

JUSTICE CENTER

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Collaborative Approaches to Public Safety

Statement by

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Chairman Mollohan, Ranking Member Wolf, and Members of the subcommittee, I am pleased to be with you today to discuss Justice Reinvestment and the Council of State Governments Justice Center's work in states providing data-driven analyses and options to help state policymakers reduce recidivism, manage the growth of state prison populations, and increase public safety.

Problem

This committee has recently heard testimony about growing prison and jail populations, and how these trends have fueled increases in the number of releases from jails and prisons: 670,000 people released from prison and 9 million from jails each year.¹ Most of the people released from prison, and

¹ The number of people released from prisons has been steadily increasing – from about 600,000 in 2000 to more than 670,000 in 2004. See P. M. Harrison and A. J. Beck, *Prison and Jail Inmates at Midyear 2005*, U.S. Department of Justice, Bureau of Justice Statistics, NCJ213133 (Washington, D.C.: U.S. Government Printing Office, 2006). The jail numbers (2004) come from A. J. Beck, "The Importance of Successful Reentry to Jail Population Growth," presented at the Jail Reentry Roundtable of the Urban Institute, Washington, D.C., June 27, 2006.

many people released from jail, are placed under some form of community supervision. The Pew Charitable Trusts reported that 5.1 million people (or 1 in 45 adults) are on probation or parole today.²

As we return more people to the community from prison and jail and put more people under community supervision, we are seeing record numbers of failures. In fact, these failure rates are largely responsible for driving growth in state prison populations. Pew reported that prison populations will grow 13 percent over the next five years.³ Much of this is attributable to probation and parole revocations and people released from prison committing new crimes.

I want to thank you Chairman Mollohan, Ranking Member Wolf, and Members of this subcommittee for your support of the Second Chance Act. As you know, Second Chance is an important first step in addressing recidivism rates nationwide. It is also the foundation to address additional criminal justice challenges facing states, local governments and communities, including the need to use state correctional resources more effectively.

Despite the unprecedented interest in reentry, state and county elected officials are finding that they don't have the resources to finance, on a large scale, strategies necessary to make someone's transition from prison to the community safe and successful: improve supervision practices; deliver effective drug and mental health treatment; provide education, job-training, and connections to employment; and ensure safe housing. Indeed, as the states face the grim reality of \$350 billion in budget shortfalls over the next 2.5 years,⁴ elected officials are scrambling to fund important services and shelving plans to expand promising pilot programs, or worse, scuttling reentry programs altogether.

State spending on corrections has risen faster over 20 years than spending on nearly any other state budget item – increasing from \$10 billion to \$45 billion a year.⁵ In Ohio and Michigan, one out of every three state employees works for the department of corrections. In Ohio, one out of every six state employees is a corrections officer.

State and county officials are now facing a "crisis" in their criminal justice systems: prison costs are rising; important programs in prisons and in the community are being slashed as prison costs eat up more and more of state budgets. The impact of this reality is devastating –community-based programs dwindle, recidivism rates rise, and prison growth accelerates. To fund the expansion of the

² Public Safety Performance Project, *One in 31: The Long Reach of American Corrections*, (Washington, D.C.: Public Safety Performance Project, The Pew Charitable Trusts, March 2009).

³ Public Safety Performance Project, *Public Safety, Public Spending: Forecasting America's Prison Population 2007-2011*, (Washington, D.C.: Public Safety Performance Project, The Pew Charitable Trusts, February 2007).

⁴ Iris J. Lav and Elizabeth McNichol, "State Budget Troubles Worsen," *Center on Budget and Policy Priorities*. 13 March 2009. 30 March 2009. < <http://www.cbpp.org/cms/index.cfm?fa=view&id=711>>

⁵ National Association of State Budget Officers, *State Expenditure Report 2006* (Washington, D.C.: National Association of State Budget Officers, 2007). National Association of State Budget Officers, *State Expenditure Report 1987* (Washington, D.C.: National Association of State Budget Officers, 1987). From 1991 to 2001, state spending on corrections grew faster than any other state budget item except Medicaid expenditures, according to the National Conference of State Legislatures, "State Spending in the 1990s."

prison system, dollars continue to be siphoned from smart and effective criminal justice policies, which are gradually eliminated altogether.

In Florida, for example, the prison population just surpassed 100,000, and is projected to reach 125,000 within 5 years.⁶ To accommodate the growth in the prison population during last year's budget, state policymakers appropriated \$305 million to build three new prisons, but had to cut funding for probation officers, the state court system, and \$1 billion from the education budget to do so. By 2013, however, state policymakers will need to find hundreds of millions of more new dollars from other parts of the state budget to fund the construction of an additional 16 prisons they will need to house the growing prison population.

When policymakers exhaust all options they have for funding additional prisons, some dangerous scenarios emerge. Policymakers begin considering releasing offenders indiscriminately and in mass numbers, which is especially scary considering that safeguards in the community such as treatment, supervision, and employment services have likely been greatly diminished because of the fiscal pressures described earlier. In California, the state's prisons house 170,000 people, twice their operating capacity, at an annual cost to taxpayers of \$9 billion. With severe overcrowding, and no solution in sight, a panel of three federal judges tentatively ruled in February of this year, that the state must reduce the prison population by 57,000, or 40 percent, within three years.

A crime-fighting strategy based exclusively on building more prisons is not the solution. We cannot incarcerate our way out of the problem. Evidence from the states demonstrates that policymakers should not assume that simply incapacitating more people will have a corresponding increase on public safety. For example, over the past seven years, Florida has increased its incarceration rate 16 percent, while New York State's incarceration rate went in the opposite direction, decreasing 16 percent. Despite this 32 percent difference, New York's drop in crime rate over the same period was double Florida's decrease in crime. In short, while New York invested considerably less money in prisons than did Florida, New York delivered greater public safety to its residents.

Justice Reinvestment: A Data-Driven Strategy

Increasingly reluctant to finance the construction of another prison, but wary of the ramifications of doing nothing, our members (who are both the conservative Republicans and liberal Democrats that make up state governments across the country) delivered these instructions to us: help us cut spending on corrections, reduce failure rates of people released from prison, and increase public safety in the neighborhoods where people released from prison return.

In response, we developed a data-driven strategy called Justice Reinvestment, which has three phases:

⁶ Public Safety Performance Project, *One in 100: Behind Bars in America 2008*, (Washington, D.C.: Public Safety Performance Project, The Pew Charitable Trusts, February 2007).

- Analyze crime and corrections data and develop policy options to reduce spending on corrections and reinvest in strategies to increase public safety and strengthen communities.
- Implement enacted policy options effectively.
- Establish and track indicators of key corrections and public safety trends to ensure accountability.

We provide targeted, intensive technical assistance to select states where state leaders have committed to work cooperatively and across branches of government and to provide us with access to data systems. Our team comprises nationally-recognized criminal justice experts, including experts in community supervision, law enforcement, substance abuse, mental health and employment.

We work closely with state policymakers, including the governor and his or her cabinet officials, legislative leaders, judges, local law enforcement, prosecutors, and a broad group of key stakeholders in the state. Over the course of a one to two year process, we provide them with the following deliverables:

**a data-driven explanation that concisely explains why the prison population is growing, who is returning to prison, and for what reasons.*

**a comprehensive analysis of crime trends in the state, which collapses and integrates information across criminal justice and human service agencies, at all levels of government.*

**precise definitions of target populations and geographic areas where specific services and supervision should be targeted to ensure the maximum impact on recidivism.*

**systems that provide policymakers with brief, up-to-date information that track the implementation of new policies and monitor the extent to which they are yielding their projected results.*

With this information, we assist state governments in developing concrete, practical policy options. For each of these options, we project their impact on the prison population and state spending.

Smart decision-making leads to several important results: first, policy makers are examining current data on their criminal justice systems to see what works and what does not; second, states are working to ensure that dangerous offenders are incapacitated – meaning that bed space is available and dangerous people are removed from the community; third, states are designing and implementing new and innovative community programs in the neighborhoods where people released from prison return to ensure they have the substance abuse, mental health, job training, and housing they need.

Our effort is made possible by funding from The Pew Charitable Trusts, the Bureau of Justice Assistance, other private foundations, and the states themselves. Some of the leading foundations in the arena of criminal justice have been: The Pew Charitable Trusts; the Annie E. Casey, MacArthur, Joyce and Ford foundations; the Open Society Institute and the JEHT Foundation.

The Pew Charitable Trusts has been a particularly important player in the field and is a major supporter of our work at the Justice Center. Pew works only in areas where it believes the facts are clear and that significant improvements in public policy can be made by bringing the facts and the research to light. The involvement of nonpartisan, research-based organizations like Pew and others has been absolutely vital to the development of data-driven policy solutions. The Public Safety Performance Project of the Pew Center on the States has been not only a funder but our substantive partner in working with states to analyze their prison populations and generate policy options that protect public safety and control corrections costs. At the national level, the Pew project has produced reports like “One in 100” and “One in 31” that are raising awareness of the dramatic growth in the size and cost of the correctional system, as well as advancing fiscally-responsible alternatives. The private sector will continue to play a substantial role in helping states, but as the “One in 31” report graphically portrayed, the challenges are so large that greater federal assistance is essential.

Emerging Themes from the States

From our work in ten states so far, we have been able to identify several critical issues that typically arise when implementing a Justice Reinvestment strategy.

First, we have learned that each state has distinct issues. There is no “one-size-fits-all” solution to each state. To the contrary, each state’s criminal justice system is distinct: the drivers of the prison population, the opportunities to reduce recidivism and increase public safety, and the communities to which people from prison return are unique to each jurisdiction.

Second, a Justice Reinvestment strategy can only be applied where there is a bipartisan commitment among the state’s leaders to work together to address the criminal justice challenges. The Justice Reinvestment strategy takes a holistic look at the criminal justice system, focusing on law enforcement, judicial systems, parole and probation, prevention programs, community supervision resources, and geographic mapping of relevant populations. Before we agree to provide the necessary analysis for a state, we require a commitment from the governor, legislature, judicial branch, law enforcement, prosecutors and other key stakeholders to work together in a bipartisan approach to criminal justice policy based on data and analysis we provide to the team. Without a bipartisan commitment from these stakeholders, our work would only provide fodder for political gamesmanship and would serve no useful purpose.

Third, each state needs a comprehensive data analysis of their criminal justice system, and the impact that policy decisions may have on criminal justice costs and public safety. Few, if any, states

have access to such data when making important budget or policy decisions. What information policymakers do receive pertains to a particular agency and is fairly narrow in scope. Equipped with information focused on one part of the criminal justice system, state officials are for all practical purposes blindfolded, touching just one part of the elephant or fumbling with thousands of jigsaw puzzle pieces. We can no longer afford for policymakers to appropriate billions of taxpayer dollars with no understanding of what impact such spending will have on community safety.

For example, Wisconsin's Department of Corrections, which has an annual budget of \$1.2 billion, maintains a reasonably modern and effective data system. Owing to budget cuts over the past years, however, the agency has no research department and thus no capacity to analyze the data collected.

Fourth, in every state there are a handful of "high-stakes" communities in which most people return when released from prison or jail. These communities are disproportionately minority, poor, and often blighted and lack resources. State (and county) efforts to reduce recidivism have historically yielded discouraging results in part because resources have not been targeted strategically.

In Arizona, geographic analyses helped state policymakers identify a neighborhood in South Phoenix that accounted for just one percent of the state's total resident population, but six percent of the state's prison population. For every 44 probation revocations that neighborhood generated, the state spent \$1 million in incarceration costs. Concentrating resources on that geographic area, and leveraging and integrating investments made through other funding silos, could generate significant improvements to public safety and reduce expenditures.

Fifth, in addition to place-based strategies, we have learned that policymakers also need to ensure resources are concentrated on high-risk individuals. For every two people released from prison, one will be reincarcerated within three years. All too often, however, reentry resources focus on the 50 percent of individuals most likely to succeed and ignore the half that needs assistance. Ironically, the data demonstrate that focusing resources on low-risk individuals can actually reduce their chances of success.

Sixth, state officials enacting policies to reduce corrections spending and increase public safety are typically without the tools to monitor effectively the implementation of these policies and to troubleshoot effectively when the results promised do not actually materialize.

Case Studies

Governors and legislative leaders in many states have made written, joint requests for intensive technical assistance through our justice reinvestment initiative. To date, our funders have authorized us to work in ten states. We are actively engaged in Michigan and Wisconsin. We have completed our analyses in eight states: Arizona, Connecticut, Kansas, Nevada, Pennsylvania, Texas, Rhode Island, and Vermont. In each of these jurisdictions, Republican and Democratic legislators, together with the governor, used the findings and policy options we developed to enact legislative initiatives that received

overwhelming bipartisan support. These policy changes were endorsed by prosecutors and local law enforcement and editorial pages in each of these states because they offered a better dollar-for-dollar impact on public safety than the status quo. The results realized demonstrate why they enjoyed such broad support: prison population growth in these states has either slowed or flattened completely; at the same time, crime is down in each of these states.

Texas

In 2007, the prison population in Texas was projected to grow by more than 14,000 people over a five-year period at a cost to taxpayers of an additional \$523 million for the construction and operation of new facilities in the 2008 and 2009 fiscal biennium.⁷

Legislative leaders requested a detailed analysis from the Council of State Governments Justice Center to describe why the prison population was increasing. The Justice Center experts found that three factors were contributing to the buildup of the prison population. First, probation revocations had increased: between 1997 and 2006, the number of people revoked from probation to prison increased 18 percent, despite a 3 percent decline in the probation population. Second, state officials cut funding for residential treatment programs for people on probation and parole, which fueled a growing backlog: by 2006, more than 2,000 individuals were awaiting placement in such programs and facilities. Third, the parole board, whose confidence in community based supervision and supports had waned, reduced parole grant rates; approval rates were below the minimum suggested by the parole board's own guidelines.

During the 2007 legislative session, state lawmakers enacted a package of criminal justice policies to avert the growth in the prison population and save \$443 million. To improve success rates of people under supervision, the legislature reinvested \$241 million to expand the capacity of treatment and diversion programs, and enhance the use of parole for low-risk offenders.

The legislation included an expansion of treatment and diversion programs: 800 residential treatment beds for people on probation supervision with substance abuse needs; 3,000 slots for outpatient substance abuse treatment; 1,400 new beds in intermediate sanction facilities to divert probation and parole technical violators from prison; 300 new beds in halfway house facilities for people under parole supervision; 500 new beds in a new facility for an in-prison treatment unit targeting people with DWI offenses; 1,500 new beds for an in-prison intensive substance abuse treatment program; and 1,200 slots for intensive substance abuse treatment programs in the state jail system.

The new policies also enhanced parole and probation policies and procedures: establishing a maximum limit for parole caseloads to ensure adequate supervision; reducing probation terms for drug and property offenders from a maximum of 10 years to a maximum of five years to focus the treatment and supervision they receive during the years when research studies show that they are more likely to re-

⁷ Council of State Governments Justice Center, "Justice Reinvestment State Brief: Texas," 2007.

offend; creating incentives for counties that create progressive sanctioning models for probation officers to respond effectively to violations of supervision; and, expanding drug courts and other specialty courts to place offenders who committed minor crimes in treatment programs that will reduce their likelihood to re-offend.

Since the enactment of the policies, the prison population growth has slowed. The official state projection released shortly before these policies were approved estimated that the prison population would swell to 160,126 by September 2008. In fact, however, the actual population for that month was 155,459.⁸ At the same time, recidivism and crime rates appear to have fallen. Furthermore, whereas the prison population was projected to grow to, the population has now stabilized and is not projected to significantly increase.

Kansas

In 2007, the Kansas prison population was projected to increase 22 percent by 2016 at a cost of approximately \$500 million in additional construction and operating costs over a ten year period.⁹ The governor and legislative leaders requested intensive assistance from the CSG Justice Center's experts to analyze the prison population and work with policymakers to develop strategies to reinforce Kansas's "tough and smart" criminal justice framework.

The Justice Center found that parole and probation revocations accounted for 65 percent of prison admissions, consuming 27 percent of prison capacity at a cost to taxpayers of \$53 million annually. Ninety percent of revocations were for violations of conditions of release, with alcohol or drug use accounting for 32 percent of parole revocations.

Most people released from prison had not participated in programs that could reduce their risk of reoffending. Half of people in need of substance abuse treatment and 72 percent of people needing vocational education did not participate in relevant risk reduction programs prior to their release from prison.

During the 2007 legislative session, state policymakers approved a package of recidivism reduction policies and appropriated \$7.9 million to expand reentry programs and strengthen community supervision through the adoption of evidence-based strategies.¹⁰ The legislation included: creation of a performance-based grant program for community supervision (probation) programs to design local strategies to reduce revocations by 20 percent; establishment of a 60-day program credit to create an incentive for people who successfully complete educational, vocational, and treatment programs prior to release; and, restoration of earned time credits for good behavior for nonviolent offenders.

⁸ Legislative Budget Board, "January 2007 Projection Report," 2007. Legislative Budget Board, "LBB Tracking Spreadsheet: TDCJ Population Report," 2008.

⁹ Council of State Governments Justice Center, "Justice Reinvestment State Brief: Kansas," 2007.

¹⁰ Ibid, Justice Center.

Since the enactment of this legislation, the state prison population has declined by 4 percent, the state has canceled plans to build any new facilities, and recidivism and crime rates have declined.

Arizona

In 2007, the prison population in Arizona was projected to increase 50 percent by 2017, requiring the addition of 17,000 prison beds at a ten year cost of between \$2 and 3 billion in additional construction and operation expenses. State policymakers commissioned an analysis from the CSG Justice Center, which found that high rates of failure among people on probation supervision were contributing significantly to the projected growth in the prison population. In FY 2006, more than 4,000 probationers were revoked to prison for conditions violations at a cost of \$100 million to the state. Of those admitted to prison for failing on probation, 79 percent were identified as property or drug offenders.

During the 2008 legislative session, state policymakers enacted legislation to hold probation agencies accountable for reducing crime and improving the success rate of people on probation supervision. The legislation established incentives for both the people on probation and the county probation agencies to improve success rates. First, the legislation allows eligible probationers to earn up to 20 days off their term of supervision for every 30 days they demonstrate positive progression and compliance with their conditions of supervision, participate in their community service assignments, and adhere to court-ordered restitution payments. Probationers who violate conditions of release lose whatever time they initially earned off of their period of supervision. Second, the legislation creates a performance funding mechanism that reinvests 40 percent of any savings realized by the state from reduced probation revocations into the counties to improve victims' services and expand access to substance abuse treatment and other community-based programs designed to reduce recidivism among probationers.

Connecticut

In 2002, Connecticut policymakers faced an \$817 million budget deficit, a prison overcrowding crisis, and prison population growth outpacing every other state in the US. In 2004, the Connecticut General Assembly enacted legislation that included provisions to streamline the parole process, reduce parole and probation violations by 20 percent, ensure a period of supervision for all persons released from prison, and require the state to develop a comprehensive re-entry plan to address high recidivism rates.

Enacting these policies generated \$30 million in savings in the upcoming year, of which nearly \$13 million was reinvested in strengthening community supervision and treatment services. Probation revocations dropped from 400 in July 2003 to 200 in September 2005; and the prison population declined while the crime rate continued to drop.

Pennsylvania

In 2006, an official state projection estimated the prison population would increase 30 percent between 2007 and 2011 at a cost of \$850 million in additional construction and operating expenses. Despite this investment in additional capacity, the Commonwealth was projected to still experience a capacity shortfall of 9,300 beds by 2013.

During the 2008 legislative session, the Pennsylvania General Assembly approved a package of legislation that expanded the use of intermediate sanctions for parole violations, increased the use of diversion programs, and established a “risk reduction sentencing option” for people in prison so that there would be an incentive for successfully completing evidence-based programs that reduce recidivism. Additional policies enacted included: several measures to reduce jail overcrowding including reimbursement from the state to county jails for some of the expenses incurred in housing state inmates and requiring people with a maximum sentence of 2 – 5 years to serve their time in prison; a risk reduction sentencing option – equal to three-fourths of the minimum sentence – that would qualify eligible nonviolent offenders for release at the expiration of the sentence date for successful completion of evidenced-based risk reduction programs; and, an increase in the number of eligible participants with substance abuse needs in the State Intermediate Punishment diversion program.

Rhode Island

In 2007, Rhode Island’s prison population was projected to increase 21 percent between 2007 and 2017 at a cost to taxpayers of an additional \$300 million in construction and operating expenses.

In 2007, policymakers developed and implemented several administrative parole options: screening people admitted to prison during intake to identify people with substance abuse needs; utilizing a logic model to both guide program placement decisions as based on risk and demonstrated need, and ensuring timely access to treatment in prison that will be required by the parole board prior to release; and, employing a parole risk assessment to incorporate when making release decisions.

During the 2008 legislative session, the state legislature enacted changes to provide incentives for people in prison to complete certain risk reduction programs, require the parole board to employ risk assessments when making release decisions, and standardize the way Rhode Island calculates earned time credits for people in prison who demonstrate good behavior.

Nevada

In 2007, the prison population in Nevada was projected to increase 60 percent by 2016 at a cost of approximately \$2 billion in additional construction and operating expenses. During the 2007 legislative session, policymakers enacted legislation increasing incentives for people to complete risk reduction programs. The legislation was designed to: increase the number of program credits awarded for completion of in-prison vocational, educational, and substance abuse treatment programs; increase

the credit people in prison and on community supervision can earn off of their sentence for good behavior and compliance with the conditions of their supervision; and, establish the Advisory Commission on the Administration of Justice to review criminal justice polices.

Vermont

In 2007, the prison population in Vermont was projected to increase 23 percent by 2018. To accommodate this growth, the state would need to contract for additional out-of-state prison capacity at a cost of at least \$82 million, or build and operate new prison beds, which the state estimated would cost more than \$200 million.

During the 2008 legislative session, policymakers enacted legislation to reduce recidivism by people on community supervision and to preempt further growth in the prison population. The legislation included: the reorganization of several prisons and the establishment of a new 100-bed work camp for male offenders with substance abuse treatment needs; the establishment of pilot screening and assessment processes prior to sentencing and prior to release from prison to identify people who are appropriate for treatment and diversion programs; the expansion of the Intensive Substance Abuse Treatment Program; a diversion program that provides intensive community supervision; and, establishing caseload caps and authorizing corrections to use electronic monitoring to strengthen community supervision for high risk offenders and reduce recidivism rates by 10 percent for this population.

Meeting the Demand

Although several states have now demonstrated the value of using data to inform smart, bipartisan criminal justice policies that reduce spending and increase public safety, policymakers in the majority of states remain without this type of detailed, timely information. From these states, policymakers call us weekly inquiring about the possibility of applying a justice reinvestment strategy and requesting intensive technical assistance. Without such support, the real and unsettling possibility exists that policymakers will act without the benefit of data, increasing the likelihood that new policies adopted will compromise public safety or be fiscally unsustainable.

Thank you for the opportunity to testify before the committee today, your attention to these issues, and leadership in helping states address these challenges. We look forward to continuing to work with you on these matters.