States have found ways to reserve prison space for the most serious offenders without jeopardizing public safety.

BY ALISON LAWRENCE

A decade ago, rising prison populations and costs seemed to be an irreversible trend. Since 2007, however, large-scale, data-driven corrections and sentencing reforms in a growing number of states are demonstrating success.

These bipartisan efforts have prioritized prison space for serious and repeat offenders, improved community supervision for other offenders, and re-invested the savings in services that are effective at reducing recidivism and victimization.

Legislatures have reduced penalties for lower-level drug offenders and increased the availability of mental health and substance abuse treatment. They have also focused on providing services and building the skills of inmates to help them succeed after release.

At least 25 states have used what is commonly called justice reinvestment to develop and adopt reforms. This process involves an analysis of the data on what drives prison populations and costs, enactment of policies that address those factors, investments that support carrying out the changes, and oversight and measurement to ensure the desired results are being achieved.

The results are telling. Half the states have reduced their prison population since 2009. Most recently, five states—Alabama, Idaho, Mississippi, Nebraska and Utah—adopted reforms in 2014 and 2015 that collectively have projected savings or avoided costs of more than $1.7 billion over the next two decades.

This impressive work in states is being emulated at the federal level. Proposed bills in Congress would focus federal corrections resources on the most serious offenders. “There’s no shortage of admiration for state efforts on the Hill,” says Lindsey Carlson of The Pew Charitable Trusts public safety performance project. “Clearly states have led the way and prompted interest in Congress to follow suit.”

In September 2015, NCSL and Pew brought together legislators who have championed state efforts to discuss strategies for successful and sustainable reform. Here’s what they had to say.
The Participants

**CALIFORNIA**

**Senator Loni Hancock** chairs the public safety policy and budget committees. She has responsibilities for overseeing implementation of California Realignment.

In 2009, the Legislature created state-local performance-based funding to address probation violations. In three years, the probation failure rate has declined by 33 percent, resulting in $537 million in savings. In 2011, in response to a court order, supervision responsibility for low-level felony offenders was realigned from the state to counties. The state prison population has declined by more than 36,000 inmates.

**OREGON**

**Senator Floyd Prozanski (D)** chairs the Criminal Justice and Public Safety Committee.

A 2015 law expanded the use of probation in lieu of incarceration, graduated sanctions for probation and parole violations, and evidence-based practices for community supervision. The state has saved nearly $37 million from a mandatory reentry supervision policy.

**GEORGIA**

**Former Representative Jay Neal** served in the Georgia General Assembly from 2005-2013 and was primary sponsor of a 2012 reform bill. He now works for the state’s criminal justice coordinating council.

The General Assembly has enacted reforms each year since 2012. These laws have created graduated penalties for burglary and forgery, raised felony theft thresholds, revised penalties for drug possession, relaxed some mandatory sentences and expanded use of electronic monitoring. The state also required evidence-based corrections practices and established procedures for risk and needs assessment.

**MISSISSIPPI**

**Senator W. Briggs Hopson III (R)** chairs a judiciary committee and sits on the appropriations committee. He is also a co-chair of NCSL’s Law, Criminal Justice and Public Safety Committee.

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**NEBRASKA**

**Senator Les Seiler (NP)** is chair of a reform oversight committee and member of the judiciary committee. He was the primary sponsor of South Carolina’s 2010 omnibus reform bill.

A 2010 law restructured criminal offenses and penalties and addressed diversion, treatment, good time and community supervision. The state has experienced a 6.3 percent decrease in the violent crime rate and a 17.9 percent drop in crime recidivism.

**KENTUCKY**

**Representative John Tilley (D)** chairs Kentucky’s judiciary committee and is a member of the justice and judiciary budget subcommittee. He was the primary sponsor of the 2011 reforms. Tilley also co-chairs NCSL’s Law, Criminal Justice and Public Safety committee.

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**STATE LEGISLATURES: What was the impetus for sentencing and corrections reform in your state?**

**South Carolina Senator Gerald Malloy (D):** The prison population had increased nearly threefold over 25 years, with continued growth projected. Cost was an issue. In 2009 we decided to develop a strategy that would yield a high-performing system.

**Former Georgia Representative Jay Neal (R):** Instead of spending $264 million to build two new prisons, in 2011 we looked at developing a framework to protect public safety, make proper use of tax payer dollars, and do so mindful of the moral imperative we have to help individuals be law abiding and productive members of society.

**California Senator Loni Hancock (D):** Our reform has been mainly court driven. Even with significant increases in prison space since the late 1980s, facilities had become so overcrowded that the U.S. Supreme Court told us in 2011 that we had to reduce our population by at least 30,000. It was clear that the public did not want to keep building prisons, and that it wasn’t making us safer.

**Oregon Senator Floyd Prozanski (D):** A citizen initiative in the mid-90s that established mandatory minimums contributed to extensive prison growth. In 2012 we were building one prison and a second was on the design board. Meanwhile, the state’s commitment to evidence-based practices helped set the stage for justice reinvestment.

**Mississippi Senator Briggs Hopson (R):** By 2013, prison crowding and costs were out of control, while we were faced with building more prisons. Also, there were concerns about inconsistencies in sentencing and use of probation, especially with drug offenders.

**Kentucky Representative John Tilley (D):** In 2009, we had a 45 percent prison growth rate while the rest of the country was at 13 percent. And we were seeing very little return on that investment.

**Nebraska Senator Les Seiler (NP):** Last year, the state’s prisons were 165 percent over capacity and building a new prison would only reduce it to 125 percent. Plus, we know that one third or more of offenders come back into the system and 31 percent of the prisoners have mental illness.

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Why do you think the reforms have been enacted by such large margins?

Tilley: In Kentucky, a seven-member task force traveled the state in an intentional campaign that built coalitions and momentum for reform. We engaged stakeholders and got them on board.

Malloy: In South Carolina, we invited everyone to the table—police, prosecutors, the judiciary, probation, correction and interest groups—and made them part of the solution instead of part of the problem. Many worked on the reforms which resulted in a consensus bill. Using a data-driven and evidence-based approach pretty much takes the partisanship out of the equation.

Neal: The Georgia initiatives were also data-driven and collaborative. Because of that, two measures passed unanimously.

How has your legislature reinvested the savings from reducing the prison population?

Seiler: Up front, we appropriated $3.2 million for FY 2016 and $12.1 million for 2017. It will be used for community programs, more and better probation and parole supervision, and efforts to monitor and measure results. We included a half million dollars for county jails to encourage them to house inmates locally rather than sending them to state prison.

Hancock: California also offers an incentive to counties that successfully supervise some offenders. We split the savings achieved when somebody isn’t sent to state prison 50-50 with the county. The counties have been getting about half a million dollars a year. And to make the reinvestment sustainable, we wrote into the law that the savings must be reinvested in evidence-based practices to reduce recidivism. Also, voters passed Prop 47 in 2014, which reclassified many nonviolent felonies into misdemeanors, with money saved allocated to education and rehabilitation.

Prozanski: Oregon put $40 million into a performance grant for counties to demonstrate that state savings can be redirected to the local level. It was one of the largest investments being made to our counties at that time.

Hopson: Rather than money up front, the general premise in Mississippi’s reforms was to offset incarceration costs by having nonviolent offenders serve time under intensive community supervision rather than in prison. They can work, pay taxes and take care of their own living expenses while still being held accountable for their crimes.

What kinds of results are you seeing?

Malloy: We’ve closed three and a half prisons and have about 4,500 fewer people in our prison system. We’ve freed up beds for violent prisoners and are managing more nonviolent offenders in the community.
An academic study showed that justice reinvestment has had economic and social benefits, which includes an estimated 982 people who were diverted from prison and are now in the workforce.

**Tilley:** We have several good indicators: The prison population is down, mandatory reentry supervision is working well and recidivism in Kentucky has trickled below the national average, while before we were well above it. Overall spending is down and supervision services have increased.

**What are you doing to sustain the reform?**

**Seiler:** We built in a legislative performance audit committee to gather information, track implementation and compile an annual report. While early in this process, we are working through challenges related to sharing data.

**Neal:** Certainly you build credibility with proper data collection and a system for measuring outcomes. A key to sustaining our work in Georgia is to see that the proper interventions and accountabilities remain in place. Absent that, people will be back in the system within a couple of years and we’ve just kicked the can down the road.

**Prozanski:** In Oregon we’ve got a bench of legislators and stakeholders who are mostly on the same page about reducing recidivism and improving public safety. We have put in place a system of measurements, like offender population, recidivism rates and spending. If we start seeing things not fall into place, we’ll look at why that is and tweak or adjust it.

**What’s next?**

**Malloy:** The oversight committee is working on a system for reinvestment, which we think will be needed for lasting results. When the governor signed this legislation he called it one of the most meaningful of his tenure, and predicted that its full significance will show in 20 years. So it’s incumbent on the General Assembly to be gatekeepers and carry forward the good that has been done.

**Tilley:** In Kentucky we need to look at our persistent felony offender laws, which in some cases have people who have committed minor offenses facing some substantial prison time. While we have experienced a lot of success, we might need to look at the deep end of the pool.

**Hopson:** We will continue to put public safety at the forefront of justice reinvestment. It’s about allowing people who can and will accept rehabilitation to become good, taxpaying citizens.

**Neal:** We are working on a next-generation assessment that will help us better identify needs and risks, and establish a “transition accountability plan” for offenders that includes programs in prison as well as upon release to community supervision. It’s good public policy both to prepare offenders to come back into the community and better prepare the community to be able to manage them.

**Prozanski:** We still have work to do on the reinvestment components, but I think that ongoing oversight and reliance on data will help define future actions.

**Hancock:** It’s a balancing act and a challenge to make the cultural shift from punishment to rehabilitation and prevention. We want people to come back as safe neighbors.