 121 (2008); La. HB 62 (2009); La. SB 312 (2010); La. HB 228 (2012); La. HB 994 (2012); Mass. SB 2583 (2010); Miss. SB 2039 (2009); Miss. HB 1136 (2010); Neb. LB 712 (2010); Nev. AB 510 (2007); N.H. SB 500 (2010); N.Y. AB 156 (2009); N.Y. SB 7864 (2010); N.C. HB 335 (2010); N.C. HB 642 (2010); N.D. SB 214I (2011); Ohio HB 86 (2011); Okla. SB 137 (2011); Okla. HB 3052 (2012); Ore. HB 3508 (2009); Ore. SB 1007a (2010); Pa. HB 4 (2008); S.C. SB 1154 (2010); Texas HB 2649 (2011); Wash. HB 1361 (2009); W.Va. HB 2419 (2009); W.Va. HB 3205 (2011); W.Va. SB 371 (2013); Wis. AB 216 (2008).

Results


Committee on Legislative Research. *Fiscal Note for Truly Agreed to and Finally Passed SCS for HCS for HB 1525, L.R. No. 5562-08.* Jefferson City, Mo.: May 29, 2012.


Del. SB 226 (2012); Ga. HB 742 (2012); Ga. HB 1176 (2012); Hawaii SB 2776 (2012); Hawaii HB 2514 (2012); Mo. HB 1525 (2012); Okla. HB 3052 (2012); Penn. SB 100 (2012); Penn. HB 135 (2012); Texas SB 166 (2007); Texas HB 1 (2007); Texas HB 1678 (2007); Texas HB 3736 (2007); Vt. HB 859 (2008).
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