THINGS LAWMAKERS **NEED TO CONSIDER** WHEN REFORMING CORRECTIONS POLICY.

BY DONNA LYONS

tate 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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-Kentucky Senator

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 nonviolent, lower-level offenders also of prison with no accountability fill our prisons and that there are 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."

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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.

other more effective approaches for 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

> 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."



Senator Tom Jensen Kentucky



Representative Jerry Madden Texas



David Guice North Carolina



Janice Pauls Kansas



Jim Luker Arkansas

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Gerald Mallov South Carolina



Michael Costello Massachusetts

Principle 6. Allow policies to reflect current circumstances and

In many states, felonies are based on outdated definitions. In some states, for example, stealing a \$500 laptop could be a felony. In many instances, however, that \$500 limit was set years ago and never adjusted as the price of consumer goods increased.

Since 2000, nearly half the states have adjusted monetary thresholds for theft. Arkansas' recent act included raising the felony threshold from \$500 to \$1,000 to reduce the number of felony convictions for low-level crimes. It also created a new felony class for theft with a value of less than \$5,000. In Colorado, recent changes require the Division of Criminal Justice to consult with state economists and recommend changes to the threshold amount to the General Assembly every five years.

Of the 24 states that enacted "three strikes" sentencing laws in the early 1990s, at least 16 have made notable changes. In particular, states have eliminated or narrowed life without parole penalties and replaced mandatory sentences with sentencing ranges. South Carolina last year eliminated mandatory minimums for drug offenses below trafficking, but added certain violent crimes to those that require the inmate to serve 85 percent of the sentence.

"The 2010 reforms were balautomatically be denied a shot anced," says Senator Gerald Malloy of South Carolina. "Violent and career criminals belong behind bars, —Massachusetts Representative and for a long time, and the expense of locking them up is well justified. We recognize other nonviolent, lower-level offenders also fill our prisons and that there are other, more effective approaches for dealing with them."

Principle 7. Include strategies to reduce crime and victimization, and use available resources.

Efforts to reduce crime do not necessarily begin and end in criminal justice systems. They also can include prevention, family services, health, labor, and other state policies and agencies. Many legislatures are elevating the importance of transition supervision and assistance for inmates when they're released into the community. Florida lawmakers require local communities to provide services for housing, health care, education, substance abuse treatment and employment for recently released offenders.

To help parolees find a job after they are released from prison, in 2010 Massachusetts reduced the number of years required before conviction records can be sealed, gave employ-



ers more access to the state's criminal records, and improved the data in those records. The policy also prohibits an employer from requiring information on criminal records on initial job application forms. Having a job increases an ex-offender's ability to find housing and health care, support a family, and comply with court-ordered debts and restitution.

"This gives a foot in the door to qualified applicants who otherwise would be overlooked in a competitive hiring process," says Massachusetts Representative Michael Costello. "We really believe employers should have an accurate picture of a prospective employee, and that people with a record shouldn't automatically be denied a "We really shot at a job."

A national survey last year for the believe employers should Public Safety Performance Project of the Pew Center on the States found have an accurate picture of a strong public support among regprospective employee, and that istered voters for the types of sentencing and corrections reforms people with a record shouldn't currently being undertaken in the states. Pew reports 91 percent of those surveyed agreed or strongly agreed with the statement: "It does not matter whether a nonviolent offender is in prison for 21 or 24 or 27 months. What really matters is the system does a better job of making sure that when an offender does get out, he is less likely to commit another crime."

> This is the real return we want on our corrections dollar, says Madden.

> "We all know the environment we are in, trying to manage government resources and meet fundamental requirements of public safety," he says. "We haven't always done that so well, but increasingly we have information and opportunity to do it better."

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Michael Costello

Read an interview with Denise E. O'Donnell, director of the Bureau of Justice Assistance at the U.S. Department of Justice, and NCSL's publication "Principles of Effective State Sentencing and Corrections Policy: A Report of the NCSL Sentencing and Corrections Work Group" at www.ncsl.org/magazine. You also can view videos of legislators discussing the reform principles.