

CRIME AND TREATMENT

OVERCROWDED PRISONS AND ADDICTED INMATES ARE A TOUGH CHALLENGE FOR LAWMAKERS.

BY DONNA LYONS

With a prison population that surged 12 percent from 2007 to 2008, Kentucky lawmakers are looking for solutions.

They think they have found one in a measure passed last year that offers some felony offenders the option of substance abuse treatment in lieu of criminal charges.

“This represents a culture change in dealing with addicted offenders,” says former Senator Dan Kelly, the key sponsor of the measure who has since taken a circuit court judgeship.

The policy is expected to save millions of dollars by diverting offenders from prison and also could save the lives of those who complete the treatment. “It’s one of those fairly small changes to law that will have significant policy impact,” Kelly says.

Kentucky’s problem is also a national one. Substance abuse offenders make up 20 percent of inmates in state prisons. Abuse and addiction, however, play a much larger role. Some 80 percent of offenders abuse drugs and alcohol, and nearly half of jail and prison inmates are thought to be clinically addicted.

TWO-PRONGED APPROACH

Kentucky’s approach is to screen felony defendants for substance abuse. Some are diverted to community-based services; others with more serious problems and criminal records are referred to an intensive, secure substance abuse treatment program run by the department of corrections.

“There would be a sense of justice denied if there was no secure confinement option in

this,” Kelly says. “This gives those serious offenders an opportunity for pretrial diversion if they demonstrate commitment to treatment.”

About 200 felons can be held in secure treatment at a time for an estimated savings of \$1.4 million in the first year. Long term, supporters of the legislation say cost savings will be about \$40 million.

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FORMER KENTUCKY SENATOR
DAN KELLY

Kentucky currently has 20 corrections-based substance abuse treatment programs in prisons and jails. A study of the programs started in 2005 found reductions in recidivism and substance abuse among the participants. Reported drug use drops more than 50 percent during the 12 months following release as compared with before treatment. And more than two-thirds of participants are not in prison or jail 12 months later.

“It pays for itself,” said Senator Ed Worley, who was among sponsors of the legislation aimed at stopping the revolving door for repeat drug offenders. “There are too many repeat offenders with drug problems filling up our jails and prisons. We need to rehabilitate them so they can contribute to society, rather than repeatedly drain our revenues.”

In 2007, the Texas Legislature authorized 5,000 more beds for short-term treatment in the state’s corrections system. At the time, the state was facing prison growth projections that would require 17,000 new prison beds by 2012. The treatment beds and other community-based substance abuse and mental health treatment programs were approved as an alternative to prison construction. Texas is now seeing its prison population decline along with fewer probation and parole revocations.

Representative Jerry Madden of Texas calls state funds spent for drug, alcohol and mental health programs a “reinvestment strategy” that pays off.

“If we provide reentry services that work, the public is safer. If we provide drug treatment that works, the public is safer,” Madden says. Not only that, he said the state is approaching \$1 billion in savings as a result of the reinvestment begun three years ago.

EXPLOSIVE GROWTH

States also have turned to specialty drug courts to help break the cycle of drugs and crime. The growth of these courts is nothing short of amazing.

The first drug court began in 1989 in Dade County, Fla., at a time when crack cocaine was overwhelming criminal justice systems elsewhere. Florida officials, including



SENATOR
ED WORLEY
KENTUCKY

Donna Lyons heads NCSL’s criminal justice program.

DRUG ABUSE: BY THE NUMBERS



REPRESENTATIVE

JERRY MADDEN

TEXAS

then-Florida Attorney General Janet Reno, developed and piloted the model of drug treatment under close judicial supervision. Two decades later, there are more than 2,100 operating drug courts around the country in all states, with more planned.

Florida's programs, funded largely by local and state money, are presently expanding in nine counties using federal stimulus money. Each year, about 10,000 Florida offenders enter drug court supervision, and current expansion will add as many as 2,000 people statewide.

Drug court professionals hail the ability of specialty courts to get and keep people in treatment while saving corrections money. But others advocate that addiction should be treated as a public health concern rather than a criminal justice matter.



\$11.3 BILLION

Growth in federal drug control budget from FY 1988 to FY 2009—\$2.8 billion to \$14.1 billion.



2,147

Total number of drug courts in the United States since the first opened in 1989.



1.7 MILLION

Drug abuse violation arrests in 2008, 12.2 percent of all arrests that year.



MORE THAN 1 MILLION

Number of people in specialized alcohol or drug treatment on any given day.



\$135.8 BILLION

Amount states spent on substance abuse and addiction in 2005.

Sources: FBI Uniform Crime Reports, National Center on Addiction and Substance Abuse at Columbia University, National Drug Court Institute, Substance Abuse and Mental Health Services Administration, White House Office of National Drug Control Policy.

HAWAII OFFERS HOPE

In 2004, Hawaiian Circuit Court Judge Steve Alm took a new approach to dealing with “high-risk” drug offenders on probation.

The pilot program, Hawaii's Opportunity Probation with Enforcement, or HOPE, provided 35 offenders on the verge of being sent back to prison with one final chance to get clean and comply with the rules.

Offenders considered at high-risk attended a formal “warning hearing” and were notified that violations would result in swift and certain sanctions. When a violation—missed appointment, drug use or other violation of probation—occurred, the person on probation was immediately summoned before the judge and given a sanction, such as a short jail term served on the weekend, progressing in length for additional violations. Drug treatment was not mandatory and was ordered only if the person requested it or had repeated violations related to drug use.

Research comparing HOPE probationers to “probation-as-usual” caseloads found reduced drug use, better compliance with

rules and reduced recidivism. During the first six months of participation in HOPE, the rate of positive drug tests fell by 93 percent and missed probation officer appointments dropped from 14 percent to 1 percent. Research also concluded that “probation-as-usual” offenders were three times more likely to be sent to prison than HOPE probationers.

Judge Alm's leadership in the development of HOPE led to early success. In 2007, the Hawaii Legislature appropriated funds to continue and expand the program. By 2009, the program had more than 1,500 participants and now permits domestic violence and sex offenders to participate.

Sustained success has been attributed to these factors:

- ◆ The basic tenets of the program—clear behavior expectations, swift action upon violation, certainty of punishment, and the least amount of punishment necessary for the violation—mean that offenders must change their behavior to succeed.

- ◆ Coordination, cooperation and buy-in from agencies involved in running the pro-

gram—the court, probation, law enforcement, attorneys and treatment providers—are crucial, and some question if other programs will work as well without it.

Programs with similar principles have been replicated in other jurisdictions around the country. The South Dakota court-based 24/7 Sobriety Project applies “swift, certain and meaningful consequences” to people who repeatedly are arrested for driving under the influence. A planned replication in Clark County, Nev., also is in the works.

The success of HOPE and additional efforts throughout the country on policies that aim to reduce spending on corrections, control growth in the prison population and increase public safety have gained attention at the national level. In November 2009, two bills were introduced in Congress. One would authorize a national HOPE program, and a second would provide grants to states for “justice reinvestment,” a strategy currently underway in a number of states that analyzes criminal justice data to identify and implement cost-saving policies.

—Alison Lawrence, NCSL

The National Association of Criminal Defense Lawyers issued a report in late 2009 after a task force spent two years studying the courts. Its findings question the effect of drug courts and assert that minorities, immigrants and the poor often are under-represented in drug courts.

“Drug courts have not slowed the rise in either drug abuse or prison costs,” says Cynthia Orr, president of the group. She says it’s time to ask if our national drug policy is working and look at shifting focus to a public health-centered approach.

CALIFORNIA COLLABORATION

The largest scale criminal justice-drug treatment collaboration to date is underway in California.

Proposition 36, approved by voters in 2000, provides treatment instead of incarceration for nonviolent drug offenders. From 2002 through mid-2008, 340,000 drug offenders were referred and 242,000 were placed in treatment under the policy.

California Assemblyman Tom Ammi-ano, who chairs the Committee on Public Safety, says treatment policy is a sensible way to stretch limited criminal justice resources. “California’s budget and prison overcrowding crises are invariably linked—and so are their solutions,” he says. Ammi-ano says public safety and rehabilitation can be successfully integrated, and he’s interested in back-end policies, as well, like improving access to treatment for drug-addicted parolees.

Proposition 36 programs have evolved to include graduated levels of service to meet a variety of substance abuse needs, says Millicent Gomes, the deputy director of the Office of Criminal Justice Collaboration in the California Department of Alcohol and Drug Programs. She notes that after 30 months, arrest rates of those who complete treatment are lower than for others who do not receive treatment.

“Jail and prison costs are offset,” Gomes



ASSEMBLYMAN
TOM AMMIANO
CALIFORNIA

says. “There are benefits and costs avoided in many other areas, such as emergency rooms and family services.”

Most state-level drug court funding has been sustained in California, but many county-level diversion programs have suffered from the state’s fiscal crisis. A 2008 study by the University of California, Los Angeles, found the effectiveness of the policy was undermined by inadequate funding, even while it has saved taxpayers millions of dollars. The principal investigator on UCLA’s Proposition 36 studies, Darren Urada, said it was exciting to find a tool like this in a current climate of budget cuts. The researchers warned, however, that shrinking and unpredictable funding will erode the benefits.

Even so, Gomes says the nearly decade-

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CYNTHIA ORR, PRESIDENT, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

old policy in California has created the kind of culture change other states seek in dealing with offender addicts. She said Proposition 36 has institutionalized a continuum of care model that can withstand tough economic times

Despite the tough fiscal situation facing California, Gomes says, support remains strong from many lawmakers and the public for the diversion approach.

In Kentucky, the diversion legislation quickly garnered bipartisan support in both chambers and from other branches of government, Kelly says. He points to two reasons the policy passed unanimously in both houses.

“There is a clear recognition that our criminal justice system can do better with addicted offenders,” he says. “And, I don’t know of any family that isn’t affected in some way by addiction. So there is a great deal of understanding and emotion about this.”

CHECK OUT a Q and A with the deputy director of the White House Office of National Drug Control Policy at www.ncsl.org/magazine.