

**Statement by
The Honorable John T. Broderick, Jr.**

Chief Justice of the New Hampshire Supreme Court

**Hearing on
H.R. 4080, the "Criminal Justice Reinvestment Act of 2009" and
H.R. 4055, the "Honest Opportunity Probation with Enforcement (HOPE) Initiative Act of
2009"**

May 11, 2010

**Subcommittee on Crime, Terrorism, and Homeland Security
Judiciary Committee
U.S. House of Representatives**

Chairman Scott, Ranking Member Gohmert, and members of the Subcommittee, I appear before you today to speak in support of the Criminal Justice Reinvestment Act, which would enable more states and local jurisdictions to utilize the kind of data-driven and bipartisan justice reinvestment process that New Hampshire has found to be so valuable.

I would like to offer an account of the assistance New Hampshire received over the last year, thanks to the support of the Department of Justice Bureau of Justice Assistance, the Pew Center on the States, and the New Hampshire Charitable Foundation.

Last year, the leadership of New Hampshire's three branches of government—the Governor, Senate President, House Speaker, and I—came together for a new approach to address the serious challenges facing our corrections system.

We all recognized that doing nothing would allow corrections costs to continue to climb and our already staggering level of recidivism to worsen.

As Chief Justice of the New Hampshire Supreme Court, I joined with other state leaders to request this assistance because the costs of recidivism were too high, both in terms of lives affected and budgets impacted, and now was the time to bending the cost curve and public safety curve back toward less spending and better outcomes.

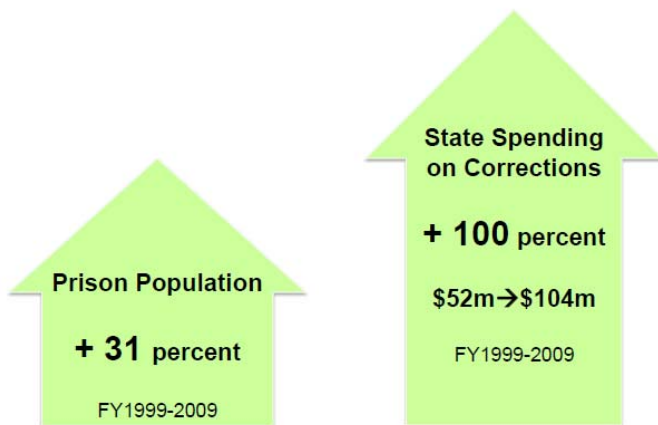
Our state lacked the data analysis capability to fully investigate the causes of our corrections system's growth, however, and we needed a process to bring together state leaders from both parties and stakeholders from across the criminal justice system to review this analysis. Together, through this process, we needed to forge consensus around a policy framework that would make our state safer.

Thanks to the partnership our state formed with Pew, BJA, and the technical assistance provider, the Council of State Governments Justice Center, we began a process of analyzing data, soliciting input from state and local stakeholders in the criminal justice system, and developing a policy framework that was turned into bipartisan legislation that was recently approved by our legislature's House and Senate with overwhelming support. As a result, our state will be safer and spend less on corrections.

Let's look at the major challenges New Hampshire was facing.

In the past 10 years, the state's prison population increased 31 percent and spending on corrections doubled to over \$100 million.¹ Unless the state took action, independent estimates suggested that the prison population would otherwise increase by another 11 percent at an additional cost of \$179 million in construction and operating costs.²

Figure 1. New Hampshire's Prison Population and Costs Have Increased



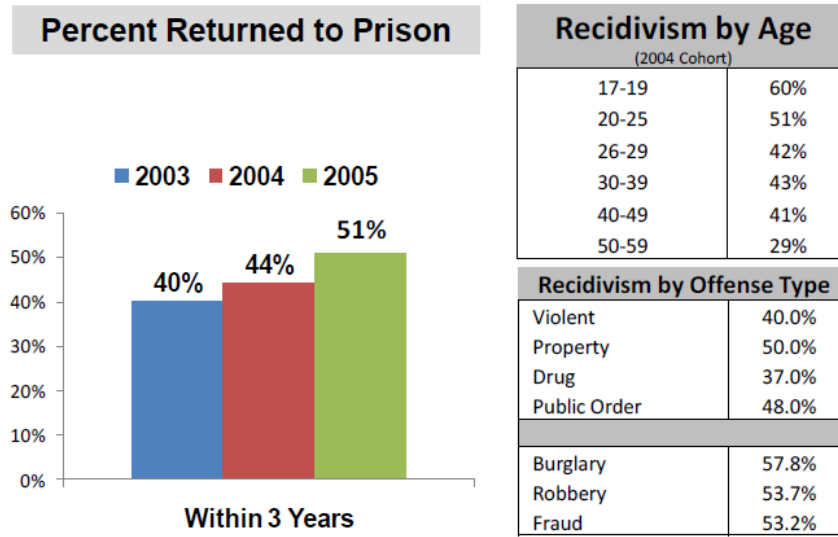
Despite these increases in the prison population and taxpayer spending, reported crime did not decline and was already lower than nearly every other state.

The comprehensive analysis conducted by the CSG Justice Center helped us identify that the state's prison population had increased due to rising rates of failure for people on probation or parole.

¹ Data analysis presented in this testimony was independently carried out by the CSG Justice Center. This and additional analysis is available in the Justice Center report "Justice Reinvestment in New Hampshire: Analyses & Policy Options to Reduce Spending on Corrections and Increase Public Safety," which can be accessed by visiting this webpage: http://justicereinvestment.org/states/new_hampshire/pubmaps-nh

² Delay, Dennis, Ryan Tappin, and Steve Norton. "New Hampshire Center for Public Policy Studies." *Prison Projections 2008*, March 2009). p. 13. http://www.nhpolicy.org/reports/prison_population_2009.pdf (accessed August 19, 2009).

Figure 2. New Hampshire's Recidivism Rate Has Increased

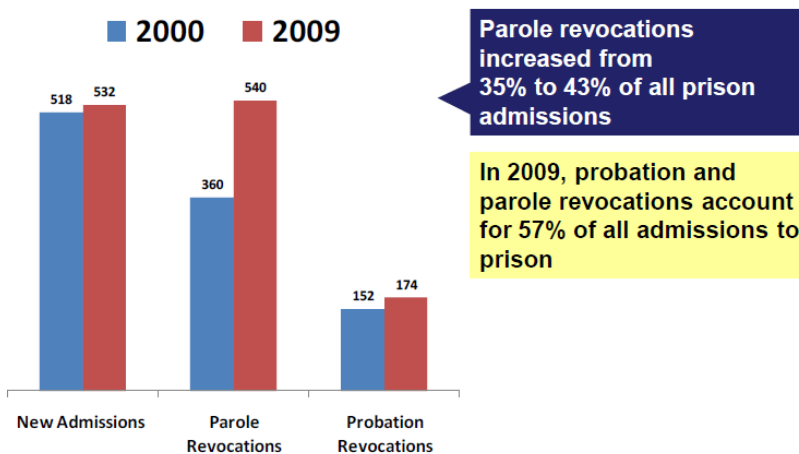


The recidivism rate in New Hampshire increased dramatically over the past 10 years and is now above the national average.

Fifty-seven percent of people admitted to state prison last year did not commit a new crime. They failed to comply with the conditions of their supervision in the community and were revoked to prison.

The vast majority of these revocations involved drug or alcohol use.

Figure 3. Failures on Probation and Parole Drive New Hampshire Prison Admissions



Without available state funds for rapid drug tests, intermediate sanctions to quickly respond to minor violations, or contracted drug treatment in the community to require offenders to attend, probation and parole officers have few tools besides revoking offenders to prison

Not only did probation and parole officers lack the right tools, they also had less time to supervise and work with each offender. The number of people placed on probation and parole grew significantly while the number of supervising officers remained stable, which caused caseloads to rise.

The intensive technical assistance that we received in New Hampshire also made it possible for a broad assessment to be conducted on the services and treatment available in our state for people in the criminal justice system with substance use and / or mental health needs.

The majority of individuals in jail and prison have either addiction or mental health disorders (or both).

More than 70 percent of individuals in the criminal justice system with mental illness also have a substance use problem.

Mental illness often leads to homelessness, joblessness, family dysfunction and crime. Failing to treat it in our community mental health system is a formula for more crime, more failure, and more expense.

This population represents a significant driver of the people who fail on community supervision.

Figure 4 Case Review of 90 Parole Revocation Files

- 59% of parole revocations to prison did not involve any new offense convictions or allegations, and of these:**
 - ✓75% involved drugs
 - ✓41% involved program failure
 - ✓25% involved absconding
 - ✓19% indicated prior violations
- 86% of revocations will be eligible for parole again**

New Hampshire currently does not provide resources to the Department of Corrections for community-based substance abuse and mental health, despite research showing the effectiveness and value of specialized treatment combined with effective supervision.

This provides you with a sense of the challenges New Hampshire was facing. Other states have simply resorted to building more and more prisons at greater and greater expense to taxpayers, yet without any appreciable impact on recidivism rates. Other states, we knew, had tried policies that when applied retroactively, understandably caused great concern among some law enforcement, prosecutors, and victim advocates. Instead, the Governor, state legislative leaders, and I chose to follow in the footsteps of Texas, Kansas and other states that had used the data-driven approach of justice reinvestment to identify pragmatic, bipartisan policies that could help us improve public safety, reduce spending on corrections, and put us in a position as a state to be able to reinvest in the community-based drug and mental health treatment services that we know can have the greatest impact on crime and individual lives.

Over a period of several months, a work group chaired by state Attorney General Michael Delaney—and composed of the Senate President, Speaker of the House, myself, Republican and Democratic state lawmakers, three other judges, two state agency commissioners, a county jail superintendent, and several public members—met at length and repeatedly to carefully review analyses presented by the CSG Justice Center. Our mission: to develop a set of pragmatic policy options that policymakers and stakeholders across the criminal justice system could embrace.

The courts played an integral role in the process, including the participation of judges in the work group, the channeling of input from additional judges across our state through focus groups, and the contribution of court data to the analysis.

This impressive bipartisan, inter-branch work group unanimously endorsed a policy framework that was carefully crafted to gradually lower the prison population by reducing the number of people who fail on probation and parole.

It does this in three ways:

- Increasing supervision for those we're most concerned about and are likely to reoffend,
- Providing probation and parole officers new tools to hold offenders accountable when they fail to play by the rules in the community, and
- Expanding access to substance abuse and mental health treatment.

It was equally important to many policymakers and victim advocates in our state that we did not have to alter our state's truth-in-sentencing laws, or make any policies retroactive, or cause any mass early release to achieve the goals of lowering recidivism and reducing spending on corrections.

For our state, this will mean safer communities with lower recidivism and cost savings for the state and counties. Over the next four years, our state is on track to save between \$7 and 10 million. That may not sound like a lot of money here in DC, but in the context of the New Hampshire General Fund budget, I can tell you it means a great deal. The cost of providing states with the kind of intensive, state-specific technical assistance we received in NH is significant,

I'm sure. But few other efforts generate the same kind of return on investment. Just the cost savings alone over four years will be more than twenty times the cost of the technical assistance required to help us identify the specific policies we employed.

The most important changes, however, are those less easily measured: the lives that are restored through effective treatment and appropriate supervision and the increased public safety our residents will enjoy as we bring down our recidivism rates, as states like Texas and Kansas have shown to be possible.

It is both my belief, and that of many in New Hampshire who were involved with Justice Reinvestment Initiative, that other states and local jurisdictions should benefit greatly from the additional resources that would be made available under the Criminal Justice Reinvestment Act, to help them have access to the data and expertise to increase public safety and reduce taxpayer spending on corrections.

I would be happy to respond to members' questions.