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State Sentencing and Corrections Policy in an Era of Fiscal Restraint

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STATE SENTENCING AND CORRECTIONS POLICY IN AN ERA OF FISCAL RESTRAINT

EXECUTIVE SUMMARY

During the 2001 legislative session the landscape of criminal justice policy began to change in significant directions. In statehouses across the country, legislators adopted bills that either scaled back or reversed sentencing policies with the explicit objective of reducing incarceration. A number of states enacted legislation moderating policies regarding mandatory minimum sentencing and the treatment of drug offenders. These legislative actions heralded a significant reconsideration of approaches to public safety and signaled a new willingness to consider less punitive approaches to the problem of crime by politicians of both parties, in sharp contrast to the trends of the last quarter century.

Several developments account for the change in the political environment leading to the first significant moderation in criminal justice policy among states in decades. These include:

- The declining crime rate for most of the 1990s helped to reduce public fear and concern on this issue.
- New programs and practitioner initiatives, such as drug courts, gained acceptance as viable alternative methods for dealing with crime.
- Growing public and policymaker awareness of the limits of incarceration, expressed most recently in concern about "re-entry" for the nearly 600,000 inmates released from prison each year, often with few skills, drug treatment or training to facilitate their return.

An additional new development in 2001 has been the declining economic picture. Budget shortfalls in nearly every state have driven many states to consider cutting corrections budgets. The events of September 11th and their aftermath intensified existing economic difficulties and resulted in the need to cut state expenditures. In the few months following, state executive officers and legislators have proposed substantial shifts in funding for criminal justice programs. Some of these build on policy changes that may be expected to reduce incarceration, and therefore costs, while supporting continued crime reduction. Others, however, may lead to short term savings and long term cost increases.

This report assesses both of these developments among the states.

- The first section highlights the significant legislative initiatives of 2001 in regard to criminal justice policy, and sentencing in particular.
- The second section provides an overview of fiscal actions taken or proposed to date that are likely to affect the course of policy in many states.

I. LEGISLATIVE SENTENCING INITIATIVES IN 2001

...if simply warehousing people is our solution, then we as a society have failed

Idaho Governor Dirk Kempthorne (R)
State of the State Address, January 8, 2001

At the beginning of 2001, legislators and executive policymakers could look back on three decades of ever-toughening crime policies. Beginning in the 1970s, their predecessors across the country enacted a myriad of laws designed to increase the punitive nature of criminal justice policy. These included broadening the definitions of criminal behavior and measures to increase the number of offenders sentenced to prison and the length of time they were to serve. Primary examples were the widespread adoption of mandatory sentencing, “truth in sentencing,” “three strikes and you’re out” policies, and cutbacks in parole. By the 1990s every state had enacted at least some of these measures, as had the federal government.

These crime policies contributed substantially to the nearly six-fold increase in the national prison population from 1970 to 2000, and a combined prison and jail population of 1.9 million by 2000. During this period there were similar increases in the numbers of offenders on probation and parole as well.

Beginning in the 1980s, a number of states expanded community corrections programs, drug treatment, and other sentencing alternatives, partially as an attempt to control the growth of prison expansion. While these efforts were varied in their impact on prison populations, they gained increasing legitimacy with courts and the public as viable sentencing options for many offenders. In a number of states the acceptance of community corrections and drug treatment prepared the ground for politically acceptable legislation explicitly intended to reduce incarceration and, hence, the cost of corrections. Nonetheless, legislative trends generally were still oriented toward increasing prison sentences, resulting in continued rising prison populations.

Other developments, though, have helped make consideration of policies to reduce prison populations politically palatable.

First, the declining crime rate for most of the 1990s helped to reduce public fear and concern on this issue. This has translated into the “crime issue” having less political saliency in recent years; relatively few political campaigns have highlighted “get tough” themes at either a national or local level, in sharp contrast to political discourse of the 1980s and early 90s.

Second, in addition to community corrections concepts, new programs and practitioner initiatives have shown political leaders and the general public alike that it is possible to develop effective approaches to public safety that draw on community resources and use problem-solving techniques. These include such efforts as the rapid expansion of treatment-oriented drug courts, community policing, the well-publicized collaborative innovations such as the law enforcement/community partnership in Boston to reduce youth violence, and a variety of approaches to alternative sentencing.

Third, there is a growing awareness that long prison sentences are not the answer to crime in many instances. The punishment-oriented "war on drugs" has contributed to a record prison population that still leaves many citizens dissatisfied with the level of crime and drug abuse. The prospective release of 600,000 inmates each year, most of whom are at the same low literacy and employment levels with which they went to prison, has implicitly raised questions about the value of incarceration of non-violent offenders to the goal of reducing crime in the long run.

For these and other reasons, increasing numbers of political leaders now believe it possible to propose the means and methods of reducing incarceration. As a result, a substantial number of states enacted changes in sentencing and drug policy during the 2001 legislative session¹:

- Four states adopted revisions to selected mandatory and "truth in sentencing" laws: Connecticut, Louisiana, Mississippi, and North Dakota.
- Five states expanded the role of drug treatment as a sentencing option: Arkansas, California, Idaho, Oregon, and Texas.
- Seven states passed legislation to ease prison overcrowding: Arkansas, Iowa, Mississippi, Montana, North Carolina, Texas, and Virginia.

¹ While this report is based on the findings of an extensive search of various legislative and media databases, additional legislation may have been enacted that is not covered here.

A. Reducing Scope of Mandatory Sentencing and “Truth in Sentencing”

Connecticut—Allow Judicial Discretion in Sentencing of Some Drug Offenders

In response to prison overcrowding and an expanding corrections budget, Connecticut passed Senate Bill 1160 (heretofore known as Public Act No. 01-99) that took effect July 1, 2001. The legislation permits judges to deviate from mandatory minimum sentencing guidelines for non-violent drug offenders. In such cases, the sentencing judge must show “good cause by the defendant” and state the reason for departure. Part of the legislative intent related to providing a remedy for the racial disparities that have resulted from “school zone” mandatory sentencing policies. Under such policies, persons charged with drug offenses in urban areas are more likely to be located near a school zone and therefore subject to more severe penalties. Since urban areas generally have greater concentrations of minorities, these policies have exacerbated racial and ethnic disparities within the criminal justice system.

The fiscal impact statement that accompanied the legislation stated that during the year 2000, at any given time there were 580 individuals serving a mandatory minimum non-violent drug sentence in Connecticut prisons. The cost of their incarceration for the duration of their sentences was estimated to be \$88 million. In 2000, there were 303 convictions for crimes that will come under the auspices of this new law. Although unable to provide exact figures on potential savings, the fiscal impact statement concluded that “the bill would result in significant savings to criminal justice agencies, primarily the Department of Correction” depending on how frequently it was employed by judges.

Louisiana—Eliminate Mandatory Minimums for Certain Non-Violent Offenses

In response to prison overcrowding, Louisiana’s recent passage of Senate Bill 239 by a 34-5 margin will reduce certain drug and non-violent sentences and eliminate mandatory minimums for non-violent crimes. The legislation halves the current sentencing guidelines for drug offenses as well as repeals legislation that forbade the consideration of parole for many low-level non-violent offenders. Furthermore, the bill alters the state’s habitual offender, or “three strikes” legislation, by mandating that all three felonies must be a violent crime, sex offense, drug crime punishable by 10 or more years, or any other crime punishable by 12 or more years. The previous law had stated that only one of the “three strikes” need have been a violent offense.

Although not retroactive, the legislation does provide for a Risk Review board that will examine the records of qualified inmates to determine if they are eligible for early release. Approximately 40% of the 4,165 minor drug and property offenders currently in prison would be eligible to go before the Risk Review panel. Assuming that 50%, or slightly over 2,000 inmates, are paroled or released in some other fashion, the state will save about \$3.4 million over the course of the bill’s first 12 months. For subsequent years, the fiscal impact statement predicts that the Department of Corrections will save \$4.2 million annually for the next two years and \$6.2 million annually for the following two fiscal years.

Mississippi—Repeal “Truth-In-Sentencing” for Non-Violent Offenders

Effective July 1, 2001, Mississippi Senate Bill 3028 permits certain first time, non-violent offenders to become eligible for parole after serving one-fourth of their sentence. Prior to this bill the Mississippi “85-percent law” had mandated that all felony prisoners serve 85% of their sentence before becoming eligible for parole. Attached to the new law is a provision requiring that felony drug offenders must either complete a treatment program prior to parole or enter one as a condition of release.

North Dakota—Repeal Mandatory Minimums for First Time Drug Offenders

North Dakota passed House Bill 1364 to repeal mandatory minimums for first time drug offenders. During 2000, it has been estimated that there were 51 persons sentenced under the state’s mandatory minimum legislation.

Although it is not possible to ascertain how many of the 51 persons sentenced would have been eligible under HB 1364, the fiscal impact statement concludes that if half of those sentenced to prison via mandatory minimums could be diverted, the state would save \$750,000 over a two year period. Additionally, North Dakota passed House Bill 1431, which calls for the creation of a Legislative Council to examine, among other priorities, feasible alternatives to imprisonment.

B. Changes in Sentencing and Treatment of Drug Offenders

Arkansas—Creating Incentives for Drug Offenders with Promise of Expungement

Current Arkansas law grants judges discretion to sentence offenders convicted of non-violent and non-sexual offenses into treatment as opposed to a prison term. Under Arkansas House Bill 2644, to add incentive for the offender to abide by the program subsequent to his or her completion, if the individual remains drug-free through the completion of their probation, the offense will be expunged from their record.

California—Divert Low Level Offenders into Treatment Programs

Passed in 2000 with strong support from the California voting public, Proposition 36 overhauls the sentencing guidelines for low-level, non-violent drug offenses. Effective July 1, 2001, those convicted of a felony or misdemeanor drug possession charge for the first or second time, instead of being sent to jail or prison, are diverted to probation with a court mandated drug treatment component. The court will sentence offenders to a maximum of one year of community drug treatment, with the option of adding up to six months in post-treatment follow-up care. Additionally, the court reserves the right to direct the individual into skills training, counseling, or other probation programs. Proposition 36 also applies to parolees who, instead of facing revocation and re-institutionalization for a failed drug test or possession charge, will be placed on probation and enrolled in a treatment program.

The fiscal impact of this legislation is potentially very substantial. According to the California Legislative Analyst's Office², it is estimated that Proposition 36 will result in up to 24,000 persons being sent to treatment instead of prison annually, freeing up 11,000 prison beds.³ Once the program has been functional for a few years, the state is estimated to save \$200-\$250 million annually. If the decreased need for additional prison construction due to capacity constraints is figured into the equation, the state will save an additional \$450-\$550 million over the long term.

These figures only represent savings for the state prison system. County jails (12,000 offenders, \$40 million) and the state parole system (9,500, \$25 million) also stand to benefit greatly from Proposition 36. Funding for the treatment program will come from a Substance Abuse Treatment Trust Fund. Sixty million dollars will be allocated to the Fund for FY 2000-01 and \$120 million annually until 2005-06. From that point onward, appropriations will be determined yearly by the California governor and legislature. One caveat regarding the legislation is that funding for the treatment programs may not be sufficient to handle the anticipated demand. Proposition 36 makes it the responsibility of localities to provide additional funding and there are already concerns in such areas as Los Angeles regarding shortages of treatment slots. For example, Ventura County officials are requesting \$750,000 to augment the state provisions for rehabilitation programs.

² California Legislative Analyst's Office. *Proposition 36: Drug Treatment Diversion Program. Initiative Statute.* Available online: www.lao.ca.gov/initiatives/2000/36_11_2000.html

³ Since many of these offenders would have only spent a few months in prison, there are fewer free prison beds than diverted prisoners.

Idaho—Expand Treatment for Drug Offenders in Prison and through Drug Court

Republican Governor Dirk Kempthorne, in his 2001 State of the State address, adamantly voiced his support for providing adequate drug treatment for the state's prison population, 87% of whom are estimated to have a substance abuse problem. Despite advisor recommendations for the state to undertake a policy of prison construction "every two years for the foreseeable future" to combat the state's drug problem, Governor Kempthorne opted instead to expand an existing women's facility with beds dedicated to drug treatment. He also challenged the Legislature to approve monies earmarked for community drug treatment.

The Senate responded with the passage of two bills, SB 1257 and SB 1171. SB 1257, an appropriations bill, dedicates \$490,000 for community based treatment, \$576,000 to provide for the treatment demands of drug court, \$1.17 million to the Department of Corrections for the expansion of drug treatment beds and counseling, and \$812,000 to provide for an increase in outpatient programs. The result of this funding is an increase of 150% in residential treatment spaces, a 16% increase in counseling slots, and a 61% increase in outpatient treatment contacts.

Senate Bill 1171, the Idaho Drug Court Act, provides funding for an extension of drug courts into all judicial districts. The estimated cost of this undertaking is \$2.3 million, providing for the processing, assessment, monitoring, and post-sentencing testing needed to fully implement drug courts as a viable diversion from incarceration.

Oregon—Divert Certain Drug Offenders into Treatment

Senate Bill 914 is designed to compel local law enforcement agencies to develop plans to "integrate drug treatment into the criminal justice system's dealings with people who commit nonviolent felony drug possession offenses" as well as those who commit other nonviolent crimes that have been motivated by drug dependence. These drug treatment programs, through the creation of the Drug Prevention and Education Fund, will be financed, in large part, through civil asset forfeitures of drug-related properties.

Texas—Encourage Treatment as an Option for Drug Offenses

The 2001 Texas State Legislative Session witnessed the passage of a number of pieces of legislation affecting the criminal justice system. Following the lead of many other states, House Bill 1287 establishes a framework for the expansion of drug courts across the state, including a requirement that counties that exceed 550,000 in population must establish a drug court, and that the program must have a minimum of 100 persons under supervision within the first four months of adoption. Prior to passage of this law, there had only been three such courts in operation.

In response to the widespread prevalence of drug addiction and mental illness among both adult and juvenile inmates, the Legislature passed three bills dedicating funds to research alternative ways in which such individuals can be managed. Senate Bill 558 creates a Drug Demand Advisory Committee to examine ways to diminish drug use and its negative consequences, House Bill 1901 mandates the undertaking of a study into the creation of an inclusive plan to

deal with juvenile drug abuse and juveniles with mental disorders who are on the verge of, or in, the juvenile justice system, and Senate Bill 636 requires an analysis of applying the Texas Medication Algorithm Project⁴ to bring adequate treatment to the states mentally ill inmates.

⁴ See www.mhmr.state.tx.us/centraloffice/medicaldirector/tmapover.html for further explanation.

C. Legislation to Ease Prison Overcrowding

While state legislators and policymakers recognize that they can reduce the expenditure of state criminal justice funds now absorbed by drug arrests, prosecutions, and sentencing, they have also been exploring other areas in which they can reduce costs while reducing crime. In the last legislative season, state governments proposed and adopted a number of different cost-reducing approaches to traditional criminal justice processing.

Arkansas—Increase the use of Community Corrections Centers

Community correction facilities have been established to reduce prison growth by diverting minor parole revocations from state institutions to these local centers. The Arkansas Senate, by passing Senate Bill 158, effectively moved to expand this program to encompass a broader range of eligible offenders. Prior to Senate Bill 158, offenders could only be diverted into a community corrections program if they had not violated their parole conditions with a new criminal offense. However, the new legislation permits commitment to the community program as long as the new offense is not a felony, opening up the program to many low-level misdemeanor offenders and substantially reducing the burden upon the state correctional facilities.

Iowa—Reclassify Third Degree Burglary

In an effort to address prison population issues, effective July 1, 2001, Senate File 543 reduces burglary in the third degree⁵ and attempted burglary in the third degree from a Class D felony to an aggravated misdemeanor charge. However, the legislation also creates determinate sentencing for Class D felons, as well as increasing from 90 days to 1 year the length of time for a reconsideration of specific felony sentences.

Mississippi—Increase Opportunities to Earn “Good Time”

Mississippi passed House Bill 1358 which created further programs through which a trusty could acquire earned time towards early release. These include educational programs, certain work projects, and “special incentive programs.”

Montana—Divert Chronic DUI Offenders into Treatment

Facing a large number of Driving-Under-the-Influence (DUI) offenders filling its state institutions, the Montana legislature passed Senate Bill 0489 which diverts individuals convicted of a fourth or subsequent DUI offense from prison sentences and into residential treatment programs. If the person successfully completes the program, he or she will be permitted to serve the remainder of the sentence on probation.

State fiscal impact statements for this program estimate savings of over \$57,000 for the first year after the program begins (January 1, 2002) and, once the initial program investments are made in

⁵ Burglary of an unoccupied motor vehicle or motor truck.

the first fiscal year, a savings of \$2.5 million for fiscal year 2003. After the program has been up and running, estimates are that it will save the state \$3 million per year.

Additionally, the Montana House passed HB 0637 which dedicated \$100,000 over the next two years to provide restorative justice grants to Montana communities. The bill states that:

[I]ncarcerating offenders carries an extremely high cost and may not be the most effective strategy for restoring victims, reforming offenders, and reducing recidivism. It is the intent of [Section 2] to divert appropriate offenders who are at low risk for violence from incarceration to community programs based on restorative justice . . .

North Carolina—Increase Opportunities to Earn “Good Time”

Senate Bill 397 makes it easier for those confined in local facilities to earn credit time by taking a GED course. For every 30 days of GED classes, the individual can earn four days of credit towards his or her sentence. This is in addition to a pre-existing credit system that offered a similar incentive for work programs. This bill expands that credit to include education, rehabilitation, or other forms of training programs.

Texas—Permit Supervised Release for Chronically Ill Inmates

House Bill 772 will divert persons deemed inappropriate for incarceration into more suitable programs by permitting expanded parole for chronically ill inmates. Estimates are that the elderly portion of the Texas prison population will grow to over 10,000 by 2008; this bill permits such persons suffering from persistent, inveterate ailments to be released into proper facilities so as to manage their condition. Additionally, inmates will be placed under supervision deemed appropriate to their security risk.

Virginia—Permit Early Release for Elderly Inmates

With “truth-in-sentencing” legislation ensuring that offenders serve longer terms in prison, prison overcrowding has become less a function of an increase in prison admissions and more closely related to the length of sentence. In response to this phenomenon, Virginia passed House Bill 1762, designed to provide elderly inmates with early release. In addition to taking up bed space, elderly inmates require more frequent use of medical services and the annual cost of their incarceration can be three times that of a younger inmate.

Prior to the passage of this legislation, anyone convicted of a felony (Class I Felony withstanding) over the age of 65 who had served a minimum of five years, or over the age of 60 who had served a minimum of ten years, was eligible for conditional release, as long as their conviction took place subsequent to January 1, 1995. HB 1762 removes this cutoff date and makes all offenders who meet the criteria eligible for conditional release.

II. STATE EFFORTS TO REDUCE CORRECTIONS COSTS IN 2001-2002

The National Association of State Budget Officers (NASBO) estimates that for fiscal year 2001, states will spend a combined total of \$38 billion on corrections, a 5.2% increase from 2000 to 2001.⁶ In an era of increasingly tight budgets, many states are seeking to identify areas in which they can make significant cuts, and the growing corrections budget is one that is being considered in at least 16 states.

This section reports on the means by which states are reducing corrections budgets for the current fiscal year, as well as proposals for the next fiscal year. Due to the currency of the issue, many of these proposals are subject to change.

- Eleven states have proposed or enacted plans to reduce their state correctional budgets: Arizona, Arkansas, California, Florida, Illinois, Iowa, Michigan, New York, Ohio, Oklahoma, and Wisconsin.
- Ten states have considered either putting off proposed prison expansion or have begun to close currently operating facilities: Arkansas, California, Colorado, Illinois, Michigan, Missouri, New York, Ohio, Oregon, and Wisconsin.
- Seven states have made cuts to treatment or educational programs: Arizona, California, Florida, Illinois, Ohio, Oregon, and Washington.
- Three states have expressed support for continued substance abuse treatment or sentencing reform: Idaho, Maryland, and Washington.

Arizona—Cuts to Prison Treatment Programs

After lengthy debate in which Governor Jane Hull provided an ultimatum stating that cuts to the corrections budget could not exceed 4%, Arizona made up the difference by asking the state university system to withstand a bigger cut to its budget.⁷ The final budget decision will still leave the corrections department operating with a \$21 million reduction.⁸ The cuts will come at the expense of substance abuse programs, as well as benefits for employees such as tuition assistance.

Arkansas—Delayed Prison Construction

Arkansas reduced its corrections budget by \$21.6 million, putting off construction of new beds as well as reneging on payment to local jails for housing prisoners.⁹ The state owes its counties \$2.7 million, and is forecast to leave them \$2.1 million short, prompting local jailers to contemplate alternatives to alleviate rampant overcrowding.

⁶ *National Association of State Budget Officers: State Expenditure Report 2000.* (2001, Summer).

⁷ Davenport, P. "Hull Draws Line on Cuts for Prisons but Says Universities May Have to Give More." *Associated Press*, December 10, 2001.

⁸ Klug, F. "Prison Budget Cut to Hit Inmates, Staff." *Arizona Daily Star*, December, 27, 2001.

⁹ Jefferson, J. "State Agencies Cut Budgets for DHS, Education, Prisons." *Associated Press*, November 20, 2001.

California—Cuts in Substance Abuse Treatment

In November 2001, California Governor Gray Davis, in the midst of a budget shortfall forecast to reach \$12.4 billion, proposed numerous emergency cuts prior to releasing his 2002-03 budget proposal designed to cut expenditures over the next two years by some \$3 billion.¹⁰ By withholding the opening of 200 beds in a new 500-bed substance abuse treatment facility, California will save \$1.6 million from the previously budgeted \$3.9 million.¹¹ Additional treatment limitations are proposed for the California Department of Youth Authority concerning substance abuse, sex offender and mental health treatment. In the Governor's May budget revision, he also proposed cuts of funding of \$10 million in the state's self-proclaimed War on Methamphetamine.

Colorado—Delay of Prison Construction

A \$267 million budget shortfall in Colorado has forced the state to table a planned prison construction project.¹²

Florida—Cuts in Prison Education and Drug Treatment

Part of Florida's \$1 billion budget cuts included cutting \$7.3 million from drug treatment for prisoners and \$8.1 million for prisoner educational services.¹³

Idaho—Support for Drug Treatment and Community Custody

Idaho's Department of Corrections is undertaking job restructuring as well as renegotiating its contract with Corrections Corporation of America (CCA) in an effort to trim \$350,000 from its budget.¹⁴ With actual revenue falling \$111 million short of projections, the Idaho budget was operating at a zero balance. Despite this grave situation, Governor Kempthorne continued to express a strong commitment to expanding substance abuse treatment:

*The Correction budget is at 100 percent of what they received last year, because of the sheer size of the prison population and the costs of incarceration. Unfortunately, this is one of our growth industries. Any further cuts here go directly into removing substance abuse treatment and education. If we do that, we're simply back to warehousing individuals, and we will see them continually return to prison driving up the costs in the future.*¹⁵

Governor Kempthorne has pledged funding to build 100 community custody beds and to continue to provide education, job training and substance abuse treatment to female offenders, all

¹⁰ California Legislative Analysts Office, *Addressing the State's Fiscal Problem*, December 19, 2001. Available online: http://www.lao.ca.gov/2001/budget_options/1201_budget_options.html

¹¹ Davis, G. *Proposed Reduction in 2001-02 Spending*. Available online: www.dof.ca.gov

¹² Martinez, J.C. "Legislators Sharpen Budget Ax." *Denver Post*, September 26, 2001.

¹³ Ulferts, A. "Where the Cuts Are." *St. Petersburg Times*, November 30, 2001.

¹⁴ Hoffman, W. "Budget Squeeze Hits State Prisons Agency." *The Idaho Statesman*, December 20, 2001.

¹⁵ Governor Dirk Kempthorne's 2002 Budget Address Before a Joint Session of 2nd Regular Session of the 56th Idaho Legislature. January 9, 2002.

while keeping women close to their families. Additional federal funds will be dedicated to providing transitional housing and treatment for those coming out of prison.

Illinois—Cuts in Prison Education

The Department of Corrections responded to Governor Ryan's budget trimming demands by deciding to close the Joliet Correctional Center, a savings of \$4 million.¹⁶ The state also intends to cut college level classes for approximately 25,000 inmates, laying off hundreds of professors.¹⁷ This is being done despite the fact that Roosevelt University's inmate graduates have only a 4.6% recidivism rate, a full 41% lower than the state's general recidivism rate.

Iowa—Cuts in Corrections Staff

Iowa's shaving of \$8 million off its corrections budget forced the lay-off of 150 corrections employees, and further cuts are expected in drug treatment, health care, food and library services, and prison chaplains.¹⁸ An audit released in August showed the state's prison budget climbing steeply and spurred lawmakers to consider sentencing reform.¹⁹ Recent estimates project the Iowa prison population increasing from the current level of 8,101 to over 12,000 inmates within the next decade.²⁰ State House member Dick Myers stated, "One of the ways we can head this stuff [increasing costs] off is to put more of an emphasis on community corrections."

As Iowa enters its legislative season, the issue of prison overcrowding is being trumped by the budget crisis, despite warnings from the governor that the current situation in Iowa prisons is "getting very close to where a federal judge might be inclined to get back involved in running our prison system."²¹ Instead of building a new prison, Iowa legislators have sought to investigate returning more discretion to judges in deciding how to assign low-level offenders. As noted above, Iowa already passed legislation in the past session designed to divert certain classes of low-level offenders from prison. The Judiciary Committee Chairman has noted that he would like to see what has resulted from those changes before a further revamping of the sentencing guidelines.

Kansas—Possible Prison Closing

The Governor's preliminary budget proposal contained a plan to temporarily close five prisons.²² However, this suggestion was not received well by those in the legislature, and only remains a potential avenue to reduce a \$426 million budget deficit.

¹⁶ Babwin, D. "Illinois' Joliet Prison to Close." *Associated Press*. Available online: dailynews.yahoo.com/h/ap/20011217/us/joliet_prison_1.html

¹⁷ Dodge, S. "Budget Ax Hits Prison Education." *Chicago Sun-Times*, December 12, 2001.

¹⁸ Petroski, W. "Budget Cuts Force Prisons to Lay Off 150: Cuts to Come in Services, Not Guards." *Des Moines Register*, November 10, 2001.

¹⁹ Glover, M. "Audit Details Soaring Prison Costs." *Associated Press*, August 13, 2001.

²⁰ Petroski, W. "Sept. 11 Affects Crime Debate." *Des Moines Register*, January 10, 2002.

²¹ *Ibid.*

²² Rothschild, S. "Governor's \$400 Million in Budget Cuts Hits Lawrence, Kan., School Funding." *Lawrence Journal World*, December 16, 2001.

Maryland—Continued Support for Substance Abuse Treatment

Despite a substantial budget, Governor Glendening reaffirmed his commitment to provide substance abuse treatment to the over 55,000 addicts residing in Baltimore by giving the city \$9 million for the coming fiscal year. Although the looming budget crunch has many worried about funding for such programs, a Glendening spokeswoman stated, “don’t expect any new initiatives or new programs, but we’ll be fighting to sustain the commitments that we made.”²³

Michigan—Closed Three Facilities

This past autumn Michigan cut \$55 million from its corrections budget, partially by closing down the Jackson Maximum Correctional Facility and two other institutions.²⁴ The closing of up to three facilities is expected to cost up to 200 guards their jobs.²⁵

Missouri—Delayed Prison Opening

In Missouri, \$326 million in budget cuts has forced the state to delay the opening of an already built facility which cost \$168 million.²⁶ The Eastern Reception, Diagnostic and Correctional Center in Bonne Terre sits completely vacant, requiring an additional \$12 million to outfit the facility and \$45 million annually for operations. The Bonne Terre issue is at the center of the state’s budget debate, with Governor Holden stating that the opening of the facility is a “very high priority.”²⁷

New York—Closed Prison Housing Units

As part of a corrections budget proposed by Governor Pataki that has been reduced by nearly \$20 million, medium security housing units at the Sing Sing state prison facility will be closed. This change is expected to eliminate the equivalent of 127 full-time positions and will save the state \$5.7 million. Additionally, due to a state prison population that is expected to decrease by 8,600 inmates between April 2000 and April 2003, the state will also close a number of their underused *Special Housing Units*. In his State of the State address, Pataki also reaffirmed his support for an overhaul of the state’s strict Rockefeller drug laws.

Ohio—Closed a Prison and Delayed the Construction of New Facilities

The state cut nearly \$25 million from the corrections budget this year and plans to cut an additional \$55 million in 2002, forcing it to abandon plans to open an additional 220 halfway-

²³ Epstein, G.A. “More Funds for Drug Treatment: Glendening Plans to Fulfill Vow Made to City 2 Years Ago; \$9 million Extra; Funding is Expected to Survive and Cuts in Assembly Session.” *The Baltimore Sun*, January 3, 2002.

²⁴ Franklin, A. “Prison Program Hit Hard: State Slashed Budget; 3 Facilities are Closing.” *Detroit Free-Press*, November 12, 2001.

²⁵ “Protesters Picket at Capitol Over Prison Closing.” *Associated Press*, December 17, 2001.

²⁶ Bengali, S. “Budget Ax Leaves Missouri Town Stuck with a Big, New, Empty Prison.” *The Kansas City Star*, October 21, 2001.

²⁷ Bell, B. “Governor Will Make Money for New Prison a Priority.” *St. Louis Post Dispatch*, January 17, 2002.

house beds.²⁸ Ohio prison head Reginald Wilkinson, decrying the cuts, noted that it is the rehabilitation programs and those designed to smooth the process of reentry that will suffer, and he predicts a commensurate increase in crime. Additionally, the tight fiscal situation forced Ohio to delay the opening of a 125-bed minimum-security facility designed to treat nonviolent offenders' substance abuse problems.²⁹ The state also closed the Orient Correctional Institution, moving its 1,700 prisoners to other facilities in the state.³⁰ Workers from that facility will have to wait until January 21st to discover if they will be transferred or laid off.³¹

Oklahoma — Possible Staff Layoffs

The Department of Corrections remains \$46.2 million short of balancing its budget, with half of that figure needed to pay the cost of inmates housed in private facilities. At this time, a hiring freeze, layoffs, and a cutback in operating expenses are being considered if they do not receive the funds they require.³²

Oregon—Cuts in Youth Facilities and Crisis Intervention Programs

With a budget forecast to fall \$700 million short, Governor Kitzhaber proposed a 7.6% cut in the public safety budget. Some of the areas affected include a reduction of 150 beds from the Oregon Youth Authority, elimination of crisis intervention programs in instances of domestic violence and the delay of opening any new prison facilities.³³ Governor Kitzhaber made it clear that this budget was designed to underscore the desperation of the current deficit and the need for cooperation and immediate action.

Washington—Proposed Sentencing Reforms to Reduce Prison Population

In response to the state's estimated \$1 billion budget deficit, corrections officials have proposed numerous sentencing reforms to alleviate the growing population pressure on state correctional facilities. The recommendations include reducing drug offender sentences from Level VII to Level VI, increasing the proportion of property and drug offenders eligible for Earned Early Release from one-third to one-half, eliminating community supervision for certain low and medium-low offenders, and reducing sentences for certain burglary offenses.³⁴ Cuts have also been proposed to prison drug treatment as well as vocational programs. The Department of Corrections estimates these policy changes will remove 1,872 prisoners from state facilities and reduce the supervisory caseload by 53,000. Decisions on any prison closures will depend upon how significant these first round of cuts are in meeting the state's challenge of reducing the budget by 15%.

²⁸ Gillespie, C. "Cuts Limit Halfway-House Growth: Officials Sought More Beds for Released Inmates." *The Columbus Dispatch*, November 12, 2001.

²⁹ Associated Press. "Budget Cuts Keep Prison Boot Camp Closed." *The Columbus Dispatch*, December 12, 2001

³⁰ Johnson, A. "Orient Prison to Close." *The Columbus Dispatch*, December 7, 2001.

³¹ Johnson, A. "Prison Workers Await Word on Job." *The Columbus Dispatch*, January 8, 2002.

³² "State Agencies Could Take a Hit Because of Budget Shortfall." *Associated Press*, January 6, 2002.

³³ Law, S. "Kitzhaber Shows Depth of Budget Crunch." *The Statesman Journal*, January 8, 2002.

³⁴ Budget Reduction Message from Secretary Joseph Lehman, October 31, 2001.

Wisconsin—Delayed Opening of New Facilities

Governor McCallum proposed a 6% reduction in the corrections budget; with cuts totaling \$40 million.³⁵ Wisconsin will delay the opening of a 1,500 bed prison by two months and further postpone the construction of another 750 bed facility until the following budget term. However, lawmakers have warned that a lack of new prisons could potentially delay the return of the more than 3,500 Wisconsin inmates housed in prisons in other states.³⁶ The state had begun shipping prisoners to other states in 1996 in an effort to alleviate overcrowding, but since then has reconsidered the policy and has been committed to returning all its inmates to Wisconsin by 2003.

McCallum has also proposed delaying the construction of a geriatric facility, a new segregation unit in one state prison, and a secure institution for parole violators. Other state programs such as free busing for families of inmates face cuts as well. Additionally, McCallum has stated that the state's truth-in-sentencing legislation needs to be reconsidered.

³⁵ Jones, R.P. "Corrections Takes \$40 Million Hit: Plan Would Delay Prison Openings, Charges Inmates Extra, Ends Relatives Busing." *Milwaukee Journal Sentinel*, January 22, 2002.

³⁶ "Budget Shortfall Could Keep More Inmates in Other States' Prisons." *Associated Press*, January 7, 2002.

III. IMPLICATIONS OF POLICY DECISIONS FOR FUTURE BUDGETS AND PUBLIC SAFETY

Over the past year there have been substantial developments in sentencing and corrections policy around the nation. As has been detailed in this report, a number of states have moved in the direction of providing greater discretion to judges and corrections officials in regard to imposing sentences and considerations of length of time to be served in prison, increasing treatment over punishment, and otherwise opening the way to reduced reliance upon incarceration. Research and experience suggest that these steps will not endanger public safety and can reduce state costs.

In the latter part of the year, the movement toward reducing prison populations was intensified by a largely unanticipated budget shortfall that has reached crisis proportions in some states. But while virtually every state is affected by the fiscal realities of the current recession, the means by which state policymakers are responding will affect both fiscal health and public safety over time.

The range of various proposals now being presented and adopted by state legislatures suggests an analytical framework by which policymakers are measuring the value to be gained from their decisions:

- Policymakers are increasingly aware that sentencing and corrections policy choices have both short-term and long-term considerations. Experience and research show that fiscal decisions that save funds in the short run may result in higher long-term costs in some cases. Consider, for example, the decisions made by governors in Idaho and Maryland to support substance abuse treatment at current levels despite the difficult fiscal climate. These policy decisions are imbued with the recognition that cuts in these areas could have serious implications for crime and prison populations over time.
- Decisions made this year will have budgetary implications for years to come. This is particularly true in regard to prison construction, where new institutions can be expected to be operational for at least fifty years. Thus, an initial decision to spend \$100,000 per prison cell for construction will be accompanied by at least a \$20,000 annual cost per inmate for incarceration over the lifetime of the institution. Decisions to refrain from, or delay, building new prisons lead to compounded financial benefits over time.
- Political leaders have learned that court system and community partnerships are increasingly necessary. Innovations in recent years in community policing and specialized treatment courts have demonstrated the value of collaborative approaches to public safety. These initiatives offer the potential of more effectively meeting the needs of the voting public and making use of local resources to solve community problems. Further expansion and development of new partnership models may be particularly warranted in a time of declining budgets.

- There is a growing appreciation that moderation in sentencing practices offers opportunities for controlling prison costs. Given the fiscal constraints on corrections systems, sentencing policy changes such as those enacted in a number of states over the past year offer the opportunity to “do more with less.” By granting judges increased discretion in cases that would have previously mandated fixed terms of imprisonment, court systems now have greater opportunity to assess the sentencing needs of individual offenders and to fashion sentences that respond appropriately to identified issues.
- Many leaders have come to understand that prisoner reentry services offer opportunities for cost-effective public safety approaches. Given that a number of states are scaling back or postponing planned prison construction, the issue of prisoner reentry into the community becomes even more critical. State officials are paying close attention to federal and private initiatives to facilitate inmate “re-entry” into the larger community. They are learning the value of broad pre-release programming and post-release services to provide opportunities for early release and to reduce the numbers of offenders sent back to prison, with potentially significant savings and positive implications for public safety.

While budgetary decisions are particularly difficult in the current economic climate, state and policymakers are, for the first time, re-considering three decades of punishment-oriented policies. This may well lead to a reassessment of the relationship between the justice system and community institutions, the role of sentencing policy in crime control, and the appropriate balance among various correctional sanctions. By engaging in such a process, policymakers may be able to develop effective approaches to public safety that will only be enhanced once the fiscal climate improves.