



E-Bulletin

Oct 2010
Issue 3

Sentencing and Corrections Policy Updates



National Conference of State Legislatures, 7700 East First Place, Denver, CO 80230
www.ncsl.org – alison.lawrence@ncsl.org – 303/364-7700

Front Page

2010 Midyear Legislative Summary

Lawmakers continue to enact policies aimed at reducing recidivism, prison populations and costs.

As economic pressures continue to mount for the third consecutive fiscal year, states are looking for changes outside prison walls to meet reduced operating budgets for corrections departments. Through June 30, 2010, state legislatures have passed laws that restructure drug offenses and drug courts, expand community corrections, and create more rehabilitative and reentry services for inmates.

South Carolina passed the Omnibus Crime Reduction and Sentencing Reform Act of 2010. This came after more than a year of work by a bipartisan study committee that recommended comprehensive changes to the state's criminal code. Some changes include adding to the "violent crime" list; restructuring certain property, drug and violent offenses; requiring a period of post-prison "reentry" supervision for certain offenders; requiring use of risk and needs assessments for parole release decisions and to determine the type of supervision and services needed for parolees and probationers; and creating an oversight committee to monitor

implementation of the act and make recommendations to the legislature on reallocation of any cost savings that result from these changes. The Public Safety Performance Project of the Pew Center on the States provided technical assistance to the study and published a [brief](#) outlining the changes.

At least 15 states addressed drug laws. Alabama authorized [drug courts](#) to be used with sentencing and supervision options that include pretrial release, pretrial diversion, probation, jail, prison, parole, community corrections or other release from a correctional facility. Indiana, Pennsylvania, and Virginia also authorized creation of drug courts, while Minnesota, Oklahoma and Utah expanded theirs. Colorado restructured penalties for certain [drug offenses](#) and removed certain mandatory prison terms, ultimately permitting more judicial discretion in sentencing drug offenders. Kentucky, New Hampshire, Louisiana and New Mexico commissioned studies to evaluate existing drug laws.

At least eight states addressed community corrections. Alabama, Arizona, Colorado, Florida, Indiana and Nebraska did so by increasing funding, enhancing coordination among services, creating bed space, and evaluating the effectiveness of existing programs. Mississippi created the [Circuit Court Community Corrections Act of 2010](#) with an oversight commission, charged with piloting community corrections programs in specified counties. Pilot programs include nonresidential community service, educational and vocational training, post-adjudication rehabilitation, work release, diversion programs, and juvenile and adult drug courts. Vermont created the Community Safety and Corrections Task Force to determine best practices in correctional supervision, such as reducing the need for bed space through alternative sentencing.

Inmate labor programs were addressed by at least nine states and Puerto Rico. Florida, Iowa, Kansas, Mississippi, Oklahoma, Puerto Rico and Virginia now permit use of inmate labor for public or private projects.

INSIDE THIS ISSUE

Front Page

2010 Midyear Legislative Summary 1

On the Fiscal Front

The Economy and Crime 2

How Criminology Can Save States from Bankruptcy 2

Issue in Focus

Three-Strikes Laws: Past and Present 3

On a Related Note

On The Hill 4

Recent Reports 5

Mark Your Calendars

5

Work release programs are on the rise as well. Some, like Nebraska's and Virginia's, require inmates to deposit a portion of earned wages in a fund to support the program. Alabama and Kansas authorized new work release programs, while Louisiana commissioned an evaluation of current programs. Kentucky, Minnesota and Utah now require jail inmates to reimburse correctional facilities for some costs associated with their incarceration.

Legislation related to rehabilitation, reentry and transitional services for inmates were enacted in at least 17 states, Puerto Rico and Washington, D.C. Florida encouraged local public safety coordinating councils to develop comprehensive reentry plans and required that rehabilitative community reentry programs be funded through community corrections. Reentry programs include housing assistance, health care, education, substance abuse treatment and employment. Hawaii now requires soon-to-be-released inmates who are parents to participate in programming related to family and parenting issues. Iowa appropriated funds to its Department of Workforce Development for an offender reentry program that will provide employment skills training.

NCSL's [Sentencing and Corrections Enactment Database](#) contains detailed summaries of legislation enacted between Jan. 1 and June 30, 2010.

On The Fiscal Front

The Economy and Crime

A criminology professor's take on how the current economic recession affects crime rates.

On July 26, at the 2010 NCSL Legislative Summit, the NCSL Law and Criminal Justice Committee hosted a presentation on [crime and the economy](#) by [Richard Rosenfeld](#), curator's professor in the Department of Criminology at the University of Missouri–St. Louis.

Rosenfeld said the current economic recession is a break from the past in that crime rates generally do not increase across the board, and that information related to drug markets suggests drug activity has not increased during this recession. While it is unknown how police force reductions have affected crime rates, it is likely that now-diminishing justice program stimulus funds have helped state and local jurisdictions maintain operations.

Rosenfeld explained how research explores the relationship between the economy and crime, noting that, while perception of a poor economy is seen to correlate with robbery rates, those rates change irrespective

to the economy and consumer pessimism. He said the historic crime drops in the 1990s can be attributed mainly to demographics – baby boomers have aged – are aging out of crime-prone years. Rapidly increasing incapacitation rates also likely contributed in the short-run to crime drops, but with other longer-term consequences, he said.

He described mechanisms that link property crimes to economic conditions, including such things as unemployed people being at home, thus creating fewer opportunities for daytime home burglaries. On the other hand, a down economy usually improves markets for illegal goods, perhaps provoking crimes in areas outside of low-income neighborhoods where they normally thrive.

Rosenfeld recommended to lawmakers that they use crime data in policy development, but cautioned against data that are untimely and inadequate in providing for comparative assessments. State-level crime statistical units are the best source for timely information on a state's crime rates, according to Rosenfeld, while the state-to-state

comparative data provided by the FBI's Uniform Crime Reports are valuable but not timely enough. He also cautioned that, as states develop and debate policy, gaps in information often are filled by criminal justice interest groups.

More information about the [Law and Criminal Justice Committee's Legislative Summit sessions](#), as well as [Richard Rosenfeld's power point](#), are available on the NCSL website.

How Criminology Can Save States from Bankruptcy

Identifying the "power few" in the criminal population and pushing the right criminological buttons might keep states out of the red.

The National Institute of Justice interviewed Lawrence Sherman, PhD, about the relationship between the economy and crime. The [video and a transcript of the interview](#), divided into five sections, are available on the NIJ's website and summarized on the next page.

Segment 1: The “Power Few” and “Push-Button” Criminology

Dr. Sherman suggests that applying popular economic theory to criminology might be a key to helping states balance their criminal justice budgets. Push-button criminology requires identifying the “power few”—the small handful of criminals who commit the majority of offenses—and adjusting sentencing policies to target this group. Ultimately, Dr. Sherman says, we must incapacitate certain offenders and reallocate criminal justice funds to better support crime prevention through increased police presence.

Segment 2: The Crime Harm Index

The right question to ask regarding crime rates, Dr. Sherman says, is not whether it is going up or down, but how the crime adds up—what is the overall harm to society? He compares this “crime harm index” to the gross domestic product and challenges the Bureau of Justice Statistics to implement such an index to accurately inform the nation on U.S. crime rates.

Segment 3: Crime and Justice Research Needs to Evaluate Cost-Effectiveness

Dr. Sherman recommends that researchers include cost data in studies and research grants that systematically review the criminal justice system so that governments can better determine what crime prevention efforts they can afford and how much they want to spend. Reiterating that only a handful of offenders are committing a large number of crimes, he again suggested that one more cost-effective strategy would be to “reconfigure [the criminal justice] portfolio” by reducing prison spending, increasing investments in policing, and managing those investments “more aggressively in the direction of the strategies that are effective.”

Segment 4: The Role of the Federal Government in Solving Crime and Justice Problems

Because of its large-scale economy, Dr. Sherman argues that the federal government should play a much larger role in research and development of strategies to transform criminal justice operations at all levels. He recommends considering criminal justice as an integrated multi-governmental effort.

Segment 5: Criminological Forecasting

Dr. Sherman suggests using criminological forecasting, coupled with more selective incarceration, to better maintain crime rates. He argues it may be more accurate to forecast crime rates than to allow judges and

prosecutors to determine incarceration based on a rap sheet that may accurately reflect the likelihood that an offender will return to a life of crime.

NCSL gratefully acknowledges the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, for allowing us to reproduce, in part or in whole, the video, [“Interview with Lawrence Sherman, Ph.D. – Less Prison, More Police, Less Crime: How Criminology Can Save the States from Bankruptcy.”](#)

The opinions, findings, and conclusions or recommendations expressed in this video are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice or NCSL.

Issue in Focus

Three-Strikes Laws: Past and Present

In the mid-1990s, “three strikes and you’re out” were buzzwords in sentencing reform. Fifteen years later, states continue to enact and amend three-strikes laws, reexamining penalties that are best suited to crack down on habitual offenders.

Early Three-Strikes Laws: 1993 – 1995

[“Three strikes and you’re out” for habitual offenders](#) was coined and successfully carried out in the 1993 fall elections in Washington, where voters approved the Persistent Felony Offender Act. It required life without the possibility of parole for third-time serious felony offenders.

Three-strikes laws generally require a prison term for habitual or persistent offenders. However, the number and types of crimes that trigger a three-strikes sentence, as well as the length of the prison term, differ from state to state.

Nearly all states have some type of sentence enhancement that applies to habitual offenders, and many states have mandatory minimum provisions that apply to repeat offenders of violent crimes. The three-time loser notion caught on in the early 1990s; 24 states passed laws between 1993 and 1995.

In 1994, California, Colorado, Connecticut, Georgia, Indiana, Kansas, Louisiana, Maryland, New Mexico, North Carolina, Tennessee, Virginia and Wisconsin enacted “three-strikes”-type laws. An additional 10 states—Arkansas, Florida, Montana, North Dakota, New Jersey, Nevada, Pennsylvania, South Carolina, Utah and Vermont—passed laws in 1995.

Current Three-Strikes Laws

Of the 24 states that enacted three-strikes laws during the early 1990s, at least 16 have since made notable changes. In particular, states eliminated life without parole penalties and replaced mandatory sentences with sentencing ranges. However, three-strikes laws in at least eight states—Arkansas, Georgia, New Mexico, North Dakota, Tennessee, Utah, Vermont and Virginia—remain as first enacted.

Gaining notoriety on several criminal justice issues, [South Carolina’s 2010 Omnibus Crime Reduction and Sentence Reform Act](#) modified the state’s three-strikes law. The new law eliminated the requirement that three-strikes penalties are mandatory. Under the state’s three-strikes laws, punishment for two- and three-strikes convictions can be terms up to life without parole. The act also adds certain crimes—such as attempted murder, first degree assault and battery by a mob, second degree assault and battery by a mob, and assault and battery of a high and aggravated nature—to the list of “most serious offenses” that are punishable under the three-strikes statute. Certain offenders that are within three years of release now are eligible for parole or work release. Like South Carolina, at least 10 other

states—Colorado, Connecticut, Florida, Kansas, Louisiana, Maryland, Montana, Nevada, New Jersey, and Wisconsin—have increased judicial discretion in three-strikes sentencing. In Florida, for example, judges are not required to apply penalties to two-strikes offenders; rather, they may penalize an offender up to a certain maximum, depending on the underlying offense.

At least seven states—Indiana, Louisiana, Montana, Nevada, New Jersey, North Carolina, and Wisconsin—have eliminated the possibility of life without parole or narrowed the circumstances under which the court can impose a life without parole sentence for three-strikes offenses. Montana eliminated life without parole, replacing it with sentencing ranges and also allowing the judge to impose fines. Under Nevada’s updated three-strikes law, an offender can be eligible for parole after a minimum prison term is served. North Carolina’s life without parole sentence and review for parole eligibility after 25 years served provisions were eliminated. Instead, the law requires that the sentence for habitual offender status run consecutively with the sentence for the underlying felony conviction.

At least eight states have created sentencing ranges under their three-strikes laws. Connecticut changed its three-strikes sentencing from mandatory maximum prison terms to minimum and maximum ranges, depending on the offense. Nevada added several sentencing ranges to those available for third-strike offenders in addition to the life sentence requirements in the original law. Louisiana requires a determinate sentence, but provides ranges within which the sentence

must fall, depending on whether it is a second or third conviction and on the applicable sentence for the underlying offense. Pennsylvania maintained its mandatory minimum sentences, but added mandatory maximum sentences for two- and three-strikes provisions to carry a minimum prison term that is double the length of the mandatory minimum.

Since California’s three-strikes law passed in 1994, the Legislature has removed the mandatory life sentence penalty (that required at least 25 years be served) for third-strike offenders. The law now requires offenders to serve a prison term three times that for the underlying offense, 25 years, or the term for the underlying offense plus any sentence enhancements, whichever is the greatest of the three. More than 15 years after initial popularity, states such as California continue to review and refine their three-strikes laws.

On A Related Note

On the Hill

National Criminal Justice Commission Act

On July 27, 2010, the U.S. House of Representatives passed the [National Criminal Justice Commission Act of 2010](#) (HR 5143), which would establish a national, bipartisan commission to conduct a comprehensive evaluation of the nation’s criminal justice system and offer recommendations for reform in areas including sentencing policy, incarceration rates, law enforcement, crime prevention, substance abuse, corrections and reentry. A [Senate version](#), S. 714, currently is pending. The NCSL Law and Criminal Justice

Committee [action policy](#) on this bill is available on the NCSL website.

The Second Chance Act

In 2008, Congress passed the [Second Chance Act](#), which provides grants to states, local governments and nonprofit groups for innovative reentry relate programs aimed at reducing recidivism. On July 21, 2010, the U.S. Senate Judiciary Committee held a [hearing](#) on the Second Chance Act to consider budget appropriations for FY 2011.

Collateral Consequences of Criminal Convictions

The House Judiciary subcommittee on Crime, Terrorism, and Homeland Security held a [hearing on June 9, 2010](#), to discuss the collateral consequences of criminal convictions, which include reentry barriers to employment, education and housing. The hearing addressed ways to reduce collateral consequences of convictions in order to reduce recidivism. Two pieces of federal legislation have been recently introduced to address some of the issues raised at this hearing – [H.R. 5300](#), the “Fairness and Accuracy in Employment Background Checks Act of 2010” and [H.R. 5492](#), the “Fresh Start Act of 2010.” H.R. 5300 requires the FBI to make changes to improve the accuracy of federal criminal background checks and other information. H.R. 5492 amends the federal criminal code to allow an individual convicted of a nonviolent criminal offense to file a petition for expungement of the record of such conviction under certain circumstances.

Recent Reports

Innovations in Community Corrections

NCSL’s recent report, [Innovations in Community Corrections](#) explores how states are implementing community-based policies and programs that can safely reduce prison populations and costs, including creating incentive funding streams, investing in evidence-based practices, addressing offender needs, and obtaining assistance from federal agencies and other organizations.

National Research of Public Attitudes on Crime and Punishment

As part of its work in the states to protect public safety and control corrections costs, the [Public Safety Performance Project](#) (PSPP) partnered with two of the nation’s leading polling firms—[Public Opinion Strategies](#) and the [Benenson Strategy Group](#)—to explore public attitudes toward crime and punishment. The firms

conducted focus groups and a national survey of voters to measure support for policy change and to enhance how citizens communicate about these complicated issues. The project recently released a [summary of the findings](#).

Washington State Institute for Public Policy’s Benefit-Cost Tool for States

In 2010, the [John D. and Catherine T. MacArthur Foundation](#), [The Pew Charitable Trusts](#) and the [Washington State Institute for Public Policy](#) (WSIPP) entered into a partnership to develop a cost-benefit tool to help states make policy decisions. A [recently released report](#) by WSIPP describes the progress made on a portion of this project. It focuses on evidence-based sentencing and corrections policy options to reduce crime and lower corrections costs.

NOTE: Links to external websites and reports are for information purposes only and do not indicate NCSL’s endorsement of the content on those sites.

This newsletter is prepared under a partnership project of NCSL’s Criminal Justice Program in Denver, Colorado and the Public Safety Performance Project of the Pew Center on the States, based in Washington, D.C. The NCSL project is designed to help states tap the best research and information available to put a fiscal lens to sentencing and corrections policy options and reforms.

Mark Your Calendars



NCSL Fall Forum
December 8–10, 2010
Phoenix, Arizona