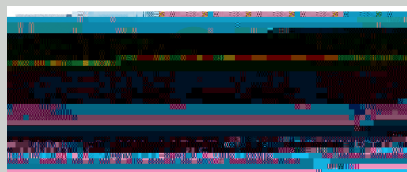
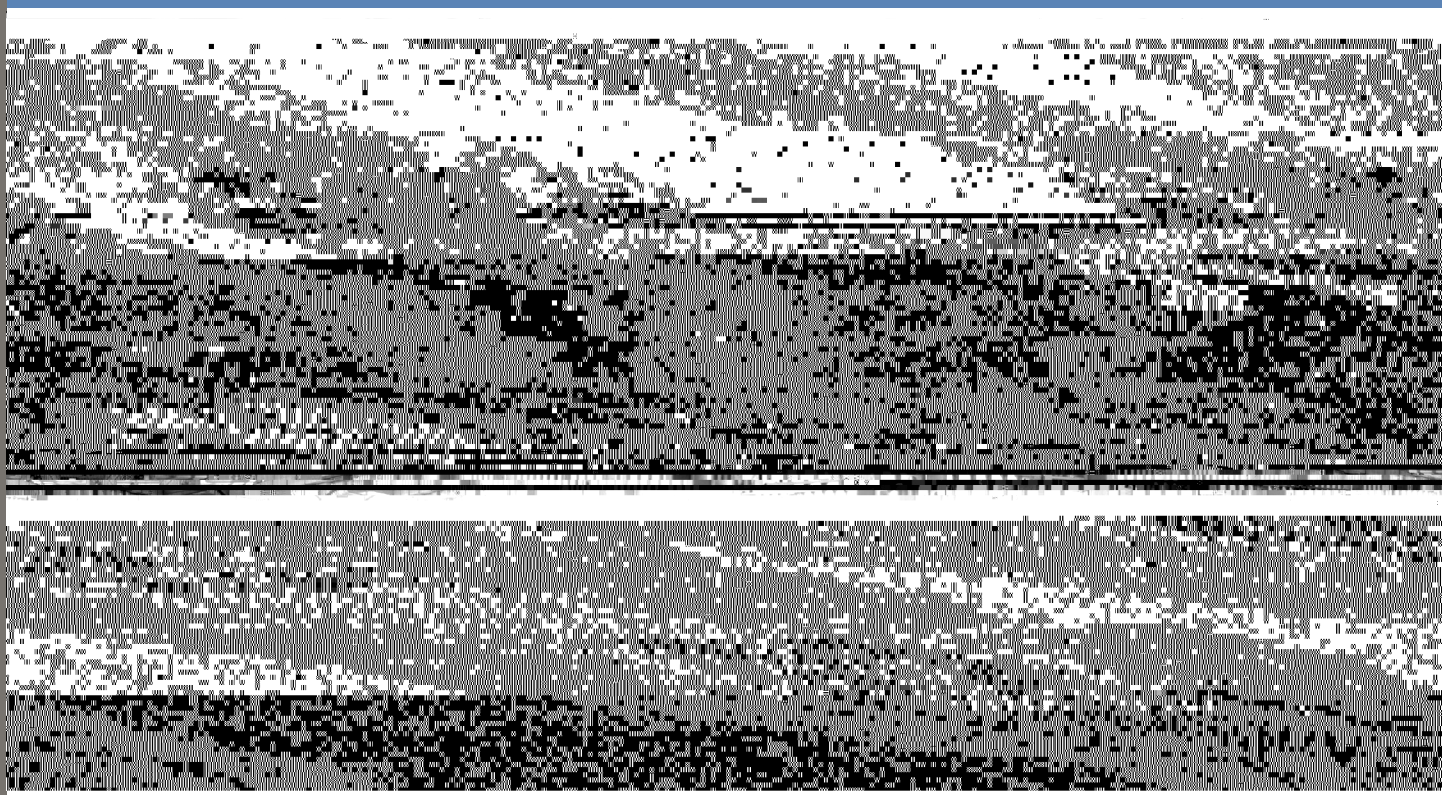


SMART REFORM IS POSSIBLE

States Reducing Incarceration Rates and Costs
While Protecting Communities



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While Protecting Communities

AUGUST 2011



Table of Contents

- Introduction 5**
- Recommendations for Reform..... 9**
- Acknowledgments 15**
- I. States Implementing Successful Bipartisan Reforms..... 17**
 - Texas (2007) 17
 - Kansas (2007) 25
 - Mississippi (2008) 30
 - South Carolina (2010) 36
 - Kentucky (2011) 41
 - Ohio (2011) 47
- II. States Working Toward Reform 53**
 - California 53
 - Louisiana 54
 - Maryland 55
 - Indiana 56
- III. 2011 National Legislative Trends in Criminal Justice 57**
- Conclusion..... 61**

Introduction

Since President Richard Nixon first announced the “War on Drugs” forty years ago, the United States has adopted “tough on crime” criminal justice policies that have given it the dubious distinction of having the highest incarceration rate in the world. These past forty years of criminal justice policymaking have been characterized by overcriminalization, increasingly draconian sentencing and parole regimes, mass incarceration of impoverished communities of color, and rapid prison building. These policies have also come at a great expense to taxpayers. But budget shortfalls of historic proportions are finally prompting states across the country to realize that less punitive approaches to criminal justice not only make more fiscal sense but also better protect our communities. This report details how several states with long histories of being “tough on crime” have embraced alternatives to incarceration, underscoring that reform is not only politically and fiscally viable, but that other states must also urgently follow suit.

Between 1970 and 2010, the number of people incarcerated in this country grew by 700%. As a result, the United States has the highest incarceration rate in the world, although we have only 5% of the world’s population.¹ At no other point in U.S. history—even when slavery was legal—have so many people been unnecessarily deprived of their liberty. Too often, lawmak-

In the past few years, the public and policymakers across the political spectrum have started to recognize that criminal justice reform is both necessary and politically viable. Lawmakers have steadily become interested in alternatives to incarceration that have proven to produce more effective public safety outcomes (“evidence-based” policies). “Get tough on crime” politicians are talking instead about being “smart on crime” and legislators are enacting bills supporting evidence-based programs—like diverting people charged with lower-level drug offenses into treatment instead of incarcerating them and imposing non-prison sanctions on those who violate the technical terms of their probation and parole instead of simply returning them to prison.

Most recently, the U.S. Supreme Court has also weighed in on the debate. In May 2011, in *Johannes v. California*, the Supreme Court recognized the dangers of overcrowded prisons, mandating that the state of California enact reforms to reduce its prison population in order to alleviate unconstitutional overcrowding.

Reforms that rely less on incarceration have long made economic sense, but dramatically declin

Recommendations for Reform

As highlighted by the significant success of criminal justice reforms discussed in this report, it is more than possible for a state to limit its reliance on prisons, reduce its corrections budget, and promote public safety and fairness. As states across the country are realizing that reducing prison populations and corrections budgets is a necessity, they can look to the examples in this report as ways to reform their criminal justice systems with promising results.

Some of the states discussed in this report—Texas, Kansas, Mississippi, South Carolina, Kentucky, and Ohio—have implemented the following selection of reforms. These reforms are “evidence-based,” i.e., backed up by social science and economic evidence proving their success, and show that mass incarceration is not necessary to protect public safety.

Systemic Reforms. These reforms affect criminal justice policies at large, undertaking a holistic evaluation or reform of a state’s criminal justice system.

- ***Require Evidence-Based Criminal Justice Practices and Risk Assessment Instruments.*** Criminal justice policies are more effective when crafted based on criminology or science rather than fear and emotion.
 - States should implement policies grounded in research proving that those policies actually achieve their stated goals. States should commission periodic evaluations of new or existing criminal justice policies and require affected state agencies to report progress on the implementation and success of programs.
 - States should incorporate the application of risk assessment instruments to individuals throughout the criminal justice system.

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- States should create or resurrect legislative committees to explore and recommend reforms. They should give these committees power to identify drivers of the prison population, propose reforms, oversee implementation, and evaluate successes. Examples: Kentucky (1976), Texas (2007), Kansas (2009), South Carolina (2011).

- **Require Accurate Fiscal Impact Statements.** Most state legislatures require proposed legislation to undergo a fiscal impact analysis that assesses the expenditures and cost sav5t3Es

cash deposits with the court instead of compensated sureties. States should advance legislation that more strictly regulates the commercial bail bond industry. Examples: Kentucky (1975, 2011).

- **Limit Time to Arraign.** States should set and abide by a specific time limit—such as 24 hours—between arrest and arraignment.
- **Reduce Penalties for Drug Offenses.** A quarter of the people in state and federal prisons are incarcerated for drug offenses. In 2009 alone nearly 1.7 million people were arrested in the U.S. for nonviolent drug charges.³ Marijuana arrests comprise more than half of all drug arrests in the United States, and nearly 90% of those are charges of possession only.⁴ These policies drain billions of taxpayer dollars and millions of law enforcement hours, with little benefit to public safety. Incarceration is not a proper solution to drug offenses; prison does not treat addiction and often makes individuals more prone to drug use.⁵
 - **Decriminalize/“Defelonize” Drug Possession.** States should decriminalize simple possession of all drugs, particularly marijuana and for small amounts of other drugs. States could also legalize drugs like marijuana, setting up a system to tax and regulate sales. As an alternative to decriminalization, states can convert drug possession crimes to misdemeanors or civil penalties, which carry non-prison sanctions. Examples: California (2010); Kentucky (2011).
 - **Provide Non-Prison Sanctions for Drug and Other Low-Level Offenses.** States should mandate non-prison alternatives, such as drug treatment, community service, or probation, for those convicted of low-level drug offenses. Additionally, states should offer drug treatment to all people with drug convictions who have substance abuse problems. States should also mandate similar alternatives for those convicted of other low-level offenses like property crimes or violations such as public intoxication. Examples: Kansas (2003); Texas (2003, 2007); Mississippi (2009); South Carolina (2010); Kentucky (2011); Ohio (2011).
 - **Eliminate the Crack/Cocaine Disparity** States should eliminate disparate sentences for crack and powder cocaine offenses. Last year, the federal government took steps to reduce the disparity, recognizing that the sentencing disparities fly in the face of science and logic and have devastating racially disparate effects, as the substances are pharmacologically identical.⁶ All states and the federal government should take further steps to completely eliminate sentencing disparities between crack and powder cocaine offenses, bringing our laws into line with science. These changes should be applied retroactively to those already in prison. Examples: South Carolina (2010); Ohio (2011).
- **Eliminate Mandatory Minimum Sentences.** In the 1950s and 1960s, our criminal sentencing laws gave too much discretion to judges. This structure resulted in judges sentencing individuals to vastly disparate sentences for similar offenses often due to racial biases. Since the mid-1970s, however, federal and state governments have implemented strict, inflexible,

revocation rates by a certain percentage within a certain time period. Examples: Texas (2007); Kansas (2007, 2011); Ohio (2011); California (2011); Louisiana (2011); Maryland (pilot 2011).

- ***Increase Transparency, Oversight, and Training of Parole Boards.*** In most states, the governor appoints members to the parole board. Often, individuals on these boards lack training and make decisions about parole release based on instinct instead of evidence. This results in an unfair execution of justice with little transparency or accountability for parole decisions.
 - States should mandate the use of risk assessment tools and require training for parole boards. They should also mandate that parole boards consist of members with different and varied experience and backgrounds and require boards to periodically report results to the legislature to determine whether they are making evidence-based deci-

I. States Implementing Successful Bipartisan Reforms

TEXAS (2007)



~State Representative Jerry Madden (R), 2007¹¹

Reduction in Incarcerated Population: Stabilized population & 11% reduction in prison growth by 2012.

- 2007 Incarcerated Population: 155,345 in prisons; 67,885 in jails.
- 2010 Incarcerated Population: 155,022 in prisons; 69,731 in jails.
- Projected 2012 Incarcerated Population: 156,986 in prisons (would have been 168,166 without reforms); plus jail population.

Reduction in Corrections Costs: Over \$2 billion saved by 2012 in averted prison growth.

- 2007 Corrections Costs: \$2.96 billion (including \$2.3 million on prisons).
- 2010 Corrections Costs: \$3.11 billion (including \$2.5 million on prisons).

Key Bipartisan Reforms:

- **Front-End**
HB 2668 (2003): Mandated probation for low-level possession of many drugs.
- **Back-End**
HB 1 (2007): Reinvested \$241 million to create treatment programs for those on parole and probation and non-prison sanctions for those committing technical violations.
SB 166 (2007): Gave financial incentives to local probation departments to provide non-prison sanctions for technical probation violations.

HB 2649 (2011): Increases earned credit eligibility to up to 20% of sentence length for nonviolent offenses.

HB 1205 (2011): Expands earned credit program for probation.

- **Juvenile Reforms**

SB 103 (2007): Eliminated prison sentences for juvenile misdemeanors; set minimum periods of detention as the default for other offenses.

HB 1 (2009): Closed three juvenile prisons and reinvested partial savings into juvenile probation.

Effect on Public Safety: Since 2007, the crime rate in Texas fell more than 8%; Texas now has its lowest crime rate since 1973.

A. Escalating Prison Growth & Costs

In 2007 Texas's incarcerated population numbered 226,901 prisoners,¹² making Texas the state with the fourth highest incarceration rate in the country. Texas had an astronomical corrections budget (including funding for prisons, parole, and probation programs) of almost \$3 billion annually.¹³ That year, the Texas nonpartisan Legislative Budget Board estimated that by 2012 the state would need an additional 17,000 prison beds, projected to cost the state \$2 billion to build plus approximately \$290 million per year to operate the additional prisons.¹⁴ After many small attempts at reform, this budget projection finally shocked legislators into enacting large reforms to move away from the state's overreliance on prisons.

B. Political Momentum for Change

2001-2003: L B A A

A highly publicized set of drug cases triggered an initial round of reforms to the Texas criminal system. In 2001, dozens of African-Americans in the town of Tulia were charged and convicted of false, very low-level cocaine offenses. They were sentenced to 20, 40, 60 and even 90 years. After intense litigation, the defendants established that their convictions were based on false and uncorroborated law enforcement testimony.¹⁵ Texas Governor Rick Perry (R) then pardoned the Tulia defendants in 2003.

In 2001, in response to public attention to the Tulia arrests, the Texas legislature passed HB 2351 (which required corroboration of confidential informants' testimony),¹⁶ SB 1074 (which prohibited racial profiling by police officers),¹⁷ and SB 7 (which set requirements for public legal defense for indigent defendants).¹⁸

Many of the legislators supporting these laws formed an unlikely coalition of Democrats and Republicans united by the growing strain on the budget and overflowing prisons. The Chair of the Corrections Committee, Representative Ray Allen (R), spearheaded the reform effort and collaborated with the ACLU of Texas and the Justice Policy Institute (a think-tank committed to reducing incarceration rates) to identify potential reforms that would decrease prison populations without endangering Texas communities.

In 2003, the coalition successfully passed HB 2668 in furtherance of these goals, which:

- **Mandated probation for first-time, low-level drug possession** of small amounts of marijuana, cocaine, and other drugs, offering a suspended sentence instead of prison time.¹⁹

2005: A C

Representative Allen then sought a more comprehensive overhaul of the criminal justice system in 2005, working with Senator John Whitmire (D) and Representative Jerry Madden (R) to garner bipartisan support.²⁰ Groups like the ACLU of Texas continued to work with the legislators. The bill would have reduced probation lengths, expanded drug courts to more counties, and expanded earned time credits for those on parole and probation. Of the 181 state legislators, 72 Democrats and 82 Republicans voted to pass HB 2193.²¹

Governor Perry then vetoed the bill, supporting the “tough on crime” position taken by law enforcement.

2007: H C M

By 2006, faced with growing prisons that would cost the state over \$2 billion, Governor Perry began to realize that change to the prison system was a necessity. The Texas legislature worked with the Council for State Governments (CSG) (a national nonpartisan organization that fosters state government collaboration) to identify factors driving the prison growth.²² CSG found three influential factors: increased probation and parole revocations, fewer individuals receiving parole, and a reduced capacity for residential treatment programs for individuals on parole and probation.

In 2007, after Representative Allen’s departure from the legislature, Senator Whitmire and Representative Madden quickly revived and revised the 2005 attempted reforms. As Representative Madden stated, the plan was to turn the debate from one that says “be tough on crime to one that says be smart on crime.”²³ The ACLU, the Texas Criminal Justice Coalition (a state policy research group advancing criminal justice reforms), and the Texas Public Policy Foundation (a nonprofit libertarian research institute) worked to pass the reforms. Governor Perry also took a seat at the reform table.

C. Bipartisan Legislative Reforms

2007 : E D C

In May 2007, the legislature passed several bills, with strong bipartisan support, packaged together as the Whitmire/Madden Correctional Treatment and Diversion Plan. This package aimed to reduce the state's soaring prison population and provide smoother reintegration into society, which would eventually lead to lower revocation rates, increased public safety, and huge cost savings.

One key difference between the 2005 bill and the enacted 2007 reform package was a budgetary provision allocating funds to keep the programs alive (discussed as HB 1 below).²⁴

Texas has gained nationwide acclaim for its 2007 reforms and the ongoing bipartisan efforts to reduce reliance on prisons. But Texas, like all states, still has more work to do. For the last several years, Texas's reforms have focused on parole and probation, addressing an individuals' exit from prison. Texas would be justly served to focus on front-end reforms like decriminalizing low-level drug and property offenses, reducing sentences for some crimes, and mandating alternatives to incarceration for low-level crimes. Texas is still facing a serious budget shortfall between \$15 and \$27 billion over the next two years and would be prudent to continue to cut back on its prison spending.⁵⁹

KANSAS (2007)

→ **2007** Kansas State Legislature passed a law that would have increased the number of prison beds from 14,000 to 18,000. The law was vetoed by Governor Sam Brownback.

~Then U.S. Senator, now Governor Sam Brownback (R), 2004⁶⁰

Reduction in Incarcerated Population: 14.6% reduction in prison growth as of 2009.

- 2003 Incarcerated Population: 9,046 in prisons; plus jail population.
- 2009 Incarcerated Population: 8,610 in prisons (would have been 9,927 without re

A. Escalating Prison Growth & Costs

In 2003, Kansas's prison population was growing at nearly double the national rate. Since the 1990s, it had increased by 49%, to a record 9,046 prisoners in 2003.⁶¹ This unprecedented growth was due largely to harsh prison sentences for low-level drug possession. For example, between 1997 and 1999, the number of individuals sent to prison for first-time, low-level drug possession increased by 65%.⁶²

A staggering increase in statewide corrections spending accompanied the rising incarceration rate. Between 1985 and 2003, Kansas's annual spending on prisons consistently increased, rising from \$60 million to \$220 million.⁶³

B. Political Momentum for Change

As a result of a looming budget crisis, in 2002 the newly elected Governor Kathleen Sebelius (D) sought to cut \$6.8 million from the Kansas Department of Corrections (DOC) budget. The Kansas Sentencing Commission ordered a statewide poll to assess how the public felt about drug policy. The Council for State Governments (CSG) and the University of Kansas conducted the poll.⁶⁴ The results revealed that more than 85% of those surveyed believed the state should provide treatment to those who used drugs and 72% supported drug treatment over prison for drug possession crimes.⁶⁵

Emboldened by the poll results and realizing that the current policy was untenable, the Sentencing

2005:  **A**

In 2005, the prison population once again began to creep up and reports projected that without major reforms Kansas would soon need to build 1,300 new prison beds. Unclear as to how to stem the tide, the Sentencing Commission sought technical assistance from CSG to identify factors driving the prison growth.

2007  **B**

The state discovered that the staggering increase in incarceration was driven by the high rates of parole and probation revocations sending individuals back to prison for technical violations.⁷¹

2011: H

In 2011, Governor Sam Brownback (R) took office. This year, he signed into law SB 60,⁹⁸ which:

- Gives municipal judges discretion to sentence individuals to **house arrest for minor crimes** (like ordinance violations) instead of incarceration;⁹⁹ and
- Gives judges discretion to place individuals under **house arrest for violations of parole conditions** instead of imprisoning them.

For the past decade Governor Brownback has been a national leader of conservative voices calling for smart prison reform. There is strong hope that he will put Kansas back on the map as a state advancing smart criminal justice reform.

MISSISSIPPI (2008)



~ Mississippi Department of Corrections Commissioner Christopher Epps, 2011¹⁰⁰

A. Escalating Prison Growth & Costs

By 2007, Mississippi's incarcerated population had grown to 29,096 prisoners, making it the state with the second highest incarceration rate in the country.¹⁰¹ State prisons were operating at 99% of capacity and the cost of the corrections system was consuming an ever-increasing portion of the state budget. In 1994, the Mississippi Department of Corrections (DOC) budget was \$109.6 million, but by 2008 it had more than tripled to \$348 million.¹⁰²

If incarceration rates kept growing at that pace, the state would need to add 5,000 more prison beds in the next ten years. The community impact of this mass incarceration was equally striking, with seven of every ten Mississippi prisoners having a relative in prison.¹⁰³

Much of Mississippi's overincarceration problem could be traced to 1995, when the legislature passed one of the harshest "truth-in-sentencing" laws in the country.¹⁰⁴ The law mandated that all individuals convicted of felonies must serve 85% of their sentence before they could even be considered for parole.¹⁰⁵ Mississippi's law was harsher than other states because it applied to all prisoners, regardless of whether they had been convicted of a violent or nonviolent offense.

B. Political Momentum for Change

Faced with the fiscal and human consequences of a corrections system running over capacity, legislators slowly began to think about prison reform.

2004:



In 2004, the state enacted several small reforms with bipartisan support that:

- **Expanded the earned credit program**, allowing individuals 30 days of credit applied toward their sentences for every 30 days of time served with a clean disciplinary record in prison (HB 686).¹⁰⁶ Of 174 Mississippi state legislators, 44 Republicans and 88 Democrats voted to pass this bill.¹⁰⁷
- Created a **medical parole program** allowing terminally ill prisoners to apply for parole (HB 654).¹⁰⁸

As explained below, HB 686 has been a great success, particularly when combined with later expansions to the program noted below. While successful, these reforms on their own proved ineffective in decreasing the booming prison population or the costs to the state.¹⁰⁹ Lawmakers and advocates continued to seek ways to reform the prison system.

2006: L

The ACLU's National Prison Project had been litigating against the DOC to improve the deplorable conditions at Parchman Farms, the state's supermax prison.¹¹⁰ During the litigation, DOC Commissioner Christopher Epps began to work in partnership with the ACLU and the JFA Institute (a nonpartisan research agency) to examine and reform conditions at Parchman. In 2006, Commissioner Epps entered into a legal agreement with the ACLU to improve the prison's conditions.¹¹¹ Understanding that the scope of the prison problem required more extensive reform, Commissioner Epps began thinking about ways to reduce Mississippi's prison population.¹¹²

As in other states, many individuals returning to prison in Mississippi do so because of technical violations rather than new crimes. Even with the increase in the size of the parole population,¹²⁸ the rate of parole revocations has remained constant.¹²⁹ For example, out of the nearly 3,100 prisoners the DOC released in 2009, only 121 have been returned to custody.¹³⁰ Of those, all but five returned for technical parole violations.

The reforms implemented in Mississippi between 2004 and 2010 will save a total of \$450 million by 2012.¹³¹ This includes not only the savings of SB 2136, but also the savings of the 2004 earned credit program reform (\$31.4 million), the 2004 medical parole law (\$5 million), the 2009 electronic monitoring expansion (\$2.6 million), and averted prison construction (\$400 million).¹³²

Furthermore, Mississippi's crime rate, which has been decreasing steadily from its peak in 1994, has continued to decrease after the reforms and has now fallen to its lowest level since 1984.¹³³

E. Moving Forward

While progress and the savings to the state from these reforms are significant, the major players in Mississippi realize that they need to build on past reforms to continue their successes.

The DOC continues to explore methods to decrease reliance on needless incarceration. It is considering an earned credit program for those on parole, under which individuals can continue to receive the same earned credit for exemplary time served on parole as they did in prison.¹³⁴ The DOC is also testing a new electronic monitoring device to move individuals from prison to house arrest.¹³⁵

Commissioner Epps remains committed to reducing costs and the prison population while upholding public safety. He has identified a number of priorities for further reform in 2012, including: easing the standard for medical parole; extending the eligibility for earned credit to individuals convicted of drug possession offenses;¹³⁶ reducing parole violation penalties; and creating a non-prison unit to house those committing technical parole violations.¹³⁷

In April 2011, the ACLU of Mississippi and Justice Strategies (a research group advocating for criminal justice reform) released a report calling for additional reforms including: replacing mandatory minimums with flexible sentencing standards; lowering and narrowing the prescribed sentencing range for drug offenses; and limiting the use of life without parole to violent crimes.¹³⁸

Additionally, the ACLU and JFA continue to monitor conditions in Mississippi's prisons and work to move juveniles out of adult facilities. The DOC continues to collaborate with the ACLU, and in June 2011 it agreed to shut down Unit 32 at Parchman Farms—the facility that sparked the original lawsuit¹³⁹—and to reform conditions and reduce the use of solitary confinement in other maximum-security facilities.

Mississippi is a good example of a “tough on crime” state that is on the path toward significant reform. Mississippi had the second highest incarceration rate in the country and still managed to reform its prison system with the support of the Governor, DOC Commissioner, bipartisan legislators, and key advocates. As much of Mississippi’s past reforms have focused on back-end parole reform, the state would be well served to examine some reforms to its sentencing laws that would reduce prison admissions while protecting public safety.

SOUTH CAROLINA (2010)

“The bill will reduce the state’s prison population by 7.3 percent, save \$241 million in corrections costs, and create 1,000 jobs. It will also create a medical parole program, expand parole eligibility for certain offenses, and create an earned credit program for probation.”

~State Senator George Campsen III (R), 2010¹⁴⁰

Projected Reduction in Incarcerated Population: 7.3% reduction in prison growth by 2014.

- 2009 Incarcerated Population: 24,612 prison; approx. 13,000 in jails.
- 2014 Projected Incarcerated Population: 26,111 in prison (would be 27,903 without reforms); plus jail population.

Projected Reduction in Corrections Costs: \$241 million saved by 2014 in averted prison growth.

- 2009 Corrections Costs: \$400 million (including \$265.4 million on prisons).

Key Bipartisan Reform - S.1154 (2010):

- **Systemic**
Required fiscal impact statements for criminal justice legislation.
- **Front-End**
Eliminated mandatory minimum sentences for drug possession; eliminated the crack/cocaine disparity; provided non-prison alternatives for some drug sale offenses.
- **Back-End**
Created medical parole program; expanded parole eligibility for certain offenses; created earned credit program for probation.
- **Undermining Progress**
Expanded list of violent crimes; added three strikes law.

Effect on Crime Rate: Projected to increase public safety; drop in crime rate expected to continue.

A. Escalating Prison Growth & Costs

By the end of 2009, South Carolina's prison population stood at 24,612, a nearly 270% increase over 25 years.¹⁴¹ Adding to this problem were the 3,200 new individuals expected to enter the state's prisons by 2014.¹⁴² South Carolina's taxpayers had been shouldering increasingly heavy burdens to house these prisoners; the state's corrections expenses ballooned to \$394 million in 2008—over a 500% increase from 1983.¹⁴³ This was certainly bad news for a state facing an \$877 million budget gap.¹⁴⁴

Due to the state's extreme sentencing policies, people convicted of nonviolent offenses constitute a large portion of South Carolina's prison population. In 2009, almost half of individuals in prison were incarcerated for nonviolent offenses and 66% of those who violated parole or probation returned to prison due to technical violations not constituting new crimes.¹⁴⁵

Despite these increases, South Carolina's crime rate, while steadily declining for the past decade, remained high compared to other states. In addition, the state's recidivism rate actually increased over the decade of increased incarceration.¹⁴⁶

B. Political Momentum for Change

Faced with the overwhelming cost of housing an ever-increasing prison population, South Carolina's political leaders recognized the need for action. Chief Justice Jean Toal of the Supreme Court of South Carolina went so far as to call the severity of the prison growth a "national scandal."¹⁴⁷ Legislators became concerned that using the state's prisons to house individuals convicted of nonviolent offenses would leave no room in prisons for those committing violent crimes. Building and operating new prisons just to cover violent offenses would cost the state roughly \$500 million.¹⁴⁸

Recognizing the problem, the state established the bipartisan South Carolina Sentencing Reform Commission in 2008¹⁴⁹ to recommend changes to the state's laws.¹⁵⁰ The commission consulted the Pew Center on the States to identify drivers of the state's prison growth.

Gerald Malloy (D), chair of the Sentencing Reform Commission, was concerned about space for violent offenders and wanted to free up resources for law enforcement efforts to prevent crime in the first place.¹⁵¹ Newt Gingrich, a leader of the national conservative organization Right on Crime, agreed: "Low-level violations, as well as certain nonviolent drug-related crimes, can be punished in other ways that aren't as expensive as prison. We build prisons for people we're afraid of. Yet South Carolina has filled them with people we're just mad at."¹⁵²

Groups from across the spectrum joined these leaders in supporting reform, including the ACLU

justice reform think-tank). The ACLU of South Carolina supported efforts to reduce reliance on prisons and cautioned against any changes to the laws that would unnecessarily increase criminal penalties.

C. Bipartisan Legislative Reform

2010 : D , E E

The Sentencing Reform Commission ultimately produced a set of recommendations enacted as S. 1154.¹⁵³ The law passed the legislature almost unanimously, with only four legislators dissenting. The reforms were mostly progressive in that they provided for alternatives to incarceration in many cases, though several provisions actually created more prison time for certain offenses.

The law contained many provisions; foremost it:


Required

- Required a **fiscal impact statement for criminal justice legislation** revising existing or creating new criminal offenses.¹⁵⁴ In this way, the law sought to provide the legislature with information about the long-term costs of incarceration before it acts to possibly increase the prison population.
- Created an **oversight committee** with discretion to shift up to 35% of the savings resulting from these reforms away from prisons and toward probation and parole.¹⁵⁵

Eliminated

- **Eliminated mandatory minimum sentences for simple drug possession**, restoring discretion to judges.¹⁵⁶
- Gave judges discretion to impose **non-prison alternatives for first or second non-trafficking drug offenses** like probation, suspended sentencing, work release, and good conduct.¹⁵⁷
- **Eliminated the crack/cocaine disparity.**¹⁵⁸
- **Restricted enhanced penalties** for prior marijuana possession convictions for a subsequent possession conviction.¹⁵⁹
- Added **intent elements** for drug crimes near schools.¹⁶⁰
- **Increased the felony property crime threshold** from \$1,000 to \$2,000.¹⁶¹
- Decreased the maximum sentence for nonviolent burglary from 15 years to 10 years.¹⁶²

- Created a **medical parole program** for terminally ill or ailing prisoners to apply for parole.¹⁶³
- **Expanded parole eligibility** and provided work release for individuals convicted of certain



The law has come under criticism not only due to the provisions increasing prison sentences, but also because most of its provisions are discretionary and not mandatory. For more dramatic decreases in the prison population and the subsequent savings, judges must take advantage of the new provisions and choose to sentence people convicted of nonviolent offenses to alternatives to incarceration.¹⁷⁸ Critics claim judges are still handing down sentences that favor incarceration, but Chief Justice Toal remarked that judges are responding positively to the new guidelines and may increase their use of alternatives as time passes.¹⁷⁹ Toal went on to say that substantial changes will take at least another year, and that South Carolina still needs to develop some of the resources that provide alternatives to incarceration.¹⁸⁰ South Carolina's judiciary is working to educate judges about the new law and how to implement it.¹⁸¹

E. Moving Forward

South Carolina has taken a step toward criminal justice reform with S. 1154. But lawmakers and advocates are wise to realize their work to reform the system is hardly done.

In 2011, Governor Nikki Haley (R) and the Senate introduced a proposal to merge the state's probation, parole, and county corrections agencies under one authority.¹⁸² The proposal did not pass this year, and the legislature is set to take it up next year.

Local advocacy groups continue to keep a close eye on the legislature to ensure it does not make shortsighted cuts or reforms that would peel back any of the 2010 reforms aimed at reducing prison populations. These groups must also ensure that the legislature, Department of Corrections, and judges fully implement these reforms. The state legislators and advocates must continue to come together to enact further reforms to reduce the state's reliance on unnecessary incarceration, with a particular eye toward decreasing its pre-trial detention population in county jails.

KENTUCKY (2011)

~ State Senator Tom Jensen (R), 2011¹⁸³

Projected Reduction in Incarcerated Population: 18.4% reduction in prison growth by 2020.

- 2010 Incarcerated Population: 20,763 in prison; 18,800 in jails.
- 2020 Projected Incarcerated Population: 18,308 in prison (would have been 22,132 without reforms); plus jail population.

Projected Reduction in Corrections Costs: \$422 million saved by 2020 in averted prison growth.

- 2010 Corrections Costs: \$468.8 million (including \$289.6 million on prisons).

Key Bipartisan Reform - HB 463 (2011):

- **Pre-Trial**
Eliminates pre-trial detention for many drug offenses; mandates citations instead of arrests for some misdemeanors.
- **Front-End**
Reclassifies marijuana possession to a misdemeanor; presumes probation for simple possession of many drugs; reduces sentences for other drug crimes; offers non-prison alternatives for felony possession.
- **Back-End**
Expands earned credit programs for prison and parole.

Projected Effect on Public Safety: Projected to maintain public safety; drop in crime rate expected to continue.

A. Escalating Prison Growth & Costs

Over the past 20 years, Kentucky's corrections expenses grew from \$117 million in 1989 to \$513 million in 2009—a 338% increase that is well above the national average.¹⁸⁴ This is a result of Kentucky's burgeoning prison population¹⁸⁵—one that has grown by 45% over the past decade, more than triple the national average.¹⁸⁶

However, Kentuckians were not safer as a result of the runaway prison spending; recidivism actually increased by 6% from 1997 to 2006.¹⁸⁷ Despite this, Kentucky's crime rate was still below the national average.¹⁸⁸ This is an example of how the growth in the prison population was not driven by an increase in criminal activity, but rather by several inefficient corrections policies. Kentucky sentenced individuals to prison time instead of to probation, treatment, or other non-incarceration punishments at a far higher rate than other states.¹⁸⁹ Violations committed on parole accounted for nearly one-fifth of prison admissions, nearly double the amount in 1998,¹⁹⁰ and 25% of Kentucky's prison population was incarcerated for drug offenses.¹⁹¹

Kentucky was on an unsustainable path. With existing policies in place, Kentucky was projected to take in an additional 1,400 prisoners over the next 10 years¹⁹² at a total cost of an additional \$161 million.¹⁹³

B. Political Momentum for Change

1975: A M

The recent burst in Kentucky's prison population came as a surprise to some familiar with Kentucky's criminal justice system. Starting in 1976, the state had instituted some of the most sensible and efficient pre-trial detention reform laws in the nation. The 1976 pre-trial detention reforms:

- Established **pre-trial release as the default** “unless the court determines in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required.”¹⁹⁴
- **Abolished commercial for-profit bail bondsman.**¹⁹⁵
- Gave the Supreme Court power to establish a **uniform bail schedule** for nonviolent, low-level felonies, misdemeanors, and violations.
- Returned bail deposits to defendants when they were found innocent or the charges dropped or dismissed.¹⁹⁶
- Required courts to offer substance abuse counseling for drug offenses.¹⁹⁷

- Implemented a statewide uniform Pre-trial Services Agency to use a **risk assessment tool to release low-risk, low-level defendants** prior to trial instead of incarcerating them.
 - The law limited release to individuals accused of committing violations (like shoplifting, marijuana possession, public intoxication, and criminal trespassing) and allowed courts to impose supervision conditions (like phone-reporting, drug testing, home incarceration, or in-person reporting) for these crimes.¹⁹⁸

To date, the Pre-Trial Services Agency has saved the state millions of dollars in corrections costs by reducing court dockets through release and subsequent dismissal of charges. This program has been a huge success, with 71% of defendants released showing up for their court dates and refraining from committing new violations.¹⁹⁹

Although this reform was successful in many ways, Kentucky's prison population spiked after the 1980s due to harsh drug laws. The state's increasing number of arrests for drug violations and its unnecessarily long sentences for those convicted of felony drug possession led to large recent increases in prison population and corrections spending.

2005 & 2006: A

In 2005 the Pre-Trial Services Agency implemented the Monitored Conditional Release (MCR) program in 48 of the 120 counties in the state. The program:

- Required that pretrial officers interview defendants with a risk assessment tool to make **recommendations of pre-trial release for lower risk defendants.**
- Targeted counties struggling to pay the costs of housing individuals in county jail before trial.²⁰⁰

2005 2008: F

In 2005 and 2008, Kentucky launched two attempts at reform, commissioning legislative task forces to make recommendations. However, legislators largely ignored the recommendations due

- Mandates judges to **release individuals posing low flight risks and low threats to public safety**.²¹⁶
- Requires that **courts limit bail amounts for nonviolent misdemeanors**, such as possession of some drugs, so that bail does not exceed the fines and court costs that would result if the individual was convicted of the highest misdemeanor possible.²¹⁷
- Grants individuals charged with most crimes a **\$100 credit toward bail for each day in jail**.²¹⁸

- Makes **simple possession of marijuana a low misdemeanor** with a maximum jail term of 45 days.²¹⁹
- **Decreases maximum sentences for possession²²⁰ or trafficking²²¹** of certain drugs to three years from five years.
- **Decreases sentences** for trafficking smaller amounts of drugs.²²²
- Grants individuals **automatic presumptive probation for the simple possession** of many drugs.²²³
- Gives judges discretion to impose **treatment for felony possession of some drugs** other than marijuana, and makes this alternative the preferred sentence for first offenses.²²⁴
- Mandates that judges use **risk assessment tools** during sentencing.²²⁵

- Requires probation and parole departments to **use evidence-based practices**.²²⁶
- **Expands earned credits**, crediting individuals with 90 days for completing educational or drug treatment programs, or 10 days per month of exemplary time served.²²⁷
- Requires subsequent parole hearings for individuals convicted of nonviolent felonies two years after a parole denial.²²⁸
- Creates **earned credit for parole** and directs the DOC to set procedures governing time earned.²²⁹
- Requires that individuals sentenced to jail simply for failure to pay fines earn a credit of \$50 toward the fine for each day in jail or up to \$100 if the individual performs community service during the sentence.²³⁰

D. Success and Projected Savings

The reforms in HB 463 are expected to be a massive relief on both Kentucky's prison system and taxpayers. In the first year of implementation the reforms are expected to reduce the prison population by 3,218, a figure that jumps to a 3,824 decline by 2016.²³¹

The law is also projected to save approximately \$422 million by 2020, including \$160 million in averted prison construction and operation costs.²³² Even after the additional costs of probation and parole caseloads and increased pre-trial services are taken into account, Kentucky will net approximately \$30 million in savings in the first year of implementation, with savings increasing in subsequent years.²³³ A portion of the projected savings will be used to strengthen Kentucky's parole and probation systems in an effort to further reduce recidivism.²³⁴

Crime rates are expected to decline, as they have been doing since the mid-1990s.²³⁵

E. Moving Forward

HB 463 is a major step toward reform, but the Task Force realizes it has more to do. In June 2011 it solicited additional recommendations to reform its penal laws and criminal justice system. Several local advocacy groups including the ACLU of Kentucky, the Kentucky Equal Justice Center (a nonprofit poverty law group), the Catholic Conference of Kentucky, and the Department of Public Advocacy (the state public defender organization) have called for additional reforms, including reducing days spent in pre-trial detention, increasing the use of reentry programs modeled on those in Texas, and expunging criminal records for low-level offenses.

The state has taken a huge step forward but there is still much more to be done. Local advocates must be vigilant in ensuring that the reforms are implemented as passed and that HB 463 is just the cusp of the reform movement in Kentucky.

OHIO (2011)



~State Senator Bill Seitz (R) (2011)²³⁶

Projected Reduction in Incarcerated Population: 13.8% reduction in prison growth by 2015.

- 2011 Incarcerated Population: 50,857 in prisons; approx. 20,500 in jails.
- 2015 Projected Incarcerated Population: 47,000 in prisons (would have been 54,000 without reforms); plus jail population.

Projected Reduction in Corrections Costs: \$1 billion saved by 2015 in averted prison growth.

- 2011 Corrections Costs: \$1.77 billion (nearly all on prisons).

Key Bipartisan Reform - HB 86 (2011):

- **Front-End**
Eliminates crack/cocaine disparity; reduces mandatory minimum sentences for some drug crimes; mandates non-prison alternatives for misdemeanors and low-level felonies; increases property crime thresholds.
- **Back-End**
Expands earned credit programs; expands parole eligibility; gives prisoners over the age of 65 additional parole hearings; provides financial incentives for counties to reduce technical violation revocations.
- **Juvenile**
Gives judges more discretion to keep juveniles out of the adult system.

Reform Undermining Progress – HB 153 (2011): sold six state prisons.

Projected Effect on Public Safety: Projected to maintain public safety; drop in crime rate expected to continue.

A. Escalating Prison Growth & Costs

From 2000 to 2008, the number of people entering Ohio's prisons had increased by 41%. If existing policies remained unchanged, the state would need to spend \$829 million by 2018 to build and operate new prisons to house the increasing population.²³⁷ As it was, Ohio's prisons were already at 133% capacity, holding 51,722 prisoners in a system built for only 38,655. Ohio's jails were just as overcrowded, holding over 20,000 prisoners. With the system bursting at the seams, the state was already spending about \$1.8 billion on its corrections system.²³⁸

B. Political Momentum for Change

Recognizing that the state could no longer support the growing budget strain of excessive prison growth, Ohio legislators created a committee to review the problem. Senator Bill Seitz (R) and Representative Mike Moran (D) chaired the committee to seek solutions. The Council of State Governments provided technical assistance to identify factors driving the prison growth. Several groups also advocated for comprehensive reform including the ACLU of Ohio, the Buckeye Institute (a state ehensi s4Cm[(gr)o s4Cm[3

2011 : D , E J

Criminal justice advocates in Ohio refused to give up. In 2011, bipartisan legislators reintroduced comprehensive reform very similar to SB 22. Of the 132 state legislators, 49 Democrats and 77 Republicans voted to pass HB 86. Governor John Kasich (R) signed the bill in June 2011. The law does the following:

• Risk Assessment

- Mandates use of a uniform **risk assessment tool** by all state courts, probation and parole departments, and correctional institutions to assess an individual's risk of reoffending.²⁴²

• Sentencing

- **Eliminates the crack/cocaine disparity** and gives judges discretion to sentence individuals convicted of possession of less than 10 grams to halfway houses or drug treatment.²⁴³
- **Reduces mandatory minimum sentences for marijuana and hashish** offenses.
- **Increases monetary thresholds for property crimes** that are felonies from \$500 to \$1,000 and for other property crimes by 50%.²⁴⁴

- **Expands parole eligibility** for certain prisoners who have served at least 80% of their sentences.²⁵²
- Provides an additional

In this way, Ohio's prison sale is primed to undermine the crucial reforms accomplished in HB 86. Instead of reforming the criminal justice system by taking shortcuts for one-time infusions of cash from prison sales, the legislature must maintain its focus on holistic reforms eventually leading to less reliance on prisons. Legislators must keep their eyes on the prize—the ultimate goal is to reduce prison budgets and prison populations by allowing individuals who do not deserve to be in prison to remain in their communities. Simply selling or privatizing prisons for purported cost savings makes no progress toward this goal and can often detract from and work against positive prison reform.

D. Success and Projected Savings

Once fully implemented, the package of reforms in HB 86 is projected to save about \$1 billion over the next four years.²⁶⁷ This includes \$925 million in savings in avoided prison construction and operation costs and \$78 million in additional budget savings.²⁶⁸

The law is also projected to reduce the total number of prison beds by over 2,000 in the next four years, with a projected 2015 prison population of about 47,000 prisoners²⁶⁹ (the population was projected to be 54,000 without the reforms) compared to the current population of 50,857.²⁷⁰

The law is not expected to negatively impact public safety. Ohio's crime rate, which has been on the downslide since 1991, is expected to continue declining.²⁷¹

E. Moving Forward

Ohio achieved an excellent first step this year in criminal justice reform with HB 86. But it is up to the champions of these reforms and local advocacy groups to ensure the implementation and continued funding of these reforms. These players must be especially vigilant given the plethora of pennywise pound-foolish budget cuts made this year. Ohio's legislators must continue steadily on the path to prison reform, enacting further reforms in future years.

initiatives in 2012 to abolish the death penalty, reform California's three strikes law, and legalize and regulate marijuana sales.²⁸⁴

California is poised to significantly reduce its prison population and usher in an era of alternatives to incarceration, but it remains to be seen whether and how earnestly California's state and local officials will implement meaningful reform.

Louisiana: Relief for Some, More Reforms Needed

Louisiana has the unfortunate distinction of being the state with the highest incarceration rate in the nation. Not surprisingly, Louisiana has some of the harshest sentencing laws in the country, imposing sentences of life without parole at four times the national rate²⁸⁵ and 82% of those in prison are serving time for nonviolent crimes.²⁸⁶

Because of these laws, Louisiana's prison population—like the nation's at large—is becoming increasingly elderly and ailing, taking a significant toll on the state's budget. The state spends \$19,888 a year to house an average prisoner, but spends about \$80,000 a year to house and care for an ailing prisoner.²⁸⁷ For several years Burl Cain, the warden of the Louisiana State Penitentiary at Angola, has been publicly explaining how the prison has been "turning into a nursing home." In 2011, the ACLU of Louisiana teamed up with Warden Cain and the Louisiana Conference of Catholic Bishops to garner bipartisan legislative support to pass HB 138, creating an **elderly parole program**. The legislation, which Governor Bobby Jindal (R) signed into law in June 2011, gives some individuals age 60 or older the right to a parole hearing to determine whether they no longer pose safety risks and can be released.²⁸⁸

jails are incarcerated prior to trial—though presumed innocent—or have been convicted of ordinance violations (like public drunkenness or traffic violations). In 2010, a coalition successfully opposed Sheriff Marlin Gusman’s attempt to expand the jail in Orleans Parish,²⁹² which already had the highest jail incarceration rate in the country. Reform advocates hope these other expansion attempts will be similarly defeated.

It seems that at least some lawmakers in Louisiana understand the need to reduce prison and jail populations and budgets. If they are serious about achieving this goal, they will build on the laws passed this year to achieve much more in future years—especially in the area of reducing the state’s harsh sentencing laws.

Maryland: Beginning to Agree on Prison Reform

Since 1980, Maryland’s incarcerated population has tripled, with a corrections budget of over \$1.3 billion.²⁹³ Like so many other states, Maryland found itself strapped for cash and looking for ways to fix the many gaps in its budget. This year, a bipartisan coalition came together calling for prison reform. A group of Maryland legislators led by Representative Michael Hough (R), Representative Chris Shank (R), and Senator Lisa Gladden (D) sponsored two bills that would take much-needed steps toward reforming the state’s criminal justice system and easing its strain on the budget. Groups across the political spectrum, including the ACLU of Maryland, the Justice Policy Institute, Americans for Tax Reform (an organization advocating for low income taxes), the American Legislative Exchange Council (a conservative organization of state legislators), and the Tea Party joined together to support these bills.

SB 801 creates a pilot program in two counties providing for a system of **graduated sanctions** (possibly like day reporting or community services) instead of automatic prison time for those committing technical parole violations (like missing a parole meeting).²⁹⁴ The law also requires parole officers to report the number of individuals incarcerated for technical violations.²⁹⁵ Other bills sponsored by this coalition that did not pass this session aimed to reduce recidivism²⁹⁶ and provide earned credits to those on parole.²⁹⁷

A separate group of likeminded legislators also successfully passed another bill to reduce Maryland’s prison population. HB 302 **reduces the power of the governor to intervene in parole decisions**. It depoliticizes the process by requiring the governor to take timely action if he wishes to override the parole board’s decision that an individual serving a life sentence no longer poses a safety risk and should be released onto parole.²⁹⁸ Other bills sponsored by this group of legislators that did not pass include efforts to reform mandatory minimum laws and decriminalize low-level marijuana possession.²⁹⁹

Many of the bills failing to pass this session would have gone a long way toward reducing prison populations and costs, but met opposition due to shortsighted and inaccurate fiscal cost

assessments conducted by the legislature. Problematically, the calculations for these bills only included the upfront costs of starting such programs but did not include the significant projected cost savings that would be reaped by the state when these individuals receive non-prison alternatives. These types of shortsighted budget calculations may serve the state in the short-term, but compromise larger cost savings in later years.

This year Maryland has taken small but important steps to chip away at the state's incarceration epidemic. This dynamic bipartisan criminal justice reform effort is gaining traction in Maryland and has the potential in upcoming years to have a significant impact on the state's prison growth and budget.

Indiana: A Missed Opportunity, but Hope for 2012

Recognizing the need for reducing prison populations and costs in Indiana, Governor Mitch Daniels (R) proposed a comprehensive package of criminal justice reforms to save the state more than \$1 billion. The proposal, which received technical assistance from the Council of State Governments, aimed to rely less on prisons for nonviolent offenses, thereby freeing up space for individuals who pose the greatest threat to public safety. Bipartisan legislators introduced and championed the reforms, packaged as SB 561.³⁰⁰

Unfortunately, using "tough on crime" rhetoric, prosecutors persuaded the Senate to pass an amended version of the bill that turned the original proposal on its head. Had the amended version become law, it would have actually increased prison time, populations, and budgets; the state would have had to build three new prisons, at a cost of \$210 million each with an additional \$48 million a year to operate them. Governor Daniels rightfully announced that he would veto such a costly and ineffective bill. The legislature then chose to let the bill die rather than send the governor a bill that he would veto.³⁰¹

Governor Daniels and reform groups have already announced they will push another effort for comprehensive reform next year.³⁰² The state has also formed a study committee to explore marijuana decriminalization and non-prison alternatives for offenses. Indiana remains a state at a

III. 2011 National Legislative Trends in Criminal Justice

Over the last few years, and particularly in 2011, several criminal justice trends have begun to emerge in states across the country. Some are positive, aimed at reducing prison populations and corrections costs while protecting public safety. Others are negative, either misguided or serving to increase prison use and budgets with limited benefit to safety. Below are a few examples of bills in state legislatures in the last couple of years. Unless otherwise noted, these bills passed the state legislatures and are now law.

Positive Trends

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Select Examples: Connecticut (2005—eliminated);³¹⁷ South Carolina (2010—eliminated);³¹⁸ federal (2010—reduced to 18-1 ratio);³¹⁹ Ohio (2011—eliminated);³²⁰ Missouri (2011—bill introduced reducing 75-1 ratio to 4-1).³²¹

- ***Eliminating Mandatory Minimum Sentences.*** Several states have recognized the negative effects of sentencing laws that require judges to sentence individuals to mandatory minimum lengths in prison. Too often, these laws result in nonviolent drug users serving lengthy sentences in prison, even though they do not pose serious threats to public safety, and missing opportunities for treatment. Recognizing these negative effects, several states have recently eliminated mandatory minimum laws.

Select Examples: South Carolina (2010);³²² New Jersey (2010);³²³ Massachusetts (2010—partial reform);³²⁴ 2011—bill introduced for full elimination);³²⁵ Ohio (2011—for marijuana and hashish);³²⁶ Flor /Span AMCID 2805 BDC BT/11_1 1 Tf6.413 0 0 6.413 412.5973 556.5327.0715326

Select Examples: Wisconsin (2004—age 65 & 5 years served or age 60-64 & 10 years served);³⁴³ Louisiana (2011—age 60 & 10 years served);³⁴⁴ Ohio (2011—second parole hearing to those over age 65);³⁴⁵ Texas (2011—bill introduced, age 55).³⁴⁶

Negative Trends

- **Privatizing or Selling Prisons.** As states move to reform their criminal justice codes and reduce prison budgets, efforts to privatize or sell prisons to private corporations have become a negative side effect. Oftentimes the very same legislators and think-tanks pushing for comprehensive prison reform simultaneously push for privatization. In some instances, states have proposed sales of state-built prisons to private entities as a shortsighted way to fill a budget gap for the current year. As the ACLU of Ohio's report explains, selling prisons for a one-time profit during a recession is pennywise and pound foolish, takes a toll on taxpayers, creates more dangerous prisons and prisoners, and does not solve the overincarceration problem.³⁴⁷ Privatization can have the same effects. States should also be wary of how privatization and sale of prisons create perverse incentives to increase incarceration rates for private companies motivated by profits.

Select Examples: Arizona (2009—required privatization of some prisons, but not implemented; & 2011—privatization reintroduced);³⁴⁸ Florida (2011—privatized prisons in eighteen counties);³⁴⁹ Ohio (2011—sold six prisons);³⁵⁰ New Hampshire (2011—established committee to explore privatization);³⁵¹ Maine (2011—bill introduced to construct a private prison);³⁵² Louisiana (2011—bill introduced to sell three prisons);³⁵³ Texas (2011—bill introduced to privatize jails).³⁵⁴

- **Shortsighted Cuts to Successful Programs.** Many states have already created dive -

- **Repealing Earned Credit Programs.** Creating and expanding earned credit programs has been a popular justice reform implemented in states across the country in the last few years. However, after highly publicized anecdotal stories of a released prisoner on parole committing a violent crime, the public and prosecutors are starting to call for repeals to what have been coined as “early release” programs. Legislators in some states have succumbed to these efforts and are repealing reforms proven to reduce recidivism on the whole.

Select Examples: Illinois (2010);³⁶⁴ New Jersey (2011);³⁶⁵ Wisconsin (2011);³⁶⁶ New Hampshire (2010—bill introduced);³⁶⁷ Rhode Island (2011—bill introduced).³⁶⁸

Conclusion

As this report details, there are myriad ways—legislative and administrative—in which lawmakers can take action to lower a state’s prison population, save money, protect public safety, and increase fairness in the justice system.

Our overreliance on prisons hurts us all—individually, as a society, and as a nation. Many states, like those detailed in this report, have acknowledged this reality and begun the process of remedying their criminal justice systems. But there is still room for reform in every state in this country. As shown in this report, one set of changes to criminal justice policies is never enough: reform is an ongoing process.

It is possible to formulate criminal justice reforms that will garner bipartisan legislative and governmental support, as well as support within our communities, and achieve reductions in prison populations and budgets without compromising public safety. A state can select reforms from a broad menu of changes, but must first take the step to commit to reform.

The ACLU’s Center for Justice looks forward to offering our expertise and assistance to state lawmakers as they move toward a more reasoned and humane approach to criminal justice.

Endnotes

1 Adam Liptak, *Prisoners of War*, *The New York Times*, Apr. 23, 2008, <http://www.nytimes.com/2008/04/23/us/23prison.html>.

2 *State of New York v. ...*, 25 *...* 20 (2007), http://www.sentencingproject.org/doc/publications/dp_25yearquagmire.pdf; *...* & *...*, *...* 2-3 (2007), http://www.sentencingproject.org/doc/publications/rd_stateratesofincbyraceandethnicity.pdf; *...* 358 (2003), <http://www.albany.edu/sourcebook/pdf/section4.pdf>.

3 *...*, <http://www.drugpolicy.org/facts/drug-war-numbers> (last visited July 11, 2011).

4 *...*, <http://www.drug-policy.org/sites/default/1RQult/1ROL>.

79 (2009), <http://nij.ncjrs.gov/multimedia/transcripts/nijconf2009-alternative-sentencing.htm> (stating "we have more than 70 percent of simple drug possessors going now to S.B. 123 instead of going to prison.")

80 (2003), http://www.accesskansas.org/ksc/sb123/Wichita_June15_2010-SB123_Update_Conf.pdf

[Redacted text block containing multiple lines of obscured content]

101 ... note 60.

102 ... 2 (2010), <http://www.pewcenteron-thestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/PSPP/MDOCPaper.pdf?n=8407>.

103 Gray, ... note 100, at 2.

104 ... § 47-7-3 (1995).

105 ... 4, at 41 (1995), <http://static.nicic.gov/Library/012259.pdf>.

106 H.R. 686, 2004 Leg., Reg. Sess. (Miss. 2004), <http://billstatus.ls.state.ms.us/documents/2004/pdf/HB/0600-0699/HB0686SG.pdf> (allowing trustees, prisoners given special status classification based on good behavior, to earn 30 days of good time for every 30 days served as a trusty).

107 ... note 102, at 2.

108 H.R. 654, 2004 Leg., Reg. Sess. (Miss. 2004), <http://billstatus.ls.state.ms.us/documents/2004/pdf/HB/0600-0699/HB0654SG.pdf>.

109 ... note 102, at 2.

110 John Buntin, ... Aug. 2010, <http://www.governing.com/topics/public-justice-safety/courts-corrections/mississippi-correction-reform.html>.

111 Margaret Winter & Stephen F. Hanlon, ... 35 ... 1, 7 (Fall 2008), available at http://www.aclu.org/images/asset_upload_file829_41138.pdf.

112 ... 6-8.

113 S. 2136, 2008 Leg., Reg. Sess. (Miss. 2008), <http://billstatus.ls.state.ms.us/documents/2008/pdf/SB/2100-2199/SB2136SG.pdf>.

114 ... & ... 2 (2009), <http://ucjc.law.utah.edu/wp-content/uploads/Jail-as-a-Condition-of-Felony-Probation.pdf>.

115 ... S. 2136 (excluding individuals sentenced with drug possession, people convicted habitually and people convicted of sex offenses).

116 ... § 1(c). Prisoners with sentences of less than 5 years who have also earned meritorious time allowances may be eligible after serving 9-10 months.

117 ... (Feb. 29, 2008), <http://picayuneitem.com/local/x2079277333/Bill-allows-thousands-to-be-eligible-for-parole>.

118 ... Buntin, ... note 110.

119 S. 2880, 2009 Leg., Reg. Sess. (Miss. 2009), <http://billstatus.ls.state.ms.us/documents/2009/pdf/SB/2800-2899/SB2880SG.pdf>. Eligibility for electronic monitoring was later extended to also include juvenile defenders. H.R. 420 2011 Leg., Reg. Sess. (Miss. 2011), <http://e-lobbyist.com/gaits/view/213786>.

120 Prior to the 2009 amendment individuals were only eligible for placement in the program within their first year of being in custody. Miss. Code Ann. § 47-5-1003(2) (2004), <http://billstatus.ls.state.ms.us/documents/2004/html/HB/0600-0699/HB0652SG.htm>.

121 S. 2039, 2009 Leg., Reg. Sess. (Miss. 2009), <http://billstatus.ls.state.ms.us/documents/2009/pdf/SB/2001-2099/SB2039SG.pdf> (provides pre-determined merit time reductions for prisoners who participate in programs approved by the commissioner, such as those with educational or occupational value).

122 H.R. 1136, 2010 Leg., Reg. Sess. § 2 (Miss. 2010) <http://billstatus.ls.state.ms.us/documents/2010/pdf/HB/1100-1199/HB1136SG.pdf> (allowing trusty earned time for sale and manufacture of controlled substance offenses, but not trafficking or possession with intent to deliver or sell offenses).

151 at 2.

152 at 3.

153 at 5.

154 S. 1154, 118th Gen. Assemb., Reg. Sess. § 61 (S.C. 2010), http://www.scstatehouse.gov/sess118_2009-2010/bills/1154.htm.

155 § 62.

156 § 38.

157

181

182 Ashley Byrd, *South Carolina's PPP Corrections Merger*, June 26, 2011, <http://www.southcarolinaradionetwork.com/2011/06/26/senator-explains-snags-in-ppp-corrections-merger/>.

183 Jack Brammer, *Gov. Beshear Signs Law to Merge State Corrections*, Lexington Herald-Leader, Mar. 1, 2011, <http://www.kentucky.com/2011/03/01/1652817/beshear-will-sign-into-law-a-sweeping.html>.

184 Kentucky's 2010 total corrections spending was \$468.8 million. *2010 Annual Report of the Office of the State Auditor* (2011), <http://www.osbd.ky.gov/NR/rdonlyres/9FFE93E8-44D2-43A2-87A0-86DE7869E44E/0/1012BOCVolumeIC.pdf>.

185 *State of Kentucky v. [redacted]*, 2010 WL 1234567 (Ky. 1 (2010)) [hereinafter "*[redacted]*"], http://www.pewtrusts.org/uploadedFiles/Kentucky_brief_updated.pdf.

186 *[redacted]*, 200 *[redacted]* 6 (2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/py09ac.pdf>. For data on Kentucky's jail population *[redacted]* (2011), www.kentucky.gov.

dailyindependent.com/local/x186203768/Senate-approves-penal-code-changes.

212 Press Release, The Pew Ctr. on the States, Pew Applauds Ky. Leaders for Comprehensive Pub. Safety Reforms (Mar. 3, 2011), http://www.pewcenteronthestates.org/news_room_detail.aspx?id=328572.

213 H.R. 463 Vote History, 2011 Leg., Reg. Sess. (Ky. 2011), http://www.lrc.ky.gov/record/11rs/HB463/vote_history.pdf. The bill passed 96-1 in House and 38-0 in the Senate.

214 , § 46. So long as the officer believes the charged individual will appear for trial and the individual was not uncooperative or violent the officer must believe the individual will appear for trial and the individual must not have been uncooperative or violent. Exceptions may apply if the offense was sexual or involved firearms or driving under the influence.

215 H.R. 463, 2011 Leg., Reg. Sess. (Ky. 2011) § 16, <http://www.lrc.ky.gov/record/11rs/HB463/bill.doc>.

216 , § 48.

217 , § 47.

218 , § 48.

219 , § 16.

220 , § 12.

221 , § 11.

222 § 9-10. A first offense for trafficking small amounts of some drugs is now a misdemeanor rather than a felony; with other drugs, a first or second offense constitutes a less severe class of felony than previously.

223 § 5, 11-12 (applying unless the prosecution can demonstrate a reason for incarceration, e.g., with an individual who presents a public safety threat).

224 § 12, 20. Which drugs apply to which provisions can be found in the text of HB 463 and in the Kentucky controlled substance schedules, <http://www.lrc.ky.gov/krs/218a00/chapter.htm>; completion of the program will also result in the records being sealed.

225 , § 83.

226 , § 3, 49-51.

227 , § 36 (stating that the education programs can be a GED, high school diploma, college diploma, technical diploma, or civics).

228 , § 32.

229 , § 55, 57.

230 , § 86. \$12.50/hour if community service is performed during the sentence, up to \$100/day; \$50/day otherwise.

231

(2010), justicereinvestment.org/files/ohio_conference_report.pdf [hereinafter “Ohio Report”].

238 http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Fact_Sheets/PSPP_1in31_factsheet_OH.pdf (2009),

239 <http://www.drc.ohio.gov/web/Fiscal%20Year%202010%20Fact%20Sheet%20Final.pdf> (2010), (community correction programs are residential programs that serve as an alternative to prison that provide treatment and assistance addressing convicted persons’ needs such as educational, vocational, chemical dependency, and family assistance).

240 [note 237](#).

241 Memorandum from Christine Link, Exec. Dir., ACLU of Ohio, to Members of the Ohio Budget Planning and Mgmt. Comm. (Aug. 17, 2010), http://www.acluohio.org/issues/criminaljustice/CoverLtrToOhioBudgetPlanningMgmtCommittee2010_08.pdf.

242 H.R. 86, 2011 Leg. 129th Sess. § 5120.114 (Ohio 2011), http://www.legislature.state.oh.us/BillText129/129_HB_86_CH_N.html (requiring all of these entities to use the tool to make informed correctional decisions for all individuals based on the likelihood of re-offending).

243 § 2925.03 (mandatory prison is determined on the basis of the amount and is required for any drug offenses committed in the vicinity of a school or a juvenile).

244 § 2909.11.

245 § 307.932, 2929.26. This is provided that the individual had not previously been convicted for another misdemeanor. The

America (CCA), the largest private prison operator, for example, states on its website: "With state and federal budgets stretched and public needs always competing with limited dollars, legislators are faced with critical choices on where to spend scarce resources. Creating a partnership with CCA to construct, manage and maintain their prisons allows governments to care for hardworking taxpayer dollars, while protecting critical priorities like education and health care."

260 Alan Johnson, www.dispatchpolitics.com/live/content/local_news/stories/2011/03/22/copy/sale-of-prisons-fewer-inmates-part-of-plan.html?adsec=politics&sid=101, Mar. 22, 2011, http://www.dispatchpolitics.com/live/content/local_news/stories/2011/03/22/copy/sale-of-prisons-fewer-inmates-part-of-plan.html?adsec=politics&sid=101.

261 Richard A. Oppel Jr., www.nytimes.com/2011/05/19/us/19prisons.html?scp=1&sq=private%20prison&st=cse, May 18, 2011, <http://www.nytimes.com/2011/05/19/us/19prisons.html?scp=1&sq=private%20prison&st=cse>.

(2010), <http://www.state.hi.us/auditor/Reports/2010/10-10.pdf>.

(2007), <http://www.gao.gov/new.items/d086.pdf>.

38 (2001), <https://www.ncjrs.gov/pdffiles1/bja/181249.pdf>.

- 315 http://sentencingproject.org/doc/publications/dp_CrackedJusticeMar2011.pdf.
- 316 Dorothy K. Hatsukami & Marian W. Fischman, *JAMA* 306, 127, 127-226 (2011), <http://jama.ama-assn.org/content/276/19/1580.abstract>.
- 317 H.R. 6635, 2005 Leg. Reg. Sess. (Conn. 2005), http://www.cga.ct.gov/asp/cgabilstatus/cgabilstatus.asp?selBillType=Bill&bill_num=6635&which_year=2005&SUBMIT1.x=13&SUBMIT1.y=10&SUBMIT1=Normal.
- 318 S.C. S. 1154 (began to equalize the disparity in 2005 and fully equalized the sentencing structure for crack and cocaine in 2010).
- 319 S. 1789, 111th Cong. (2010), <http://www.gpo.gov/fdsys/pkg/BILLS-111s1789enr/pdf/BILLS-111s1789enr.pdf> (enacting the Fair Sentencing Act which reduced the federal sentencing disparity from 100-to-1 to 18-to-1).
- 320 Ohio H.R. 86, § 2925.03 (equalizing the crack-cocaine powder disparity in their state).
- 321 H.R. 913, 96th Gen. Assemb. (Mo. 2011), <http://www.house.mo.gov/billsummary.aspx?bill=HB913&year=2011&code=R>. (debating HB 913 to reduce the current 75 to 1 sentencing disparity between crack and powder cocaine to 4 to 1).
- 322 S.C. S. 1154 (doing away with mandatory minimums for simple possession).
- 323 S. 1866, 213th Leg., Reg. Sess. (N.J. 2008), http://www.njleg.state.nj.us/2008/Bills/S2000/1866_I1.HTM (eliminating mandatory minimums for drug-free school zone convictions).
- 324 H.R. 4712, 186th Leg., Reg. Sess. (Mass. 2010), <http://www.malegislature.gov/Bills/186/House/H4712> (making those convicted of drug offenses serving less than 2.5 years at a county jail eligible for parole after serving half the sentence).
- 325 H.R. 2266, 187th Leg., Reg. Sess. (Mass. 2011), <http://www.malegislature.gov/Bills/187/House/H02266> (would be repealing all mandatory minimum drug sentences).
- 326 Ohio H.R. 86.
- 327 S. 1334, 2011 Leg., Reg. Sess. (Fla. 2011), <http://www.flsenate.gov/Session/Bill/2011/1334>. (would be repealing all mandatory minimum drug trafficking sentences).
- 328 Md. H.R. 353, 2011, Leg., Reg. Sess. (Md. 2011), _____

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- 362 Mike Ward & Kate Alexander, *State Budget Cuts to Prison System Would Mean 245,318 More Prisoners*, Feb. 16, 2010, <http://www.statesman.com/news/texas-politics/budget-cuts-to-state-prison-system-would-mean-245318.html> (budget proposed cuts to all county probation departments).
- 363 Ted Gest, *The Axe Falls on Criminal Justice Spending*, July 6, 2011, <http://www.thecrimereport.org/archive/2011-07-the-axe-falls-on-criminal-justice-spending>.
- 364 William Lee & Monique Garcia, *Ill. Gov. Suspects Release Program*, Dec. 14, 2009, http://articles.chicagotribune.com/2009-12-14/news/0912130295_1_release-program-inmates-prison-population (stating that the governor suspended the earned time credit program).
- 365 Chris Megerian, *Gov. Christie Signs Bill to Repeal Early Release Program*, May 9, 2011, http://www.nj.com/news/index.ssf/2011/05/gov_chris_christie_signs_bill_1.html (governor repealed program after crimes allegedly committed by individuals on early release).
- 366 Eric Brooke, *620.com News: Local/122914168.html*, May 31, 2011, <http://www.620wtmj.com/news/local/122914168.html> (program was only two years old and released about 500 individuals early).
- 367 *NHRS MC News: n=57*, Sept. 29, 2010, <http://nhrmsc.com/news.php?n=57> (explaining bill that would limit parole to only nine months before sentence expiration for all individuals in prison).
- 368 Bill Tomison, *Fox Providence: Cranston Group Wants Good Time Repealed After Komrowski Murder Charge*, June 15, 2011, http://www.foxprovidence.com/dpps/news/local_news/region_3/cranston-group-wants-good-time-repealed-after-komrowski-murder-charge_3848503 (backlash against a murder committed by an individual released early).



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