

PROMISING BEGINNINGS

Bipartisan Criminal Justice Reform in Key States



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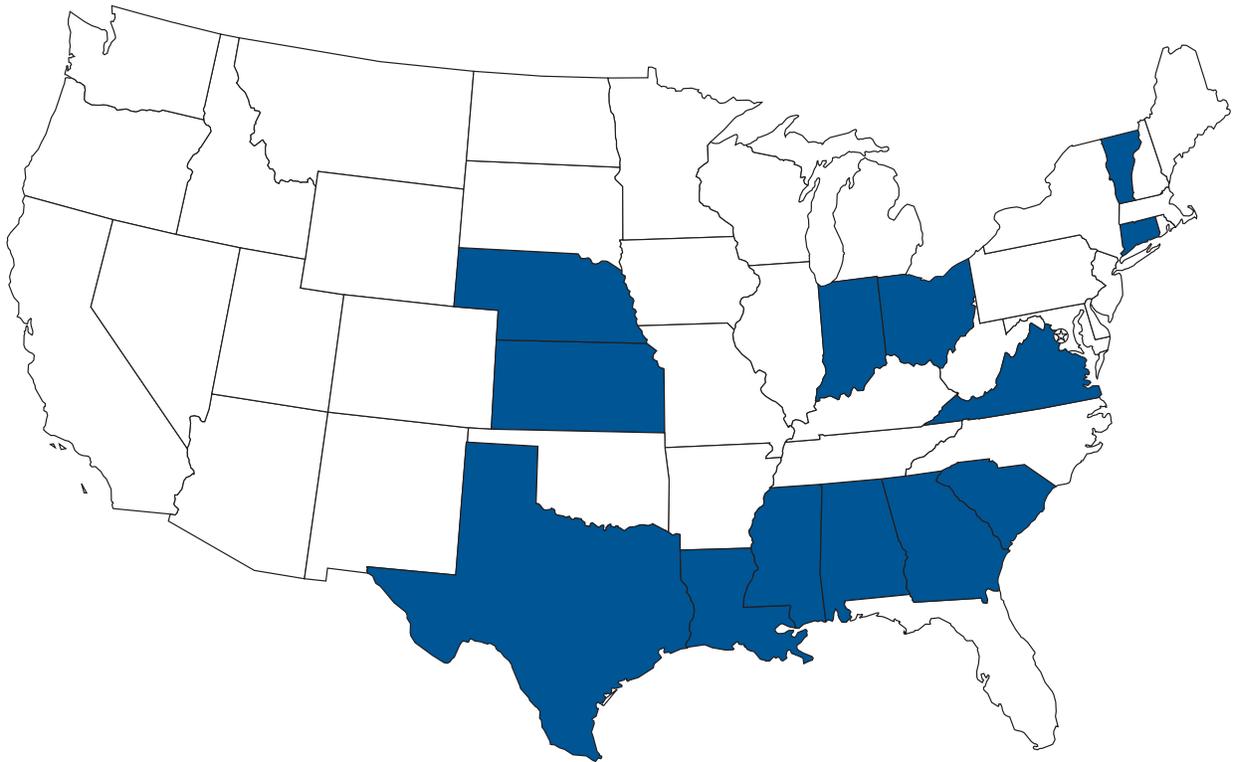
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INTRODUCTION

The current economic crisis has put the spotlight on the exorbitant costs of our penal system, which has devastated some communities and absorbed billions of taxpayer dollars without producing a proportional decrease in crime rates. The convergence of societal and budgetary impacts of over-incarceration has carved out a window of opportunity for substantive reforms which prioritize efficiency and fairness over partisan politics. At both a national and state level, efforts are being made to address our incarceration crisis and enhance fairness in the system through initiatives such as revising outdated and ineffective sanctions, increasing the use of diversion programs and strengthening supports for safe, positive reintegration. The following report highlights key reforms from a diverse group of states that have all succeeded in cultivating bipartisan support for reform measures that are not only cost-effective, but are actually improving public safety through new programmatic initiatives and smarter sentencing guidelines. We seek to highlight these efforts as promising beginnings, underscoring the fact that these examples mark the first steps on the road to reform, and not the completion of a journey.

As a non-partisan organization dedicated to preserving civil liberties and the integrity of our Constitution, the ACLU has been at the frontlines of these battles for nearly a century. In 2010, the ACLU celebrated the passage of the Fair Sentencing Act, which achieved a partial reversal of two decades of racially biased drug laws. Ushering this critical piece of legislative reform were Democrat and Republican leaders from both the House and Senate, who considered the testimony and support of a coalition of unlikely partners, including the National Prison Fellowship, the American Conservative Union, and the NAACP.

That same year, South Carolina passed the Omnibus Crime Reduction and Sentencing Reform Act by unanimous consent in the State Senate and nearly unanimous support in the House, a decisive response to a growing prison population and a system which delivered lengthy sentences to offenders, nearly fifty percent of whom were convicted of low-level, non-violent offenses. The estimated savings as a result of these new policies amount to over \$409 million over a five year period. The SRA has garnered support from leaders such as current Presidential Candidate Newt Gingrich, who publicly criticized South Carolina's expensive and disproportionate response to crime.

In 2007, the Texas State Senate passed comprehensive juvenile justice reform legislation and adopted a budget for the adult criminal justice system based on the recommendations of a bipartisan commission review. The FY2008-2009 budget sought specifically to fund the expansion of treatment programs within the prison system and diversion programs for probationers and parolees. The estimated net savings in that year based on the costs of creating additional prison units alone is \$443.9 million. This figure does not include the significant costs of court fees, law enforcement, probation and parole officers, and loss of human capital.

While the ACLU is encouraged by these movements, there is still tremendous work to be done. As a nation we still bear the shameful title of being the “world’s largest jailer,” incarcerating one out of every 99 adults and leaving 1.5 million children without a parent while one or both of their parents are in prison.¹ Restoring fairness and equity to our criminal justice system will require the continued commitment of lawmakers, judges, law enforcement, advocates and concerned citizens who recognize that the system is broken. Although attitudes towards crime have been politically divisive in the past, the current climate has created common ground among progressives and conservatives by revealing the waste and ineffectiveness of criminal justice policies. The movement for reform represents a rare opportunity for leaders of both parties to encourage the adoption of evidence-based practices which are targeted, ethical, and cost-effective. Far from compromising public safety, an insistence on informed policy making will strengthen our communities and preserve the core constitutional values that protect us all.

¹ Families Against Mandatory Minimums, *Women in Prison in Nutshell*, Factsheet, June 29, 2010, <http://www.famm.org/Repository/Files/Women%20in%20Prisons%20in%20a%20Nutshell%206.29.10.pdf>.

ALABAMA

Criminal Justice Challenge Confronting the State:

- Alabama is facing a projected FY2012 budget gap of \$979 million.²
- Despite already cutting General Fund agencies by 20% over the past two years, Alabama's corrections received \$346 million in FY2011.³
- From 1997 to 2007, Georgia's Department of Corrections expenditures increased by \$335.2 million.⁴
- Alabama has one of the nation's highest incarceration rates and is detaining over 30,000 individuals⁵ in a prison system designed to hold 12,000 inmates.⁶
- Roughly one in four new admissions to prison in Alabama are due to parole and probation revocation cases.
 - Notably, close to "half of these revocations were for minor technical violations that did not result in a new offense."⁷
- From FY2006 to FY2007, more than 1,300 individuals had their probation revoked for a technical violation⁸ and were sent back to prison at a cost of over **\$19 million** to Alabama taxpayers.⁹
- According to projections, if legislation is not adopted to address Alabama's growing prison population, the state will need to build additional capacity for 1,500 inmates at a cost of **\$151 million**.¹⁰

State Reform:

- **Senate Bill 325 (2010)** – signed into law by former Governor Bob Riley to enhance the court's ability to prescribe alternatives to incarceration for technical probation

2 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

3 Alabama Finances, Legislative Budget Hearing Presentation, February 8, 2011, http://www.uah.edu/admin/Budget/documents/Legislative%20Budget%20Hearing%20Presentation%2002_08_2011.pdf.

4 Robert Z. Welsh, *Tough On Crime and The Budget: The Difficult Balancing Act of Public Safety and Skyrocketing Prison Costs*, Georgia Budget and Policy Institute, January 2008, <http://www.gbpi.org/documents/20080111.pdf>.

5 National Institute of Correction, *Statistics for the State of Alabama*, <http://nicic.gov/features/statestats/?state=al>.

6 The PEW Center on the States, Public Safety Performance Project; *Work in the States: Alabama*, <http://www.PEWcenteronthestates.org/uploadedfiles/Alabama.pdf>.

7 Equal Justice Initiative, *Alabama Reform Probation Law to Promote Safety and Reduce Prison Crowding*, May 10, 2010, <http://www.eji.org/eji/node/391>.

8 A Technical violation occurs when an individual violates a probation or parole requirement but does not commit a new criminal offense. Technical violations include missed appointments, unpaid fines, and loss of employment.

9 *Id* at Equal Justice Initiative.

10 Alabama Public Safety and Sentencing Coalition, *Consensus Report*, March 2011, http://www.pewcenteronthestates.org/uploadedFiles/alabama_corrections_report.pdf.

violations.¹¹

- Now, when considering a probation violation, the Court can decide to continue existing probation, issue formal or informal warning to the probationer, conduct formal or informal conferences with the probationer, compel the probationer to participate in reentry-assistance programs, or modify the conditions of probation to include the addition of “short periods of confinement.”¹²
 - The law also stipulates that individuals who technically violate probation cannot be held in a facility for more than 90 days.¹³
- **Alabama Public Safety and Sentencing Coalition** – a bipartisan group of legislators, judges, lawyers and other related agencies came together in 2010 to systematically analyze the vast criminal justice challenges confronting Alabama with the goal explicit goal of “developing data-driven consensus legislative proposals that will enhance public safety, hold offenders accountable, and manage the prison population.”¹⁴

Republican Supporters of Reform:

Governor Robert Bentley

- The Auburn Plainsman notes that the Governor “added that prison reform was needed to address the number of drug-addicted individuals currently incarcerated in state prisons.”¹⁵

11 Alabama Sentencing Commission, *2010 Legislative Package: 2010 Regular Session: Technical Violations of Probation*, http://sentencingcommission.alacourt.gov/Legislation_2010.html.

12 *Id.*

13 *Id.*

14 *Id.* at *Alabama Public Safety and Sentencing Coalition*.

15 The Auburn Plainsman, Sparks, *Bentley showcase platforms for Alabama*, October 21, 2010, http://www.theplainsman.com/view/full_story/9987259/article-Sparks--Bentley-showcase-platforms-for-Alabama--?instance=home_news_lead_story.

CONNECTICUT

Criminal Justice Challenge Confronting the State:

- Connecticut is facing a projected FY2012 budget gap of \$2.9 billion.¹⁶
- Since 1980, Connecticut's total incarcerated population has increased 369.5%, ballooning from 3,845 on January 1, 1980 to 18,052 on January 1, 2010.¹⁷
- In 2007, Connecticut spent 4.4% of its general funds on corrections, and in 2006, 12.6% of the states employees worked in corrections.¹⁸
- In 2003, Connecticut had the nation's fastest growing prison population.¹⁹

State Reform:

- **Substitute House Bill 5211 (2004)** – “An Act Concerning Prison Overcrowding”²⁰ is a bipartisan piece of legislation that passed almost unanimously in the Connecticut legislature and streamlined the parole process for low-risk offenders including.
 - Requiring the board to hold hearings for prisoners who have served a certain amount of their time;
 - Allowing the board chairman to transfer inmates granted parole to a halfway house, group home, mental health facility, or an approved community or private residence within 18 months of their parole release date;
 - Allowing an inmate to receive a compassionate parole release under certain circumstances; and
 - Requiring the Parole Board Chairman and Executive Director to create an incremental sanctions system for parole violations.²¹
- Probation violations fell by 50% from July 2003 to September 2005.²²
- Over a two year period, Connecticut enjoyed a significant decrease in its prison

16 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

17 Christopher Reinhart, *Connecticut Prison Population Statistics*, OLR Research Report (2010-R-004), January 15, 2010, <http://www.cga.ct.gov/2010/rpt/2010-R-0030.htm>.

18 The PEW Center on the States, *One in 100: Behind Bars in America 2008*, February 2008, http://www.PEWcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf.

19 Tracy Russo, *Justice Reinvestment: Reshaping Justice and Reallocating Resources*, Department of Justice, January 27, 2010, <http://blogs.usdoj.gov/blog/archives/556>.

20 Connecticut General Assembly, *Substitute for Raise H.B. No. 5211: Session Year 2004*, http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=5211&which_year=2004.

21 Betty Gallo, 2004 ACLU of Connecticut Legislative Report, <http://www.acluct.org/legislation/2004legislative/report/>.

22 Council of State Governments, Justice Center, *Justice Reinvestment Connecticut Profile*, <http://justicereinvestment.org/states/connecticut>.

population while the crime rate continued to drop.²³

- Of the roughly \$30 million saved via decreased spending on corrections, approximately \$13 million went to funding community-based diversion and probation programs.²⁴
- **Continued Progress** – Today, Connecticut has roughly 18,000 incarcerated individuals, a 10-year low for the state,²⁵ and from FY2010 to FY2011, decreased corrections appropriations by 7.67%.²⁶
- In January 2010, Connecticut closed the Webster Correctional Institution²⁷, with an estimated savings of \$3.4 million.²⁸
- Three additional facilities are also in the process of being closed—the Enfield Correctional Institution, the Bergin Correctional Institution, and the Gates Correctional Institution.²⁹
 - Department of Corrections Commissioner Leo Arnone has noted that closing the Gates Correctional Institute will save approximately **\$12.3 million a year**.³⁰

Republican Supporters of Reform:

Former Governor Jodi Rell

- In a 2009 Press Release, the former Governor “announced she has directed the Department of Correction to consider closing a prison, citing a decline in the inmate population, the agency’s success with a number of post-release programs and the need to find savings and efficiencies in state government.”³¹
- In another 2009 press release, Governor Rell noted, “We face an extraordinarily difficult budget situation—a challenge unlike any we have known in modern memory...While other states—including states facing even more severe budget problems than our own—are being forced to build new prisons, we can make the most of our successes by building on these achievements.”³²

23 *Id.*

24 *Id at Tracey Russo.*

25 Ken Dixon, *State Closing Enfield prison; move 350 prisoners to Cheshire*, Connecticut Post, July 8, 2011, <http://www.ctpost.com/news/article/State-closing-Enfield-prison-move-350-prisoners-1457980.php>.

26 Vera Institute of Justice, *The Continuing Fiscal Crisis in Corrections: Setting a New Course*, October 2010, <http://www.vera.org/download?file=3072/The-continuing-fiscal-crisis-in-corrections-10-2010-updated.pdf>.

27 Connecticut Department of Correction, Webster Correctional Institution, last modified January 5, 2011, <http://www.ct.gov/doc/cwp/view.asp?a=1499&q=265448>.

28 *Governor Rell Announces DOC Recommendation for Prison Closure: Webster CI in Cheshire*, Press Release, December 1, 2009, <http://www.ct.gov/governorrell/cwp/view.asp?A=3675&Q=451528>.

29 *Id at Ken Dixon.*

30 Bob Connors, *State to Close Prison*, NBC Connecticut, April 1, 2001, <http://www.nbcconnecticut.com/news/local/State-to-Close-Prison-119080439.html>.

31 *Governor Rell: State Exploring Prison Consolidation: Cites Decreasing Inmate Numbers, New Correction Officer Graduating Class And Effective Post-release Programs As Factors*, Press Release, November 6, 2009, <http://www.ct.gov/governorrell/cwp/view.asp?A=3675&Q=450346>.

32 *Id at Governor Rell Announce DOC Recommendation for Prison Closure.*

GEORGIA

Criminal Justice Challenge Confronting the State:

- Georgia is facing a projected FY2012 budget gap of \$1.3 billion.³³
- Georgia has the nation's highest rate of adults under the correctional system with roughly 1 in 13 adults either on probation or parole or in prison or jail.³⁴
 - The national average is 1 in 31.³⁵
- Georgia spends more than **\$1 billion per year on its prison system** and houses approximately 53,000 inmates.³⁶
- Corrections spending had quintupled since 1985.³⁷
- Georgia's prison growth has been driven primarily by longer prison sentences.
 - In 1990, the average inmate released on a drug possession charge spent 10 months in prison while in 2009, the same individual would spend, on average, 21 months in prison.³⁸
- According to Governor Nathan Deal, Georgia spends \$18,000 per year on each prison inmate while, in comparison, it only spends \$3,800 per year for each public school student and \$6,800 per year for each student in the university system.³⁹

State Reform:

- **House Bill 1161 (2004)** – the Probation Management Act passed Georgia state legislature with overwhelming support⁴⁰ and established the Probations Options Management Program (POM).
 - POM allowed the Georgia Department of Corrections to create an administrative process to sanction probation violators without the need for a courtroom hearing before a judge, although the judge maintains final authority in all cases.⁴¹

33 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

34 The PEW Center on the States, 1 in 31 U.S. *Adults Behind Bars, on Parole or Probation*, March 2009, http://www.PEWcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf.

35 *Id.*

36 Carrie Teegardin and Bill Rankin, *A Billion Dollar Burden or Justice*, Atlanta Journal-Constitution, September 23, 2010, <http://www.ajc.com/news/government-waste/a-billion-dollar-burden-532578.html>.

37 *Id.*

38 *Id.*

39 Mike Klein, *Criminal Justice Reform Will Focus on Alternatives for Non-Violent Offenders*, Georgia Public Policy Foundation, Thursday, February 17, 2011, <http://mikekleinonline.com/2011/02/17/sweeping-review-of-criminal-justice-will-focus-on-prison-alternatives/>.

40 HB 1161 – Probation Management Act; enact, http://www1.legis.ga.gov/legis/2003_04/sum/hb1161.htm.

41 John Speir and Tammy Meredith, *An Evaluation of Georgia's Probation Options Management Act*, Atlanta: Applied Research Services, October 2007, http://ars-corp.com/_view/PDF_Files/AnEvaluationofGeorgiasProbationOptionsManagementAct_FinalReport2007.pdf.

- The intent of the legislation was to
 1. Enhance public safety by applying immediate, certain and proportionate sanctions to probation violations;
 2. Reduce amount of jail time for individuals between arrest and sanctions application;
 3. Expand use of non-custodial options for technical probation violations; and
 4. Ensure immediate and certain consequences for probation violations thereby reducing recidivism.⁴²
- An evaluation of the program found that, “POM participants spend significantly less time in jail than non-POM probationers in the same circuit. These differences are striking, evidencing anywhere from a three to five-fold decrease in jail time for those sentenced under POM.”⁴³
- **House Bill 265 (2011)** – creates the 2011 Special Council on Criminal Justice Reform for Georgians and the Special Joint Committee on Georgia Criminal Justice Reform
 - Introduced by House Speaker David Ralston (R-Blue Ridge) and House Minority Leader Stacey Abrams (D-Atlanta) and several other members of the Georgia House of Representatives, the bill passed the Georgia state legislature with nearly unanimous support and was signed by Governor Nathan Deal on April 22, 2011.⁴⁴
 - The Special Council on Criminal Justice Reform for Georgians will consist of the Governor, members of the state legislature, the Chief Justice of the Supreme Court, and other appointees.
 - The Council will study the criminal justice system in order to determine how to “better manage a growing prison population through increasing public safety, improving rehabilitation, and lowering state expense.”⁴⁵

Republican Supporters of Reform:

House Speaker David Ralston (R-Blue Ridge)

- “I don’t think we ought to let public safety depend on getting a bargain basement price, but I think we do have to be conscious of the cost of incarceration. I think the dialogue has already started.”⁴⁶

42 *Id.*

43 *Id.*

44 *Deal enacts criminal justice reform council: Governor signs legislation in Hall County drug court where his son is presiding judge*, Press Release, April 22, 2011, http://www.georgia.gov/00/press/detail/0,2668,165937316_169688037_170658299,00.html.

45 Georgia General Assembly, 11 HB 265/AP, http://www1.legis.ga.gov/legis/2011_12/fulltext/hb265.htm.

46 Carrie Teegardin and Bill Rankin, *A billion-dollar burden or justice? ACJ investigation: Georgia leads nation in criminal punishment*, Atlanta Journal-Constitution, May 23, 2010, <http://www.ajc.com/news/government-waste/a-billion-dollar-burden-532578.html>.

Governor Nathan Deal

- “For violent and repeat offenders, we will make you pay for your crimes. For other offenders who want to change their lives, we will provide the opportunity to do so with Day Reporting Centers, Drug, DUI and Mental Health Courts and expanded probation and treatment options. As a State, we cannot afford to have so many of our citizens waste their lives because of addictions. It is draining our State Treasury and depleting our workforce.”⁴⁷
- “Make no mistake. While this effort should ultimately uncover strategies that will save taxpayer dollars, first and foremost we are attacking the human cost of a society with too much crime, too many people behind bars, too many children growing up without a much needed parent and too many wasted lives.”⁴⁸

Chief Justice Carol Hunstein

- “Our state can no longer afford to spend more than \$1 billion a year to maintain the nation’s fourth highest incarceration rate, I am confident that with this united front that you see here today we will accomplish our goals.”⁴⁹

Representative Jay Neal (R-LaFayette)

- “For decades we’ve been treating the symptoms of our addictive and mentally ill prisoners, the symptoms being their criminal behavior, rather than treating the root cause of those symptoms. As a result, spending on corrections has skyrocketed.”⁵⁰

Presidential Candidate and Former House Speaker Newt Gingrich and Virginia Attorney General Mark Early, *Cutting recidivism saves money and lives*, *Atlanta Journal Constitution*, March 23, 2010

- “Georgians simply can’t afford for the corrections system to maintain the status quo. Just as a student’s success isn’t measured by his entrance into high school but by his graduation, and a bridge’s value isn’t measured by its completion but by its long-term reliability, celebrating taking criminals off the street with little thought to their imminent return to society is foolhardy. The key to public safety and fiscal sanity is not just getting dangerous people off the streets but also making sure that men and women who eventually leave prison have changed and can stay crime-free on the outside.”⁵¹

47 Jim Galloway, *Nathan Deal: Drug addiction “draining our treasury,”* *Atlantic Journal Constitution*, January 10, 2011, <http://blogs.ajc.com/political-insider-jim-galloway/2011/01/10/nathan-deal-drug-addiction-draining-our-treasury/>.

48 *Id.*

49 *Id.* at Mike Klein.

50 *Id.*

51 Newt Gingrich and Mark Early, *Cutting recidivism saves money and lives*, *Atlanta Journal Constitution*, March 23, 2010, <http://www.ajc.com/opinion/cutting-recidivism-saves-money-397952.html>.

INDIANA

Criminal Justice Challenge Confronting the State:

- For FY2011, Indiana had to close a \$1.3 billion budget gap.⁵²
- From FY2000 to FY2010, Indiana's prison population grew 47% increasing from 19,309 to 28,389.⁵³
- Appropriations for the Indiana Department of Correction in FY2010 were \$679 million compared to \$495 million in FY2000.⁵⁴
- The Indiana Department of Corrections projects that the prison population will increase 21%, from 28,474 to 34,794 between 2010 and 2017.⁵⁵
- This is estimated to cost the state **\$1.2 billion between 2010 and 2017**, which includes new bed construction and increased operating costs to accommodate the expanding prison population.⁵⁶

State Reform:

- **Justice Reinvestment Steering Committee** – bipartisan group (includes designees of the governor, chief justice, and House and Senate leadership) established to guide the analysis of the state's criminal justice system and the development of policy options⁵⁷
- **Senate Bill 415 (2010)** – allows rehabilitation based discharge for long term prisoners who have served 21 years and have received four years of earned credit for participation in education, treatment, or other programs⁵⁸
 - Passed Indiana State Senate by a vote of 48-0⁵⁹ before being signed into law by Governor Mitch Daniels

52 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

53 Council of State Governments, Justice Center, *Justice Reinvestment Indiana Profile*, <http://justicereinvestment.org/states/indiana>.

54 *Id.*

55 Indiana Department of Correction, *Internal Department of Correction memo: Actual Vs. Projected Populations*, March 2010.

56 *Id.* at Council of State Governments.

57 Council of State Governments, Justice Center, *Justice Reinvestment in Indianan: Summary Report & Policy Framework*, December 2010, <http://www.in.gov/legislative/interim/committee/reports/CCECDB1.pdf>.

58 Nicole D. Porter, *The State of Sentencing 2010 Developments in Policy and Practice*, The Sentencing Project, February 2011, <http://sentencingproject.org/doc/publications/publications/Final%20State%20of%20the%20Sentencing%202010.pdf>.

59 *Waterman's bill addressing overcrowded prisons could soon become law*, Press Release, March 4, 2010, <http://www.indsenaterepublicans.org/2010/03/09/watermans-bill-addressing-overcrowded-prisons-could-soon-become-law/>.

Republican Supporters of Reform:

Governor Mitch Daniels

- “Having more dangerous and repeat-offending criminals in prison is the best way to protect Hoosiers, but if our current laws and practices result in nondangerous offenders taking up space at high cost to taxpayers, there may be better ways to manage that.”⁶⁰
- Notably, Governor Daniels has expressed strong opposition to S.B. 561 (2011), which lengthens penalties for certain offenses. According to the Indianapolis Star, Governor Daniels stated, “It’s a shame, honestly, that what looked to be a consensus is unraveled because of one interest group, the prosecutors, and they do not speak for all prosecutors...The main point here was to incarcerate people in a smarter way and to save Indiana’s taxpayers a lot of money...So I’m not going to sign something that heads in the opposite direction and costs taxpayers money beyond what would already be the case.”⁶¹

60 *New study aimed at cutting Indiana prison costs*, Indianapolis Recorder, June 30, 2010, http://www.indianapolisrecorder.com/news/local/article_2dcb7fad-3cc5-5d8e-a527-512fb6d0d946.html.

61 Heather Gillers, *Gov. Daniels: I’ll veto amended prison bill*, Indianapolis Star, March 23, 2011, <http://www.indystar.com/apps/pbcs.dll/article?AID=2011103230322>.

KANSAS

Criminal Justice Challenge Confronting the State:

- Kansas is facing a projected FY2012 budget gap of \$492 million.⁶²
- In 2006, the combination of a high recidivism rate and policies the state adopted to lengthen prison sentences was set to increase Kansas' prison population by an estimated 26% by 2016.⁶³
 - This would have cost the state approximately **\$500 million** in additional construction and operating expenses.⁶⁴
- In FY2006, probation and parole revocations made up 65% of prison admissions and cost taxpayers **\$53 million annually**.⁶⁵

State Reform:

- **Senate Bill 123 (2003)** – mandates sentences of community-based drug abuse treatment and community supervision for non-violent offenders convicted of drug possession for the first or second time⁶⁶
- The legislation was, in part, a response to the rapid increase in the number of individuals being incarcerated for drug offenses in 2002.
- It allowed preexisting community-based drug treatment providers to assess safety risk and substance abuse needs of eligible individuals and then recommend particular treatment program based on the assessment.
- Eligible offenders receive up to 18 months of community-based substance abuse treatment and revocation for noncompliance is determined by individual community corrections officers, drug treatment counselors, and sentencing judges.⁶⁷
- Since its implementation, incarceration rate for individuals convicted of drug crimes has dropped 23% and the estimated 2008 cumulative budget savings from Senate Bill 123 are \$7.5 million.⁶⁸

62 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

63 Council of State Governments, Justice Center, *Policy Options to Increase Public Safety & Manage the Growth of the Prison Population*, March 2007, <http://justicereinvestment.org/files/KS%20Policy%20Impact%20Chart%20Final%20LetterSize.pdf>.

64 *Id.*

65 Tony Fabelo, *Tough and Smart: Opportunities for Kansas Policymakers to Reduce Crime and Spending*, Presentation, December 12, 2006, <http://www.PEWcenteronthestates.org/uploadedFiles/KS%20Tough%20and%20Smart%20Slideshow.pdf>.

66 Don Stemen and Andres Rengifo, *Kansas Senate Bill 123: A Process and Implementation Evaluation*, Vera Institute of Justice, July 2006, http://www.accesskansas.org/ksc/sb123/SB123_Process_Eval_FINAL.pdf.

67 *Id.*

68 Judith Greene and Marc Mauer, *Downscaling Prisons: Lessons from Four States*, the Sentencing Project, 2010, http://www.sentencingproject.org/doc/publications/publications/inc_DownscalingPrisons2010.pdf.

- **Senate Bill 14 (2007)** – passed with strong bipartisan support
 - Established a performance-based grant program for community corrections programs with the goal of reducing parole revocations⁶⁹
 - Between FY2006 and FY2008 Kansas has experienced a 21.9% decrease in revocation rates and a 26.2% increase in successful completion of community supervision.⁷⁰
 - In order to increase the number of individuals to successfully complete educational, vocational, and treatment programs prior to release, the legislation provided the opportunity to earn additional sentence reductions for program completion.⁷¹
 - It also increased the amount of time credits a nonviolent offender could earn for good behavior.⁷²
 - It is estimated that SB 14 will save Kansas approximately **\$80.2 million** over five years in averted construction and operation expenses.⁷³
 - Thanks to this initiative, in early 2009 the parole revocation rate was 48% lower than it was in 2003 and the prison population was 7.5% lower than it was in 2004.⁷⁴

- **House Bill 2412 (2010)** – authorizes medical parole for prisoners diagnosed with terminal medical conditions expected to cause death within 30 days⁷⁵

Effects of the Economic Crisis – Losing Momentum:

Following the passage and successful implementation of SB 14, Kansas came to be considered “a leader in a spreading national effort to make parole more effective and useful,”⁷⁶ but these positive trends have been reversed since the economic downturn.

- According to the Kansas Sentencing Commission, the number of prison admissions

69 Kansas Community Corrections, *Statewide Risk Reduction Initiative: Annual Report*, January 12, 2009, http://www.doc.ks.gov/publications/the-senate-bill-14-risk-reduction-initiative/SB_14_Risk_Reduction_Initiative_Report_2009.pdf/.

70 *Id.*

71 Roger Werholtz, Testimony to the House of Representatives Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, Hearing on Justice Reinvestment, April 1, 2009, <http://justicereinvestment.org/files/Kansas.Werholtz.pdf>.

72 *Id.*

73 Council of State Governments, Justice Center, *Justice Reinvestment Kansas Profile*, <http://justicereinvestment.org/states/kansas>

74 *Id.* at Roger Werholtz.

75 Nicole D. Porter, *The State of Sentencing 2010 Developments in Policy and Practice*, The Sentencing Project, February 2011, <http://sentencingproject.org/doc/publications/publications/Final%20State%20of%20the%20Sentencing%202010.pdf>.

76 Erik Eckholm, *New Tack on Straying Parolees Offers a Hand Instead of Cuffs*, The New York Times, May 17, 2008, http://www.nytimes.com/2008/05/17/us/17parole.html?_r=2&pagewanted=1&adxnlnx=1211203058-NVm41KvOcyky4uw4A0vnAQ.

FY2010 is the highest it has been in four years.⁷⁷

- The increase in prison population is partly due to the fact that the number probation condition violators who were re-admitted to prison rose by 17.4% from FY2009 to FY2010.⁷⁸
- The Commission has stated that, “The reason for the increase of probation condition violators is unknown. It is possible that insufficient funding to community corrections may have some impact, as well as loss of revenue, program, and alternative sanctions available locally, during the economic downturn.”⁷⁹

Republican Supporters of Reform:

Governor Sam Brownback

- “We should not be resigned to allowing generation after generation to return to prison because they don’t have the tools to break the cycle. I personally favor a number of these faith-based approaches. But if there are other approaches, let’s try them. This is an enormous problem, and since the ‘70s, we have basically just said we’ll lock people up.”⁸⁰
- “We’ve got a broken corrections system. Recidivism rates are too high and create too much of a financial burden on states without protecting public safety. My state and others are reinventing how we do business by employing justice reinvestment strategies that can put our taxpayers’ dollars to better use.”⁸¹

State Senator John Vratil (R-Overland Park), Senate Judiciary Committee Chair

- “If we do not address the problem today, we are effectively deciding to spend hundreds of millions of dollars on future construction and operation of more prisons...Kansas will miss the opportunity to become safer.”⁸²

Representative Michael O’Neal (R-Hutchison), House Judiciary Committee Chair

- “We’ve already spent millions ensuring that Kansans are safe by locking up offenders for longer periods of time. Now it’s time to make Kansas safer by making sure that when offenders inevitably finish their sentences, they are productive taxpaying members of our community.”⁸³

77 Kansas Sentencing Commission, *Fiscal Year 2011 Adult Inmate Prison Population Projections*, August 2010, http://www.accesskansas.org/ksc/documents/FY2011_Prison_Population_Projection_Report.pdf.

78 *Id.*

79 *Id.*

80 Chris Suellentrop, *The Right Has a Jailhouse Conversion*, *The New York Times*, December 24, 2006, <http://www.nytimes.com/2006/12/24/magazine/24GOP.t.html?pagewanted=print>.

81 Fox Butterfield, *Repaving the Long Road Out of Prison*, *The New York Times*, May 4, 2004, <http://www.nytimes.com/2004/05/04/us/repaving-the-long-road-out-of-prison.html?pagewanted=all&src=pm>.

82 Council of State Governments, Justice Center, *Justice Reinvestment State Brief: Kansas*, October, 2007, <http://justicereinvestment.org/states/kansas/pubmaps-ks>.

83 *Id.*

LOUISIANA

Criminal Justice Challenge Confronting the State:

- Louisiana is facing a projected FY2012 budget gap of \$1.6 billion.⁸⁴
- One out of every 55 adults is in prison in Louisiana.⁸⁵
- In 2008, Louisiana has the nation's highest incarceration rate.⁸⁶
- Its prison population has doubled in the last twenty years.⁸⁷
- Louisiana's prison incarceration rate and jail incarceration rate both greatly exceed the national rates.
 - 881 per every 100,000 people are in prison in Louisiana and 704 out of every 100,000 people are in jail.
 - Nationally, 502 per 100,000 people are in prison and 250 per 100,000 are in jail.⁸⁸

State's Reform Efforts:

- **House Bill 630 (2009)** – Louisiana amended penalties for persons serving life sentences for heroin offenses and strengthened good time policies.⁸⁹
 - Passed with significant majorities the both bodies of the Louisiana state legislature
 - The bill notes, “it is in the interest of fairness that such individuals who have been incarcerated for many years for crimes involving heroin should be entitled to be considered for parole.”⁹⁰
- In January 2011, Governor Bobby Jindal announced that The Pew Center on the States' Public Safety Performance Project will begin reviewing Louisiana's criminal justice system in an effort to develop policies to make the criminal justice system more effective and efficient.⁹¹
 - Speaker of the Louisiana House of Representatives, Jim Tucker, said of the

84 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

85 PEW Center on the States, *Public Safety Performance: Work in the States: Louisiana*, http://www.PEWcenteronthestates.org/initiatives_detail.aspx?initiativeID=327561.

86 Justice Policy Institute, *Louisiana Leads the Nation and the World in Lock Up Prison and Jails: Expensive – Not Keeping Communities Safer*, <http://www.criticalresistance.org/katrina/louisianaleads.html>.

87 *Id.*

88 The Sentencing Project, <http://www.sentencingproject.org/map/map.cfm#map>.

89 Nicole D. Porter, *The State of Sentencing 2009 Developments in Policy and Practice*, The Sentencing Project, 2009, http://www.sentencingproject.org/doc/publications/s_ssr2009Update.pdf.

90 Louisiana State Legislature, *House Bill No. 630: Act No. 533: enrolled, 2009*, <http://www.legis.state.la.us/billdata/streamdocument.asp?did=668907>.

91 *Governor Jindal Announces LA Selected for PEW Partnership to Reform LA Criminal Justice System*, Press Release, January 20, 2011, <http://gov.louisiana.gov/index.cfm?md=newsroom&tmp=detail&catID=2&articleID=2658>.

announcement, “I’m proud that Pew selected Louisiana for its in-depth analysis of our state’s prison system. For this to work, Pew required a legislature that works together, a policy environment that’s ripe for change, and a state whose three branches are cohesive and effective. We’ll see some new ideas from this study that will make our corrections system more effective at how it uses tax dollars and reforms offenders, which will benefit all of Louisiana.”⁹²

- **House Bill 138 (2011)** – signed by Governor Jindal on June 29, 2011⁹³
 - Legislation makes individuals who have reached the age of 60 and have spent at least 10 years in prison eligible for parole consideration provided the individual has
 1. Not been convicted of a violent crime or a sex crime
 2. Not committed any disciplinary offenses in the year before parole eligibility
 3. Completed at least 100 hours of pre-release programming
 4. Completed substance treatment as applicable
 5. Obtained a high school diploma or equivalent
 6. Obtained a “low risk” designation
 - The Louisiana Legislative Fiscal office estimates that 15 individuals currently meet these conditions and if they are granted parole could save the state \$199,885 annually.⁹⁴

Republican Supporters of Reform

Governor Bobby Jindal

- In a March 2009 announcement regarding a plan for work release, day reporting centers, and reentry initiatives, Louisiana Governor Bobby Jindal stated, “Without education, job skills, and other basic services, offenders are likely to repeat the same steps that brought them to jail in the first place. This not only affects the offender, but families and our communities as well...This is a problem that needs to be addressed head-on. We cannot say we are doing everything we can to keep our communities and our families safe if we are not addressing the high rate at which offenders are becoming repeat criminals. By implementing this re-entry program, we can curb the cycle of repeat offenders and thereby reduce the burden on our prisons and help offenders create a place in society that adds value to their lives while keeping our communities safe for our families.”⁹⁵

⁹² *Id.*

⁹³ *Governor Jindal Sign Bills into Law*, Press Release, June 29, 2011, <http://www.gov.louisiana.gov/index.cfm?md=newsroom&tmp=detail&articleID=2882>.

⁹⁴ Matthew LaBruyere, *Fiscal Note: HB 138 Enrolled*, Legislative Fiscal Office, June 21, 2011, <http://www.legis.state.la.us/billdata/streamdocument.asp?did=758046>.

⁹⁵ *Governor Jindal Announces New Re-Entry Program for State Inmates in Parish Prisons to Reduce Recidivism Rate and Make Communities Safer*, Press Release, March 18, 2009, <http://gov.louisiana.gov/index.cfm?articleID=1073&md=newsroom&tmp=detail>.

MISSISSIPPI

Criminal Justice Challenge Confronting the State:

- Mississippi is facing a projected FY2012 budget gap of \$634 million.⁹⁶
- The state has the second highest rate of incarceration in the country.
- State prisons were operating at 99 percent capacity and the cost of the corrections system was eating up an ever increasing portion of the state budget.
- In 1994, the Mississippi Department of Corrections (DOC) budget was \$109.6 million and by 2007 it had tripled to \$327 million.⁹⁷
- If incarceration rates continued to increase, the state would need to add 5,000 additional prison beds in the next ten years in order to accommodate the expanding population.
- Much of Mississippi's over incarceration problem could be traced back to the mid 1990's when a truth-in-sentencing law was passed.
 - The law mandated that all inmates—regardless of the nature of their offense—had to serve 85% of their sentence before they could even be considered for parole.

State's Reform Efforts:

- **Senate Bill 2136 (2008)** – passed with strong support from Governor Haley Barbour and Department of Corrections Commissioner Christopher Epps
 - The bill allows all inmates convicted of non-violent felonies to be eligible for parole after serving 25% of their sentence.
 - The legislation was retroactively applied so as to allow the legislation to have an immediate impact on the size of Mississippi's prison population.
 - As soon as the bill became law, 3,000 new inmates were made eligible for parole.
- The state also increased funding for the parole board and created a risk assessment tool for the parole board.
 - Allowed the parole board to use a findings based tool to designate what individuals were best suited for parole
 - Using the new risk assessment tool, the parole board in Mississippi was not only able to process individuals more quickly, but they also began to slightly increase their parole approval rate.
- Following the passage of this legislation, Mississippi's parole violations and recidivism rates dropped precipitously.

96 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

97 *Reforming Mississippi's Prison System*. JFA Institute with the assistance of the Mississippi Department of Corrections for the Public Safety Performance Project, the PEW Center on the States.

- Of the over 3,000 individuals released from 2008 to August 2009, only 4% have returned to custody and less than 0.2% were rearrested for new crimes.⁹⁸

Republican Supporters of Reform:

Pete Smith, former spokesman for Governor Barbour

- “The majority of inmates have a release date—meaning at some point in the future they will return to society. This legislation was more about re-entry than it was about budget concerns.”
- “To release inmates solely based on cost would not be prudent. The driving force behind this bill was a practical matter of good policy.”

98 American Bar Association, *Texas & Mississippi: Reducing Prison Populations, Saving Money, and Reducing Recidivism*, <http://www2.americanbar.org/sections/criminaljustice/CR203800/PublicDocuments/paroleandprobationsuccess.pdf>.

NEBRASKA

Criminal Justice Challenge Confronting the State:

- Nebraska is facing a projected FY2012 budget gap of \$166 million.⁹⁹
- From 1995 to 2005 Nebraska's corrections spending went from \$72 million to \$206 million—an increase of roughly 186%.¹⁰⁰
 - Over this period, prison population increased by 34%¹⁰¹
- The incarceration rate went from 185 per 100,000 individuals in 1995 to 245 per 100,000 in 2009, which is an increase of over 32%.¹⁰²
- The Department of Correctional Services operated at 138% of design capacity in 2007, and the prison population was projected to increase an additional 12% over a 4 year period.¹⁰³

State Reform:

- **Legislative Bill 46 (2003)** – passed unanimously in the Nebraska state legislature and attempts to ensure that prison beds are available for violent criminal instead of low-level, non-violent offenders who can be safely and more effectively placed in community supervision programs
 - As detailed in the Introducer's Statement of Intent, LB 46 “contains enhanced community corrections programs as its centerpiece. LB 46 endeavors to limit the use of incarceration (the most expensive sentencing option) to those cases in which it is the best use of state resources...The objective is to increase the certainty of an offender's prison sentence, address punishment and the need for public safety, and emphasize accountability while using an array of intermediate or graduated sanctions for non-violent offenses to decrease overall correctional costs.”¹⁰⁴
 - Notably, in order to achieve this goal, LB 46
 - “allow[s] the state parole board to consider whether an inmate's failure to complete part of a treatment program should affect his or her release date;
 - “require[s] the director of the Department of Correctional Services to advise the governor of a facility overcrowding emergency within 30 days of

99 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

100 The PEW Center on the States, *Public Safety Performance Project: Nebraska, February 2007*, <http://www.pewcenteronthestates.org/uploadedFiles/NE%20State%20Profile%202-22-07.pdf>.

101 *Id.*

102 Marc Levin and Vikrant Reddy, *Controlling Costs and Protecting Public Safety in The Cornhusker State*, Platte Institute for Economic Research, February 2011, http://www.platteinstitute.org/docLib/20110223_Criminal_Justice_-_FINAL.pdf.

103 *Id.* at *The PEW Center on the States*.

104 Senator Kermit A. Brashear, *Introducer's Statement of Intent: LB 46*, February 13, 2003, <http://www.legislature.ne.gov/FloorDocs/98/PDF/SI/LB46.pdf>.

- when the state’s prison population reaches 140 percent of capacity; [and]
- “grant[s] probation officers authority, with permission from a chief probation officer, to impose administrative sanctions if probationers commit minor or technical violations of their sentences.”¹⁰⁵
- Additionally, LB 46 made the **Community Corrections Council** into a permanent entity whose mission “is to develop and monitor the implementation of a comprehensive community corrections strategy in Nebraska for the purpose of reducing the incarceration of certain, targeted felony offenders while supporting the use of a continuum of community facilities and programs to ensure a consistent and rational statewide sentencing policy.”¹⁰⁶
 - **Legislative Bill 390 (2011)** – restructures the Community Corrections Council as the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice¹⁰⁷

Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice

- **Serious and Violent Offender Reentry Program (2003)** – initiative to provide adult offenders who have a high risk of reoffending with comprehensive case management and to assist with substance abuse and mental health problems, housing, employment, education, criminal behavior, and family relationships¹⁰⁸
 - Participants accounted for 96 fewer misdemeanors and 28 fewer felony arrests per 200 participants during the 12-month follow-up period.¹⁰⁹
 - The annual recidivism-outcome cost savings per 200 participants was **\$1,169,719**.¹¹⁰
 - “When recidivism-outcome and societal-victimization costs are combined, the total annual savings due to the [National Department of Correctional Services] Re-Entry Program are **\$10,637 per reentry participant**.”¹¹¹
- **Specialized Substance Abuse Supervision (2006)** – initiative of the Community

105 98th Nebraska Legislature, First Session, 2003 Session Review, Unicameral Update (Volume XXVI, Number 22), <http://www.nebraskalegislature.gov/update/year-end%20issues/2003.pdf>.

106 Nebraska Community Corrections Council, *What is the Council*, 2010, <http://ccc.nebraska.gov/about.html>.

107 Committee Statement, *LB390*, One Hundred Second Legislature, First Session, 2011, <http://nebraskalegislature.gov/FloorDocs/Current/PDF/CS/LB390.pdf>.

108 Office of Justice Programs, *State Activities and Resources: Nebraska*, U.S. Department of Justice, <http://www.ojp.usdoj.gov/reentry/sar/ne.html#4>.

109 Lisa L. Sample and Cassia Spohn, *Final Report for the Evaluation of Nebraska’s Serious and Violent Offender Reentry Program*, School of Criminology and Criminal Justice, University of Nebraska at Omaha, January 2008, http://reentry.unomaha.edu/final_report_2008.pdf.

110 *Id.*

111 *Id.*

Corrections Council to reduce recidivism rates of moderate- to high-risk felony drug offenders via intensive, evidence-based community supervision programs including but not limited to substance abuse treatment services and academic and vocational education¹¹²

- **Legislative Bill 191 (2011)** – passed unanimously in the Nebraska state legislature and was signed by Governor Dave Heineman on March 16, 2011
 - The legislation expands the amount of time the Department of Corrections can reduce an inmate’s or a parolee’s period of incarceration and also directs the Parole Board to reduce an individual’s parole term by an additional 10 days per month for “conduct in conformity with the conditions of a parole.”¹¹³
 - Notably, the Nebraska Department of Correctional Services estimates that the legislation will produce a slight reduction in expenditures in FY2012-2013.¹¹⁴

Republican Supporters of Reform:

Governor Dave Heineman,

- “We believe that community corrections programs can help provide better results than simply building more maximum-security prisons in our state.”¹¹⁵

112 Carolyn Meeks, Jane Meza, Elizabeth Lyden, and Kathleen M. Grant, *Specialized Substance Abuse Supervision (SSAS) in Nebraska: A Study of the First Year of Implementation*, University of Nebraska Medical Center, October 31, 2008, http://ccc.nebraska.gov/PDF/SSASS%20Study%20Final%2011-08%20Report_2008OCT31.pdf.

113 *Early release incentives for good behavior approved*, Unicameral Update, March 10, 2011, <http://update.legislature.ne.gov/?p=3826>.

114 *Doug Nichols, Fiscal Note: LB 191*, January 21, 2011, <http://nebraskalegislature.gov/FloorDocs/Current/PDF/FN/LB191.pdf>.

115 *New Partnership Will Help Nebraska Move Forward*, Press Release, March 5, 2007, <http://www.governor.nebraska.gov/columns/2007/030507.html>.

OHIO

Criminal Justice Challenge Confronting the State:

- Ohio is facing a projected FY2012 budget gap of \$3 billion (this is half of the total projected shortfall for Ohio for the 2011-2012 biennium).¹¹⁶
- Ohio's prison population is approximately 6.5 times as large as it was in 1974.¹¹⁷
- The prison system is holding roughly 12,500 more inmates that it was designed to hold and is therefore operating 31% above its capacity.¹¹⁸
- Ohio's prisons population has grown from holding 13,138 inmates in 1981 to approximately 50,857 in 2011.¹¹⁹
 - This is an increase of nearly 287% in a thirty year span.
- The FY2011 combined budget for the Department of Rehabilitation & Correction and the Department of Youth Services is over \$1.8 billion, which is more than all general state government spending.¹²⁰
- The Ohio Department of Rehabilitation and Corrections estimated that in 2018, 6,647 additional beds would be needed for the prison system to operate at 123% of capacity and 9,799 beds to operate at 115% of capacity.¹²¹

State Reform:

- **House Bill 86 (2011)** – passed with near unanimous support in the Ohio state legislature and was signed into law by Governor John Kasich on June 29, 2011
 - Legislation makes essential changes to the juvenile justice system and focuses on reducing Ohio's prison population by
 - "Increasing the number of days prisoners can earn towards early release in return for participating in educational and vocational training programs;
 - Eliminating the crack-cocaine sentencing disparity;
 - Eliminating mandatory minimum sentences for many low-level drug crimes;
 - Increasing diversion programs for low-level drug offenders in lieu of conviction;

116 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

117 David J. Diroll, *Prison Crowding: The Long View, with Suggestions*, Ohio Criminal Sentencing Commission, March 2011, <http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/Publications/MonitoringReport2011.pdf>.

118 *Id.*

119 *Id.*

120 *Reform Cannot Wait: A Comprehensive Examination of the Cost of Incarceration in Ohio from 1991-2010*, American Civil Liberties Union of Ohio, August 17, 2010, http://www.acluohio.org/issues/CriminalJustice/ReformCannotWait2010_08.pdf.

121 Brian Martin, *Ohio Prison Population Projections and Intake Estimates*, Ohio Department of Rehabilitation and Correction, July 2009, http://www.drc.ohio.gov/web/Reports/proj_july2009.pdf.

- Raising the threshold used in determining penalties in theft-related crimes; and
 - Providing diversion programs for child support violators.”¹²²
 - The Legislative Service Commission estimates that that the House passed version of H.B. 86, will likely reduce the number of inmate beds in Ohio’s prison system by over 2,000.¹²³
 - H.B. 86 is projected to save about **\$1 billion** over the next four years, once fully implemented.¹²⁴
- **Community Corrections Act (CCA)** – diversion program designed to keep nonviolent offenders out of prison
 - In 2009, CCA programs funded by the state diverted 10,114 offenders from prison.¹²⁵
 - While in CCA diversion programs, participants earned \$41,152,732; paid \$394,709 in restitution; paid \$2,490,974 in court costs and fines; paid \$798,183 in child support and completed 207,346 hours of community work service.¹²⁶
 - **Community-Based Corrections Facilities (CBCFs)** – residential, dormitory-style facilities with rehabilitative programming, such as drug treatment, vocational training, and education
 - In 2009, 5,749 offenders were placed in CBCFs and 82% of the participants successfully completed their programs.¹²⁷
 - Participants earned \$1,168,148; paid \$26,764 in restitution; paid \$170,250 in court costs and fines; paid \$30,554 in child support and completed 242,147 hours of community work service.¹²⁸
 - **Community Residential Services (CRS)** – primarily consists of halfway houses, mostly operated by non-profit organizations

122 *What’s Happening in Ohio: Reforming Ohio’s broken criminal justice system*, American Civil Liberties Union of Ohio, updated July 5, 2011, <http://www.acluohio.org/issues/criminaljustice/default.asp>

123 Joseph Rogers, *Fiscal Note & Local Impact Statement: Sub. H.B. 86 of the 129th G.A.*, Ohio Legislative Service Commission, June 22, 2011, <http://www.lsc.state.oh.us/fiscal/fiscalnotes/129ga/hb0086sr.pdf>.

124 Laura A. Bischoff, Lynn Hulsey and Joanne Huist Smith, *Prison sentence reductions may save \$1B*, Dayton Daily News, June 23, 2011, <http://www.daytondailynews.com/news/ohio-news/prison-sentence-reductions-may-save-1b-1191462.html>; see also Ohio Legislative Service Commission, *Fiscal Note & Local Impact Statement, H.R. 86, 129th Session*, 2011, <http://www.lsc.state.oh.us/fiscal/fiscalnotes/129ga/hb0086hp.pdf>. Note, the initial study by the Council for State Governments indicated a projected cost savings of \$90 to \$100 million, but not all of the proposed reforms were included in the final version of the bill, which has made finding an updated cost savings estimate challenging.

125 *Community Corrections Act Fiscal Year 2009*, Ohio Department of Corrections and Rehabilitation, <http://www.drc.ohio.gov/web/Reports/CCA/Annual%20Report%202009.pdf>.

126 *Id.*

127 *Community-Based Correctional Facilities Fiscal Year 2009*, Ohio Department of Corrections and Rehabilitation, <http://www.drc.ohio.gov/web/Reports/CBCF/Annual%20Report%202009.pdf>.

128 *Id.*

- Offenders in halfway houses are either referred by the Court of Common Pleas, placed there as a sanction of probation or parole supervision, or released inmates participating in the Transitional Control program, which allows them to serve up to the final 180 days of their sentence in a halfway house.
 - In 2008, CRS diverted 7,400 offenders from being placed in prison.¹²⁹
 - By keeping these individuals out of prison, conservative estimates put the prison expenditure savings at **\$46.1 million** (which is more than CRS' 2008 budget).¹³⁰
- **Graduated Sanctions Matrix (2005)** – progressive sanction guidelines for individuals under the supervision of the Ohio Adult Parole Authority¹³¹
 - Created a violation response grid based on offender risk, violation severity, and cumulative behavior to determine response.¹³²
 - Instead of revoking parole for violations, the matrix allows for alternative sanctions such as increased reporting, curfew, drug testing, and placement in a halfway house.¹³³
 - From 2006 to 2008, technical revocations from parole declined 556 to 343.¹³⁴
 - **Ohio Risk Assessment System (ORAS)** – partnership between the Ohio Department of Rehabilitation and Correction and the University of Cincinnati School of Criminal Justice to create a universal assessment system that can be used at all points of contact with the criminal justice system¹³⁵
 - The goal of ORAS is to help “efficiently allocate supervision resources and structure decision-making in a manner that reduces the likelihood of recidivism.”¹³⁶
 - Ohio is beginning to see a minor decrease in the growth rate of its prison population
 - Notably, in the *Ohio Prison Population Projections and Intake Estimates: FY 2010-2018*, the Department of Rehabilitation and Correction “present a downward

129 Marc A. Levin, *Smart on Crime*, the Buckeye Institute for Public Policy Solutions, November 2010, citing “Testimony of Gayle Dittmer,” http://www.opd.ohio.gov/RC_Reports/BuckeyeInstituteSmartOnCrimeReport.pdf.

130 *Id.*

131 Brian Martin, *Examining the Impact of Ohio’s Progressive Sanction Grid, Final Report*, August 2008 (Document Number 224317), <http://www.ncjrs.gov/pdffiles1/nij/grants/224317.pdf>.

132 *Id.*

133 *Id.*

134 Senarath Dassanayaka, *Calendar Year 2008 Summary of Institution Statistics*, Ohio Department of Rehabilitation and Correction, July 31, 2009, <http://www.drc.ohio.gov/web/Reports/Progress/Calendar%20Year%202008%20Summary%20Statistics.pdf>.

135 Ohio Department of Rehabilitation and Correction, *Ohio Risk Assessment System*, June 15, 2010, <http://www.drc.ohio.gov/web/oras.htm>.

136 Edward Latessa, Paula Smith, Richard Lemke, Matthew Makarios and Christopher Lowenkamp, *Creation and Validation of the Ohio Risk Assessment System, Final Report*, University of Cincinnati School of Criminal Justice, July 2009, http://assessments.com/assessments_documentation/ORAS/ORAS_Final_Report_and_Validation.pdf.

revision in forecasted population levels compared to the last projections released in December 2008.”¹³⁷

Republican Supporters of Reform:

Terry Collins, Ohio Corrections Chief

- “We are at a critical and urgent stage. If current trends continue, our research indicates the population will reach nearly 60,000 inmates by 2018. I can tell you today, just to build beds to get us to 100% capacity would cost us roughly \$1 billion dollars, and that does not include the operational funding. Common sense sentencing reform says we must change and understand that some people can be punished and held accountable for their actions without being placed behind prison fences.”¹³⁸

Governor John Kasich

- “[C]orrections reform is critical. It’s one of the big cost sinks that we have. We’ve got some states that are releasing people because they can’t control their costs. We have to think intelligently about how we’re going to do this.”¹³⁹
- The Columbus Dispatch also reports that Kasich “said locking up offenders who have committed ‘relatively minor crimes’ in costly state prisons ‘doesn’t make sense to me.’”¹⁴⁰

137 Brian Martin, *Ohio Prison Population Projections and Intake Estimates: FY 2010-2018*, Bureau of Research, Office of Policy and Offender Reentry, Ohio Department of Rehabilitation and Corrections, July 2009, http://www.drc.state.oh.us/WEB/Reports/proj_july2009.pdf.

138 Terry J. Collins, *Testimony before the Senate Finance and Financial Institutions Committee on Amended Substitute House Bill 1 (Sykes)—Biennial Operating Budget*, April 29, 2009, <http://www.occionline.org/pdf/home/Senate%20Finance%20and%20FinancialInstitutions%20Committee%20Testimony-Final.pdf>.

139 Alan Johnson, *Prison reform awaits Kasich: Changing overcrowded system won’t be easy*, The Columbus Dispatch, December 12, 2010, http://www.dispatchpolitics.com/live/content/local_news/stories/2010/12/12/copy/prison-reform-awaits-kasich.html?sid=101.

140 *Id.*

SOUTH CAROLINA

Criminal Justice Challenge Confronting the State:

- South Carolina is facing a projected FY2012 budget gap of \$630 million.¹⁴¹
- Over the last 25 years, South Carolina has seen its correctional population nearly triple.¹⁴²
- By 2014, the prison population was projected to grow by another 3,200 inmates.¹⁴³
- This rapid prison expansion is partially the result of sentencing practices that led to significant increases in the incarceration rate of non-violent offenders.¹⁴⁴
 - In 2009, 49% of the state's prison population was incarcerated for non-violent offenses.¹⁴⁵
- The increasing number of parole and probation revocations due to technical, non-criminal violations has also contributed to the prison population expansion.¹⁴⁶
 - 66% of the individuals who had their parole or probation revoked were sent back to prison for non-criminal violations.¹⁴⁷
- In 2010, South Carolina spent \$349 million on prisons, which is an increase of over 500% since 1983.¹⁴⁸
 - Still, the state Department of Corrections is projecting that it will have an operating deficit of \$7.4 million in FY2010-2011.¹⁴⁹

State Reform:

- **S. 1154 (2010)** – The Omnibus Crime Reduction and Sentencing Reform Act of 2010 was signed by former Governor Mark Sanford in 2010 after passing unanimously in the state Senate and by a vote of 97-4 in the state House of Representatives¹⁵⁰

141 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

142 The PEW Center on the States, *South Carolina's Public Safety Reform: Legislation Enacts Research-based Strategies to Cut Prison Growth and Costs*, Public Safety Performance Project, June 2010, http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/PSPP_South_Carolina_brief.pdf.

143 *Id.*

144 *Id.*

145 *Id.*

146 *Id.*

147 *Id.*

148 *Id.*

149 *Three-Year General Fund Outlook: FY2011-12 to FY2013-14*, State Budget and Control Board, Office of State Budget, Dec 2010, http://www.budget.sc.gov/webfiles/OSB/historical/FY_11-12_to_FY_13-14_Three_Year_Financial_Outlook_revision_2.pdf.

150 South Carolina General Assembly, 118th Session, 2009-2010, A273, R262, S1154, Status Information, http://www.scstatehouse.gov/sess118_2009-2010/bills/1154.htm.

- The bill was based on the work of the bipartisan Sentencing Reform Commission (a creation of the state legislature during the 2007-2008 legislative session).¹⁵¹
 - The legislation is divided into 4 sections –
- I. Offense Reclassification – addresses largest drivers of incarceration and crime¹⁵²
 - Restructures controlled substance offenses, including –
 - Removing sentencing disparity for crack and powdered cocaine possession
 - Ensuring that non-trafficking drug offenders are eligible for programs such as probation, parole, work release, good conduct, and other credits.
 - Increases penalties for certain crimes including expanding the list of violent crimes and restructures specific violent and property offenses.¹⁵³
 - Requires fiscal impact statement before any committee action amending existing criminal offense sentencing provisions¹⁵⁴
 - II. Release Provisions Enhancement – ensures use of cost-effective reentry and release policies that also maintain public safety
 - Establishes administrative intermediate sanctions based on research that shows that “sanctions are effective in decreasing probation and parole violations”¹⁵⁵
 - Allows supervised individuals to “good-time” credits for meeting all of conditions of probation or parole
 - Requires Parole Board to implement a risk and needs assessment tool for use in parole decisions and parole conditions determination
 - III. Parole and Probation Improvements – focuses probation and parole resources on high-risk offenders and improves low-risk offender transition into the community
 - Requires non-violent inmates who have been incarcerated for over two years be placed under mandatory supervision 180 days before release date
 - Creates good behavior incentives for individuals under supervision
 - Creates administrative sanctions for violations of terms and conditions of supervision¹⁵⁶
 - IV. Continuing Oversight – establishes continuing oversight of criminal justice reform in the state
 - Sentencing Reform Oversight Committee created to oversee reform implementation, issue reports required by the Sentencing Reform Act, and perform additional studies and

151 Gerald Molloy, *Sentencing Reform Commission: 2009 Presentation*, 2009, <http://www.scstatehouse.gov/citizensinterestpage/SentencingReformCommission/2009SRCChairPresentation.pdf>.

152 Jean Hoefler Toal, *Sentencing That Makes Sense: Why Should I?*, 2010 Sentencing Workshop, Alabama Judicial College and the Pew Center on the States, <http://m.sccourts.org/whatsnew/AlabamaSentencingReform.pdf>.

153 While this specific provision is unlikely to reduce the prison population and may have deleterious effects on the effort to reduce the prison population, the other provisions contained in S. 1154 do address mass incarceration.

154 *Id* at *The PEW Center on the States*.

155 *Id* at *Jean Hoefler Toal*.

156 *Id* at *the PEW Center on the States*.

evaluations as necessary¹⁵⁷

- V. Estimated Savings – this legislation is projected to **save \$241 million by 2014** including saving \$175 million in construction costs and \$66 million in operating costs saved from avoided prison construction¹⁵⁸

Republican Supporters of Reform:

Presidential Candidate and Former U.S. House Speaker Newt Gingrich and Prison Fellowship Vice President Pat Nolan

- “About half of South Carolina’s prison population is being held for nonviolent offenses... Such 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.”¹⁵⁹

Former Governor Mark Sanford

- “For the taxpayers, there is something fundamentally wrong with that system...Unless we’re going to build a bunch more jails, you have got to look at alternatives. This bill does that. I think it strikes the right balance and in the process saves the taxpayers over 400 million bucks.”¹⁶⁰

State Senator George E. “Chip” Campsen III (member of the South Carolina Sentencing Reform Commission that developed the overhaul proposal)

- “This approach is soft on the taxpayer and smart on crime. It is soft on the taxpayer because it will reduce the need to build more prisons. It is smart on crime because community-based alternatives such as restitution and drug courts entail more accountability and have been proven to reduce recidivism.”¹⁶¹

157 *Id.*

158 *Id.*

159 *Id.*

160 Yvonne Wenger, *New law changes criminal sentencing*, The Post and Courier, June 3, 2010, <http://www.postandcourier.com/news/2010/jun/03/new-law-changes-criminal-sentencing/>.

161 *Id.* at The PEW Center on the States.

TEXAS

Criminal Justice Challenge Confronting the State:

- Texas is facing a projected FY2012 budget gap of \$9 billion.¹⁶²
- In January 2007, the Texas Legislative Board projected that Texas' adult prison population would go from 152,894 offenders at the beginning of FY2007 to 168,166 offenders in FY2012.¹⁶³
 - This represents an increase of nearly 10% in Texas' prison population in five years.
- The Legislative Budget Board also projected that 17,332 new prison beds would be needed by 2012 and that it would cost **\$1.13 billion to build** these beds and an additional **\$1.50 billion to operate over a five year period.**¹⁶⁴

State's Criminal Justice Reforms Pre-2007 Fiscal Outlook:

- **House Bill 2668 (2003)** – required that drug possession offenders with less than one gram of a controlled substance be sentenced to community supervision instead of jail¹⁶⁵
 - Texas' Legislative Budget Board estimated that the two-year net impact to the General Revenue Related Funds would be a **savings of approximately \$30 million.**¹⁶⁶
- **General Appropriations Act of 2005** – allocated \$27.7 million per year to enhance community supervision in an effort to decrease program caseloads, encourage the use of progressive sanctions, and increase additional community supervision options such as residential treatment and aftercare¹⁶⁷
 - After one year, programs that received new funding witnessed a 7% decrease in felony revocations and a 13% decrease in felony technical revocations.¹⁶⁸

162 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

163 Legislative Budget Board, *Adult and Juvenile Correctional Population Projections: Fiscal Years 2007-2011*, January 2007, http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Projections_Reports_2007.pdf.

164 *Id.* See also Marc Levin, *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, Texas Public Policy Foundation, January 2010, <http://www.texaspolicy.com/pdf/2010-01-PP04-justicereinvestment-ml.pdf>.

165 House Research Organization, *Bill Analysis: HB 2668: Requiring probation of certain controlled substances*, May 1, 2003, <http://www.hro.house.state.tx.us/pdf/ba78r/hb2668.pdf#navpanes=0>.

166 John Keel, *Fiscal Note, 78th Legislative Regular Session*, Legislative Budget Board, May 19, 2003, <http://www.legis.state.tx.us/tlodocs/78R/fiscalnotes/html/HB02668E.htm>.

167 Texas Department of Criminal Justice, *Report to the Governor and the Legislative Budget Board on Monitoring of Community Supervision Diversion Funds*, December 1, 2006, http://www.tdcj.state.tx.us/publications/cjad/m_com_sup_diversion_funds_dec-06_tagged.pdf.

168 *Id.*

State Reforms Post-2007 Fiscal Outlook:

- **Senate Bill 103 (2007)** – legislation adopted unanimously in the Texas House and Senate and signed into law by Governor and Presidential Candidate Rick Perry on June 8, 2007, which attempts to improve Texas’ juvenile justice system by
 - Lowering the Texas Youth Commission (TYC) population by increasing community-based rehabilitative alternatives to incarceration;
 - Increasing training for juvenile correctional officers;
 - Lowering staff-to-youth ratios to 1:12;
 - Separating juveniles by age and crime;
 - Keeping individuals over the age of 19 out of the TYC;
 - Enhancing oversight by creating an Office of Inspector General; and
 - Preventing courts from placing misdemeanant youth in TYC facilities.¹⁶⁹

- A bipartisan group of state officials—including Senate Criminal Justice Committee Chair John Whitmire (D) and House Corrections Committee Chair Jerry Madden (R)—sought assistance from the Council of State Governments’ Justice Center in order to analyze the key factors driving prison population expansion and found that the main contributors were
 1. Increases in probation revocation;¹⁷⁰
 2. Decreases in residential treatment programs; and¹⁷¹
 3. Decreases in the use of parole.¹⁷²

- In 2007, in order to address these factors, the Texas Legislature adopted a budget (which was approved by the governor) for FY2008-2009 that “included greater treatment capacity in the prison system and the expansion of diversion options in the probation a parole system.”¹⁷³

- The final adopted budget increased funding for additional diversion and treatment capacity by \$241 million¹⁷⁴ and included
 - \$30.2 million to expand Texas’ substance abuse treatment program for felony offenders by 800 beds;¹⁷⁵
 - \$27 million to fund 600 residential substance abuse and mental health treatment beds;¹⁷⁶

169 Senate Bill 103, Enrolled Bill Summary, Legislative Session 80(R), Effective 6-8-07, <http://www.legis.state.tx.us/billlookup/BillSummary.aspx?LegSess=80R&Bill=SB103>.

170 Council of State Governments, *Justice Center, Justice Reinvestment in Texas: Assessing the Impact of the 2007 Justice Reinvestment Initiative*, April 2009, http://justicereinvestment.org/files/Texas_Bulletin.pdf.

171 *Id.*

172 *Id.*

173 *Id.*

174 *Id.*

175 House Research Organization, *CSHB1: The House Appropriations Committee’s Proposed Budget for Fiscal Year 2008-09*, State Finance Report (No. 80-2), March 26, 2007, <http://www.hro.house.state.tx.us/pdf/ba80r/hb0001.pdf#navpanes=0>.

176 *Id.*

- \$27.1 million to add 1,400 intermediate sanction facility beds, designating half for probationer and half for parolees;¹⁷⁷ and
- \$10 million to fund, “mental health services, medications, and continuity of care to defendants in local jails and post-release treatment and supervision of persons found not guilty by reason of insanity.”¹⁷⁸
- The investments contained in the FY2008-2009 budget are estimated to generate a **net savings of \$443.9 million** by rendering the need to create additional prison units unnecessary.¹⁷⁹
- Following the adoption of the new budget –
 - The number of parole revocations for technical violations dropped from 2,031 in FY2006 to 1,077 in FY2008 (nearly reducing the number of revocations by half in a single year).¹⁸⁰
 - From December 31, 2006 to January 1, 2008, Texas was able to not only slow its rate of incarceration but was actually able to reduce its overall prison population by 326 people.¹⁸¹
 - From 2007 to 2008, Texas (along with Massachusetts) experienced the largest decrease in its imprisonment rate of any state.¹⁸²
- **House Bill 1711** (2009) – the Legislature continued supporting its justice reinvestment by adopting legislation that requires “the Texas Department of Criminal Justice to establish a comprehensive reentry and reintegration plan for offenders released or discharged.”¹⁸³
- From December 31, 2008 to January 1, 2010, Texas’ state and federal prison count decreased by 1,257 people.¹⁸⁴

Republican Supporters of Reform

Presidential Candidate and Governor Rick Perry, State of the State Address, 2007

- “I believe we can take an approach to crime that is both tough and smart...[T]here are thousands of non-violent offenders in the system whose future we cannot ignore. Let’s focus more resources on rehabilitating those offenders so we can ultimately spend less money locking them up again.”¹⁸⁵

177 *Id.*

178 *Id.*

179 *Id.* at Council of State Governments, Justice Center.

180 Texas Board of Pardons and Paroles, *Annual Report: FY 2008*, May 2009, <http://www.tdcj.state.tx.us/bpp/publications/AR%20FY%202008.pdf>.

181 The PEW Center on the States, *1 in 31 U.S. Adults Behind Bars, on Parole or Probation*, March 2009, http://www.PEWcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf.

182 William J. Sabol, Heather C. West and Matthew Cooper, *Prisoners in 2008*, Bureau of Justice Statistics (NCJ2248417), December 2009, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>.

183 Senate Research Center, *H.B. 1711: Bill Analysis*, May 5, 2009, <http://www.capitol.state.tx.us/tlodocs/81R/analysis/pdf/HB01711S.pdf>

184 The PEW Center on the States, *Prison Count 2010: State Population Declines for the First Time in 38 Years*, revised April 2010, http://www.pewcenteronthestates.org/uploadedFiles/Prison_Count_2010.pdf.

185 *Gov. Rick Perry’s State-of-the-State Address*, Speech, February 7, 2007, <http://governor.state.tx.us/news/speech/29/>.

VERMONT

Criminal Justice Challenge Confronting the State:

- Vermont is facing a projected FY2012 budget gap of \$176 million.¹⁸⁶
- Although Vermont has one of the nation's smallest prison populations in absolute terms, it also has one of the fastest growing populations in the United States.¹⁸⁷
 - Vermont's prison population increased from 1,697 individuals on December 31, 2000 to 2,145 individuals on December 31, 2007, an expansion of over 26%.¹⁸⁸
- This expansion helped spur Vermont's state spending on corrections to increase from 4% of state general funds in 1990 to 10% of state general funds in 2008.¹⁸⁹
- Despite continually increasing expenditures on corrections, Vermont did not witness a corresponding decline in crime rates.
 - According to FBI statistics, violent crime in Vermont increased by nearly 9% from 2005 to 2006.¹⁹⁰
- As the number of people in prison climbed, re-incarceration also remained high.
 - 50% of people released in 2005 were reconvicted of a new crime within three years.¹⁹¹
- In 2007, the prison population was projected to increase 23% by 2018.¹⁹²
- If Vermont had constructed and operated the additional capacity needed to accommodate its growing prison population, it would have had to invest an estimated **\$206 million** over ten years.¹⁹³

State Reform:

- In 2007, a bipartisan group of policymakers—including former Governor Jim Douglas and Chief Justice Paul Reiber—established the Justice Reinvestment Working Group.¹⁹⁴

186 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>.

187 Heather C. West, *Prison Inmates at Midyear 2009-Statistical Tables*, Bureau of Justice Statistics, NCJ [230113], June 2010, <http://bjs.ojp.usdoj.gov/content/pub/pdf/pim09st.pdf>.

188 *Id.*

189 Council of State Governments, Justice Center, *Justice Reinvestment Vermont Profile*, http://justicereinvestment.org/files/Vermont_State_Brief.pdf.

190 Federal Bureau of Investigation. *Crime in the United States*, 2006, United States Department of Justice, September 2007, http://www2.fbi.gov/ucr/cius2006/data/table_04.html.

191 Council of State Governments, Justice Center, *Recent and Projected Growth in the Vermont Prison Population*, January 2008, http://justicereinvestment.org/files/VT_Prison_Population_Projection_Report.pdf.

192 *Id.*

193 *Id.*

194 *Id.* at Council of State Governments, Justice Center, *Justice Reinvestment Vermont Profile*.

- This Group analyzed Vermont’s growing prison population and found –
 1. The fastest growing segment of Vermont’s prison population was property and drug offenders, who accounted for more than 50% of the increase in the felony prison population from 2000 to 2006.¹⁹⁵
 2. The screening and availability of substance abuse treatment inside prison was greatly limited and only 13% of the individuals who reported substance abuse disorders received in-prison treatment.¹⁹⁶
 3. The state’s reintegration program to provide supervision and community services to released offenders was also underutilized and nearly half of the individuals who qualified for the program were not enrolled due to inadequate housing options.¹⁹⁷

- **H. 859 (2008)** – An Act Relating to Increasing Substance Abuse Treatment, Vocational Training, and Transitional Housing for Offenders in Order to Reduce Recidivism, Increase Public Safety, and Reduce Corrections Costs was signed into law by former Governor Jim Douglas in May 2008
- The legislation explicitly aims to “reduce recidivism, increase public safety, and reduce the cost to the state of incarcerating offenders by increasing substance abuse treatment services, vocational training, and transitional housing available to offenders, and by establishing processes for reducing incarceration time when appropriate”.¹⁹⁸
 - Restructures and closes certain correctional facilities, including converting a correctional facility into a 100-bed “therapeutic work camp for men;”¹⁹⁹
 - Expands the Department
 - of Corrections Intensive Substance Abuse Program, funds pilot programs for pre-sentencing mental health and substance abuse needs screening, directs the commissioner of corrections to partner with community organizations in order to increase beds for individuals reentering the community, directs the commissioner to purchase electronic monitoring equipment;²⁰⁰
 - Authorizes administrative probation with low supervision for certain low-risk offenders;²⁰¹ and
 - “Directs commissioner of corrections to screen and assess felony drug and property offenders for substance abuse treatment and to use the results in writing a reentry plan and connecting those reentering the community to

195 *Id.*

196 *Id.*

197 *Id.*

198 Vermont Legislature, Act of the General Assembly, No. 179, *An Act Relating to Increasing Substance Abuse Treatment, Vocational Training, and Transitional Housing for Offenders in Order to Reduce Recidivism, Increase Public Safety, and Reduce Corrections Costs*, (H. 859), <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT179.HTM>.

199 Vermont Legislature, Act of the General Assembly, No. 179 (H.859), *Act Summary*, 2007-2009, <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT179SUM.HTM>.

200 *Id.*

201 *Id.*

- appropriate treatment services.”²⁰²
- The bed savings from this legislation are intended to avert the state’s need to either contract out-of-state capacity to hold its prison population or construct new prisons, which is estimated to produce a net savings of **\$54 million** between FY2009 and FY2018.²⁰³
 - At the end of November 2010, Vermont’s prison system was reporting a population decrease of 250 individuals as compared to November 2009.²⁰⁴
 - **S. 292 (2010)** – An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees passed Vermont House of Representatives with the support of 80% of voting members and was signed into law by former Governor Jim Douglas on June 3, 2010
 - Effort to reduce prison population, thereby reducing corrections expenditures while maintaining community safety by addressing corrections policy include –
 - Providing the right to bail to nonviolent offenders for violation of their probation;
 - Establishes that the lack of appropriate community housing cannot be the sole factor in denying furlough to a nonviolent offender if the offender completed his or her minimum sentence as well as all court-ordered programming;
 - Discharging from probation nonviolent misdemeanor or nonviolent felony probationer who have (1) less than six months of their probation remaining and have completed all programming designed to reduce the risk of recidivism or (2) have served at least 2 years of an unlimited probation term and have completed all court-ordered programming intended to reduce likelihood of recidivism; and
 - Directs the commissioner of corrections, the administrative judge of the trial courts, and other related entities “to reduce, to the extent possible, the average daily number of incarcerated detainees to 300 persons or less by January 1, 2011 and to maintain the average daily number at this level...[and to develop] strategies to reduce the number of people entering the custody of the commissioner of corrections and to minimize the time served of those who do enter the commissioner’s custody, consistent with public safety.”²⁰⁵
 - The legislation also includes provisions that will not reduce the prison population including expanding the types of crimes that require offenders to be posted on the state’s sex offender registry and creating an exemption to the requirement that a sex offender’s address be posted on the registry if the individual has a developmental disability and resides in a 24-hour supervised location.²⁰⁶

202 *Id.*

203 *Id.* at Council of State Governments, Justice Center, Justice Reinvestment Vermont Profile.

204 Jane Lindholm, *State Incarceration Rate Declines*, Vermont Public Radio, December 6, 2010, http://www.vpr.net/news_detail/89433/.

205 Vermont State Legislature, Legislative Summary, Act No. 157 (S. 292), <http://www.leg.state.vt.us/docs/2010/Acts/ACT157sum.htm>.

206 The ACLU believes this type of provision is problematic and does not address the issue of overincarceration.

- The provisions contained in S. 292 that focus on reducing prison population are estimated to save approximately \$3.2 million.²⁰⁷
 - The legislation also requires that part of these savings be used to “provide grants to community justice centers and similar programs to support offenders who are released pursuant to the act to reintegrate into the community.”²⁰⁸

Republican Supporters of Reform

Former Governor Jim Douglas,

- “High rates of recidivism come at a substantial cost to taxpayers and create unsustainable growth in our state corrections budget. We need to continue to identify and implement new strategies that will protect our families and the safety of our communities by focusing on successfully reintegrating property and drug offenders into the community and preserving prison beds for the most serious offenders.”²⁰⁹

207 Vermont League of Cities and Towns, *2010 Legislative Wrap-Up: Corrections Bill (S. 292)*, http://www.vlct.org/d/advocacy/wlr_2010/wrapper/corrections.pdf.

208 *Id.* (at Vermont State Legislature).

209 Vermont State Senator Dick Sears, *We must change prison policies*, Stowe Reporter, October 7, 2010, http://www.stowetoday.com/stowe_reporter/opinion/opinion_columns/article_7c82ecea-d22a-11df-b6b9-001cc4c03286.html.

VIRGINIA

Criminal Justice Challenge Confronting the State:

- Virginia had to confront a projected FY2012 budget gap of \$2 billion.²¹⁰
- Virginia's total correctional expenditures were approximately **\$1.46 billion in 2009** and accounts for 7.6% of total state expenditures.²¹¹
 - Virginia's 2009 total correctional expenditures represent a 57% increase of what Virginia spent on correction in 1999, which was \$928 million.²¹²
- This increase in corrections expenditures is driven in part by the massive expansion of Virginia's prison population.
- In 2008, 1 out of every 46 adults was under correction control in Virginia.²¹³
 - In 1982, 1 in every 108 adults fell into this category.²¹⁴
- Despite the fact that between 1990 and 2008 Virginia saw its violent crime rate decrease 31% and its property crime rate decrease 41%, the state's incarceration rate increased nearly 80% over the same time period.²¹⁵
- According to the Virginia Criminal Sentencing Commission, the growth in Virginia's prison population can be attributed to the increase in individuals incarcerated for drug offenses and for technical violations of community supervision and the "longer lengths of stay for violent offenders."²¹⁶
 - In 2008, 58% of felony offenders returned to court for technical convictions.²¹⁷
- According to data from the PEW Center on the States, in 2008, for every dollar Virginia spent on prisons, it only spent 11 cents on community supervision programs.²¹⁸

State Reform:

- **House Bill 927 (2010)** – bipartisan legislation to establish an immediate sanction

210 Elizabeth McNichol, Phil Oliff and Nicholas Johnson, *States Continue to Feel Recession's Impact*, Center on Budget and Policy Priorities, updated January 9, 2012, <http://www.cbpp.org/files/9-8-08sfp.pdf>. Note, Virginia has two-year budget and closed their FY2012 shortfall when the FY2011-FY2012 biennium budget was enacted.

211 National Association of State and Budget Officers, *2009 State Expenditure Report*, Fall 2010, <http://www.nasbo.org/LinkClick.aspx?fileticket=w7RqO74llEw%3d&tabid=107&mid=570&forcedownload=true>.

212 National Association of State and Budget Officers, *2000 State Expenditure Report*, Summer 2001, <http://www.nasbo.org/LinkClick.aspx?fileticket=%2bTEfp0%2b%2flBA%3d&tabid=107&mid=570&forcedownload=true>.

213 The PEW Center on the States, *1 in 31: The Long Reach of American Corrections: Virginia*, March 2009, http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Fact_Sheets/PSPP_1in31_factsheet_VA.pdf.

214 *Id.*

215 Meredith Farrar-Owens, *Impact of Technical Violators on Virginia's Prison Population*, Virginia Criminal Sentencing Commission, Presentation at the BJS/JRSA 2009 National Conference, http://www.jrsa.org/events/conference/presentations-09/Meredith_Farrar_Owens.pdf.

216 *Id.*

217 *Id.*

218 *Id.* at *The PEW Center on the States*.

probation program for nonviolent offenders was adopted unanimously by both the Virginia House and Senate and then signed into law by Governor Bob McDonnell in April 2010.²¹⁹

- This legislation attempts to decrease prison costs by addressing the issue of probationers who technically violate the terms of their community supervision but have not committed a new crime.
 - Provides that an offender arrested for violating the terms of his or her probation cannot spend more than 30 days in jail for a probation offense.²²⁰

219 HB 927 Immediate sanction probation program; established, <http://leg1.state.va.us/cgi-bin/legp504.exe?101+sum+HB927>.

220 *Id.*

CONCLUSION

For over three decades, harsh drug laws and highly punitive criminal justice policies have expanded the nation's prison population by an increase of 700%. Over half of those incarcerated are non-violent, low level offenders who do not pose any serious threat to society. At \$6 billion, the costs of sustaining the current system and the impact on the future of our nation's economy are tremendous, and can no longer be ignored. State-level initiatives from Texas to South Carolina provide hard evidence that truly bipartisan efforts are possible and that the practical, common-sense goals of criminal justice reform can be a unifying force for change. The success of state reform measures also provide a valuable set of blueprints for implementation at the federal level, and we urge an honest, thorough examination of these models moving forward.

Finally, while strained budgets have posed constraints on many important areas of public policy, our criminal justice system is in the unique position of having access to a wide range of innovative, evidence-based practices that prioritize safety and accountability while also passing the test of fiscal soundness. It is now up to our lawmakers to use the best of research and scholarship to improve our system of justice and restore fiscal responsibility.