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State Sentencing and Corrections Legislation

2007 Action, 2008 Outlook



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By
Alison Lawrence



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INTRODUCTION

The U.S. prison population is projected to increase by 192,000 inmates by 2011, according to *Public Safety, Public Spending: Forecasting America's Prison Population 2007 – 2011*, a report by The Public Safety Performance Project of the Pew Charitable Trusts' Center on the States. With the growing prison population comes an increase in costs. The report estimates that it could cost states as much as \$27.5 billion over the next five years to accommodate the growing prison population.

Lawmakers responded to this forecast last year with state sentencing and corrections legislation aimed at controlling prison populations and budget growth by:

- Expanding community corrections;
- Managing probation and parole violators;
- Boosting incentives for good behavior;
- Preparing inmates for reentry; and
- Linking released offenders to community support.

Two states raised the age at which juveniles can be tried as adults, and six states required corrections departments to use evidence-based programs and policies that research has shown will reduce recidivism. Several legislatures last year charged task forces, committees or corrections departments with researching sentencing and corrections policies and are awaiting recommendations from those.



EXPANDING COMMUNITY CORRECTIONS

State legislators enacted laws that give the justice system more options to provide structure other than traditional probation but with less control and cost than a prison cell. Community corrections programs include halfway houses, mental health and drug treatment centers, day reporting centers, and pre-trial diversion programs. While maintaining public safety by allowing only appropriate offenders to participate, prison populations are controlled because offenders remain in the community where they are required to work, participate in treatment, pay restitution and child support, and comply with other terms of their sentence. The offenders will also incur a portion of the cost of supervision through fees.

At least six states—Alabama, Alaska, Illinois, Montana, Nevada and New Hampshire—passed laws aimed at supervising more offenders in the community, sparing more costly prison space.

- Alabama created a pre-trial diversion program for low-level offenders.
- Alaska now requires various state agencies to work together to create a treatment program for co-occurring mental health and substance abuse disorders that are “evidence-based” and “community-based.”
- Illinois and Montana created mental health courts with incentives and sanctions to be determined by the courts.

- Nevada expanded eligibility for home confinement. An offender is now prohibited from entering the program if he has a conviction for a violent offense within the previous year (the original provision prohibited an offender with a violent offense within the past five years). The law also allows misdemeanor sex offenders to be eligible for home confinement. It prohibits an offender with a sentence that has a maximum term of 20 years' imprisonment or more from home confinement.
- New Hampshire now permits day reporting centers as a sentence alternative or for offenders who are being released from prison.

State legislatures also defined when an offender is eligible for community placement versus incarceration. Generally, offenders who are nonviolent, have little to no criminal history, or are lower level drug offenders are deemed appropriate for sentencing alternatives in the community. State legislatures set the eligibility criteria and allocate funds for programs. A judge, local agency or community corrections board often will determine who is accepted into specific programs.

- Tennessee clarified that a defendant being sentenced for a third or subsequent felony is not a favorable candidate for an alternative to incarceration.
- In Texas, a defendant is not eligible for community supervision if he or she has been found guilty of murder.
- Washington requires that an offender who has committed a third violation of his community supervision sentence must be returned to total confinement to serve the remainder of the sentence.

MANAGING PROBATION AND PAROLE VIOLATORS

Probation and parole violators are major contributors to the increases in state prison populations. Lawmakers passed legislation aimed at helping offenders successfully complete their community sentences and stay out of prison. To help offenders comply with supervision requirements:

- Delaware created a conditional driver's license for the purpose of employment, treatment and probation officer appointments for those who have previously had their licenses revoked.
- Kansas established a community corrections grant program for local probation departments that sets a performance goal of reducing revocations to prison by 20 percent from fiscal year 2006. The state grants have been awarded to counties with community corrections programs that will target offenders who are medium to high risk for re-offending and will offer reduced and specialized caseloads for community corrections officers.
- Nevada authorized the courts and State Board of Parole Commissioners to place parole or probation violators for up to six months in a community correctional center, conservation camp, or a minimum security facility, in lieu of sending them to prison.

- Texas passed several laws and a major budget package relating to probation and parole violations.
 - The sentencing judge must now review a defendant's record for sentence reduction or termination upon completion of one-half of the original community supervision period or two years, whichever is more. It does not apply if the defendant is delinquent in paying restitution, fines, costs, or fees that he is able to pay, or if the defendant has not completed court-ordered counseling or treatment.
 - Judges are now required to give credit against the defendant's community supervision sentence for completing a substance abuse treatment program or other court-ordered residential program.
 - Texas created a prison diversion progressive sanctions program to help counties use graduated sanctions aimed at reducing the revocation rates of offenders with community supervision sentences.
 - Texas also reduced probation terms for drug and property offenders from 10 years to five years in order to help concentrate resources on the earlier periods of a sentence when offenders are mostly likely to recidivate.



BOOSTING INCENTIVES FOR GOOD BEHAVIOR

Offenders being returned to prison for violations of their community sentences are a factor that boosts prison populations; the time that offenders are required to serve behind bars is another. Inmates may be placed under post-prison supervision in the community once they have served a specified portion of their sentences in prison. Inmates can reach their release dates, either discretionary or mandatory, through earned time that is credited toward their sentences. Earned time is generally acquired through completion of school or vocational training, participation in work or treatment programs, or for other good behavior. Earned time also can be granted at the beginning of a sentence and then taken away due to program violations.

In 2007, some states amended earned time policies for certain inmates.

- Illinois limited the amount of good conduct credit that violent and some drug offenders may earn to seven and one-half days per month.
- In Kansas, inmates convicted of certain non-violent crimes now may earn up to 20 percent off their sentences, up from 15 percent.
- Prisoners in Maine who work more than eight hours per day can now have the excess hours credited toward "good time."
- Nevada increased from 10 days to 20 days the amount of earned time an inmate may receive for good behavior and an offender on parole or probation may earn per month if current with

supervision fees and restitution payments. Probationers had not been eligible for any earned time, but now also may earn up to 20 days per month. Nevada also increased from 30 days to 60 days the amount of good time an inmate may earn for successfully completing substance abuse treatment and vocational or other training programs.

- Washington allows the lowest risk inmates to decrease their sentence by up to half for participation in the programs included in their individual reentry plan if they have not committed any new felonies.

Lawmakers increased the amount of earned time allowed for education.

- Illinois now allows a 90-day reduction in parole or supervised release after an offender passes the general educational development test.
- The Kansas Legislature created a program credit of 60 days earned time for completion of a treatment, vocational or educational program that has been shown to reduce offenders' risk of recidivism after release from incarceration.
- Nevada increased from 30 days to 60 days the amount of earned time an inmate may receive for obtaining a general educational development certificate, from 60 days to 90 days for obtaining a high school diploma, and from 90 days to 120 days for obtaining a first associate's degree.
- Tennessee made a law allowing inmates who receive a general educational development certificate, high school diploma, college degree,

certification in applied sciences, or vocational education diploma to earn 60 days of educational good-time credit. It is retroactive to inmates who received a degree before July 1, 2006.

PREPARING INMATES FOR REENTRY

According to the Pew *Public Safety, Public Spending* report, 50 percent of offenders will return to prison within three years of release. A successful reentry plan can help to lower that rate by preparing inmates to live crime-free outside prison. Reentry programs offer employment training, mental health and substance abuse treatment, behavior modification classes, and family assistance classes to inmates. In 2007, state lawmakers addressed the use of inmate reentry planning.

- Arizona is requiring a risk/needs assessment to determine the release date of and program requirements for inmates. The Teaching Offenders to Live Program, created by the Arizona Legislature, will provide inmates with evidence-based treatment and relapse prevention services and will prepare them to live independently.
- California's Department of Correction and Rehabilitation will now conduct assessments of inmates to be used for placement in programs aimed at successful reentry.
- Hawaii enacted the Community Safety Act," which requires the Department of Public Safety, in partnership with community nonprofits, to develop reentry plans. The Legislature also increased funding to expand statewide its Re-

storative Circles pilot program that helps offenders, their family members and prison staff to create a plan for transition from prison to the community.

- Washington is requiring the Department of Corrections to develop an individual reentry plan for every inmate at the time of intake that includes a risks/needs assessment.

Other legislatures added specific prison programs to prepare inmates for reentry into society.

- Arizona added family reunification to the list of allowable training programs in prison.
- California is requiring the Department of Corrections and Rehabilitation to establish a system of incentives to increase inmate participation in academic and vocational education. The department is also expanding substance abuse programs to accommodate an additional 4,000 inmates.
- Hawaii established a cognitive restructuring pilot program at the Kulani correctional facility. The program teaches inmates problem solving and decision making skills.
- Louisiana established the Prison Substance Abuse and Rehabilitation pilot program and requires all inmates convicted under the Uniform Controlled Dangerous Substances Law to participate.

States also addressed the financial stability of inmates preparing for release.

- Connecticut lawmakers created a specific savings account for inmates to designate money for discharge.
- Rhode Island increased from \$500 to \$1,000 the maximum amount a prisoner may have in his or her bank account.
- Inmates in Washington are now allowed to use funds from their personal inmate savings accounts to secure housing upon release.

State legislatures designated prison space specifically for the use of reentry.

- California is requiring the Corrections Standards Authority to ensure that new jail construction be for reentry facilities. Space for 16,000 more beds will be constructed for reentry purposes.
- Hawaii now requires that inmates in out-of-state prisons be returned to the state at least one year before their release so they can participate in reentry programs.
- With an investment of \$241 million, Texas expanded residential treatment and reentry programs by a total of 6,400 beds and increased the capacity of outpatient programs by 4,500 clients. These short-term beds and slots are aimed at reducing drug and alcohol use and thus preventing violators from returning to prison.

LINKING RELEASED OFFENDERS TO COMMUNITY SUPPORT

States created new programs and services for offenders once they are released from incarceration.

- Hawaii established the Offender Reentry Legislative Oversight Committee to monitor implementation of the offender reentry system.
- The Project Return Post-Release Skills program in Louisiana will provide former offenders with the skills necessary to become productive citizens in the community and will address a range of issues that contribute to recidivism.
- The Reentry Policy Council was established in Oklahoma to oversee reentry policies and programs operated by the Department of Corrections.
- Washington passed a variety of measures to help offenders who are moving back into the community:
 - A community transition pilot program will fund partnerships among supervision and service providers.
 - The Department of Licensing and Department of Corrections must now enter into an agreement for helping inmates obtain driver's licenses after release from prison.
 - The Department of Corrections must also establish three more Community Justice Centers that are nonresidential facilities for recently released offenders to receive reentry services. The law also requires the

department to prepare a list of future work release facilities, and to provide for equitable distribution of the sites around the state.

Two states created day reporting centers for inmates released early.

- Hawaii's center will serve 200 released offenders who have six months to one year remaining on their sentence.
- A new reporting program in New Hampshire allows a judge to release anyone who has been committed to a correctional institution, other than state prison, in order to participate in the program.

Both Hawaii and Washington addressed the location of where an inmate will be released after incarceration.

- Hawaii authorized the paroling authority to release offenders to the community in which they have the greatest family or community support.
- Washington requires offenders to be released to their county of origin unless it is deemed inappropriate. The state also is developing a pilot program to provide housing assistance to offenders who are reentering the community.

LIMITING JUVENILE JURISDICTION

Two states made changes in the age at which offenders are tried as adults. The Connecticut General Assembly raised from 16 to 18 the age of juvenile jurisdiction as of July 1, 2009. This will decrease the number of inmates assigned to adult state correctional facilities while the state works to expand juvenile justice system dispositional options for these young offenders.

On the governor's recommendation, the Rhode Island General Assembly decreased the age of juvenile jurisdiction from 18 to 17 in the 2008 budget bill. Just months later, the Assembly reversed its decision with a measure that restored the jurisdiction age to 18.

USE OF EVIDENCE-BASED POLICIES AND PROGRAMS

In 2007, six state legislatures instructed courts and corrections departments to use evidence-based programming for substance abuse treatment and other reentry services. These policies are based on fiscally responsible, data-driven analyses that reduce recidivism, decrease prison populations, and increase public safety.

A growing number of state laws encourage—and even require—that corrections programs be based on research or evidence of effectiveness. Such programs reduce recidivism, decrease prison populations, and increase public safety.

- Alaska is requiring the Department of Health and Social Services to coordinate with criminal justice agencies to implement “evidence-based,

research-based, and consensus-based” treatment for co-occurring substance abuse and mental illness.

- The California Department of Corrections and Rehabilitation was also instructed to use research-based components in relapse prevention programming.
- Hawaii created a model reentry program that incorporates skilled staff, individualized case management, life skills and parenting classes, and community agency support.
- Maine's newly established county criminal justice planning committees are updating and increasing the use of evidence-based correctional practices at the local level.
- Counties in Texas must use evidence-based assessments for offenders with community supervision sentences in order to be eligible for the Prison Diversion Progressive Sanctions Program grant.
- The Teaching Offenders to Live program in Washington provides evidence-based treatment and relapse prevention services.

A LOOK AHEAD TO 2008

With rising correctional costs and increasing prison populations, state legislatures and executive branch officials commissioned task forces to research sentencing and corrections for action in upcoming legislative sessions. The groups were charged with studying topics such as community corrections programs, evidence-based practices in corrections, and

tracking and preventing recidivism. Legislatures created sentencing commissions to review current sentencing practices. States are also conducting cost-benefit analyses to determine the effectiveness of current correctional policies. With information provided by the task forces, legislatures can make decisions through a fiscal lens based on analysis and proven strategies for legislation in 2008.

- The California Department of Correction and Rehabilitation must develop an Inmate Treatment and Prison-to-Employment Plan to evaluate current inmate education, treatment and rehabilitation programs. The California Rehabilitation Oversight Board was also created to continually examine and report on mental health, substance abuse, and education and employment programs for inmates and parolees.
- Colorado established the Criminal and Juvenile Justice Commission to ensure public safety and respect the rights of victims through evidence-based analysis of the criminal justice system. Duties include researching the effectiveness of sentencing in preventing recidivism and re-victimization, identifying effective alternatives to incarceration, and determining the most cost-effective crime prevention programs.
- Maine created the State Sentencing and Corrections Practices Coordinating Council to collaborate on criminal justice information, to monitor sentencing practices, and review data on recidivism and programming. A new Maine law also requires that counties establish criminal justice planning committees to educate, update and increase the use of evidence-based practices.
- The Nebraska Legislature created the Probation and Parole Services Study Act to conduct an in-depth analysis of the state's probation and parole systems to assess their effectiveness of coordination and administration. The study will identify areas of service overlap and analyze if a single system of probation and parole would be appropriate.
- The Nevada Legislature is requiring the newly renamed Advisory Commission on the Administration of Justice to evaluate the efficiency and effectiveness of the Department of Corrections and State Board of Parole Commissioners to determine if an oversight board is advisable, to assess the effectiveness of specialty court programs, to evaluate pre-sentence reports, and to review juvenile justice issues.
- The New Jersey Sentencing/Corrections Task Force, part of the governor's Government Efficiency and Reform Commission, will review policy and practices to identify reforms to save costs and decrease recidivism rates for offenders.
- The New York State Commission on Sentencing Reform was charged with conducting a review of the state's sentencing structure and practices, community supervision, and the use of alternatives to incarceration. The commission will review policies and make recommendations based on equity, appropriate sanctions for offenders and efficient use of correctional resources.
- In Ohio, the Public Safety Strategies Task Force will make recommendations for sentencing laws and cost-benefit analyses of criminal justice policies. It will also consider the best

use of available resources to reduce crime and hold offenders accountable. The analyses are to include, but not be limited to: expanded use of DNA sampling; expanded use of criminal background checks in jails; improvements in probation, parole and post-prison supervision; and increased use of jail beds by the Department of Corrections.

- Oklahoma created the Transformational Justice Interagency Task Force to establish goals for reducing recidivism, coordinate reentry programs, and ensure programs that manage offenders in prison are linked to those that will supervise them after release. The task force is also to seek partnerships with faith-based and community groups; identify effective evidence-based practices in reentry support, treatment and intervention programs; encourage expansion of family-based treatment centers; develop and establish a parenting skills class for inmates who are within one year of release from incarceration; establish collaboration among corrections and community corrections, technical schools, community colleges, and the workforce development and employment service sectors; and include victims in the reentry process and facilitate victim-offender dialogue when the victim is willing.

Oklahoma law also requires the Department of Corrections, along with the Pardons and Parole Board, to track the success and recidivism of violent offenders on parole for three years following release from incarceration.

- Texas established the Criminal Justice Legislative Oversight Committee to provide objective research, analysis and recommendations on

criminal justice policies. The committee will also actively monitor implementation of the series of reforms Texas passed in 2007.

- The Vermont General Assembly instructed the Joint Legislative Corrections Oversight Committee to establish a strategic plan to reduce the number of offenders in correctional facilities. The committee will include projections for incarceration rates, identify programs that aim to reduce recidivism and prevent crime, consider alternatives to current sentencing practices, and develop cost estimates of implementing the strategic plan.
- The Washington Legislature directed task forces, councils and governmental agencies to investigate six issues that affect corrections and offenders in the state.
 - A task force was created to review current law and policy related to custody and community supervision.
 - The Legislature expanded the purview of the Local Law and Justice Councils to include issues related to communication of information about offenders, community partnerships, local community policing and supervision agencies.
 - The Legislature is also requiring the Department of Corrections to conduct a community corrections workload study.
 - The Department of Corrections and the State Board for Community and Technical Colleges are to review methods to improve educational and vocational opportunities for offenders.
 - The Department of Licensing is to review and make recommendations on occupational licensing laws to encourage more

opportunities for employment of people with criminal records.

- The Washington State Institute of Public Policy will conduct an analysis of reentry to identify evidence-based practices.

According to NCSL's *State Budget Update: November 2007*, Connecticut, Florida, Idaho, Iowa, Michigan and Oklahoma identified corrections and criminal justice as one of the top three fiscal issues its legislature anticipates addressing in 2008.

CONCLUSION

Sentencing and corrections legislation in 2007 addressed the objectives of reducing prison construction and operating costs, decreasing recidivism rates, and increasing efficiency and effectiveness of corrections systems, while maintaining public safety. State legislatures are investing in reentry and community corrections programs. The results from criminal justice task forces and studies will guide the way for corrections and sentencing legislation in 2008.



APPENDIX

Links to most legislation in this report can be accessed via state legislative websites at www.ncsl.org/public/leglinks.cfm.

Alaska S 100	Idaho S 1143	Nevada A 508; 510, S 30
Alabama H 771; H 953	Illinois S 677; S 1391; H 1557	Oklahoma H 2101; S 1130
Arizona H 2298	Kansas S 14; H 2190	Oregon H 3563
California S 81; A 900	Louisiana S 308; H 645; S 138	Rhode Island H 5778; S 766; S 1141
Colorado H 1358	Maine H 528; H 1327	Tennessee H 850; S 779
Connecticut H 7217, S 1500	Montana S 382	Texas H 1; H 198; H 1678; H 3736; S 166; S 909
Delaware S 127	Nebraska L 540	Vermont S 97
Hawaii S 932	New Hampshire H 703	Washington S 6157

ABOUT THE AUTHOR

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