



# THE STATE OF CORRECTIONS

In September, NCSL and the Public Safety Performance Project of the Pew Center on the States convened a group of state lawmakers to discuss sentencing and corrections policies. This discussion included the size of the problem states face, policies that have contributed to the burgeoning prison population, political considerations, new approaches and how the recession affects potential solutions.

**State Legislatures: What's the current situation in your state with corrections populations and costs? How are corrections affected by the overall fiscal situation in your state, and vice versa?**

**Senator John Kissel (Connecticut):** In my state of 3.3 million we have 19,618 inmates. There are six correctional facilities with some 8,000 inmates just in my district. In the last six months we've gone from no deficit to a

\$300 million deficit. So these are scary fiscal times.

**Assemblywoman Sheila Leslie (Nevada):** We're in fiscal crisis because two-thirds of our state budget revenues come from sales and gaming taxes, but when the national economy is in recession, not as many people come to Las Vegas. Dealing with Nevada's high incarceration rate definitely is becoming about the money. Nevada's prison population has grown 58 percent in the last 10 years and is projected to grow another 61 percent in the next 10 years.

**Representative Roger Goodman (Washington):** Washington has a corrections budget of about \$1 billion a year. We have one of the lower incarceration rates, and a high supervision rate. We are a state without an income tax, so our budget goes up and down with the booms and the busts. Today we face a \$3.2 billion deficit in a \$36 billion budget. It's very distressing

## WHO IS BEHIND BARS IN AMERICA

- 1 in 9: Black men ages 20-34
- 1 in 15: Black men ages 18 or older
- 1 in 36: Hispanic men ages 18 or older
- 1 in 54: All men ages 18 or older
- 1 in 100: Black women ages 35-39
- 1 in 106: White men ages 18 or older
- 1 in 265: All women ages 35-39
- 1 in 297: Hispanic women ages 35-39
- 1 in 355: White women ages 35-39

Source: *One in 100: Behind Bars in America 2008*, The Pew Center on the States

trying to figure out what to cut. It's not going to be education, particularly K-12. Some would also take corrections off the table.

**Senator Stewart Greenleaf (Pennsylvania):** In 1980 we had a few thousand people in our penitentiaries. Today we have nearly 48,000

inmates, a 450 percent increase. Over that same time Pennsylvania's population increased only 3.5 percent. The corrections budget is now \$1.6 billion and growing. It's almost as much as higher education while we are facing hundreds of millions of dollars in deficits. Between now and 2012 we're going to have to build penitentiaries at \$200 million each, with another \$50 million to operate them. And if we don't do anything else, we'll have to build a penitentiary every year at those costs for the foreseeable future.

**Senator Lena Taylor (Wisconsin):** We too have seen significant increases in incarceration, yet violence continues to increase in certain areas. We have a huge budget deficit and we're also concerned about a drop in federal Byrne Justice Assistance Grant money that we have used for programs that reduce the number of prisoners. In Milwaukee County, for example, a program the DAs are doing has diverted 300 felons, but I'm getting calls about needing money to keep it going.

**Representative Terrance Carroll (Colorado):** We continue to increase our corrections budget, and it has contributed to a budget mess for the state. With 4.5 million people in the state, we have 23,000 people incarcerated. Corrections takes up about 8 percent of our state general funds. When I was first elected six years ago, a financial downturn meant we had to take nearly \$3 billion out of the state's \$14 billion general fund budget. Yet we continue to increase our corrections budget. Almost 40 percent of our inmates are in private prisons because we can't afford to build more prisons.

**Representative Linda Myers (Vermont):** We, too, don't have enough beds in Vermont, so we send 561 inmates to out-of-state, for-profit facilities, many in Kentucky, some in Tennessee. In the past 10 years we've had an 80 percent increase in our prison population. In 1996 our corrections budget was \$48 million. This year we are going to spend almost \$130 million.

**REPRESENTATIVE TERRANCE CARROLL, COLORADO**

Carroll is speaker of the House and has served as chairman of the House Judiciary Committee. He is an attorney, a former policeman and has run a youth ministry. He sponsored legislation that created the Colorado Commission on Criminal and Juvenile.

**Prison population:** 23,000

**FY 2009 general fund budget shortfall:** \$600 million.



**REPRESENTATIVE PAT COLLTON, KANSAS**

Collton is an attorney and has served on the Judiciary Committee. She co-sponsored legislation to fund community corrections and set guidelines for awarding inmate good time.

**Prison population:** 9,000

**FY 2009 general fund budget shortfall:** \$136 million



**REPRESENTATIVE ROGER GOODMAN, WASHINGTON**

Goodman is an attorney and has served as vice chair of the Judiciary Committee. He is the former executive director of the Washington State Sentencing Guidelines Commission, and is a criminal justice policy consultant for the King County Bar Association.

**Prison population:** 18,000

**FY 2009 general fund budget shortfall:** \$413 million



**SENATOR STEWART GREENLEAF, PENNSYLVANIA**

Greenleaf has been chairman of the Judiciary Committee for 24 years. He is a former district attorney and continues to practice law. He sponsored legislation that set guidelines for probation and parole revocations and created a program to reduce recidivism.

**Prison population:** 48,000

**FY 2009 general fund budget shortfall:** \$2 billion



**SENATOR JOHN KISSEL, CONNECTICUT**

Kissel is an attorney and a member of the Joint Judiciary Committee. He sponsored legislation to address evidence-based practices in probation supervision.

**Prison population:** 19,000

**FY 2009 general fund budget shortfall:** \$391 million



**ASSEMBLYWOMAN SHEILA LESLIE, NEVADA**

Leslie is the majority whip in the Assembly. An attorney, she is the specialty courts coordinator for the District Court in Reno, which includes one of the largest mental health courts in the country.

**Prison population:** 13,000

**FY 2009 general fund budget shortfall:** \$337 million

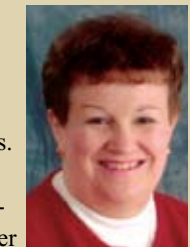


**REPRESENTATIVE LINDA MYERS, VERMONT**

Myers has served as vice chair of the Committee on Corrections and Institutions. She was a journalist before being appointed to the Legislature after the death of her husband.

**Prison population:** 2,100

**FY 2009 general fund budget shortfall:** \$88 million



**SENATOR LENA TAYLOR, WISCONSIN**

Taylor is a former member of the Assembly and currently chairs the Committee on Judiciary, Corrections and Housing. She has been a public defender and has practiced law as a private attorney.

**Prison population:** 20,000

**FY 2009 general fund budget shortfall:** \$281 million



**Note:** Prison populations as of January 2008. FY 2009 budget shortfalls as of November 2008.

**Representative Pat Colloton (Kansas):** Four years ago, we were looking at spending \$186 million building prisons and spending maybe \$300 million more over 10 years to maintain prisoners in those beds.

**SL: What policies or factors in your state seem to be contributing the most to the growth of prison populations and costs?**

**Myers:** We went through a period of “Let’s get tough on crime and put people in prison and keep them there.” A couple of years ago, for instance, we did away with good time.

**Kissel:** In Connecticut we have truth in sentencing, requiring a violent offender to serve 85 percent of his or her time before even being considered for parole. If you are non-violent, you have to do at least 50 percent of your sentence.

**Greenleaf:** We’ve concentrated on violent offenders, but we’ve thrown our net out there too widely. Our prisons now are filled with nonviolent, first-time offenders, and with no noticeable increase in public safety. Easily 70 percent of the new offenders are not violent. One of the big contributors to prison overcrowding is technical parole violators. We put people back into prison for failing a drug test, even ones who otherwise are successfully reestablishing themselves in the community. That’s a terrible waste of money.

**Taylor:** A large percentage of the people in our institutions have violated probation or parole, not committed new offenses. Often, probation and parole agents are not helping them succeed, but are just looking for them to fail. And about 83 percent of the individuals coming into our prisons have mental health, alcohol or drug addiction issues. We don’t do an adequate assessment of offenders in our system, or have adequate programs for them. Of the people who come into our prison system, 46 percent are African American, while African Americans are only about 6 percent of the population.

**Goodman:** We have now converted one of our prisons to a special facility for parole violators, and I agree it wastes our resources to lock up people who are not a threat. We have a lot of people in prison for drug crimes and not enough treatment available. And we also have racial disparities in Washington, with 30 percent of our prisoners African American, while African Americans are only 3 percent of our population.

**Carroll:** During our last budget turndown, we

## CORRECTIONS SPENDING

States spent about 5.3 percent of their general fund budget on corrections in FY 2008, estimated at \$39.8 billion, according to the latest NCSL report on state expenditures.

The vast majority of state funding for corrections was from general fund spending with earmarked revenues accounting for only about \$332 million of the total.

California spends more than any other state on corrections, about \$7.9 billion in FY 2008. At the other end of the spectrum, South Dakota and North Dakota reported spending \$53.8 million and \$56.6 million respectively.

Spending for adult corrections in 2008 grew 7.5 percent. Based on originally enacted budgets, it is projected to grow 2.2 percent this fiscal year, reflecting the overall slowdown in appropriations growth rates because of the recession.

Spending for adult corrections in 2008—6 percent of state budgets on average—has been consistent for the past two decades. Corrections spending in FY 2009 is projected to increase slightly, to 5.4 percent of general fund spending. The percent of the general fund budget spent on corrections compares to K-12 education (32.9 percent), Medicaid (15.1 percent) and higher education (10.8 percent).

*Arturo Pérez, NCSL*

trimmed the corrections budget by eliminating education, job reintegration and related programming. We saw the fruits of that in rising recidivism and technical violations. People who can’t get a job commit new crimes in an effort to make it. Another big problem in Colorado has been the difficulty in getting eligible inmates paroled. Some new appointments to the parole board have helped get a few more paroled. We also went through a long “lock them up and throw away the key” time, with a habitual offender statute, trying 16-year-olds as adults, and new sex offender laws. We still feel that impact.

**SL: What’s the political climate like for dealing with these issues?**

**Carroll:** We have started to make some headway. The new Colorado Criminal and Juvenile Justice Commission is looking at what kinds of treatment programs and transition services can help address recidivism, rehabilitation and prevention, and it is looking at disparity issues. African Americans are 25 percent and Hispanics 45 percent of our state prisoners. Black and brown people are not more criminal by nature, so we are looking at this. Colorado also has some of the strongest sex offender laws in the nation. A sex offender here is highly unlikely to ever be released from prison. Even so, we made an attempt to pass Jessica’s Law because we wanted to legislate based on good headlines. One of my responsibilities is to remind my

colleagues that good public policy always has to trump good headlines.

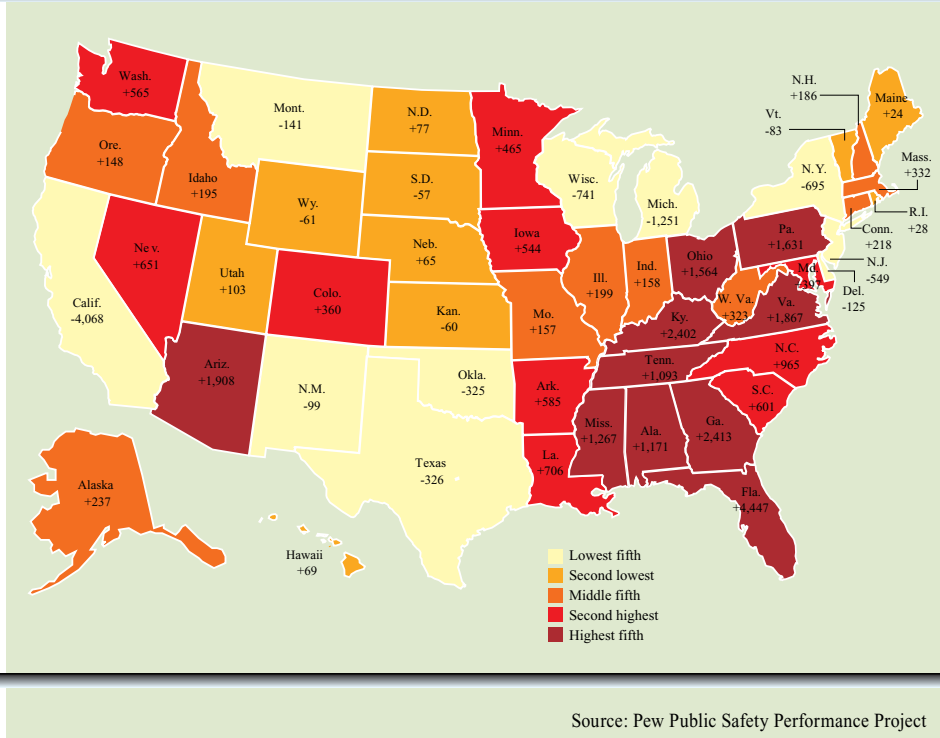
**Kissel:** Last year in suburban Cheshire, we had a horrific tragedy that prompted a reassessment of the criminal justice system. Two former inmates broke into a home, raped and murdered two girls and their mom, brutally beat the father and left him for dead. That tragedy kicked into high gear our efforts to improve the criminal justice system. It seems to me the public’s attitude is: Get tough with the violent offenders, and do everything possible to get nonviolent offenders to turn their lives around.

**Goodman:** Policymakers often are way behind the public on issues. That’s the way a legislature operates. I’m trying to articulate an exit strategy for the war on drugs. But the problem is we have these isolated incidents that really do make a difference in terms of public sentiment, making policymakers look soft on crime. I think we are close to the tipping point where we have to frame it in a different way—it’s about fiscal responsibility.

**Myers:** We don’t hear a lot from constituents in Vermont about corrections, until, of course, there is a high-profile crime. We had one in July: A 12-year-old kidnapped, raped and murdered, allegedly by her uncle who was a convicted sex offender just out of prison. So now there is an outcry for tougher sex offender laws. Before that, leaders and appropriations chairs asked us to focus on corrections, with concern about rising costs.

# WIDE VARIANCE IN PRISON GROWTH

State prisoner change, Dec. 31, 2006 to Jan. 1, 2008.



Source: Pew Public Safety Performance Project

So last year, with the involvement of The Pew Charitable Trusts, we started to study it. Our crime rate is declining or at least leveling off, helping to stabilize our prison population.

**Greenleaf:** We shouldn't be surprised that non-violent offenders addicted to drugs and put in a penitentiary come out addicted to the same substance. We are coming to understand that punishment without rehabilitation is a failure. We've tried it and it doesn't work.

**SL: What is your state doing to manage corrections growth? Are there other approaches you would like to pursue?**

**Greenleaf:** We need to deal aggressively with the technical parole violation issue. New crime legislation allows a prisoner to serve a shorter minimum sentence for participating in certain programs. Also, for years we've had a sentencing commission that makes recommendations on sentence ranges. We now are applying that to parole, providing guidelines to the Parole Board that focus on risk assessment, making alternatives to incarceration available in suitable cases.

**Colloton:** We've enacted some reforms that will keep us from having to bond and build another prison until at least 2016. Our prison

population now is dropping, providing some budget relief. For a modest cost of \$4 million to \$5 million per year we can address the five things that need to be considered when we release someone from prison—housing, a job, transportation, substance abuse or mental health services, and family matters. Recidivism has gone down by a third in the group that has been out the longest, the parolees. And we have fewer conditions violations. We're hopeful that appropriations will be made to help states develop effective reentry programs under the federal Second Chance Act. States need to push for this.

**Myers:** In Vermont, every person under the age of 23 in our corrections system must receive a high school diploma; it's the largest high school in the state. I'd like to see that requirement go up to age 26. Drug and property felony offenders make up 77 percent of our prison population. So new programs address housing, employment, a driver's license. We're also setting up more drug courts, and substance abuse and mental health services. Assessments start from the time someone is arrested and are being used in sentencing. There is no new state money going into this. We are moving prisoners—men from one prison to another, moving

women together—to find some money. After both houses worked together on their versions of this bill, there was not a single “nay” vote in either house.

**Leslie:** At some point you have to make a choice whether you are going to build more prisons or let more people out. We faced this fiscal reality in our last legislative session. We doubled good time credits to allow people to get out of prison sooner. Still, we've had a backlog of 1,200 people eligible for a parole hearing, which is costly. Like other states, our prisons are full of drug offenders. Nevada is the meth capital of the nation. Most of the people in prison were high when they committed their crime. Letting them out with no treatment sets them up to fail.

**Goodman:** In 2002, the Washington Legislature took all drug crimes off the sentencing grid and created a special drug grid that is treatment-oriented. We now have drug courts available to most of those offenders. Money we used to spend on prisons goes to the Criminal Justice Treatment Account for court-supervised treatment and other services. So we have been able to reduce the number of drug-only offenders in our state prisons.

**Greenleaf:** I'm interested in addressing addiction in a way that gives people every opportunity to be successful after their release. I think the early release opportunity we have provided to those in custody who take advantage of treatment is a motivation.

**Taylor:** A key is to target where our dollars go. We can't supervise everybody the same way; we need to do an adequate assessment so we can target the dollar. Also, we have to be providing quality services—that is programs that provide evidence of a reduction in criminal behavior. It is on our legislative agenda this year to try and do something to create a graduated sanctions process for technical violations.

**Kissel:** Better use of our tax dollars is part of our focus. We're doing things with reintegration, including parenting programs for fathers. We know that if we can properly supervise released offenders for an optimum 18 months, we greatly improve their odds of success. We are trying to distinguish between violent and nonviolent offenders, use halfway houses and train inmates for employment. If we can help break the cycle of recidivism, it will mean less victimization. It makes fiscal sense to redirect our resources, and the payback is enormous.

# STATES PRESSED TO MEET SEX OFFENDER REGISTRATION LAW

BY SARAH HAMMOND AND JEFF ARMOUR

States are facing a deadline that requires them to change sex-offender registration policies or face loss of federal criminal justice money.

The Sex Offender Registration and Notification Act is a portion of the 2006 Adam Walsh Child Protection Act. States risk losing 10 percent of the federal Byrne Justice Assistance Grant if they are not in compliance by July 27. These grants pay for many state and local criminal justice programs.

Wayne A. Logan of the Florida State University College of Law has studied sex offender policy, including federalism concerns raised by the act. He believes the requirements in the law are not adequately supported by evidence of their benefits.

“Of course we are all concerned with sex offenders and safety in the community,” Logan says, “but you’d be hard pressed to find another area of public policy in which such extensive, invalidated and costly federal requirements are imposed.”

While many related sex offender laws have passed in states since the federal requirements were put in place, there generally has not been a rush by states to meet the “substantial compliance” standard set in the Adam Walsh Act.

To date, several states have submitted compliance requests to the Department of Justice office set up to enforce the law, which is referred to as SMART. However, no states have been found in compliance with the act’s requirements, according to SMART.

## STATE STUDIES

Some states have requested studies or created task forces to determine their level of compliance with the act’s sex offender requirements, and what it would take to fully comply by the July deadline. Many of those studies include analysis of the costs and benefits of complying versus the loss of federal Byrne funds that would result from not complying. That equation is influenced by the 67 percent reduction in Byrne funds that took



place, from \$520 million in fiscal year 2007 to \$170 million in fiscal year 2008.

Although there is speculation about how the new administration and Congress will handle Byrne funds, as it stands, some states may decide losing 10 percent of these already dwindling federal funds may be less than it costs to comply with the act’s requirements.

Hawaii created an Adam Walsh Act compliance working group to determine whether the state should comply with the act. The act is “so rigid that we need to first study what compliance or noncompliance would mean for our state,” says Representative Blake K.



REPRESENTATIVE  
**BLAKE K. OSHIRO**  
HAWAII

Oshiro, a member of the House Judiciary Committee that has been addressing the issue.

“We have moved toward some of the requirements but the act’s complexity, coupled with the severe downturn in the economy, gives us pause if we should try,” Oshiro says. “I don’t know how states are going to have the resources to comply.”

## LAWS VARY

While all states have sex offender registries, laws differ on many aspects of registration, including who must register, what

information they are required to provide, duration of registration, and information sharing and notice requirements. The new federal law addresses the nationwide network of sex offender registration and notification programs.

As many as 30 states passed new policies in 2007 and 2008 related to sex offender registration provisions of the act. And 10 of those states (Delaware, Florida, Hawaii, Louisiana, Mississippi, Nevada, New Hampshire, Ohio, Oklahoma and Utah) enacted laws that address many of the act’s provisions.

An important requirement of the federal law is the tier system of sex offenders. Tiers based on the severity of the offense and criminal history of the offender affect duration of registration, frequency of in-person appearances and the extent of website disclosure.

Four states specifically addressed sex-offender classification tiers in 2007 laws. And in 2008, New Hampshire lawmakers created a three-tier system for statewide classification of sex offenders, similar to the act’s provisions.

Identifying information used by offenders online is a requirement. Twenty-one states in 2007 and 2008 expanded registration information collected to include Internet addresses, instant messaging addresses, chat screen names or blogs.

One of the most debated provisions of the federal act is the new rule for juveniles. It requires those 14 or older to register as sex offenders if they’re found responsible for a crime comparable to or more severe than an aggravated sexual abuse crime as defined in federal law.

Florida, Mississippi and Ohio implemented new juvenile sex offender rules similar to provisions of the act; 38 states already require juvenile sex offenders to register; and 15 include juveniles in the state’s online registry.

Extension requests to the SMART office may allow states more time to decide how much they are willing to change their sex offender laws to comply with the federal requirements.

*Sarah Hammond and Jeffrey Armour track criminal justice issues for NCSL.*