

7 THINGS LAWMAKERS NEED TO CONSIDER WHEN REFORMING CORRECTIONS POLICY.

BY DONNA LYONS

State lawmakers are reforming sentencing laws and correction policies across the country. They have two key objectives: Quickly cut state spending on corrections and ensure public safety is protected in the future.

With one in 100 American adults behind bars and one in 31 under correctional supervision, many lawmakers are questioning traditional assumptions about prison and rehabilitation. Recent studies and reforms show states can be smarter on crime and easier on taxpayers. Many new policies not only look to hold offenders accountable, reduce crime and victimization, but also to be sensitive to corrections costs.

A recent NCSL work group looked at this issue and developed seven principles of effective state sentencing and corrections policies.

Principle 1. *Make sentencing and corrections policies fair, consistent, proportionate and with the opportunity for rehabilitation.*

States have modified drug sentencing laws, including allowing many nonviolent offenders to be under community supervision and receive substance abuse treatment. Since 1973, New York has had some of the nation's toughest mandatory sentences for drug offenses, referred to as the Rockefeller drug laws because they were signed into law by then-Governor Nelson Rockefeller. Over several years, the New York Legislature has revised the penalties for nonviolent drug crimes, expanded eligibility for treatment, and, most recently, allowed some offenders sentenced under the Rockefeller laws to apply for resentencing.

This year in Kentucky, the General Assembly established new drug quantity thresholds to distinguish drug users from more serious drug traffickers. Increasingly, state policies call for broadly screening felony defendants for substance abuse, diverting some to community supervision and sending others to secure treatment.

“For possession offenses, we always just locked them up and they come back out in the same position, with the same problems as before, but now they also have a criminal record,” says Kentucky Senator Tom Jensen. “By deferring prosecution and providing an opportunity for treatment, there is a chance to turn your life around and avoid that record.”

Principle 2. *Have a sentencing rationale that is clear and purposeful, and make related policies logical, understandable and transparent.*

States that have successfully reduced the growth in prison populations and its associated costs have worked specifically on reducing the high rates of recidivism. More than 40 percent of parolees nationwide return to prison within three years for new crimes or violating the terms of their release, according to the Pew Center on the States.

Faced with a growing prison population and projections that Texas would need at least \$2 billion in the next five years for prison construction, lawmakers in 2007 identified and focused on the key issues leading people back to prison or keeping them there: breaking rules, a shortage of substance abuse and mental health treatment programs, and a low parole approval rate. Instead of spending \$523 million on new prisons, the Legislature used \$241 million to expand treatment in prison and community settings; establish maximum parole caseloads; limit the length of probation for drug and property offenses; and pay local agencies to supervise and punish those who violate probation and parole rules. These reforms saved \$443 million during the 2008-2009 biennium and allowed the state to spend more money to reduce the number of people who return to prison.

“By reducing prison populations and shifting the focus from how many people can we lock up to reducing crime and recidivism rates, we are achieving safer streets and communities at a lower cost to taxpayers,” says Representative Jerry Madden of Texas.

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Principle 3. *Make available a continuum of options, including prison space and community programs.*

States are increasing the options available for suitable offenders, both to get more for their money and to ensure prison space is available for the most dangerous criminals. Community supervision options—electronic monitoring, residential programs and problem-solving courts—are far less costly than putting someone in jail or prison and usually provide more supervision than traditional probation or parole. Substance abuse and mental health treatment, both residential and in the community, often can address issues that lead people to commit crimes. Increasingly, states are allowing courts and agencies to tailor supervision based on a person’s treatment needs and likelihood of committing another crime.

In 2010, state leaders in North Carolina, concerned about a 10 percent increase in prisoners forecast by 2020, considered how to improve community supervision and make the best use of treatment resources. The resulting Justice Reinvestment Act passed by the General Assembly this year requires supervision for everyone released following a felony conviction.

“Approximately 15,000 people who would have walked out of prison with no accountability now will be supervised and held accountable for following the law,” says Representative David Guice of North Carolina. The legislation was designed, he says, to balance the dual goals of increasing public safety and reducing spending on corrections.

The law allows rule violations—such as missing appointments or drug tests—to be addressed with sanctions such as electronic monitoring or strict curfews rather than prison time. The law also calls for focusing supervision and treatment on people with the highest risks and needs. It offers incentives for prisoners to participate in programs and supports diverting some people convicted of drug felonies to community treatment.

“If we do not deal with the underlying issues and provide treatment and supervision for offenders coming out of prison,” Guice says, “we’ll see them at the front door of the courthouse again.”

Principle 4. *Require policies to be resource sensitive, and costs and benefits to be measurable.*

Lawmakers want proof that programs to reduce crime actually do. To help guide policy and budget decisions, Oregon, a pioneer in evaluating the success of corrections programs, has data on nearly all of its prison programs and almost two-thirds of its community-based programs. The Illinois Crime Reduction

Act of 2009 similarly requires the gradual move to evaluating all policies to be sure resources are used only for services and programs that effectively reduce recidivism and improve the success of parolees when they are released from prison.

In Kansas, officials set a goal in 2007 of reducing by at least 20 percent probation rule violations that often send offenders back to prison. Local probation agencies established intensive supervision of offenders who are at the greatest risk of not complying with requirements.

“Within a couple of years, we had data from the Department of Corrections reporting a 25 percent decrease in revocations,” says Representative Janice Pauls of Kansas. “Not only did we exceed the goal set, but the Legislature also established benchmarks and required program data that help us identify and build on results-based policy.”

Kansas lawmakers modified their goals this year, giving grant preference to counties with a 75 percent supervision success rate or a 3 percent annual improvement in that rate.

“We want to keep the bar high, keep the carrot there to make sure funding yields continued improvement in community supervision,” says Pauls.

Principle 5. *Use justice information as a foundation to guide decision making.*

Good policy requires good information. States have been improving their data collection, analysis and technology on criminal justice trends and costs to craft policies that produce results and lower costs.

Lawmakers are adopting the concept of “justice reinvestment,” reducing spending on corrections and reinvesting savings in programs that have demonstrated they increase public safety and hold offenders accountable.

Arkansas legislators and other officials analyzed the state’s sentencing and corrections data to develop the Public Safety Improvement Act, passed earlier this year. They believe the reforms will reserve prison space for the most dangerous criminals, strengthen community supervision, and distinguish drug users from career criminals. New reporting requirements, data collection and performance reports also were required under the act.

“One of the things I learned as part of this process was that we did not have a good system for collecting and compiling the information we need to make decisions,” says Senator Jim Luker of Arkansas.

State officials expect the new law to save \$875 million in prison construction and operating expenses through 2020.

“It requires patience,” Luker says. “We won’t know results and trends overnight, but we will have information so we know and can continue what is working.”

“Violent and career criminals belong behind bars, and for a long time. ... We recognize other nonviolent, lower-level offenders also fill our prisons and that there are other more effective approaches for dealing with them.”

*—Senator Gerald Malloy
of South Carolina*



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