

Issues in Brief

Is the Budget Crisis Changing the Way We Look at Sentencing and Incarceration?

Daniel F. Wilhelm
Nicholas R. Turner

vera

INSTITUTE

of

JUSTICE

STATE SENTENCING AND CORRECTIONS PROGRAM

SHOULD COST MATTER when it comes to deciding who goes to prison and for how long?

The process and results of sentencing reform in most states suggest that, until recently, the standard answer to this question has been no. During the 1980s and 1990s, economically costly measures such as stiff mandatory minimum sentences, three-strikes legislation, and truth-in-sentencing laws were planted or took root. Critics of the reforms argued that spendthrift lawmakers driven by political gain and fear of appearing “soft” ignored the fiscal ramifications of new policy. Tough-on-crime advocates asserted that no price was too high for initiatives that would protect public safety. There is little debate about who won the argument: during the last two decades of the twentieth century, America’s incarcerated population grew more than 281 percent, finally approaching two million; expenditures for state and local corrections increased 601 percent.¹

A growing body of evidence suggests that the tide of opinion is now changing: in the twenty-first century, fiscal impact does appear to matter. From Louisiana to Iowa, from Ohio to Washington, in every corner of the United States, lawmakers have been looking to slow corrections spending as they grapple with the nation’s most serious economic downturn in a decade (for many, the first of their careers). As we reach the midpoint of 2002, 39 states have lowered their annual revenue projections. Of these, 24 have already reported that they will not meet even their revised targets.² Spending has exceeded budgets in 33 states. Spending cuts are on the table in forty. Nationwide, estimates of the total state budget shortfall for fiscal year 2002 range from \$27 billion to \$38 billion.³

Lawmakers are responding to these conditions in several ways. Some have taken predictable immediate action to stanch the flow of expenditures by closing prisons, cutting corrections staffs, and eliminating what they deem to be *nonessential* programs. Others have revisited particular sentencing policies and instituted limited reforms (*e.g.*, reducing sentencing ranges and repealing mandatory minimums) hoping to cut corrections

Issues in Brief

The State Sentencing and Corrections Program (SSC) of the Vera Institute of Justice provides non-partisan, non-agenda-driven help to policymakers. In the three years since the program's founding, SSC has worked with more than a dozen jurisdictions in the United States to provide peer-to-peer technical assistance on developing and implementing sentencing and corrections reform.

SSC's approach to technical assistance is unique. The program draws on the expertise of 33 *associates* with successful reform experience in their own jurisdictions—legislators, judges, sentencing commission directors, budget analysts, corrections administrators, probation chiefs, and other criminal justice policymakers. Peer-to-peer interaction with SSC associates allows state officials to more effectively tackle the practical and political challenges of sentencing and corrections reform.

The approach is working across the country. For example, in one Southern state SSC is helping the sentencing commission formulate legislative recommendations on the future structure of sentencing. In the Midwest, SSC is helping a gubernatorial task force develop a legislative proposal on community corrections. SSC recently testified before a House committee in a Western state on how sentencing guidelines affect prison populations. And not long ago, SSC brought together interested states to discuss policy solutions for corrections budgets in crisis.

Is the Budget Crisis Changing the Way We Look at Sentencing and Incarceration?, the third in an ongoing series of Issues in Brief, was created by SSC to show criminal justice decision makers how they can gain better control of fiscal and correctional resources by building rational and predictable policymaking systems through innovations like those in Kansas, North Carolina, and Virginia. Because many of our associates are involved in these and other cutting-edge reforms, they present an invaluable resource for jurisdictions contemplating or undertaking similar changes in their sentencing and corrections policies.

To learn more about SSC's work, or how the program can assist reform in your jurisdiction, visit our web site at www.vera.org/ssc or contact the program at (212) 376-3073 or dwilhelm@vera.org.

Daniel F. Wilhelm
Director
State Sentencing and Corrections Program

spending by slowing or even reversing prison population growth. As a result of steady reductions in crime that have eroded public fear and expanded voters' appetites for alternative corrections strategies, these officials are discovering political latitude to make broader policy changes.

While likely to be effective as cost cutting measures, many immediate responses have been one-time or ad hoc reactions. A more imposing challenge confronting legislators, governors, and other public officials responsible for criminal justice policy is to create systems that automatically incorporate consideration of cost and impact into the policy-making process. The experiences of a handful of states suggest that such systems can be built without imperiling public safety. This Issue in Brief examines those systems and their use of mechanisms such as sentencing guidelines and simulation models, legislative checks and early-warning devices, and sentencing tools for judges that assess risk. But first, to understand the magnitude and the scope of the economic challenge facing corrections systems, it examines the often drastic steps that states are taking in response to this crisis.

Immediate Responses: Prison Closings, Pink Slips, and Program Cuts

Corrections budgets have been especially hard hit by the current crisis. In FY 2002, 25 states were forced to reduce their corrections budgets. Higher education was the only government sector affected more often, in 29 states. As budget cuts have been imposed or threatened, corrections departments have responded in three predominant ways: closing prisons, reducing staff, and curtailing programs.⁴

Closing Prisons. Ohio is a good example of a state that is responding to a budget crisis by shuttering a prison. Its FY 2002 budget shortfall hovers around \$500 million. As part of his budget reduction plan, Governor Bob Taft ordered the corrections department to slash spending by \$18.9 million, or 1.4 percent. Reginald A. Wilkinson, head of Ohio's prisons, responded by closing the Orient Correctional Institution, a medium-security facility that was one of 22 new prisons established by the state in the 1980s and 1990s. As of December 2001, Orient housed 1,747 inmates and boasted a staff of 533. Just two-and-a-half years earlier, its population was 2,043 (Ohio's overall prison population has declined 9 percent in recent years, falling from 49,023 in 1998 to 44,762 in 2001). The cuts do not end with Orient. The state has also postponed opening a minimum-security boot camp that would have provided substance-abuse treatment to 125 nonviolent male offenders and abandoned plans to open 220 halfway-house beds.

Ohio is not alone in closing major institutions. Illinois is closing the 141-year-old Joliet Correctional Center for a projected

savings of \$41 million and will eventually transfer the prison's 1,200 inmates to a new processing center under construction nearby. Massachusetts is closing three prisons and moving 900 inmates into other facilities. All told, 13 states are shutting down correctional facilities or reducing beds. (See Figure 1). Twelve states are delaying or aborting the opening of similar facilities.

Staff Reductions. Not surprisingly, many of the closings and budget cuts have resulted in staff reductions. Illinois is laying off 120 correctional employees. The loss of \$2.6 million from Iowa's corrections budget has forced the layoff of 150 of its corrections staff. In total, 11 states are cutting or eliminating corrections-related jobs, while 18 states have instituted hiring freezes or purposely have allowed staff vacancies to go unfilled.

Michigan may provide the starkest example of a state looking to layoffs for immediate budgetary relief. Last December, facing a FY 2002 general fund shortfall of \$500 million and a school fund gap of \$250 million, the state sent layoff notices to 240 prison employees as part of an effort to cut \$55 million from corrections. Approximately 190 of these employees were officers, most from the state's maximum-security facility at Jackson, which was closed as part of the budget trimming process.

System-wide, Michigan has eliminated 840 corrections positions, mainly by not filling job vacancies. It has defended these moves as necessary for living within its means, but the savings may be only temporary. Even as they were closing Jackson, officials acknowledged that corrections officers would be offered jobs elsewhere in the system as vacancies occurred and that Jackson could eventually reopen because of the state's growing inmate population. In his budget for the new fiscal year begin-

ning October 1, Governor John Engler has proposed allocating \$8 million to reopen 645 beds at Jackson and 500 beds at another facility.

Cutting "Nonessential" Programs.

The third way many state corrections departments are reacting to budget pressures is by cutting so-called nonessential programs. These cuts primarily have affected educational, substance-abuse treatment, and vocational programs.

Facing a budget shortfall of at least \$804 million, Illinois has demanded cuts of \$35.4 million from its corrections department. One victim of these cuts was the \$5.4 million budget for higher education in state prisons. The elimination of this program, which served about 25,000 of the state's nearly 43,000 prisoners, resulted in layoffs of hundreds of instructors at 12 Illinois colleges and drew swift condemnation from educators. "We're going to end up putting people back out on the streets without skills who will just return to their old habits that put them in prison in the first place," said John Erwin, president of Illinois Central College.⁵

More than 450 prisoners have used the program to earn bachelor's degrees from Roosevelt University in Chicago. As one educator there observed, "It's less expensive to educate an inmate than to incarcerate an inmate two or three or four times."⁶

Educational programs are not the only ones on the chopping block. Arizona is looking to realize \$22.2 million in corrections cuts by scaling back substance abuse treatment programs. Florida, likewise, has cut \$7.3 million from inmate drug treatment and \$8.1 million from prisoner education. In all, nine states are eliminating programs.

As these examples attest, the economic challenges are vast and state corrections systems have no choice but to comply with legislative or executive mandates to slash budgets. But while the moves cited above may save money in the short term, it is difficult to predict their effect on long-term costs and the ability of corrections systems to maintain public safety. According to critics, they are reflexive responses to an acute situation and do not necessarily enhance a state's ability to spend corrections dollars effectively or wisely.

Sentencing and Corrections in the News

As economic crises rock statehouses across the country, officials are asking questions about sentencing and corrections policy: Can sentencing guidelines help manage prison populations and control correctional spending? Can parole policy and practice be reformed without expanding a state's prison population beyond capacity? How are other states seeking to expand drug treatment and alternative sanctions for nonviolent offenders?

Whether you're a policymaker asking these questions or just interested in staying informed, you need up-to-date information on the latest sentencing and corrections news. You can get it now from the State Sentencing and Corrections Program (SSC) at the Vera Institute of Justice.

Every day, SSC monitors national and state news and posts the most relevant and interesting stories on our web site. It's free of charge and visitors will not receive subsequent solicitations. To get the latest, click on www.vera.org/sscnews.

Issues in Brief

Reforming Sentencing Policy— Reducing Sentences and Repealing Mandatories

Concern about the spiraling cost of incarcerating offenders has created pressure on corrections administrators to do more than cut costs quickly. In a number of states, lawmakers have used the moment to re-examine sentencing

schemes and to engage in targeted mitigation of certain punishments. In some cases, this has resulted in the repeal of mandatory minimum sentences now perceived as too harsh and too financially onerous. In others, it has led to the reclassification of certain offenses so that they no longer automatically result in prison sentences.

Cost concerns alone, however, are insufficient to explain these changes. It seems unlikely that they would be possible if the current economic anxiety did not coincide with a historic drop in crime rates that is changing popular concerns about crime and shifting public attitudes about incarceration.

State Corrections Budget Cuts and Cost-Savings Efforts (Figure 1)

States that have cut corrections budgets in FY 2002 or have implemented cost-cutting steps

State	FY 2002 Corrections Budget Decrease (in millions of dollars)	Closing Facilities/Reducing Beds	Delayed/ Aborted Openings	Staff Reductions	Staff Vacancies/Freezes	Program Elimination
AR	22.5*		■		■	
AZ	22.2				■	■
CA	37.4	■			■	
CO	23		■		■	
FL	2.8	■	■	■		■
GA	30		■		■	
HI	1.4		■			
ID	3.6				■	
IL	35.4	■			■	■
IA	2.6		■	■	■	■
KY	9.0			■	■	
LA	2.2			■		
MA	2.7	■	■	■	■	■
MI	54.9	■	■	■	■	■
MO	no change		■			
NE	2.7	■		■		
NC	44.6				■	
NY	no change	■				
OH	18.9	■	■	■	■	■
OR	36.86				■	
OK	8.5				■	■
RI	1.8	■				
SC	53.7	■		■	■	■
UT	9	■	■	■	■	
VT	2.2	■				
VA	25.5	■		■	■	
WI	1.7**		■			

Sources: National Conference of State Legislatures; National Institute of Corrections; The Sentencing Project.

* Includes Department of Corrections and Community Corrections.

** Unconfirmed.

Shifting Public Attitudes. Crime is down and has been for the better part of a decade.⁷ This decline is reflected in both violent crimes and property crimes. From 1973 to the early 1990s, violent crime rates fluctuated in the United States. But between 1993 and 2000, the rate of all violent crimes and property offenses measured by the Bureau of Justice Statistics fell drastically: violent crimes fell by 44.1 percent; homicides, not included in the previous figure, dropped 61 percent; property crimes declined 44.2 percent. These reductions may be responsible for changing public attitudes toward crime and incarceration.

Americans are not as concerned about crime as they were several years ago. A 1994 survey by the Pew Research Center for the People and Press showed that 29 percent of respondents thought that crime was the most important problem facing their local community.⁸ By 2001, only 12 percent gave the same answer. Similarly, a 1994 Harris poll found that 37 percent of respondents considered crime and violence to be one of the two most important issues for government to address.⁹ In 2000, that figure had dropped to 11 percent.

Public attitudes about incarceration appear to be changing as well. A recent opinion poll by Peter D. Hart Research Associates shows that the public is questioning whether harsh prison sentences are the best way to punish nonviolent offenders.¹⁰ In 1994, 48 percent of Americans surveyed said that they favored addressing the underlying causes of crime, while 42 percent preferred deterrence through stricter sentencing. The Hart poll, conducted late last year, found a substantial change in public opinion, with 65 percent of respondents preferring to address root causes of crime and only 32 percent opting for harsher sentencing. The survey specifically found a change in attitudes toward mandatory sentencing.

In 1995, a 55-percent majority of those surveyed said that mandatory sentences were a good idea, while 38 percent said that judges should be able to determine a defendant's appropriate sentence. The 2001 Hart report found those numbers reversed: only 38 percent responded that mandatory sentences were a good idea, while a plurality of 45 percent said they preferred judicial discretion.

The Hart survey also documents acceptance of alternatives to incarceration for nonviolent drug offenders. In regard to simple drug possessors, 76 percent of the survey's 1,056 national telephone respondents said that they favored "supervised mandatory drug treatment and community service rather than incarceration." Seventy-one percent were in favor of applying the same treatment-based approach to small-scale drug sellers.

The Hart data has been corroborated by a public referendum in California. In November 2000, 61 percent of the state's voters approved Proposition 36, which requires treatment instead of incarceration for certain nonviolent drug offenders. The California legislature has predicted that implementing the proposition will save at least \$100 to \$150 million a year in prison costs and will avoid prison construction costs of \$400 to \$450 million. Heartened by this success, the Campaign for New Drug Policies, a political advocacy group, is targeting Michigan and Ohio for similar ballot initiatives this year.¹¹

Legislators Respond. These new attitudes have resonated strongly in several state legislatures. Louisiana, for example, has faced skyrocketing prison populations and corrections spending since the early 1990s. From 1995 to 2001, the state's incarcerated population jumped from 25,260 to some 36,000, and corrections spending rose by 45 percent from 1994 to 1999. In response, last year the state legislature passed SB

239, which removed mandatory sentences for certain nonviolent offenses and cut many drug sentences in half. The former ten-to-sixty-year penalty for possession of 28 grams of cocaine, for example, was reduced to a sentence of five-to-thirty years. The legislature also limited the application of the state's three-strikes law. The changes are estimated to generate some \$60 million in prison operations savings, some of which will finance drug courts and other alternatives to incarceration.

As Louisiana's corrections head Richard L. Stalder remarked, "[t]he legislature was asking a legitimate question. Are there more cost-effective ways to deal with these problems?"¹²

Individual legislators echoed this assessment. Representative Danny Martiny, chair of the Louisiana House Criminal Justice Committee, told the media, "[t]he people expect us to be tough on crime and they expect us to lock everybody up and throw away the key. And that's great as long as you've got a jail and you've got the finances. But we've come to a point where we just can't afford to keep doing it."¹³ Senator Charles Jones, the architect of the legislation, bluntly told reporters that Louisiana had "lost control of the prison population," adding, "We cannot continue to spend \$600 million on prisons."¹⁴ But the bill's success was due to more than economic arguments. Governor Mike Foster told the legislature that he supported the measure as a way to save money—but he also acknowledged the high social cost of the state's policies, saying, "We have locked up a lot of people who are redeemable—a whole bunch of them."¹⁵

In 2001 and 2002, 13 states took legislative action to ameliorate the effects of stringent sentencing laws (see Figure 2). Of these, Connecticut, Indiana, and North Dakota repealed mandatory minimum sentences

Issues in Brief

relating to some nonviolent offenses. (Legislation has also been introduced in three other jurisdictions—Colorado, Delaware, and Michigan—tempering mandatory minimum sentences.) Mississippi pared back truth-in-sentencing requirements. Louisiana, Virginia, and Texas expanded the number of inmates eligible for early release. Iowa granted judges greater discretion in sentencing certain felony offenders. Alabama and New Mexico eased habitual offender laws. And Idaho, Oregon, and Washington enhanced treatment options for nonviolent drug offenders. In many of these states, rising prison populations

and incarceration costs were factors for winning passage of legislation.

These efforts seem to verify what one Oregon corrections official observed: “[B]udget problems are making people ask fundamental questions about whether we can afford to keep doing what we’ve been doing.”¹⁶

Building Fiscal Discipline in the Long Term

State leaders looking for ways to get a better handle on corrections expenses can learn important lessons from jurisdictions that reformed their sentencing

systems in the 1990s. In particular, North Carolina, Virginia, and Kansas not only made far-reaching substantive changes to laws governing sentencing and incarceration, but they also developed tools to manage their corrections growth and to systematically connect sentencing policy with available resources. In each state the result has been a more disciplined and rational policy-making process that helps lawmakers balance demands for public safety, fairness, and fiscal accountability. Central to this accomplishment in all three states is a sentencing commission, a government entity serving as the

Sentencing Policy Changes (Figure 2)

States that have made, or are proposing, changes to their sentencing schemes, 2001–2002

■ Passed ● Proposed

State	Mandatory Minimums Repealed	Habitual Offender Laws Eased	Truth-in-Sentencing Rolled Back	Early Release/Parole Eligibility Expanded	Judicial Discretion in Felony Sentencing Enhanced	Drug Treatment Expanded	Drug Treatment Ballot Initiative	Sentencing Commission Formulating Systemic Recommendations
AL		■						■
CA							■	
CO	●							
CT	■							
DC								■
DE	●							
GA								■
IA					■			
ID						■		
IN	■				■			
LA	■		■	■				
MI	●				●		●	
MS			■	■				
ND	■							
NM		■						
OH							●	
OR						■		
TX				■				
VA				■				
WA						■		

repository of expertise about sentencing and corrections research and analysis.

Sentencing Guidelines. Since 1979, some twenty states and the federal government have created sentencing commissions and implemented sentencing guidelines. Historically, guidelines have served a range of functions, from correcting unwarranted disparity in sentencing, to ensuring greater consistency and truthfulness and promoting better resource management.¹⁷ Minnesota, the first state to implement guidelines, did so in order to accomplish all these aims. Recently, guidelines—or *structured sentencing*, as they are sometimes called to avoid negative associations with the federal system, which many consider unnecessarily cumbersome and unduly fettering of judicial discretion—have drawn increased interest because of the role they can play in improving resource management. Because guideline sentences offer greater uniformity and predictability, they are a powerful tool for projecting, planning for, and, therefore, controlling prison populations. Georgia and Alabama recently formed sentencing commissions that have been instructed to consider structured sentencing so that lawmakers can better manage and predict the use of resources.¹⁸

Among states that have pursued structured sentencing, North Carolina represents what many consider to be the exemplar of smart political and rational reform. When the state passed structured sentencing legislation in 1994, it sought to combine the politically attractive features of truth-in-sentencing “with other policies designed to achieve a rational allocation of correctional resources.”¹⁹ The result was a new sentencing system that simultaneously increased the likelihood and length of prison sanctions for violent and habitual offenders and established a continuum of community punishments for nonviolent offenders.

Prior to this reform, almost everyone involved in North Carolina’s system described it as failing. Under the previous, indeterminate sentencing system—the most common structure in the United States then and now—the prison population was controlled through a set of early release mechanisms, primarily parole and good time, and discretion predominantly lay with the parole board and corrections officials. Critics argued that this arrangement undermined the integrity of punishment and eroded public confidence in courts and corrections.²⁰ By the early 1990s, convicted felons were serving only 18 percent of their sentences, misdemeanants only 12 percent. Part of the problem was that more than 20,000 offenders were entering the prison system each year and there were not enough beds to accommodate them.

The Sentencing and Policy Advisory Commission, created by the state legislature in 1990, was granted an expansive charter

Can Sentencing Guidelines Reduce Prison Populations?

States with presumptive sentencing guidelines have significantly lower rates of incarceration than similar states without presumptive guidelines, researchers at the Vera Institute of Justice show in an article to appear in the July issue of *Crime and Delinquency*.

Even after taking crime rates and relevant demographic variables into consideration, the incarceration rate in a presumptive guideline state is lower than the incarceration rate in a state with similar characteristics by roughly 72 inmates per 100,000 residents. And the reduction is manifested primarily in reduced prison admissions rather than in shorter prison stays. Presumptive guideline states averaged 55 fewer prison admissions per 100,000 residents than similar states without guidelines.

In several states, enabling legislation expressly directs sentencing commissions to devise sentencing guidelines that keep prison populations within certain limits. Prior research shows that presumptive guidelines can slow or reduce prison population growth. In Oregon and Washington—two states where prison resources must be considered—incarceration rates decreased in the three years after guidelines were introduced. Florida, Minnesota, and Tennessee, states with similar requirements, saw growth in the incarceration rate slow. In fact, prison population growth in those three states was 15 to 25 percent slower than in similar states without guidelines.

However, the effectiveness of presumptive sentencing guidelines must be evaluated in light of the practical and political decisions that informed their creation. For example, in Pennsylvania, a state where the enabling legislation does not require consideration of prison resources, prison population growth did not slow. In fact, after guidelines were implemented the state’s prison population growth accelerated. This followed a legislative directive to increase incarceration and sentence severity for all offenses. Even the federal sentencing guidelines are not immune from such practical and political determinations. Although the federal structure was created under a congressional directive to consider correctional resources, there is little evidence that the instruction has received much attention.

To learn more about Vera’s research, visit our web site at www.vera.org. To receive a copy of the forthcoming article in *Crime and Delinquency* contact www.sagepub.co.uk.

to examine the system's structure and to recommend improvements. After three years of study, North Carolina went on to establish a system that required offenders to serve 100 percent of sentenced time, abolished parole, reserved prison beds for the most dangerous and incorrigible, and invested in non-prison sanctions for others. Because so many nonviolent offenders who had previously been going to prison were now being diverted, the state not only managed to enact tough-on-crime reforms, but it also saw its admissions decrease dramatically. In 1994, the first year under the new policy, admissions fell 7 percent. Between 1993 and 1997, admissions decreased 52 percent, from 28,000 to roughly 13,000 admissions. From 1994 to 2000, North Carolina's crime rate fell 12.5 percent. In 1980, North Carolina had the highest incarceration rate in the country. It now ranks thirty-first in the nation and has the second lowest incarceration rate in the South.

Simulation Models. One of the most important elements of this story is that upon establishing the commission, North Carolina's legislature required it to develop a computerized corrections population simulation model to project the resources needed to implement recommendations and policy changes. In response, the commission began by building an extensive database containing information on offenders, their criminal histories, their sentences, the time they were expected to serve, and other important characteristics. The database enabled the commission to understand the sentencing practices then in use. Information from the database could then be fed into the simulation model to project future prison populations. In formulating its recommendations, the commission was able to navigate often contentious waters by relying on the simulation model to

assess the systemic costs of various possible sentencing proposals. In fact, with the help of the simulation model, the commission was able to produce two plans for the legislature to choose from, one with more severe sentences, and another with slightly less severe sentences that would forestall the need to build new prisons for a few more years. The legislature selected the latter.

The simulation model has been very accurate. For example, the commission's projections showed that North Carolina's prison population for June 2001 would be 32,154. The actual average population for June 2001 was 31,971. This is a difference of 183 beds—or less than one percent.²¹ According to Susan C. Katzenelson, executive director of the North Carolina commission, “the effectiveness of the model is attributable to several factors. First, the model itself is a very sophisticated microsimulation model. Second, the model benefits by receiving good offender admissions data from the court system and good incarceration and revocation data from the corrections department. Finally, the nature of structured sentencing makes outcomes more logical and thus inherently more ‘modelable’ and predictable.”

North Carolina is not the only state that employs a simulation model. Pennsylvania, Florida, Texas, Kansas, and Virginia are among the other states relying on such a predictive tool.

More Effective Planning. The value of an accurate simulation model and a credible sentencing commission has become particularly apparent again this year in North Carolina. Each year, by law, the commission must project the state's prison population for the next ten years. Since structured sentencing went into effect, the commission's projections have shown that North Carolina will need 7,000 new prison beds by 2010. The legislature enacted structured sen-

tencing with its eyes open to this fact, recognizing that increases in the length of stay for violent offenders would eventually cause the prison population to grow. This past year, with the state facing a nearly \$1.5 billion budget shortfall and feeling a new urgency to cut costs everywhere, the legislature returned to the commission and asked it to formulate alternatives to the current sentencing guidelines that could alleviate the need to construct thousands of new beds in the next eight years. In a report submitted to the legislature in early May 2002, the commission identified six alternative plans, including one that would shorten sentences for nonviolent habitual felons who commit property and lesser drug offenses and another that would reduce the weight accorded to prior criminal history at sentencing.²²

Legislative Tools

Like North Carolina, Kansas also formed a sentencing commission in the early 1990s to develop reforms for a similarly troubled system. And as in North Carolina, the commission recommended, and the legislature enacted, a set of reforms including parole abolition, truth-in-sentencing, guidelines, and diversion of low-level offenders to community correction and probation. Kansas' commission continues to play a critical role in the state, collecting and analyzing data and formulating policy recommendations.

Early Warning Systems. Since Kansas' reforms were implemented, more than eight years ago, the state's prison population has grown at a rate of 38 percent, far slower than the national average of 54 percent. Over that time, while it has expanded the number of prison beds at several facilities, Kansas has not had to build one prison. One reason for this may be a unique provision

in the commission's enabling legislation. In the statute, the commission is directed to "identify and analyze the impact of specific options to reduce prison population" when projections show that "the state's prison population will exceed capacity within two years."²³ This early warning system serves two important functions: it not only automatically alerts the legislature to an impending crisis, but it also makes the difficult political task of advancing reform slightly easier. Although the legislature must approve commission recommendations, the commission must do the heavy lifting—and it does so, as *required by law*. Thus, elected officials are not put in the sometimes politically perilous position of having to request "options to reduce prison population" or formulate those options themselves.

This early warning provision has led to reforms on a number of occasions. For example, shortly before the 2000 legislative session, the commission warned that Kansas prisons were dangerously close to capacity. After some analysis, the commission determined that prison population growth was being driven in large part by a set of generally low-level, nonviolent offenders. Specifically, more than 70 percent of the entries to state prison the previous year were probationers and parolees who had tested positive for drugs or who had violated some other condition of release; they had not been convicted of new crimes. The commission developed a bill to reduce the admission of these offenders, many of whom had done their time, had been originally determined by a judge to be more appropriate for community sanctions, and had drug problems. The bill modified periods of probation and post-release supervision for some, mandated that certain condition violators be sent to community corrections rather than prison (when there was no public safety risk in doing so), and invested in the expansion of these non-prison sanctions, such as day reporting centers. In all these details, the bill relied on data produced by the commission rather than guesswork or anecdote. In 2001, the first year the effects of the new law could be measured, Kansas' prison population declined by 245 inmates, enough to delay the construction of a new correctional facility.

This year, the commission informed the legislature that while Kansas will have sufficient prison capacity for the next two years, the state will experience a sustained growth in population from 2004 through 2011 and will be in need of a "long-term strategy for managing the state's prison population."²⁴ The commission and legislature are currently studying additional strategies aimed at reducing the number of probationers and parolees admitted to prison for condition violations. They are also looking at reforming the state's drug sentencing laws to focus on treatment options instead of incarceration for nonviolent repeat drug users.

State Sentencing and Corrections Program Associates

Philip A. Baddour, Jr. State Representative, North Carolina General Assembly

Mark H. Bergstrom Executive Director, Pennsylvania Commission on Sentencing

Barbara Broderick Chief Probation Officer, Maricopa County, Arizona

Neil R. Bryant Senior Partner, Bryant, Lovlien and Jarvis, Oregon

Harold W. Clarke Director, Nebraska Department of Correctional Services

Debra Dailey Director of Research and Evaluation, Minnesota Supreme Court

Jane M. Earll State Senator, Pennsylvania

The Honorable Richard Gebelein Associate Judge, Superior Court of Delaware

Peter Gilchrist District Attorney, Charlotte and Mecklenburg County, North Carolina

Robert Lee Guy Director, North Carolina Division of Community Corrections

Cal Hobson State Senator, Oklahoma

Michael Jacobson Professor, John Jay College of Criminal Justice, New York

Kathryn P. Jett Director, California Department of Alcohol and Drug Programs

Richard Kern Director, Virginia Criminal Sentencing Commission

Michael Lawlor State Representative, Connecticut General Assembly

Robin L. Lubitz State Courts Administrator, Florida

Ed McConkie Executive Director, Utah Commission on Criminal and Juvenile Justice

E. Michael McCann District Attorney, Milwaukee County, Wisconsin

James Mills Principal Fiscal Analyst, North Carolina General Assembly

Charles A. Moose, Ph.D. Chief of Police, Montgomery County, Maryland

Paul J. Morrison District Attorney, Johnson County, Kansas

Sharon R. Neumann Regional Administrator for Community Sentencing, Oklahoma Department of Corrections

The Honorable Frank Orlando Director, Center for the Study of Youth Policy, Nova Southeastern University Law School, Florida

Reginald Robinson Chief of Staff to the Chancellor and Visiting Professor of Law, University of Kansas

The Honorable Thomas W. Ross Executive Director, Z. Smith Reynolds Foundation

Dora Schriro Commissioner, Division of Corrections, City of St. Louis, Missouri

Carol Shapiro Director, Family Justice, Inc., New York

John M. Stuart State Public Defender, Minnesota

Mindy Tarlow Executive Director, Center for Employment Opportunities, New York

Barbara Tombs Executive Director, Kansas Sentencing Commission

The Honorable Richard Walker Chief Judge, 9th Judicial District, Kansas

Gina E. Wood Director, South Carolina Department of Juvenile Justice

The State Sentencing and Corrections Program helps government officials develop balanced, fair, and affordable criminal justice policies by providing peer-to-peer assistance. For information about how these experienced policy makers and practitioners can help advance your agenda for reform, contact program director Daniel F. Wilhelm at (212) 376-3073 or dwilhelm@vera.org, or visit the SSC website at: www.vera.org/ssc.

Issues in Brief

Fiscal Notes. Another method to interject consideration of fiscal ramifications into legislative debates over sentencing and corrections policy is the requirement that fiscal notes or impact statements—reports describing the economic effects of proposed legislation—be attached to every bill that would change sentencing law. In essence, with these devices the legislature places checks and restraints on its own members. Many states require fiscal notes to be completed before a legislature votes on a bill. The power and effect of the notes vary dramatically from state to state, however. Virginia, for one, has made the fiscal note requirement a particularly muscular mechanism to limit the ability of legislators

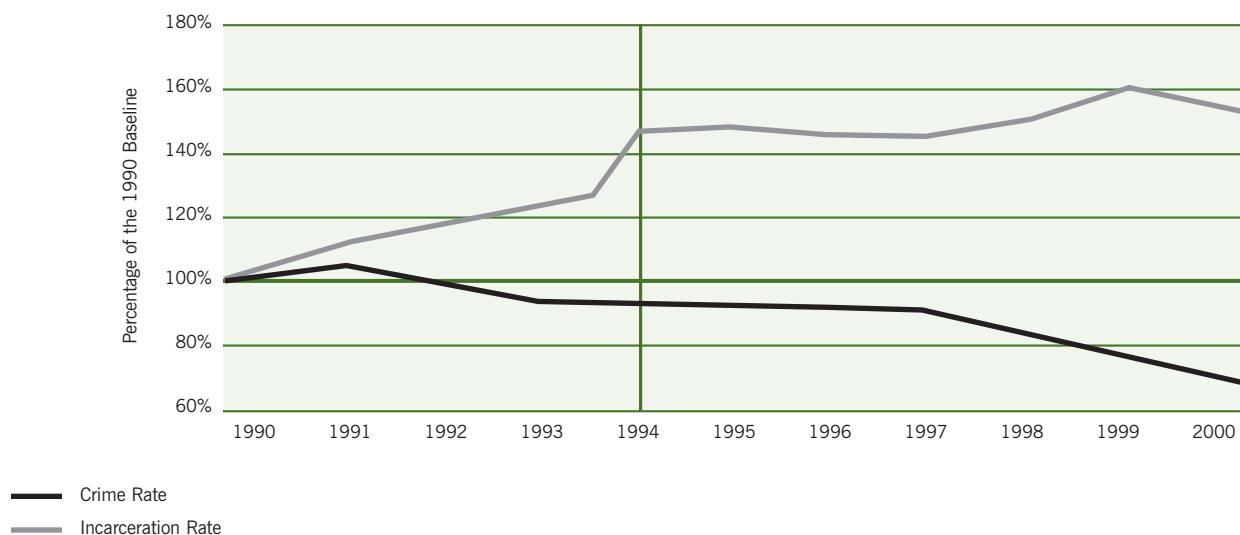
to make ad hoc alterations to sentencing structures.

By statute, Virginia requires its sentencing commission to prepare a “fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill that would result in a net increase in periods of imprisonment in state adult correctional facilities.”²⁵ This includes all bills that add new crimes punishable by imprisonment, expand the period of incarceration for existing offenses, impose minimum or mandatory terms of incarceration, or modify the law governing the release of offenders in any way that increases the time they are to be incarcerated.

The sentencing commission then forwards copies of the statement to the sponsor of the bill, the chair of the

committee that will consider the proposed legislation, and to the public safety subcommittee of either the House Appropriations Committee or the Senate Finance Committee. The estimated fiscal impact of the bill is also printed on the face of the legislation. A bill that is supported by a majority of the committee considering its substance (a process that usually does not include fiscal note review) is referred to the proper finance subcommittee. The subcommittee then determines if there is funding to support the bill. If not, the bill dies without reaching the floor for final consideration. Most important to this process is that a bill’s sponsor must identify the source of revenue to fund the bill before it can be reported out of the subcommittee. In short, if the sponsor cannot find

Increasing Violent Offender Sentences and Reducing Crime While Stabilizing Incarceration Rates in Virginia (Figure 3)
Percentage Change In Crime Rate and Incarceration Rate, Virginia, 1990–2000



In 1994, Virginia enacted its fiscal note provision as part of a comprehensive reform to reserve prison beds for violent and repeat offenders. Violent offenders now serve from 100 to 600 percent more time in prison than they did before the reform was enacted. Since then, the state’s crime rate has dropped 26 percent (compared to 24 percent nationally) while the incarceration rate has remained relatively stable, posting a 6 percent increase overall (versus 22 percent nationally). Fiscal notes, along with sentencing risk assessments and other resource management tools, have focused the attention of judges and legislators on discerning which offenders should be appropriately sanctioned outside of prison.

The chart above represents the percentage change in Virginia’s crime and incarceration rates between 1990 and 2000. The rates from 1990 serve as a baseline. The value for each subsequent year represents a percentage of the 1990 rate. For example, in 2000, the crime rate was 68 percent of the 1990 crime rate and the incarceration rate was 150 percent of the 1990 rate. The vertical line marks the implementation of the 1994 reforms.

The chart shows that Virginia managed to increase sentences for violent offenders without incurring the cost of a ballooning incarceration rate. Most of the growth in the incarceration rate occurred before the 1994 reforms.

the money to pay for the increased correctional burden, the bill cannot get to the floor for a vote.

As with reforms in North Carolina and Kansas, this requirement has not been made at the expense of protecting public safety in Virginia. It is part of a comprehensive approach to sentencing policy development that focuses on incapacitating violent and repeat offenders and reserving expensive prison space for them. In the nearly eight years that the fiscal note has been in place, Virginia's crime rate has dropped 26 percent. This compares with a drop of 24 percent across the country. At the same time, Virginia's incarceration rate has grown just 6 percent, well below the national growth rate of 22 percent, indicating greater discipline in use of expensive prison beds as a sanction (see Figure 3).

According to Dr. Richard P. Kern, director of Virginia's sentencing commission "the legislative fiscal note process has been so well received that our legislature recently voted to expand its scope. The note process now also considers the cost impact of proposed legislation on local jails and community corrections programs."

Although other states' fiscal note requirements are not as robust as Virginia's, they still manage to influence the dynamics of sentencing policy. As Representative Philip A. Baddour, Jr., Chair of the North Carolina House Judiciary Committee and Majority Leader notes: "The requirement for a fiscal note on all bills creating new crimes or increased punishment became an accepted fact of life for the North Carolina General Assembly. If the fiscal note shows a financial impact then the bill, if passed by the Judiciary Committee, must be re-referred to the Appropriations Committee. It is an integral part of our determination to balance sentencing policy with available corrections resources."

Risk Assessment at Sentencing

Virginia created its sentencing commission in the mid-1990s to make good on the singular campaign promise of then-Governor George Allen to abolish parole. In legislation that required offenders to serve at least 85 percent of their imposed sentence and lengthened sentences for violent and repeat offenders by up to 600 percent, the Virginia General Assembly also directed the commission to devise ways to divert nonviolent offenders from prison. Specifically, legislators told the commission to develop a risk assessment tool that judges could use at sentencing to identify incarceration-bound low-risk drug and property offenders who were suitable for non-prison sanctions. The legislature set as a target that 25 percent of this group be diverted from prison.²⁶

Taking up this charge, the commission analyzed characteristics (*e.g.*, criminal history, substance abuse, education, employment history, and family background) and recidivism patterns in a sample of 1,500 fraud, larceny, and drug felons released from incarceration between 1991 and 1992. It found several factors to be important in assessing an offender's risk of reconviction, including age, prior record, prior juvenile incarceration, whether the offender had been arrested in the previous 12 months, and whether he or she acted alone. Those factors found to be statistically significant in predicting recidivism were included on a worksheet for judges to fill out at sentencing—a higher total score on the worksheet indicated an increased likelihood that an offender would be reconvicted of a new felony within three years. Commission research showed that an offender scoring nine points or less would have a one-in-eight chance of being reconvicted in three years. Nine was therefore set as the threshold for recommending an

alternative sanction (offenders with a violent felony conviction were excluded altogether). In keeping with Virginia's voluntary guidelines, the decision to sentence an offender to prison or to alternative sanctions was left to the discretion of the judge, regardless of the score on the worksheet.

From 1997 to 2001, Virginia ran a pilot program to test the risk assessment tool in six of its 31 judicial circuits. Of the more than 13,000 fraud, larceny, and drug offenders processed in these courts, the tool deemed 24 percent appropriate for alternative sanctions. Put another way, the offenders in this group were otherwise facing incarceration under the voluntary guidelines, had no history of violent felonies, and had received scores of nine or less on the worksheet. Of these, judges sentenced half to alternative sanctions. The rest were sentenced to a traditional term of incarceration.

Virginia's nonviolent offender risk assessment system is novel—no other structured-sentencing state uses an empirically based risk-assessment instrument to divert offenders to alternative sanctions. In 2000, the National Center for State Courts evaluated the pilot program, and concluded that by diverting 363 low-risk offenders from prison and 192 from jail at the pilot sites, the state saved \$8.7 million. When total diversion costs of \$7.2 million were considered, the instrument still produced a net benefit of \$1.5 million. The evaluators estimated that if the instrument had been in use across the whole state, the net benefit would have been between \$3.7 and \$4.5 million in reduced costs. Following a validation study that led to refinements in the risk-assessment model, the sentencing commission recommended that a slightly modified version of the instrument used in the pilot program be introduced throughout Virginia.

Issues in Brief

Conclusion

The budget traumas of the current economic crisis are playing out against a backdrop of changed public attitudes about crime and incarceration. While perhaps immediately cost effective, prison closings, layoffs, and program eliminations fail to address the broader issue of how to better manage a state's fiscal resources.

As this Issue in Brief shows, several states have seized on the importance

and value of creating governmental organizations and arming them with appropriate instruments to take up this systemic challenge. Indeed, as legal scholar Ronald F. Wright has observed, perhaps the most important lesson other jurisdictions can draw "is the need for a [credible] sentencing commission or other full-time body to estimate the impact of changes, monitor and report on the effects of sentencing practices, and coordinate correctional resources."²⁷

The experiences of Kansas, North Carolina, and Virginia illustrate the importance of creating a state entity that can inform the creation of sentencing and corrections policy by providing data-based information that can both predict a system's needs and guide development of laws and policies that respond to those needs. And, as the innovations in these three states show, such reform-minded responses need not compromise public safety.

Footnotes

- 1 See Sidra Lea Gifford, Bureau of Justice Statistics, U.S. Department of Justice, *Criminal Justice Expenditure and Employment Extracts* (January 8, 2002); Sidra Lea Gifford, Bureau of Justice Statistics, U.S. Department of Justice, *Justice Expenditures and Employment in the United States, 1999* 1-4 (February 2002).
- 2 National Conference of State Legislatures, *State Fiscal Update April 2002* 1 (April 16, 2002).
- 3 *Ibid.*; National Association of State Budget Officers, *Fiscal Survey of States: December 2001* ix (December 2001).
- 4 For good overviews of developments in these areas see Ryan S. King & Marc Mauer, The Sentencing Project, *State Sentencing and Corrections Policy in an Era of Fiscal Restraint* 11 (February 2002); Judith Greene & Vincent Schiraldi, Justice Policy Institute, *Cutting Correctly? New State Policies for Times of Austerity* (February 1, 2002).
- 5 Susan Dodge, *Budget Ax Hits Prison Education*, Chicago Sun-Times, Dec. 12, 2001.
- 6 *Ibid.*
- 7 Bureau of Justice Statistics, U.S. Department of Justice, *Criminal Victimization 2000: Changes 1999-2000 with Trends 1993-2000* (June 2001).
- 8 Pew Research Center for the People and the Press, *Interdiction and Incarceration Still Top Remedies*, March 21, 2001.
- 9 Harris Poll, April 2000.
- 10 Peter D. Hart Research Associates, Inc., *The New Politics of Criminal Justice: Summary of Findings* (January 2002).
- 11 See Robert Collier, *Treating Drug Offenders: Huge Coffers Fund Effort to Replicate Prop. 36 in Other States*, San Francisco Chronicle, July 1, 2001.
- 12 Christopher Swope, *Taking Aim At Corrections Costs*, Governing, April 2002, at 54.
- 13 Kevin McGill, *Saving Money on Prisons. Will It Be Politically Costly?*, Associated Press, April 12, 2001.
- 14 Marsha Shuler, *Senators Vote to Relax Prison Terms*, Baton Rouge Advocate, May 3, 2001.
- 15 Kevin McGill, *Foster Pushes for Bill Removing Some Minimum Sentences*, Associated Press, May 23, 2001.
- 16 Fox Butterfield, *Tight Budgets Force States to Reconsider Crime and Penalties*, New York Times, January 21, 2002, at A1, A11.
- 17 See *Sentencing Commission Profiles*, National Center for State Courts 2 (1997).
- 18 See Alabama Code Title 12, Chapter. 25 § 12-12-1 *et seq.*; Georgia Executive Order B-22-0336-2001, August 30, 1999. The District of Columbia also has a relatively young sentencing commission that is examining whether and how sentencing in the District should be revised. See D.C. Law 12-165; D.C. Code §24-203.1 *et seq.* Because of the District's unique relationship with the federal government, however, resource management issues have not been as urgent there as in other jurisdictions.
- 19 Carol A. Horton, *U.S. Sentencing Policy: Past Trends, Current Issues, and Future Prospects* 42, 47 American Judicature Society (1997).
- 20 See Robin L. Lubitz, *Recent History of Sentencing Reform in North Carolina*, 6 Federal Sentencing Reporter 129, 129-130 (1993).
- 21 North Carolina Sentencing and Policy Advisory Commission, *Revised Population Projections Fiscal Year 2001/2002 to Fiscal Year 2010/2011* 2-3 (December 2001).
- 22 See North Carolina Sentencing and Policy Advisory Commission, *Report on Study of Structured Sentencing Pursuant to Session Law 2001-424, Section 25.8* (May 2002).
- 23 Kansas Sentencing Commission, *Report to the 2002 Kansas Legislature* 2 (February 1, 2002).
- 24 *Ibid.*
- 25 Code of Virginia Title 30, Chapter 1, Section 30-19.1:4.
- 26 Virginia Criminal Sentencing Commission, *Annual Report 2001* 49 (December 1, 2001).
- 27 Ronald F. Wright, National Institute of Justice, U.S. Department of Justice, *Managing Prison Growth in North Carolina Through Structured Sentencing* 4 (February 1998).

© Vera Institute of Justice 2002. All rights reserved.

Additional copies are available from the State Sentencing and Corrections Program at the Vera Institute of Justice, 233 Broadway, 12th Floor, New York, New York, 10279, (212) 334-1300. An electronic version is posted on Vera's web site, www.vera.org.

The Vera Institute of Justice is a private, nonprofit organization dedicated to making government policies and practices fairer, more humane, and more efficient. Working in collaboration with public officials and communities in the United States and throughout the world, Vera designs and implements innovative programs that expand the provision of justice and improve the quality of life. The State Sentencing and Corrections Program is one of several national peer-to-peer consulting and technical assistance initiatives Vera operates.