

South Dakota

Nancy LaVigne (principal investigator), Samuel Bieler, Lindsey Cramer, Helen Ho, Cybele Kotonias, Deborah Mayer, David McClure, Laura Pacifici, Erika Parks, Bryce Peterson, and Julie Samuels

From 1977 to 2013, South Dakota's prison population increased by more than 500 percent. If this trend continued, corrections spending would cost the state \$224 million over the next 10 years. The main drivers of this surge in population were the incarceration of nonviolent drug offenders and parole violators. South Dakota addressed these challenges by improving its behavioral health service and community supervision infrastructure, developing drug and DUI courts, and adopting evidence-based supervision practices. Justice reinvestment legislation also changed the criminal code to reserve prison space for the most serious offenders. These policy changes are expected to save taxpayers \$207 million over 10 years and to eliminate the need for 716 prison beds.

Impetus for Justice Reinvestment

The prison population in South Dakota has increased over the past few decades from 546 inmates in 1977 to more than 3,600 inmates in 2013, a rise of more than 500 percent. Allowing current trends to continue would have led to approximately 4,580 inmates by 2022, projected to cost the state \$224 million over 10 years, including \$126 million for the construction of two new prisons. South Dakota imprisons more of its population than any neighboring state, and the rate of females imprisoned is 100 per 100,000—far higher than the national average of 59 per 100,000. Baseline projections indicate that space for female inmates will reach capacity by 2015, and men's prisons will be at 95 percent capacity before the end of the decade.¹

With the increase in incarceration over the past several decades has come higher spending on corrections, amounting to more than \$100 million in FY 2013, up from just \$26 million in FY 1991. However, higher costs have not been accompanied by corresponding improvements in public safety. Despite an increase in the imprisonment rate far above the national average (15 percent versus two percent), South Dakota's crime rate decrease between 2001 and 2011 did not match the national average (11 percent versus 21 percent). Additionally, a 2011 study by the Pew Charitable Trusts (Pew) found that South Dakota's recidivism rate was 45.5 percent between 2004 and 2007, just above the national average of 43.2 percent and an increase of 11.8 percentage points from the previous sample period of 1999 to 2002.²

By 2012, South Dakota had been facing a structural deficit in the state budget for several years, and its leaders

HIGHLIGHTS

- South Dakota's corrections population had increased 500 percent, and the growing population would have cost \$224 million over 10 years.
- State leaders invested millions of dollars in community-based service infrastructure and focused prison space on the most serious offenders.
- JRI reforms are projected to save taxpayers \$207 million over 10 years.
- JRI reforms are projected to avert the need for 716 prison beds.
- Total planned reinvestment amounts to \$53 million over 10 years.

examined key budget items. The recent increases in corrections spending led the governor and chief justice to consider whether current practices were ensuring public safety enough to justify their large costs. They determined to follow the lead of other states and join the Justice Reinvestment Initiative (JRI). Pew and the Crime and Justice Institute (CJI) provided technical assistance to South Dakota during the justice reinvestment process.³

Establish Interbranch Bipartisan Working Group

Between March and June 2012, the governor and chief justice held 36 meetings across the state to seek the input from more than 400 criminal justice stakeholders. Subsequently, the governor and chief justice, along with the Senate and House majority leaders, chose 18 key stakeholders to serve

on the Criminal Justice Initiative Working Group. The group included members of the state's executive, legislative, and judicial branches, as well as law enforcement officers, prosecutors, defense attorneys, and treatment providers.⁴

Engage Stakeholders

In addition to the working group, a nine-member Council of Advisors—including former state legislators and attorneys general, a current and a former supreme court justice, a law professor, the South Dakota Bar Association president, and a presiding circuit court judge—reviewed and provided feedback on key findings and recommendations. The working group encouraged the engagement of other stakeholders by holding a victim, survivor, and advocate roundtable and convening a Native American Subcommittee to conduct meetings and outreach with tribal representatives from across the state. Stakeholder engagement throughout the process was essential to successful analysis, legislation development, and implementation.⁵

Analyze Data and Identify Drivers

With the leadership of the governor, chief justice, and majority leaders, the working group analyzed extensive criminal justice data, including information on prisons, parole and probation, sentencing, and recidivism. The group found that the majority of inmates in South Dakota prisons were nonviolent offenders, with drug possession the most common offense. New commitment admissions for drug offenses had increased by more than 70 percent from 2000 to 2012. Nearly 28 percent of male offenders and 55 percent of female offenders were incarcerated on drug and alcohol charges. Of these drug offenders, data from the Department of Corrections showed that more than 71 percent were serving time for possession, as opposed to the more serious crimes of manufacture or distribution.⁶

The working group found that the second population driving prison overcrowding was parole violators. Parole violators (rather than those incarcerated for a new offense) made up 25 percent of the prison population in 2012. The working group identified 768 people admitted to prison in 2012 who had violated the conditions of their parole, compared with 270 in 2000. Analysis showed that 65 percent of parole violations occur in the first year after release on supervision and 84 percent occur by the end of the second year.⁷

Develop Policy Options

To address these drivers, the working group developed 18 policy options in three broad areas. The first set of policy options addressed strengthening supervision and intervention. Working group members encouraged legislators to develop a bill to improve the probation and parole system by focusing resources on those most likely to reoffend, implementing evidence-based practices (EBPs), increasing community-based interventions, and allocating funding for a housing option for certain parolees. They also advocated for the expansion of alternative sanctions such as drug and DUI courts, as well as other supervision models such as a program similar to Hawaii's Opportunity Probation with Enforcement (HOPE) program and a community supervision pilot program tailored toward the state's tribal populations.⁸

The second set of policy recommendations focused on using prison space for violent and career criminals. In this area, members of the working group encouraged state legislators to create tiered levels of punishment for different drug crimes. They also encouraged the creation of more targeted punishments for certain property crimes, including increasing penalties for the most serious grand theft offenses while reducing and subdividing sentences for third-degree burglary and grand theft of less than \$5,000. The group suggested creating an additional penalty for chronic DUI offenders, as well as presumptive probation for Class 5 and 6 (lower level) felony offenders.⁹

The working group proposed a third set of policy options that would ensure the quality and sustainability of the reforms. The group members recommended education and training for decisionmakers and supervisors in the corrections system, as well as for legislators. They also proposed that a committee be assigned responsibility for monitoring data collection and implementation of EBPs in the state. Finally, they recommended the development of a statewide victim notification and restitution collection plan and a plan to invest justice savings back into the system to pay for new local program costs.¹⁰

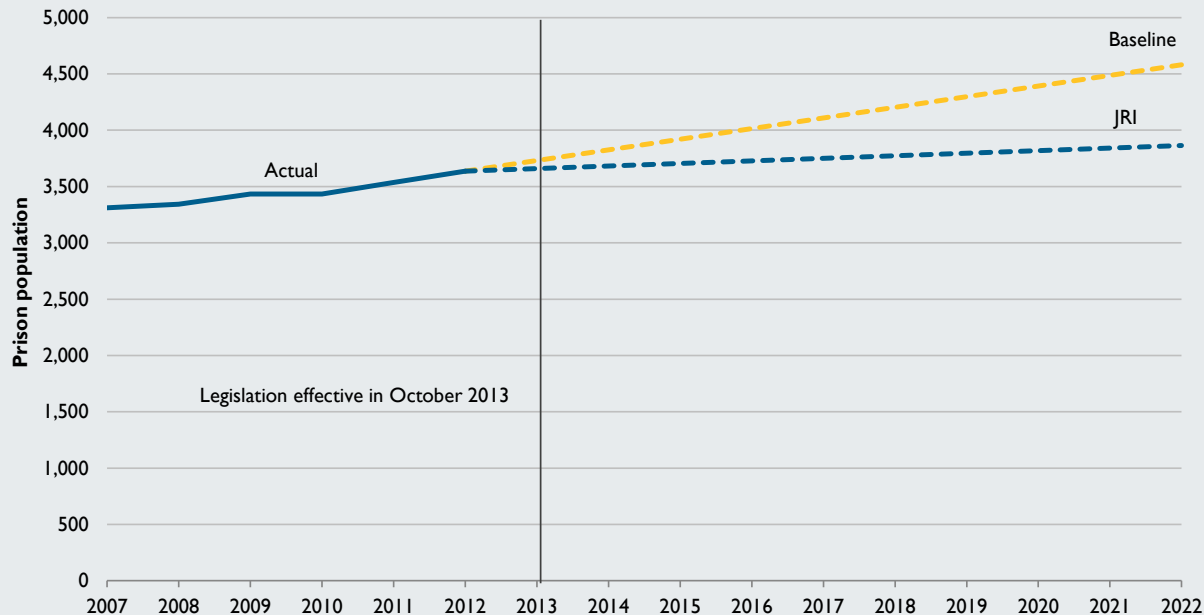
Codify and Document Changes

In early 2013, South Dakota passed Senate Bill (SB) 70, the Public Safety Improvement Act, with clear bipartisan support. It passed by a vote of 31–2 in the Senate and 63–7 in the House, and the governor signed it into law on February 6, 2013. SB 70 required policy changes in the three broad

South Dakota

FIGURE A.16

South Dakota Prison Population



Sources: JRI and baseline population projections were extrapolated from available data from Pew Charitable Trusts (2013a). Actual population data are from Bureau of Justice Statistics' *Prisoner Series*.

Note: Dotted lines represent projections.

areas outlined by the working group: strengthening offender supervision and accountability, focusing prison space on violent and career criminals, and ensuring the quality and sustainability of reforms. Many of the working group's recommendations were enacted into law through SB 70. Specifically, the Act expanded the punishment and rehabilitation options available to sentencing judges and the parole board. It allowed prison space to be dedicated to serious, violent, and repeat offenders by creating a tiered sentencing structure for drug crimes and reducing the felony classification of various nonviolent property crimes. Finally, SB 70 encouraged the sustainability of reforms by requiring accountability and performance measure reports throughout the system and creating an Oversight Council to supervise implementation of the legislation.¹¹

Implement Policy Changes

To begin the implementation process, South Dakota has applied for additional technical assistance and the Oversight Council has held its first meeting. Projected impacts of SB 70 (figure 1) include reducing prison growth by 716 beds, which will save taxpayers \$207 million over 10 years in decreased operating costs and avert construction costs for two new prisons.¹²

Reinvest Savings

In the next 10 years, the South Dakota Legislature plans to reinvest \$53 million of the \$207 million projected savings, with \$8 million from the FY 2013 and 2014 budgets allocated for reinvestment. An additional \$4.9 million is planned to be invested per year in the following years. The reinvestment plan includes allocations for training and implementation of EBPs; pilot programs for alternative sentencing options and community-based support programs; statewide systems to ensure victim notification and restitution accountability; expanded DUI and drug courts; expanded substance abuse, mental health, and cognitive-behavioral treatment services; increased probation and parole staff; and a pool of funds to support additional costs to counties.¹³

Measure Outcomes

Although it is too early to fully assess the impact of SB 70, the work of South Dakota's leadership and its criminal justice stakeholders, and the technical assistance of Pew and CJI have enabled the state to enact criminal justice reforms that promise to improve system efficiency and ensure public safety.

Notes

1. South Dakota Criminal Justice Initiative Work Group. 2012. *South Dakota Criminal Justice Initiative Work Group Final Report*. Pierre, SD: Criminal Justice Initiative.
2. Pew Charitable Trusts. 2013. *South Dakota's 2013 Criminal Justice Initiative: Legislation to Improve Public Safety, Hold Offenders More Accountable, and Reduce Corrections Spending*. Washington, DC: Pew Charitable Trusts.
3. South Dakota Criminal Justice Initiative Work Group (2012).
4. Pew Charitable Trusts (2013).
5. Ibid.
6. South Dakota Criminal Justice Initiative Work Group (2012).
7. Ibid.
8. Pew Charitable Trusts (2013).
9. Ibid.
10. South Dakota Criminal Justice Initiative Work Group (2012).
11. South Dakota Senate Bill 70, 2013.
12. Pew Charitable Trusts (2013).
13. Ibid.

Copyright © January 2014. The Urban Institute.

Permission is granted for reproduction of this file, with attribution to the Urban Institute.

This project was supported by Grant No. 2010-RR-BX-K072, awarded by the Bureau of Justice Assistance (BJA). The BJA is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. The views expressed are those of the authors and do not necessarily represent the official position or policies of the US Department of Justice or the Urban Institute, its trustees, or its funders.