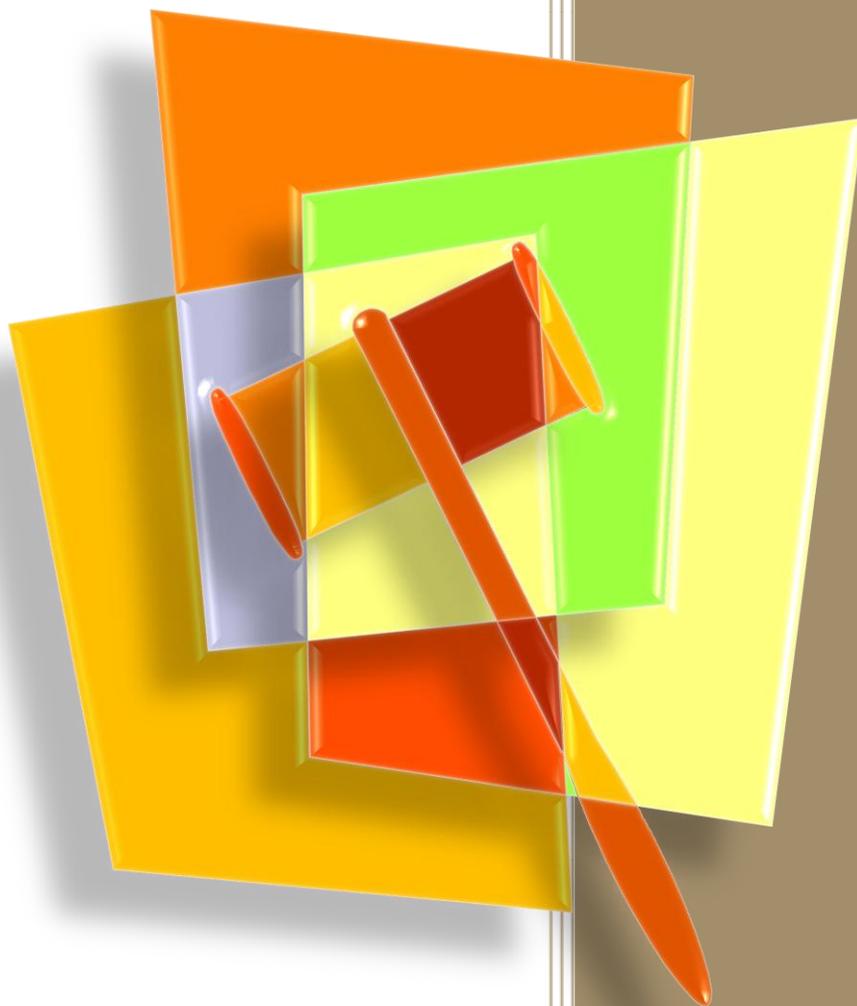


# Turning the Corner: Opportunities for Effective Sentencing and Correctional Practices in Arizona

Judith Greene  
Justice Strategies



**January 2011**

Arizona Attorneys for Criminal Justice

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## EXECUTIVE SUMMARY

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Arizona's criminal justice policies have been among the harshest in the nation for many years. The Arizona Department of Corrections currently incarcerates over 40,000 inmates. Arizona's incarceration rate has more than tripled over the past 30 years. As stated in a recent report from the Arizona Auditor General, "1 in every 749 persons in Arizona was in prison as of June 30, 1980, while 1 in every 170 Arizonans was in prison as of June 30, 2008."<sup>1</sup> Between 2000 and 2008 the average annual prison-population growth rate in Arizona was 5.1 percent, compared to just 1.5 percent for the nation as a whole. The state's prison growth rate was third highest among all 50 states, and, again, the highest in the Western region. Yet the rate of violent crime reduction (9.5 percent) in Arizona falls far short of the reduction in violent crime enjoyed by residents of states like New York, for example, where a 21.7 percent drop in crime has occurred during the same period, while taxpayers benefited from an average annual prison-population *reduction* rate of 1.9 percent.

A wealth of research findings and examples from implementation experience demonstrate the cost-savings and public safety advantages of a variety of options for improving our sentencing and correctional systems:

- Restoring judicial discretion to sentence people to more effective, less costly correctional supervision and treatment options in lieu of prison in cases where such measures would clearly better serve both justice and public safety objectives.
- Allowing judges the discretion to designate the lowest-level non-violent felony offenses as misdemeanors to avoid rendering people charged with relatively petty offenses virtually unemployable and barring their access to housing, education or treatment services.
- Creating "earned time" and "merit release" programs that provide incentives for constructive use of time served behind bars.
- Improving the effectiveness of probation and post-prison supervision with strategies that can win better compliance with supervision requirements, shorten time under supervision, and reduce recidivism.

### **"Downscaling Prisons" – An Emerging Trend**

As state policymakers confront the worsening fiscal crisis across the U.S., they have come face-to-face with the fact that the increased costs associated with harsh

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<sup>1</sup> *Department of Corrections – Prison Population Growth*. Office of the Arizona Auditor General. Report No. 10-08 September 2010.

sentencing policies compete directly with other critical elements of their state budgets, like higher education and healthcare. These policymakers are increasingly embracing “evidence-based” sentencing and correctional practices – measures that have been tested and found to produce less costly, more effective public safety outcomes.

The growing trend towards “evidence-based” practices is beginning to pay off. Since 2005, the number of states with declining prison population levels has grown steadily – from 9 in 2006, 14 in 2007, 19 in 2008, to 24 in 2009.

It is particularly instructive to examine four states – Kansas, Michigan, New Jersey, and New York. In contrast to the 12 percent growth in overall state prison populations since 2000, these states have actually achieved significant declines in their prison populations in recent years:<sup>2</sup>

- New York: A 19 percent reduction from 72,899 to 58,687 from 1999 to 2009,
- Michigan: A 12 percent reduction from 51,577 to 45,478, from 2006 to 2009,
- New Jersey: A 19 percent reduction from 31,493 to 25,382, from 1999 to 2009,
- Kansas: A 5 percent reduction from 9,132 to 8,641, from 2003 to 2009.<sup>3</sup>

The record in “downscaling states” is clear. Reducing prison populations does not increase crime rates. Reduction in prison population levels in Kansas since 2003 has not diminished public safety. By 2008, the violent crime rate had fallen by 3 percent, while property crime fell by 16 percent. While prison population levels spiraled downward in Michigan, crime rates also fell – with a reduction in violent crime of 11 percent between 2006 and 2008, and a 9 percent reduction in property crime.

Since 1999, when New Jersey’s prison population began to fall, a combination of drug policy reforms and parole system improvements set the stage for significant state budget savings, and – again – there has been no negative impact on public safety. Between 1999 and 2008, the rate of violent crime dropped by 21 percent, while property crime fell by 23 percent. Meanwhile, the state of New York has set national records for both crime reduction and prison downscaling. FBI crime data show that by 2008, violent crime had fallen by 32 percent since 1999, and property crime fell by 26 percent.

### **Conservative States Have Revisited Their Sentencing Practices: North Carolina, South Carolina, Mississippi**

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<sup>2</sup> Greene, Judith and Marc Mauer. “Downscaling Prison: Lessons from four states,” Washington, DC & New York: Joint publication of the Sentencing Project and Justice Strategies. March 2010.

<sup>3</sup> Data from Bureau of Justice Statistics’ annual prison populations reports, updated with the most recent data brief, “Prisoners at Yearend 2009 – Advance Counts.” Washington DC: Department of Justice.

In North Carolina, most of the state's mandatory minimum drug laws were replaced with structured sentences that favor treatment in the community over prison in cases involving possession or sale of less than an ounce of a controlled substance. North Carolina's award-winning sentencing model was introduced in 1994, and has helped greatly to keep the correctional budget within affordable limits. The state's imprisonment rate is remarkably low: 372, compared to a rate of 554 for the Southern region.

In 2010, legislators in South Carolina agreed to allow judges the discretion to sentence people convicted of non-violent drug crimes to probation. If they are sentenced to prison, they will become eligible for parole release. While they increased some penalties for those convicted of violent crimes, the new law is designed to improve parole supervision and help to reduce the number of people who might be sent back to prison for breaking the rules. The goal is to reduce recidivism and improve public safety through introduction of evidence-based correctional practices.

Facing financial problems in 2008, Mississippi legislators took a step toward rolling back truth-in-sentencing. The new law, SB 2136, restored the possibility of parole for many people incarcerated for drug crimes by stipulating that individuals convicted of possession, sale or distribution of drugs under certain weight levels (e.g., less than two ounces of cocaine) are parole-eligible after serving one-quarter of their prison sentence. Cost savings for Mississippi taxpayers due to the rollback of truth-in-sentencing are estimated at \$200 million.

### **Evidence-Based Community Supervision Can Reduce Recidivism and Crime**

Many efforts are underway across the U.S. to improve the effectiveness of probation and post-prison supervision with strategies that can win better compliance with supervision requirements, shorten time under supervision, and reduce recidivism. Lipsey and Cullen reviewed empirical evidence on the effects of sanctions and supervision on recidivism.<sup>4</sup> They have identified three key findings to help direct the improvement of correctional system performance:

- Every meta-analysis done to date has found that increasing the severity of sanctions at best produces only modest reductions in recidivism; at worst, it results in increased recidivism;
- Every meta-analysis of large sample studies finds greater reductions in recidivism for programs that offer treatment, as opposed to those that do not; and
- Nearly every meta-analysis of "specific rehabilitation treatments or approaches" finds reduced levels of recidivism.

Sweeping changes to probation and parole supervision in Maryland have been

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<sup>4</sup>Mark W. Lipsey, and Francis T. Cullen, The Effectiveness of Correctional Rehabilitation: A review of systematic reviews, *Annual Review of Law and Social Science*, Vol. 3 (2007).

rigorously evaluated and the results are remarkable.<sup>5</sup> Based on research findings on what works in correctional services, the program design for Proactive Community Supervision (PCS) rests on four key prescriptive elements:

1. Use a standardized tool to assess criminal characteristics.
2. Engage people under supervision to join their personal desires and goals to a focus on dealing with criminogenic issues.
3. Emphasize achievement of behavioral goals via positive and negative reinforcers.
4. Maintain an environment where people under supervision can take incremental steps and learn from missteps or small relapses.

Evaluation findings revealed that people supervised under PCS had a *42 percent lower rate of rearrest* for new crimes than those supervised using traditional methods. The technical violation rate was also lower for the PCS group: 35 percent compared to 40 percent of the non-PCS group.<sup>6</sup>

## **Conclusion**

The harsh reality of the fiscal crisis coupled with a renewed interest in evidence-based programming is stimulating a national conversation about the unreasonably high level of incarceration in the U.S. and the prospects for reducing its scale while at the same time promoting better public safety outcomes. Community corrections practice in Arizona is already moving toward broad implementation of evidence-based strategies, and the preliminary results are showing great promise.

The track record established in four “downscaling states” demonstrates that prison populations *can* be reduced with sentencing reforms and correctional policies designed to improve the overall performance of the criminal justice system. The fast growth in the number of states that are experiencing declines in their prison population has not been met by public outcry. More than a decade of public opinion surveys show that support has steadily increased for sensible reforms. The time is ripe in Arizona to pursue a better balance between prison costs and community corrections benefits.

Arizona policymakers can restore judicial discretion to sentence people to more effective, less costly correctional supervision and treatment options in lieu of prison

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<sup>5</sup> Ríos, Néstor and Judith Greene “Reducing Recidivism: A Review of Effective State Initiatives,” with Nestor Rios. New York: Justice Strategies. April 2009.

<sup>6</sup> Taxman, Faye S. “No Illusions: Offender and Organizational Change in Maryland’s Proactive Community Supervision Efforts.” *Criminology and Public Policy* 7:2, June 2008.

in cases where such measures would clearly better serve both justice and public safety objectives. Policies can be introduced to shorten prison terms with incentives for constructive activities. Pragmatic changes to “truth in sentencing” provisions have not proved controversial in states that have adopted them. Efforts to improve community supervision of people sentenced to probation, as well as those who return home from prison, are helping to restore our confidence in the American courts and correctional systems.

# REPORT

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## INTRODUCTION

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Arizona's criminal justice policies have been among the harshest in the nation for many years. The Arizona Department of Corrections currently incarcerates over 40,000 inmates. Arizona's incarceration rate has more than tripled over the past 30 years. As stated in a recent report from the Arizona Auditor General, "1 in every 749 persons in Arizona was in prison as of June 30, 1980, while 1 in every 170 Arizonans was in prison as of June 30, 2008."<sup>1</sup> Between 2000 and 2008 the average annual prison population growth rate in Arizona was 5.1 percent, compared to just 1.5 percent for the nation as a whole. The state's prison growth rate was third highest among all 50 states, and, again, the highest in the Western region. Yet the rate of violent crime reduction (9.5 percent) in Arizona falls far short of the reduction in violent crime enjoyed by residents of states like New York, for example, where a 21.7 percent drop in crime has occurred during the same period, while taxpayers benefited from an average annual prison population *reduction* rate of 1.9 percent.

This policy report is intended to encourage consideration of criminal justice practices in Arizona that have proved effective in other states. States in every region of the nation are "downscaling" their prison populations, using evidence-based sentencing and correctional policies and practices to save money and improve public safety.

The research findings and examples from implementation experience summarized in this report demonstrate the cost-savings and public safety advantages of a variety of options for improving our sentencing and correctional systems:

- Restoring judicial discretion to sentence people to more effective, less costly correctional supervision and treatment options in lieu of prison in cases where such measures would clearly better serve both justice and public safety objectives.
- Allowing judges the discretion to designate the lowest-level non-violent felony offenses as misdemeanors to avoid rendering people charged with relatively petty offenses virtually unemployable and barring their access to housing, education or treatment services.
- Creating "earned time" and "merit release" programs that provide incentives for constructive use of time served behind bars.

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<sup>1</sup> *Department of Corrections – Prison Population Growth*. Office of the Arizona Auditor General. Report No. 10-08 September 2010.

- Improving the effectiveness of probation and post-prison supervision with strategies that can win better compliance with supervision requirements, shorten time under supervision, and reduce recidivism.

### **“DOWNSCALING PRISONS” – AN EMERGING TREND**

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As state policymakers confront the worsening fiscal crisis across the U.S., they have come face-to-face with the fact that the increased costs associated with harsh sentencing policies compete directly with other critical elements of their state budgets, like higher education and healthcare. These policymakers are increasingly embracing “evidence-based” sentencing and correctional practices – measures that have been tested and found to produce less costly, more effective public safety outcomes.

Evidence-based practices are finding increased public support, signaling broad political permission for taking a fresh look at ideas such as diversion to treatment of people charged with lower-level drug and property offenses; shortening the length of time those sent to prison spend there by creating incentives for constructive engagement in treatment programs, education, and work assignments; and using graduated sanctions for people on probation and parole who break the rules. The growing trend towards “evidence-based” practices is beginning to pay off. Since 2005, the number of states with declining prison population levels has grown steadily -- from 9 in 2006, 14 in 2007, 19 in 2008, to 24 in 2009.

It is particularly instructive to examine four states – Kansas, Michigan, New Jersey, and New York. In contrast to the 12 percent growth in overall state prison populations since 2000, these states have actually achieved significant declines in their prison populations in recent years:<sup>2</sup>

- New York: A 19 percent reduction from 72,899 to 58,687 from 1999 to 2009,
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- Kansas: A 5 percent reduction from 9,132 to 8,641, from 2003 to 2009.<sup>3</sup>

The initiatives implemented in these four “downscaling” states to reduce reliance on incarceration cover a range of policy changes which are well-supported by research findings.<sup>4</sup>

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<sup>2</sup> Greene, Judith and Marc Mauer. “Downscaling Prison: Lessons from four states,” Washington, DC & New York: Joint publication of the Sentencing Project and Justice Strategies. March 2010.

<sup>3</sup> Data from Bureau of Justice Statistics’ annual prison populations reports, updated with the most recent data brief, “Prisoners at Yearend 2009 – Advance Counts.” Washington DC: Department of Justice.

<sup>4</sup> Greene and Mauer.

## **USE OF MANDATORY SENTENCING SCALED DOWN: NEW YORK, MICHIGAN, KANSAS**

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- New York: Scaled back the Rockefeller Drug Laws substantially to reduce the scope of mandatory sentences.
- Michigan: Reformed the “650 Lifer Law” that had previously imposed life sentences for 650-gram drug offenses, even for first-time offenders. Eliminated most mandatory minimum sentences for drug offenses and incorporated sentencing provisions into the guidelines system, with enhanced judicial discretion. Restructured community corrections planning expectations to create incentives to target “straddle-cell” cases in sentencing guidelines for intermediate sanctions.
- Kansas: Amended state sentencing guidelines to divert people convicted of drug possession to mandatory treatment rather than prison, and eliminated sentencing enhancements for persons with prior convictions for drug possession.

## **EFFECTIVE ALTERNATIVES FOR “PRISON BOUND” PEOPLE: NEW YORK, NEW JERSEY**

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- New York: Drug Treatment Alternative to Prison program established by the Brooklyn District Attorney’s Office to divert prison-bound defendants into treatment programs helped to reduce use of incarceration, and was expanded to other prosecutors’ offices statewide. Statewide network of Alternatives to Incarceration programs utilized data to target prison-bound offenders for sentencing alternatives.
- New Jersey: Attorney General revised plea negotiation guidelines to permit “open pleas” in lower-level, drug-free-zone cases, giving judges discretion at sentencing. Court officials expanded the drug-court model statewide, and encouraged judges to consider “open plea” cases for treatment.

## **REDUCING TIME SERVED IN PRISON: NEW YORK**

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- New York: Implemented “merit time” credits and other incentives for participation in education and vocational training, treatment and other services to speed parole consideration.

## **REDUCING REVOCATIONS: NEW JERSEY, MICHIGAN, KANSAS**

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- New Jersey: Established Regional Assessment Centers to provide input to parole board in determining if parole violators should be allowed to continue on parole supervision.
- Michigan: Established the Michigan Prisoner Reentry Initiative to develop locally based planning, focusing on services in housing, employment, substance abuse, and other areas designed to increase prospects for successful reentry.
- Kansas: Justice Reinvestment strategy to provide services under community supervision to reduce revocations for rule violations. Risk Reduction Initiative provides funding to county-operated programs that emphasize neighborhood revitalization, substance abuse and mental health treatment, and housing services.

## **ARIZONA PRISONS ARE CROWDED WITH PEOPLE CONVICTED OF LOW-LEVEL, NON-VIOLENT CRIMES.**

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Current laws and policies crowd Arizona's prisons with people convicted of low-level, non-violent crimes whose offenses are driven by addiction to alcohol and illegal drugs. Arizona's repeat-offender codes fail to make a rational distinction between serious crime and relatively petty offenses, driving long sentences for people who could be more effectively and economically sentenced to treatment.

Under Arizona's mandatory sentencing system, non-violent offenders make up more than one-third of state prisoners. Since 2006, the number of people admitted to prison for first-time drug possession and paraphernalia crimes has increased dramatically.<sup>5</sup>

In 2004, Families Against Mandatory Minimums published a report that summarized the reasons for over-reliance on incarceration in Arizona.<sup>6</sup>

The large number of low-level and non-violent offenders behind bars is a product of Arizona's mandatory sentencing laws, which force judges to lock up individuals who commit repeat but petty offenses. Most of these individuals are substance abusers whose crimes are related to addiction and many should be in mandatory treatment and other community-based programs rather than prison.

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<sup>5</sup> Fischer, Daryl. "Prisoners in Arizona: A Profile of the Inmate Population." Phoenix, AZ: Arizona Prosecuting Attorney's Advisory Council. March 2010.

<sup>6</sup> Greene, Judith, Kevin Pranis and Howard Wine. "Arizona Prison Crisis: A Call for Smart on Crime Solutions." Washington DC: Families Against Mandatory Minimums. May 2004.

When applied to non-dangerous offenses, Arizona’s sentencing enhancements make little or no distinction between serious and petty offenders. For example, under the repetitive enhancement, an addict with one prior conviction for drug possession caught selling a gram of cocaine faces a sentence that is almost double that of a dealer caught with a kilo of cocaine for the first time. Such an outcome flies in the face of common sense and the will of voters, who clearly intended that convictions for drug possession should *not* result in long prison terms. Yet if the enhancement is invoked and the prosecutor can prove the facts, the judge *must* impose an enhanced sentence.

The law prevents judges from imposing mandatory treatment and community-based sanctions on thousands of low-level non-violent offenders, even though these sentences would cost less, reduce recidivism and increase public safety more effectively than prison. The result is long sentences for non-violent and often low-level offenses.

Little has changed since 2004. Arizona’s drug laws treat the lowest-level sellers, most of whom are addicts, like major players in the drug market. Because many drug offenses, including possession with intent to sell, are Class 2 felonies regardless of the circumstances (just one felony class level below first-degree murder), addict-sellers can get prison terms longer than some violent offenders. And because of the nature of drug addiction, many who face such charges have similar non-violent charges pending, and find themselves facing multiple, lengthy sentencing enhancements.

### **CONSERVATIVE STATES HAVE REVISITED THEIR SENTENCING PRACTICES: NORTH CAROLINA, SOUTH CAROLINA, MISSISSIPPI**

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Arizona’s incarceration rate of 579 is exceeded only by five other states. Steps have been taken in some “conservative,” “tough-on-crime” states to reverse the impact of failed sentencing and correctional practices.

#### **North Carolina**

In North Carolina, most of the state’s mandatory minimum drug laws were replaced with structured sentences that favor treatment in the community over prison in cases involving possession or sale of less than an ounce of a controlled substance. North Carolina’s award-winning sentencing model was introduced in 1994, and has helped greatly to keep the correctional budget within affordable limits. The state’s imprisonment rate is remarkably low: 372, compared to a rate of 554 for the Southern region.

North Carolina judges use a grid system, with individual defendants assigned according to both the seriousness of the offense (e.g., the weight of the drugs involved) and the seriousness of their prior criminal history, if any. People who fall into the lowest grid boxes – those convicted of the least serious crimes and with the least serious prior records – are presumed eligible for a community punishment of standard probation or outpatient drug treatment. People convicted in more serious cases, but who have not caused bodily harm, might fall into a grid box that draws an intermediate punishment – intensive probation supervision and rigorous treatment requirements.

Some “border” boxes in the grid offer the judge a choice between an intermediate punishment or an active sentence of prison, or between an intermediate or community punishment. Judges are able to depart from the sentencing presumptions if warranted by legitimate distinctions among defendants and offenses, such as the actual role of the defendant, whether the defendant personally profited from the sale, and whether the defendant is struggling with addiction.

The principal strength of North Carolina’s structured sentencing system is that it has created a rational means to achieve proportionate sentencing norms. Drug “traffickers” convicted of selling 28 grams (roughly an ounce) or more of cocaine remain outside of the grid system and face a mandatory prison sentence. But the vast majority of those convicted for possession or sale of less than an ounce are sanctioned in the community, with a primary aim of providing them with supervision and treatment, not punishment for punishment’s sake.

The greatly reduced reliance on imprisonment for drug crimes in North Carolina has not reduced public safety. While crime rates declined across the nation over the past two decades, North Carolina fared particularly well with the rate of violent crime falling by 25 percent and the rate of property crime by 16 percent since 1990.<sup>7</sup>

## **South Carolina**

After seeing their state’s prison population increase more than six-fold since 1983, state officials in one of the most conservative southern states have decided to take bold action to stem the spiral caused by tougher sentencing and mandatory minimum laws.<sup>8</sup> In the mid-1990s, the state had adopted a “Truth in Sentencing” measure that required many people sentenced to prison to serve at least 85 percent of their sentence before being considered for release.

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<sup>7</sup> FBI Uniform Crime Reports, as prepared by the National Archive of Criminal Justice Data.

<sup>8</sup> “Prisons full, coffers empty: Southern Republicans think it’s time to slow down the growth of locking up.” *The Economist*, July 22, 2010

In 2010, legislators agreed to allow judges the discretion to sentence people convicted of non-violent drug crimes to probation. If they are sentenced to prison, they will become eligible for parole release. While they increased some penalties for those convicted of violent crimes, the new law is designed to improve parole supervision, and help to reduce the number of people who might be sent back to prison for breaking the rules. The goal is to reduce recidivism and improve public safety through introduction of evidence-based correctional practices.

The reforms contained in Senate Bill 1154 were crafted by a bi-partisan sentencing commission that included members from all three branches of government. Some of the specific initiatives include:

- Giving judges the discretion to sentence those convicted of non-trafficking drug convictions to probation, and to make those sent to prison eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.
- Introducing evidence-based practices that encourage compliance with probation and parole requirements, and use of administrative sanctions to revocation and recidivism.
- Requiring those with sentences of two or more years to participate in reentry programs for six months prior to being released.
- Introducing cost-effective prison release, home incarceration, and community supervision programs and incentive-based strategies for alternatives to incarceration.
- Developing a validated risk and needs assessment tool to improve probation supervision.
- Using evidence-based practices to gauge risks, needs, and “motivations to change” to inform parole decisions.
- Preparing fiscal impact statements so legislators will understand the costs associated with all new criminal offense legislation proposals.

A Sentencing Reform Oversight Committee has been established to guide implementation of the reforms. State officials estimate that the reforms will save taxpayers more than \$400 million over the next half-decade.

## Mississippi

In 1995, Mississippi, like Arizona, embraced “truth-in-sentencing” by eliminating parole, whether the crime was violent or nonviolent, requiring all prisoners to serve at least 85 percent of their prison term. The new law was enacted with little consideration of the long-term effect it would have on the state’s prison population.<sup>9</sup> Between 1994 and 2007, prison expenditures grew by 155 percent.

In 2001, after many years of wrangling about the harsh impact of “truth-in-sentencing” policy, Mississippi legislators restored parole eligibility to nonviolent, first-time offenders who have served at least one-quarter of their prison sentences. This narrow change applied to first-time offenders convicted of simple possession of drugs, but not to those convicted of *selling* drugs – even a minimal quantity. Facing financial problems in 2008, legislators took a second step toward rolling back truth-in-sentencing. The new law, SB 2136, restored the possibility of parole for many people incarcerated for drug crimes by stipulating that individuals convicted of possession, sale, or distribution of drugs under certain weight levels (e.g., less than two ounces of cocaine) are parole-eligible after serving one-quarter of their prison sentence.

The decision to release those eligible for consideration still rests with the Parole Board, whose members were appointed by the governor. To increase the board’s rate of parole, Correction Commissioner Chris Epps introduced an evidence-based tool for risk prediction to identify which parole candidates are less likely to recidivate. Positive results of the reform have been celebrated as a model in *Governing Magazine*.<sup>10</sup>

Previously parole members had relied mainly on their guts. With the new instrument in place, the parole grant rate soared, from roughly 30 percent to more than half. As the result of the new law, between April 2009 and August 2009, 3,100 inmates were reduced early, with virtually no public notice and no controversy.

Cost savings for Mississippi taxpayers due to the rollback of truth-in-sentencing are estimated at \$200 million.

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<sup>9</sup> Wood, Peter B. and R. Gregory Dunaway. 2003. “Consequences of Truth-in-Sentencing: The Mississippi Case.” *Punishment and Society*, Vol. 5, No.2.

<sup>10</sup> Buntin, John. “Mississippi’s Corrections Reform: How America’s reddest state -- and most notorious prison -- became a model of corrections reform.” *Governing Magazine*, August 2010.

## INCARCERATION AND CRIME RATES

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Experience has shown that the inverse relationship some advocates claim exists between incarceration rates and crime rates is by no means a simple matter. The common belief that more prisons are the answer to the problem of crime held sway for decades. Yet the evidence offered in support of this position has been contested by a wealth of research findings, and the validity of the claim seems increasingly thin as the experience in “downscaling” states demonstrates that substantial reductions in prison populations can go hand in hand with favorable declines in crime rates.

William Spelman argues that without the huge buildup in prison capacity between 1970 and 1990, crime rates would be 25 percent higher than they are today.<sup>11</sup> Yet in “Unlocking America,” a group of distinguished American criminologists conclude that Spelman’s analysis does not help to explain the experience in many states and counties that appears to run counter to his claim.<sup>12</sup>

More recent estimates based on individual states and counties within states have estimated the crime-reduction impact of prison growth to be much smaller or nonexistent. Research on crime and incarceration does not consistently indicate that the massive use of incarceration has reduced crime rates.

In sum, studies on the impact of incarceration on crime rates come to a range of conclusions that vary from “making crime worse” to “reducing crime a great deal.” Though conclusive evidence is lacking, the bulk of the evidence points to three conclusions: 1) The effect of imprisonment on crime rates, if there is one, is small; 2) If there is an effect, it diminishes as prison populations expand; and 3) The overwhelming and undisputed negative side effects of incarceration far outweigh its potential, unproven benefits.

Further, the “Unlocking America” criminologists assert that more prisons are not making communities safer.

Careful analysis of variations in states’ crime and incarceration rates reveals a consistent relationship: states with the *lowest* crime rates also have the *lowest* incarceration rates, and this is not primarily a result of incarceration reducing crime. Put differently, if incarceration were the key to a safer society, cities and states with exceptionally

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<sup>11</sup> William Spelman. “The Limited Importance of Prison Expansion.” *The Crime Drop in America*, Revised edition. Ed. Alfred Blumstein. New York: Cambridge UP, 2006.

<sup>12</sup> Austin, James et al. 2007. “Unlocking America.” Washington, DC: The JFA Institute.

high incarceration rates (e.g., Baltimore, Washington, D.C., Louisiana, Texas, and Oklahoma) would be the safest — not the most dangerous — places to live. What makes a place safe are social and economic factors that deliver a high quality of life as measured by good education, strong families, informal social controls, viable networks, and opportunities for stable, meaningful, and well-paid work.

The lurid television reports of crimes committed by people who have been released from prisons may lead one to believe that formerly incarcerated people are causing a crime wave; however, Bureau of Justice Statistics data show that just five percent of all arrests involve people recently released from prison.<sup>13</sup> Research suggests that longer sentences and sentencing enhancements have no major impact on post-prison recidivism or crime rates in general.<sup>14</sup> A research team at the Rand Corporation who studied correctional issues over many years concluded that community corrections in California is at least as effective as prison in discouraging lawbreaking.<sup>15</sup>

New evidence from a "downscaling" state indicates that counties maintaining the highest incarceration rates continue to suffer the highest rates of violent crime, while lower incarceration rates are associated with less crime at the county level. A recent exploratory study by Paul Schupp and Craig Rivera adds a new perspective on the evolving debate between academic experts who have reported a crime-reduction effect of increased incarceration<sup>16</sup> and those who maintain that heavy reliance on imprisonment does not support this thesis.<sup>17</sup>

Schupp and Rivera modeled incarceration patterns, or "trajectories" (trends in the percentage of people convicted of felonies who were sentenced to state prison) in each of New York's counties over the decade spanning 1990 to 1999. Then they used quantitative methods to examine the relationship of different patterns of incarceration on county-level crime rates in 2000.<sup>18</sup>

Having identified these trajectories, we then demonstrated how they

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<sup>13</sup> Recidivism of Prisoners Released in 1994. US DOJ. Washington, DC: Bureau of Justice Statistics, 2002.

<sup>14</sup> Austin.

<sup>15</sup> Joan Petersilia and Susan Turner. "Prison versus Probation in California: Implications for Crime and Offender Recidivism." Santa Monica, CA: RAND Corporation, 1986.

<sup>16</sup> Levitt, Steven. (1996). The effect of prison population size on crime rates: Evidence from prison overcrowding litigation. *Quarterly Journal of Economics*, 111; Marvell, T., & Moody, C. E. (1994).

Prison population growth and crime reduction. *Journal of Quantitative Criminology*, 10

<sup>17</sup> Clear, Todd R. *Imprisoning communities: How mass incarceration makes disadvantaged neighborhoods worse*, Oxford University Press, 2007; Lynch, Michael J. *Big Prisons, Big Dreams: Crime and the failure of America's penal system*. Brunswick, NJ: Rutgers University Press, 2007.

<sup>18</sup> Schupp, Paul and Craig Rivera. "Identifying Imprisonment Patterns and Their Relationship to Crime Among New York Counties 1990-2000: An exploratory Application of Trajectory Modeling." *Criminal Justice Policy Review* 2010 21:50

can be used to evaluate what relationship, if any, imprisonment throughout the 1990s had with both violent and property crime rates in 2000. In the bivariate analyses, the general pattern was that counties with high and/or consistently increasing trajectories of imprisonment throughout the 1990s had higher crime in 2000. Indeed, the high-rate decreasing group, which had either the highest or among the highest levels of incarceration throughout the decade, had the highest property and violent crime rates in 2000. On the other end of the spectrum, the group with the lowest imprisonment rates, the “low-rate increasing” group, had the lowest property and violent crime rates in 2000.

Noting that crime rates and other factors experienced during the decade of the 1990s might be driving crime rates in 2000, the research team used multivariate modeling tools to explore this possibility.

Even after controlling for the African American population, economic deprivation, and average crime rates in the 1990s, counties that went through the decade following a high and/or consistently increasing imprisonment trajectory had higher violent crime rates in 2000 than those counties that followed a low-level pattern of imprisonment, and the difference was statistically significant.

Similar findings have emerged in county-level research on incarceration and crime in Florida.<sup>19</sup> Taken together, these findings give credence to the theory that increasing patterns of incarceration may actually be associated with *higher* levels of violent crime.

### **WHY PRISON ISN'T ALWAYS THE BEST ANSWER.**

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Groundbreaking research has documented deleterious effects of sending so many people to prison for such long terms. Dina Rose and Todd Clear examined crime statistics in Tallahassee neighborhoods and found that in neighborhoods where incarceration rates shot up the most, crime rates increased more than in other neighborhoods in the following year. And when crime dropped in Tallahassee overall, it fell the least in the high-incarceration zones.<sup>20</sup>

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<sup>19</sup> Kovandzic, Tomislav V., & Vieraitis, Lynn M. “The effect of county-level prison population growth on crime rates.” *Criminology and Public Policy*, Vol. 5(2). 2006

<sup>20</sup> Clear, Todd R., Dina R. Rose, Elin Waring, and Kristen Scully, “Coercive Mobility and Crime: A Preliminary Examination of Concentrated Incarceration and Social Disorganization,” *Justice Quarterly*, vol. 20 no. 1, March 2003.

They argue that when too many people are pulled from their neighborhoods, incapacitation reaches a “tipping point” that can send crime rates spiraling up. Simply churning large numbers of young people from the inner city through the prison system destabilizes neighborhoods already stressed by poverty and crime. Networks of informal social control in such locations, imperfect as they are, may still serve to keep the level of crime within limits. Those involved in low-level, non-violent criminality may still provide support and care for their children and other important pro-social supports for their neighbors and friends. Viewed purely as an economic asset, each prisoner represents a net financial loss to his or her family and home community.

Clear’s research has helped to bring to public attention the idea of “million dollar blocks” – concentrated zones of poverty in urban America where millions are spent incarcerating residents each year. Clear terms the process of cycling inmates back and forth from prison to such communities “coercive mobility,” creating crime by disrupting informal, social-control networks and increasing disorder.<sup>21</sup>

Over the past decade a wealth of scholarship has traced the effects of concentrated incarceration and the many harms it brings to families, communities, family, and the labor market. Research at Princeton University in 2005 attempted to answer an unorthodox question: Was the increase in imprisonment primarily the result of changes in the criminal justice system, or to increasing crime among low-educated men? Rather than merely being reflective of social ills, the increase in incarceration of low-educated Black men appears to have *contributed* to economic inequality. They found that, “[t]he growth in economic inequality was accompanied by the emergence of two kinds of collective experience: one among college-educated whites who were largely unaffected by the prison boom, the other among non-college blacks, for whom imprisonment became a common life event.”<sup>22</sup> Imprisonment for this group has become not just a means of social control but also a contributing factor to their expanding inequality.”

Devah Pager, Bruce Western, and Bart Bonikowski examined the nexus of discrimination, employment, and imprisonment. Through field experiments in New York City’s low-wage labor markets, they were able to demonstrate the inner workings of this process. Their results showed that equally qualified Black applicants were half as likely to receive callbacks from job interviews or job offers as compared to Whites, and that in fact, Blacks and Latinos with clean criminal records did no better than White job applicants recently released from prison.<sup>23</sup> Further work by Pager and her colleagues has shown how even employers who

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<sup>21</sup> Clear, Todd R. *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*. New York: Oxford University Press. 2007.

<sup>22</sup> Bruce Western, Meredith Kleykamp, and Jake Rosenfeld. “Did Falling Wages and Employment Increase U.S. Imprisonment, Princeton University.” *Social Forces* 84, 2006.

<sup>23</sup> Devah Pager, Bruce Western and Bert Bonikowski, “Discrimination in a Low-Wage Labor Market: A field experiment,” *American Sociological Review*, Vol.74, Oct. 2009.

indicate in surveys a higher interest in hiring individuals formerly in prison are no more likely to hire them in practice.<sup>24</sup> This research points up how criminal sanctions that render people virtually unemployable can undermine the goals sought through improvement of reentry policies, casting those who are struggling to support themselves and their families onto the public welfare rolls.

Bruce Western has documented the impact of incarceration on the labor market and the family in terms of low wages, unemployment, and poverty rates. Men who have been imprisoned experience a 30 to 40 percent reduction in earnings, a 15 percent reduction in hourly wages, and an increased likelihood of poverty. Western explains how incarceration impedes family formation and damages existing marital bonds, breaking up vulnerable families by increasing the likelihood of divorce. He argues that since marriage is an institution that has been shown to foster desistance from crime, the destructive effects of incarceration may create yet more crime.<sup>25</sup>

The “get tough” philosophy that has driven the prison boom also has spawned a decade of research on the counter-productive, collateral consequences of irrational harsh punishment. The authors of “Unlocking America” summed up the complex social and economic barriers faced by those who are processed through the criminal justice system.<sup>26</sup>

Prisoners face exceptional problems from their stigmatized and reduced social and civil status. They are automatically barred from most city, county, and state employment and from some housing such as federally subsidized housing and are systematically denied employment by many private employers. Their right to vote varies from state to state, even from county to county in some states.

Even without imprisonment, the permanent stain of a felony conviction marks people as targets for social exclusion. Jeff Manza and Chris Uggen have explored the dilemma of felony disenfranchisement, documenting how laws denying felons the right to vote impacts disproportionate numbers of Black and Latino citizens, adding to the legal, social, and psychological burdens they carry as they seek a path toward a law-abiding life. Manza and Uggen present evidence suggesting that people with convictions who are able to vote are less likely to reoffend.<sup>27</sup>

The work of scholars like Western, Pager, Manza, and Uggen point to the need for new sentencing policies that reclassify some lower-level, non-violent, felony crimes to the misdemeanor level, or increase judicial discretion and flexibility to designate

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<sup>24</sup> Devah Pager and Lincoln Quillian, “Walking the Talk? What employers say versus what they do.” *American Sociological Review*, Vol. 70, June 2005.

<sup>25</sup> Western, Bruce. *Punishment and Inequality in America*. Russell Sage Foundation, 2006.

<sup>26</sup> Austin.

<sup>27</sup> Manza, Jeff and Christopher Uggen. *Locked out: Felon disenfranchisement and American democracy*, New York: Oxford University Press, 2006.

such felonies as misdemeanors on a case-by-case basis, and to restore civil liberties for people facing conviction who have not caused serious harm, so that they will be able to participate fully in civic life, and secure employment and housing as they strive toward a more constructive, crime-free life in the community.

### **EVIDENCE-BASED PRACTICES GAIN ATTENTION**

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In the mid-1970s, some criminal justice researchers expressed deep skepticism about the success of intervention programs in improving the ability of people convicted of crimes to correct their behavior and become fully functioning members of society. Over the past three decades, however, extensive research by social scientists and criminologists has helped to spur reconsideration of treatment and other viable correctional interventions.

Using “meta-analysis” studies and cost-benefit techniques, researchers have identified effective approaches and principles for design and implementation of treatment interventions. Researchers Mark W. Lipsey and Francis T. Cullen have reviewed empirical evidence on the positive effects of sanctions and supervision on recidivism.<sup>28</sup> Findings from such research efforts have renewed interest in correctional options that demonstrate more effective outcomes in terms of success under community supervision, reduced recidivism, and less cost to the taxpayer. Research findings covering outcome evaluations for treatment and community supervision, and recent cost-benefit studies highlight both the fiscal and public safety advantages of these strategies.

A growing number of state and federal policymakers are rethinking mandatory minimum sentencing laws that require automatic prison terms for those convicted of drug offenses in the light of research showing the public safety advantages of treatment over incarceration. In recent testimony before the United States Sentencing Commission on the impact of mandatory minimum penalties in federal sentencing, Marc Mauer, Director of the Sentencing Project, suggested it is unlikely they reduce offending for several reasons.

First, deterrence is mostly a function of the certainty, not severity, of punishment. Second, there is a replacement effect in play in drug-sale offenses where a new seller is ready to fill the void left by the arrest of his or her predecessor. Third, meta-analysis studies suggest that mandatory penalties themselves may be criminogenic in that longer prison sentences provide greater opportunity to learn more and enhanced criminal behavior. Finally, mandatory sentences make successful reintegration into society more difficult for individuals who are out of touch with

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<sup>28</sup> Mark W. Lipsey, and Francis T. Cullen, *The Effectiveness of Correctional Rehabilitation: A review of systematic reviews*, *Annual Review of Law and Social Science*, Vol. 3 (2007).

their families and communities for long periods of time, increasing the likelihood of recidivism.<sup>29</sup>

## THE ROLE OF ADDICTION TREATMENT

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Lipsey and Cullen reviewed empirical evidence on the effects of sanctions and supervision on recidivism.<sup>30</sup> They have identified three key findings to help direct the improvement of correctional system performance:

- Every meta-analysis done to date has found that increasing the severity of sanctions at best produces only modest reductions in recidivism; at worst, it results in increased recidivism,
- Every meta-analysis of large-sample studies finds greater reductions in recidivism for programs that offer treatment, as opposed to those that do not, and
- Nearly every meta-analysis of “specific rehabilitation treatments or approaches” finds reduced levels of recidivism.

These findings suggest that being more punitive can produce less constructive, more harmful consequences for people convicted of crimes, for their families and communities, and, ultimately, for victims of crime. Viewed from an economic and public-safety standpoint, the choice between prison and substance abuse treatment for most individuals convicted of nonviolent offenses should be an easy one. A rational cost-benefit calculation favors treatment hands down.

Data from the National Center on Addiction and Substance Abuse reveals that from 1996 to 2006 there was a 43.2 percent increase in the number of substance-involved individuals behind bars – 1.9 million, of whom almost 1.5 million met medical criteria for alcohol, drug abuse, and/or dependence the year prior to arrest, fully 64.5 percent of the incarcerated population.<sup>31</sup> A third (32.9 percent) of the 2.3 million people under incarceration have a mental health disorder and a quarter (24.4 percent) have both a substance use and mental health disorder. And yet, as all three levels of government in the U.S. spent \$74 billion in court, incarceration, probation, and parole costs to process, convict, and house substance-involved adults and juveniles in 2005, federal and state governments spent only \$632 million, of their estimated \$48 billion in criminal justice expenses, on prevention and treatment.

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<sup>29</sup> Marc Mauer, testimony prepared for the United States Sentencing Commission on The Impact of Mandatory Minimum Penalties, Wash. DC, May 27, 2010.

<sup>30</sup> Mark W. Lipsey, and Francis T. Cullen, The Effectiveness of Correctional Rehabilitation: A review of systematic reviews, *Annual Review of Law and Social Science*, Vol. 3 (2007).

<sup>31</sup> CASA. “Behind Bars II: Substance Abuse and America’s Prison Population.” New York: National Center on Addiction and Substance Abuse. February 2010.

A landmark RAND Corporation study comparing the impacts of different law enforcement strategies to treatment for heavy users of cocaine found that treatment is far more effective than mandatory minimum prison sentences. The RAND research team estimated that money spent on treatment for people prosecuted on federal cocaine charges should reduce serious crimes against both property and persons about 15 times more effectively than incarceration.<sup>32</sup>

The U.S. Department of Health and Human Services evaluation of clients in publicly funded treatment programs found that drug use dropped by 41 percent in the year after treatment. The proportion of clients selling drugs dropped by 78 percent and the proportion arrested on any charge dropped by 64 percent.<sup>33</sup> The “CALDATA” study in California found that for every tax dollar invested in substance abuse treatment, taxpayers saved seven dollars in future crime-and health-related costs.<sup>34</sup>

Staff at the Washington State Institute for Public Policy (WSIPP) conducted extensive research on the costs and benefits of program interventions that might be expected to reduce crime. Findings released in 2003 show that for those convicted of drug offenses, a dollar invested in imprisonment produces just \$0.37 in crime-reduction benefits, while Washington’s drug courts produce \$1.74 in benefits for each dollar spent.<sup>35</sup>

A study of the Drug Treatment Alternative to Prison (DTAP) program conducted by the Center on Addiction and Substance Abuse at Columbia University (CASA) found that treatment is effective, even for individuals with very significant criminal histories.<sup>36</sup> DTAP, which is run by the office of the District Attorney in Brooklyn, NY, treats repeat felony offenders addicted to heroin, crack, and powder cocaine who have already spent an average four years behind bars. Despite the obstacles, more than half graduate from the program.

CASA researchers found that DTAP participants, who receive 15 to 24 months of residential drug treatment, were less likely to be re-arrested or re-incarcerated than members of a matched comparison group who were sentenced to prison. After two years, those placed in DTAP were 26 percent less likely to be arrested, 36 percent

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<sup>32</sup> Caulkins, Jonathan P. and C. Peter Rydell, William Schwabe, James R. Chiesa “Are Mandatory Minimum Sentences Cost-Effective?” Santa Monica, CA: RAND Drug Policy Research Center. 1998.

<sup>33</sup> U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. “The National Treatment Improvement Evaluation Study (NTIES) Preliminary Report: The Persistent Effects of Substance Abuse Treatment—One Year Later.” Washington, DC: SAMHSA. 1996.

<sup>34</sup> California Department of Alcohol and Drug Programs. “Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment (CALDATA).” Sacramento, CA: California State Department of Alcohol and Drug Programs. 1994.

<sup>35</sup> Barnoski, Robert and Steve Aos. “Washington State’s Drug Courts for Adult Defendants: Outcome Evaluation and Cost-Benefit Analysis.” Olympia, WA: Washington State Institute of Public Policy. March 2003.

<sup>36</sup> CASA. National Center on Addiction and Substance Abuse at Columbia University. 2003. Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to-Prison (DTAP) Program.

less likely to be reconvicted and 67 percent less likely to return to prison than the matched comparison group. The Brooklyn District Attorney's innovative program was a "first" for prosecutors in New York, and it helped to set the stage for reform of New York's infamous Rockefeller drug laws.

## EVIDENCE-BASED COMMUNITY SUPERVISION CAN REDUCE RECIDIVISM AND CRIME

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Many efforts are underway across the U.S. to improve the effectiveness of probation and post-prison supervision with strategies that can win better compliance with supervision requirements, shorten time under supervision, and reduce recidivism. Sweeping changes to probation and parole supervision in Maryland have been rigorously evaluated and the results are remarkable.<sup>37</sup>

Judith Sachwald was faced with a problem-plagued system when she was appointed to direct the Maryland Division of Parole and Probation in 2000. Sachwald immediately set about creating a new model for community supervision. Based on research findings on what works in correctional services, the program design for Proactive Community Supervision (PCS) rests on four key prescriptive elements:

1. Use a standardized tool to assess criminal characteristics.
2. Engage people under supervision to join their personal desires and goals to a focus on dealing with criminogenic issues.
3. Emphasize achievement of behavioral goals via positive and negative reinforcers.
4. Maintain an environment where people under supervision can take incremental steps and learn from missteps or small relapses.

The goal of assessment and classification was identification of the “criminogenic needs” of individuals under supervision. This process provided a flexible model of supervision focused on the typical types of criminogenic traits of those under supervision. The typologies and associated behavioral responses sought include:

- **Disassociated:** develop a pro-social, social-support network
- **Drug-involved addict:** achieve abstinence from illicit drug use
- **Drug-involved entrepreneur:** obtain prosocial employment
- **Domestic violent:** control power and control issues
- **Mental health:** address mental health issues
- **Sex offender:** control sexually deviant behavior
- **Violent:** address violent tendencies

Supervisors and line staff received intensive training on a variety of topics including motivational interviewing, interpersonal communication, team building, conflict management and resolution, decision-making, evidence-based practices, and strengthening community partnerships.

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<sup>37</sup> Ríos, Néstor and Judith Greene “Reducing Recidivism: A Review of Effective State Initiatives,” with Nestor Rios. New York: Justice Strategies. April 2009.

## MEASURING PCS'S IMPACT

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Evaluation of the PCS community supervision model was undertaken by a team of researchers led by Faye Taxman. She found that PCS cases involved far more contacts than traditional supervision cases. Yet while PCS agents provided more scrutiny over people they supervised, they were not more likely to sanction them for their noncompliant behavior. And statistical analysis revealed that people supervised under PCS had a *42 percent lower rate of rearrest* for new crimes than those supervised using traditional methods. The technical violation rate was also lower for the PCS group: 35 percent compared to 40 percent of the non-PCS group.<sup>38</sup>

While PCS presents important lessons about how community supervision can reduce rule-breaking and improve public safety, the “Unlocking America” team of experts warns that policymakers should realize that simply lengthening the terms of supervision is not likely to improve outcomes.<sup>39</sup>

There is little evidence that lengthy parole and probation terms decrease crime. A number of studies in California discovered that 1) there was no relationship between the time on supervision and parole success, and 2) parole versus no parole supervision on recidivism rates. Probation or parole supervision failure is most likely to occur within the first 12 months of supervision; thereafter, supervision is more of a nuisance than a means for assisting people after prison or preventing them from committing another crime.

## DIVERTING PEOPLE WITH MENTAL ILLNESS

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Many public officials are reviewing their sentencing and release practices, and have begun to recognize that mental health treatment systems can successfully perform the functions of sentencing individuals convicted of crimes to community-based mental health options, diverting these people from incarceration, and ultimately preparing them for release from confinement.

National studies indicate that estimates of the number of mentally ill in state prison populations vary from jurisdiction to jurisdiction and from one period of time to another. According to a recent article, one researcher suggested that 10-15 percent of state prisoners are seriously mentally ill, a second researcher felt the range covered 10-20 percent, and other researchers argue for 15-16 percent.<sup>40</sup>

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<sup>38</sup> Taxman, Faye S. “No Illusions: Offender and Organizational Change in Maryland’s Proactive Community Supervision Efforts.” *Criminology and Public Policy* 7:2, June 2008.

<sup>39</sup> Austin.

<sup>40</sup> Lurgio and Snowden.

Program and policy initiatives aimed at diverting those with mental illness, those with substance abuse problems, or those with co-occurring disorders, share the objectives of increasing public safety and reducing recidivism. A new consensus is emerging that community-based options are more likely than civil or criminal confinement to achieve these twin objectives.<sup>41</sup>

A team of experts commissioned by the National Sheriffs Association used recent data from the Bureau of Justice Statistics at the U.S. Department of Justice to estimate the odds that a person with a serious mental illness would be in a jail or prison, rather than a psychiatric hospital.<sup>42</sup> They found that more than three times more seriously mentally ill persons were in jails and prisons than in hospitals.

Looked at by individual states, in North Dakota there are approximately an equal number of mentally ill persons in jails and prisons compared to hospitals. By contrast, Arizona and Nevada have almost ten times more mentally ill persons in jails and prisons than in hospitals. It is thus fact, not hyperbole, that America's jails and prisons have become our new mental hospitals.

Arizona ranked next to last (49<sup>th</sup> among the states) in likelihood of having mentally ill individuals in hospitals. Nationally, in less than three decades, the percentage of seriously mentally ill prisoners has almost tripled. Forty percent of individuals with serious mental illnesses have been in jail or prison at some time in their lives. The report's authors concluded that, "Any state can solve this problem if it has the political will by using assisted outpatient treatment and mental health courts and by holding mental health officials responsible for outcomes."

## **HIGH PRISON COSTS VS. COMMUNITY CORRECTIONS BENEFITS**

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Arizona's prison budget has reached a record \$1 billion, 12 percent of the total state budget.<sup>43</sup> The research evidence, based upon the experience in other states and referenced in this report, suggests several ways to safely and economically reduce Arizona's prison population.

Restoring judicial sentencing discretion, elimination of mandatory minimum sentences, and modification of "truth in sentencing laws" allows people convicted of low-level, non-violent crimes to be sentenced to shorter terms of incarceration or treatment with community supervision. "Merit time" or "earned time" systems can

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<sup>41</sup> Immarigeon, Russ and Judith Greene. "Diversion Works: How Connecticut Can Downsize Prisons, Improve Public Safety and Save Money with a Comprehensive Mental Health and Substance Abuse Approach." New York: Drug Policy Alliance. April 2008.

<sup>42</sup> Torrey, E. Fuller et. al. "More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States." Alexandria, VA: The National Sheriffs Association. May 2010.

<sup>43</sup> Fischer.

provide incarcerated people incentives to participate in education, work programs, or rehabilitation programs in exchange for shorter time behind bars. Evidence-based probation and post-prison supervision practices can assure that diverting people from prison to probation and releasing prisoners to supervision in the community will improve public safety and save tax dollars.

A team of analysts at the Washington State Institute for Public Policy has conducted extensive cost-benefit research to identify cost-effective program interventions for adults and juveniles, as well as primary prevention programs that demonstrate statistically significant reductions in crime outcomes.<sup>44</sup> Program interventions that are shown to be “smart investments” include cognitive-behavioral programs, drug treatment, vocational education, and employment programs. Effective prevention investments that bring significant returns in terms of crime reduction include early childhood education, “nurse-family partnerships” for young mothers and their children, parent-child interaction therapy, and incentives for high-school graduation.

The WSIPP analysts urge that policymakers be smart investors as they consider correctional options, because some programs work, while some do not. If chosen with care, many types of affordable interventions can reduce reliance on prison, save scarce taxpayer dollars, and help to lower crime rates. “Our analysis of evidence-based and economically sound options for corrections indicates that there are ways to provide more cost-effective use of taxpayers’ monies.”

### **“MERIT TIME” SAVES MILLIONS**

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Spiraling prison costs have renewed interest in “earned time” and “merit release” programs that provide incentives for constructive use of time served behind bars. New York’s “Merit Time” program was signed into law by Governor George Pataki in 1997. People serving prison sentences for a nonviolent, non-sex crime can earn a one-sixth reduction off their minimum term through achievement of a “milestone” goal, qualifying them more quickly for parole consideration. “Milestones” include obtaining a GED or vocational certificate, completing an alcohol or drug-abuse program, or performing 400 hours of service on a community work crew. New reforms enacted in 2009 increase Merit credits for people who take college courses, enroll in state-approved apprenticeships, or work as a prison-hospice aide.

Department of Correctional Services (DOCS) managers report that almost 38,000 people had earned a Merit parole hearing by the end of 2006. The great majority (78 percent) were serving a sentence for a drug violation. Sixty-three percent of

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<sup>44</sup> Drake, Elizabeth, Steve Aos and Marna G. Miller. “Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State.” *Victims and Offenders*, Vol. 4. 2009.

them were released.<sup>45</sup> Research on return-to-prison rates over a period of three years for those earning Merit release shows a lower rate of recidivism: 31 percent, compared to 39 percent for other people released from prison.<sup>46</sup>

## **COST SAVINGS ESTIMATES**

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DOCS researchers estimate that those who earn Merit release slice more than six months off their minimum sentence, saving an average of \$15,464 per release, for a total savings between 1997 and 2006 of \$372 million.<sup>47</sup> While these population control tools also help to restrain correctional costs, some of the cost savings estimates made by correctional managers have not produced any net reduction in overall expenditures on prison system operations.

From 1999 forward, the New York State prison population declined on a steady curve, but actual budget savings are hard to achieve unless prisons are actually closed. The administration repeatedly proposed closure of prison facilities, but until the economic downturn drove drastic budget cuts in 2009, the politics of prison closure trumped practical budget concerns. To make matters worse, other elements of the prison budget ballooned, erasing any cost savings achieved through application of DOCS' powerful population control tool kit.

Across the river in New Jersey a combination of drug policy reforms and parole system improvements since 1999 have opened the door to significant fiscal savings with no apparent adverse impact on public safety. In June 2009, DOC managers closed the Riverfront State Prison, a 1,000-bed prison in Camden, with annual operating costs of \$42 million.<sup>48</sup>

A significant motivation for downscaling prison systems has been the need to conserve our precious tax dollars in the face of a severe economic downturn. State officials have produced a variety of calculations to illustrate budget savings that have been achieved through reduced reliance on incarceration. But most agree that saving significant amounts of tax dollars requires closure of entire prison facilities.

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<sup>45</sup> The parole board approved merit release for 69 percent who had earned a merit hearing, but because the hearing usually precedes the actual release, not all are released before their normal parole eligibility date.

<sup>46</sup> New York State Department of Correctional Services. (2007) "Merit Time Program Summary: October 1997 – December 2006." Online at <http://www.docs.state.ny.us/Research/annotate.asp#merit>

<sup>47</sup> DOCS. "Merit Time Program Summary"

<sup>48</sup> Associated Press Wire Service, January 15, 2009.

## **COST/BENEFIT ANALYSTS ACROSS THE POLITICAL SPECTRUM ADVISE CONTROLLING COSTS**

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In 1999, the same year that prison populations began to shrink in New York and New Jersey, the Manhattan Institute published a report of cost/benefit analysis conducted by a team of conservative analysts. They urged a rethinking about the wisdom of continuing prison capacity expansion.<sup>49</sup>

It is likely that the community costs associated with additional incarceration would increase as the incarceration rate increases. One reason for this is that prison may lose its value as a penalty if it is seen as commonplace. A second reason is that high incarceration rates may undermine the legitimacy of the government if citizens come to see the government as too intrusive and coercive. Of course, low incarceration rates may have that effect too, if citizens come to feel that the government is not “doing enough” about crime. Thus, it is important to get the level of incarceration “right” for reasons of justice as well as to ensure the prudent use of tax dollars. Given the dramatic increases in the proportion of the population under correctional supervision in recent years, these costs must be considered.

A new study published by the Center for Economic and Policy Research proposes that reducing reliance on imprisonment of people convicted of non-violent crimes could wring billions of dollars from correctional budgets.<sup>50</sup>

A reduction by one-half in the incarceration rate for non-violent offenders (who now make up over 60 percent of the prison and jail population) would lower the overall incarceration rate to the level reached in 1993 (which was already high by historical standards). This would also lower correctional expenditures by \$16.9 billion per year, with the large majority of these savings accruing to state and local governments. These projected savings would amount to almost one-fourth of total corrections budgets. The extensive research on incarceration and crime suggests that these budgetary savings could be achieved without any appreciable deterioration in public safety.

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<sup>49</sup> Piehl, Anne Morrison, Bert Unseem and John Dilulio. “Rightsizing Justice: A Cost-Benefit Analysis of Imprisonment in Three States.” New York: The Manhattan Institute. September 1999.

<sup>50</sup> Schmitt, John, Kris Warner, and Sarika Gupta. “The High Budgetary Cost of Incarceration.” Washington DC: Center for Economic and Policy Research. June 2010.

## **IMPROVING PUBLIC SAFETY WHILE DOWNSCALING PRISONS**

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The record in “downscaling states” is clear. Reducing prison populations does not increase crime rates. Changing the sentencing guidelines for drug possession and improving community corrections and parole supervision helped Kansas officials to avoid the cost of building a new prison. Prison managers were able to close a women’s camp in 2008, saving \$480,000.<sup>51</sup> In 2009, prison capacity was reduced by 447 unneeded, minimum-security, prison beds.<sup>52</sup> Reduction in the state’s prison population levels since 2003 has not diminished public safety. By 2008, the violent crime rate had fallen by three percent, while property crime fell by 16 percent.

The downscaling process in Michigan that was initiated in 2007 has clearly not produced increased levels of crime in the state. While prison population levels spiraled downward, crime rates also fell – with a reduction in violent crime of 11 percent between 2006 and 2008, and a nine percent reduction in property crime.

Since 1999, when New Jersey’s prison population began to fall, a combination of drug policy reforms and parole system improvements set the stage for significant state budget savings, and – again – there has been no negative impact on public safety. Between 1999 and 2008, the rate of violent crime dropped by 21 percent, while property crime fell by 23 percent.

Meanwhile, the state of New York has set national records for both crime reduction and prison downscaling. The state’s prison population hit a high-water mark in 1999, dipping thereafter by 20 percent. And yet FBI crime data show that by 2008 violent crime had fallen by 32 percent since 1999, and property crime fell by 26 percent. The downscaling experience in New York should give policy makers across the nation great confidence that reducing reliance on imprisonment can be accomplished without jeopardizing the public’s safety.

## **STRENGTHENING HIGH-RISK COMMUNITIES WITH JUSTICE REINVESTMENT**

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As policymakers move to control and reduce prison costs, an increasing number of them are embracing the concept of “Justice Reinvestment,” whereby cost savings wrung from sentencing or correctional reforms are channeled back to improve and expand community supervision and/or treatment programs, or invested in efforts to improve housing, and educational opportunities for people living in high-crime, high-incarceration neighborhoods.

The emerging concept of Justice Reinvestment springs from counter-intuitive research findings such as those cited above that mass incarceration carries negative

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<sup>51</sup> Manning, Carl. “2 prison units to close earlier than planned.” *Fort Mill Times*, January 23, 2009.

<sup>52</sup> Hanna, John. “Kansas prisons chief: Budget cuts may shorten sentences.” *Kansas City Star*, August 24, 2009.

impacts for inner-city urban neighborhoods where it perpetuates a cycle of crime and incarceration. Billions of precious tax dollars are spent to imprison large numbers of people from impoverished urban communities. Yet investment in iron bars and razor wire provides relatively little return in terms of public safety, especially when compared with the positive benefits that can be gained by providing substance-abuse treatment, housing, education, and jobs. Justice Reinvestment involves reducing spending on prisons and investing a portion of the savings into infrastructure and civic institutions located in high-risk neighborhoods.

Since a national Justice Reinvestment project was introduced at the Council of State Governments, 14 states (Arizona, Connecticut, Indiana, Kansas, Michigan, Nevada, New Hampshire, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, and Wisconsin) have taken up strategies designed to implement the concept.

One of the most ambitious Justice Reinvestment projects has been initiated in Kansas. When correctional managers began to turn their attention to reducing prison costs in 2006, other state officials partnered with the Council of State Governments to embark on an ambitious plan for justice reinvestment in one of the state's high-risk neighborhoods. They understood that a lasting reduction in crime and recidivism rates would depend on efforts to revitalize the neighborhoods where people had been living when they committed the crimes that sent them to prison, and on the provision of substance abuse, mental health, employment, and housing services in the communities to which they would return.

Aided by staff at the Justice Mapping Center, they were able to pinpoint the multiple problems that gave Wichita's Council District 1 the highest incarceration rate in Kansas, accounting for \$11.4 million in spending for its prison commitments over the course of a single year. People from District 1 were using more than twice the number of prison beds as any other Wichita council district.<sup>53</sup>

State agency officials are working with staff at local city agencies on a comprehensive plan for neighborhood revitalization. Members of the state legislature are collaborating with city council members, and a community advisory committee includes representatives of the local housing and police departments, along with people from the faith community.

Since up to a third of the people released from prison who return to District 1 are homeless or lack appropriate housing options, the heart of the revitalization plan – “The New Communities Initiative” – is a neighborhood-based housing development project that will target the district's hundreds of abandoned houses and blighted properties. Several banks, hospitals, private foundations, schools, and universities have joined the community development collaboration.

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<sup>53</sup> Michael Thompson, Tony Fabelo and Eric Cadora, “Building Community Capacity to Reduce Crime and Save Prison Space” (Council of State Governments PowerPoint presentation to the Wichita Summit, April 18, 2005).

## JUSTICE REINVESTMENT IN ARIZONA

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Corrections professionals in Arizona struggle with unbridled prison population growth. Recent projections indicate that if current trends continue, the state prison population will grow by 52 percent over the next ten years, twice the rate of increase projected for the state's general population, costing taxpayers billions of dollars. Analysis of population growth reveals the high rate of failure among people on community supervision as the primary driving factor behind prison growth: parole and probation revocations account for 17 and 26 percent of admissions respectively.

Geographical analysis conducted by the Justice Mapping Center showed that a handful of neighborhoods contribute a greatly disproportional share of the people who go to prison and return upon release. South Phoenix contains just one percent of state residents yet accounts for more than six percent of the prison population. The cost of incarcerating residents from a single Phoenix zip code mounts to \$70 million annually.

The Arizona Department of Corrections is collaborating with the U.S. Department of Justice and Maricopa County government and services providers in the Phoenix Metro area to develop a plan to reduce crime and incarceration rates in such high-risk neighborhoods. To begin, they decided to focus on a specific area and review the ways in which people returning to this area were supervised by ADC Community Corrections (commonly referred to as "parole").

Changing the style of supervision to incorporate evidence-based practices such as motivational interviewing and collaborative approaches with community service providers could reduce the number of warrants issued for technical violations. The Legacy Project, a pilot program in South Phoenix's 85040 and 85941 zip code areas, was initiated by ADC in 2007. Soon after, the model was replicated by the Maricopa County Adult Probation Department within the 85041 zip code area.

Zip codes 85040 and 85041 have concentrations of poverty, crime, and delinquency that have spanned decades, with half of the area's families receiving public welfare, food stamps, and/or state-funded health benefits. Some thousand people return to the neighborhood from prison each year.

Prior to release, eligible people who will return to 85040/41 are housed together for "transition-specific planning." They meet the parole agents who will work with them after release to help them and their families achieve stability.

The effort is to move the focus away from a "zero tolerance" approach to technical rule violations toward assessment of criminogenic factors such as poverty, unemployment, substance abuse, and mental illness. Supervision agents are teaming up with city, state, and federal community providers, sharing office space

and facilitating access to needed services such as obtaining personal identification, employment and educational resources, health insurance, unemployment or disability benefits, and nutrition assistance. Referrals are given to offenders who need substance abuse and mental health treatment.

To further advance the principles of Justice Reinvestment and reduce the rate of probation violation, the Arizona Legislature enacted Senate Bill 1476, the “Safe Communities Act,” in December 2008. The measure created incentives for success for those sentenced to county-based probation supervision. Probationers are eligible to have their supervision term reduced by 20 days for each month of compliance with probation conditions, performance of community service, and payment of restitution to victims. Any county probation agency that sees a reduction in recidivism and revocations was to receive 40 percent of the prison bed savings to provide greater access to drug treatment and training programs, and to expand services to victims of crime.

A report compiled by the Administrative Office of the Courts indicates that, compared to fiscal year 2008 baseline data on revocations, there was a 13 percent decrease in revocations resulting in an admission to state prison during fiscal year 2009. During the same period, the rate of new felony convictions among people on probation fell by two percent.<sup>54</sup> Staff at the Joint Legislative Budget Committee estimated that more than \$6 million in prison costs were averted by revocation reductions in eight counties who met the requirements of SB 1476. They calculated that \$2,410,300 should be appropriated to increase community corrections services.<sup>55</sup> But, facing an overwhelming huge budget crisis, Arizona legislators have not made any appropriations available for the purposes set forth in the “Safe Communities Act.”

The promise of additional funds has not been the only motivation for reform of community supervision, however. Court officials say that revocation and recidivism reductions actually began some months before SB 1476 took effect. Work to incorporate evidence-based practices in probation had been initiated back in 2002, when the Administrative Office of the Courts and county probation managers began to introduce validated risk-assessment tools. National experts in the field of evidence-based practices were engaged to educate the state’s judges about the advantages the new strategies bring to strengthen community supervision.

Once the new tools were incorporated in practice, probation staff received training in evidence-based supervision techniques such as motivational interviewing and cognitive skills training. They were given case-planning tools to help them target

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<sup>54</sup> Waters, Kathy, JL Doyle and Marin Aguilar-Amaya. “Arizona Adult Probation: Probation Revocation & Crime Reduction Report, Fiscal Year 2009. Phoenix: Arizona Supreme Court Adult Probation Services Division.

<sup>55</sup> Joint Legislative Budget Committee staff memorandum. “Probation revocation and crime reduction performance funding; reports,” dated December 22, 2009.

program interventions to meet the risk and needs profiles of individuals under supervision, as well as positive reinforcement techniques to bolster motivation among the people they supervise. AOC provided a wealth of training and support to local probation staff throughout the process. Each county probation department is required to promulgate new policies and procedures to reflect the Code revisions. Facing a budget cutback in 2009, then-Chief Justice Ruth McGregor issued an executive order that covered a range of belt-tightening measures to trim the Judicial Branch budget. Superior Court Presiding Judges were urged to rely on the new probation risk-assessment tools and case-management strategies to reduce revocations to both jail and prison, to allocate supervision resources more efficiently, and to move for early termination for low-risk people who had made good progress and gained stability in the community.

Five county probation offices have been approved for full operation under AOC's new evidence-based practice Codes. The rest of the counties are on track for approval by December 2010. The target for reducing revocations under SB 1476 had been set at just five percent. Preliminary results show progress at more than double the required rate – as well as a modest reduction in new crimes – an encouraging sign that efforts made since 2002 to strengthen probation supervision are paying off in more efficient, more effective use of community supervision resources. These improvements indicate that the time is ripe for increasing judicial discretion to safely divert people with lower risk profiles to community supervision who are now mandated to prison under Arizona's harsh sentencing laws.

The Maricopa County Adult Probation Department is undergoing a major effort to implement evidence-based practices in response to the revisions of the Arizona Code of Judicial Administration.<sup>56</sup> Highlights of the new initiative in Maricopa County reflect the evidence-based strategies that have demonstrated excellent outcomes in Maryland.

- Training staff in periodic administration of risk-assessment tools and development of risk-based case plans that will target the criminogenic needs of each person under probation supervision.
- Shifting the focus of case management and interventions (e.g., cognitive-behavioral and social-learning programs; substance-abuse treatment) toward those with higher risks and needs, in recognition that low-risk probationers generally do not require intervention unless problems emerge while they are under supervision.
- Recognizing that interventions should be tailored to individual needs, as appropriate to a person's culture, gender, learning style, and motivation for change.

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<sup>56</sup> Broderick, Barbara. "Chiefly Speaking: Follow-up on Justice 20/20." *The Chronicle: Newsletter of the Maricopa County Adult Probation Department*, Vol. XXII(3), May/June 2010.

The Maricopa County Adult Probation Department has a long-standing evidence-based approach to case management for people with serious mental illness issues. To provide appropriate services and reduce their higher risk of revocation, staff who manage special caseloads for these people use risk-assessment tools to tailor case plans that reflect effective case-management strategies:

- A “Firm but Fair” supervision approach that involves caring, fairness, trust, and an authoritative (but not authoritarian) style of relating to those under supervision.
- A problem-solving approach to barriers and difficulties experienced by people with mental illness as they struggle to comply with the rules of probation supervision.
- A boundary-spanning effort to work closely as a team with mental health treatment professionals and to effectively advocate for needed services.

These skills and tools are helping to win very encouraging results with a challenging set of probationers. In fiscal year 2009, the specialized mental health units reported a 79 percent rate of successful probation completion, with just five percent of those on special caseloads being convicted for a new felony.

## CONCLUSION

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The harsh reality of the fiscal crisis coupled with a renewed interest in evidence-based programming is stimulating a national conversation about the unreasonably high level of incarceration in the U.S. and the prospects for reducing its scale while at the same time promoting better public safety outcomes. Community corrections practice in Arizona is already moving toward broad implementation of evidence-based strategies, and the preliminary results are showing great promise.

A recent report from Arizona’s Auditor General’s Office has recommended consideration of a number of improvements that could cut prison costs while increasing the effectiveness of the criminal justice system:<sup>57</sup>

- Expand diversion of those convicted of low-risk offenses to non-prison alternatives.
- Revise truth-in-sentencing laws to reduce the amount of prison time served by those sentenced for low-risk offenses.

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<sup>57</sup> *Department of Corrections – Prison Population Growth*. Office of the Arizona Auditor General. Report No. 10-08 September 2010.

- Broaden use of cost-effective non-prison sentencing alternatives – drug treatment, home arrest and day reporting.
- Reduce parole violation revocations with use of graduated sanctions such as day reporting, residential treatment and assessment centers.

The track record established in four “downscaling states” demonstrates that prison populations *can* be reduced with sentencing reforms and correctional policies designed to improve the overall performance of the criminal justice system. The fast growth in the number of states that are experiencing declines in their prison population has not been met by public outcry. More than a decade of public opinion surveys show that support has steadily increased for sensible reforms. The time is ripe in Arizona to pursue a better balance between prison costs and community corrections benefits.

Arizona policymakers can restore judicial discretion to sentence people to more effective, less costly correctional supervision and treatment options in lieu of prison in cases where such measures would clearly better serve both justice and public safety objectives. Policies can be introduced to shorten prison terms with incentives for constructive activities. Pragmatic changes to “truth in sentencing” provisions have not proved controversial in states that have adopted them. Efforts to improve community supervision of people sentenced to probation, as well as those who return home from prison, are helping to restore our confidence in the American courts and correctional systems.

## ABOUT THE AUTHOR

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Judith Greene is a criminal justice policy analyst and director of Justice Strategies. From 1985 to 1993 she was Director of Court Programs at the Vera Institute of Justice, where she was responsible for planning and development of a variety of demonstration programs designed to improve the efficacy of both pretrial release and sentencing practices. Subsequently she served as program director for the State-Centered Program of the Edna McConnell Clark Foundation, as a research associate for the RAND Corporation, and as a senior research fellow at the University of Minnesota Law School. In 1999 she received a Soros Senior Justice Fellowship from the Open Society Institute. Over the past year she has worked as a research associate for the Drug Policy Alliance, The Sentencing Project, the NAACP, and the Mississippi ACLU.

Ms. Greene's articles on criminal sentencing issues, police practices, correctional policy and prison privatization have appeared in numerous publications, including *The American Prospect*, *Corrections Today*, *Crime and Delinquency*, *Current Issues in Criminal Justice*, *The Federal Sentencing Reporter*, *The Index on Censorship*, *Judicature*, *The Justice Systems Journal*, *Overcrowded Times*, *Prison Legal News*, *The Rutgers Law Journal*, and *The Wake Forest Law Review*. Her work has been cited in the *New York Times*, the *Washington Post*, the *Wall Street Journal* and the *Los Angeles Times*, as well as hundreds of local newspapers across the nation.

She has presented papers for scores of organizations and conferences, including for the American Civil Liberties Union, the Open Society Institute, the Canadian Centre for Policy Alternatives, the British Columbia Provincial Court Judicial Conference, the Freidrich Ebert Stiftung's International Conference on Police Policy, the German Association for Social Work, Criminal Law and Crime Policy, the Academy of Criminal Justice Sciences, the Economic Policy Institute conference on Privatization, the Minnesota Sentencing Commission, the Maryland Commission on Criminal Sentencing Policy, and the Youth Law Center. She has presented legislative testimony on sentencing and corrections policy in California, Colorado, Connecticut, Georgia, Maryland, Michigan, New Jersey, New Mexico, New York, and Texas.

## CURRICULUM VITAE

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### **JUDITH GREENE**

139 Washington Avenue  
Brooklyn, NY 11205  
718-857-3316

### PROFESSIONAL EXPERIENCE

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2000 – Present: **JUSTICE STRATEGIES**, Director.

Justice Strategies conducts research and policy analysis on criminal sentencing issues, correctional policies and practices, immigration enforcement and detention issues, police policies and practices, and public opinion on crime and justice issues. Our current research activities include analysis of opportunities for policy reform at the federal, state and local levels on a broad variety of issues, including police practices, mandatory minimum drug laws, Justice Reinvestment strategies, and mandatory detention and removal of immigrants. Over the past year we have conducted policy research in collaboration with the Drug Policy Alliance, The Sentencing Project, the NAACP, and the Mississippi ACLU.

1999 – 2000: **OPEN SOCIETY INSTITUTE**, Senior Soros Justice Fellow

Conducted research on prison privatization. Research activities include compiling case studies on the impact of privatization in a number of key states: Minnesota, North Carolina, Tennessee, and Texas. The fellowship project produced a number of publications: magazine and journal articles, “op-eds,” as well as widely circulated policy briefs for state officials, human rights advocates, community and labor organizers regarding the impact of privatization on state and local correctional policies, communities, prisoners, and their families.

1997 – 2001: **RAND CORPORATION**, Research Associate

Conducted research and drafts reports for a number of research projects, including the national evaluation of the impact of the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) provisions of the 1994 Federal Crime Act, and . Research activities involved tracing historical developments resulting in “get tough” legislation; and conducting case studies of the impact of privatization on correctional management issues in Florida, North Carolina, and Texas.

1996 – 1999: **INSTITUTE ON CRIMINAL JUSTICE/UNIVERSITY OF MINNESOTA  
LAW SCHOOL**, Senior Fellow

Developed and conducted research and technical assistance projects for the Institute on Criminal Justice. Her research activities include directing a multi-disciplinary team study of prison privatization sponsored by the Minnesota Department of Corrections; and research on attitudes toward restorative justice among criminal justice practitioners in Vermont. Technical assistance activities include design and management of semi-annual workshops on sentencing and correctional issues for state-level criminal justice officials from states that participate in the ICJ's State Partnership for Criminal Justice program.

1993 – 1996: **VERA INSTITUTE OF JUSTICE**, Director of the State Centered Program of the Edna McConnell Clark Foundation

Responsible for planning, development, and management of the Foundation's state-centered reform effort which offered technical assistance to states which were making efforts to reform sentencing and corrections policies to expand the use of intermediate sanctions and bring rates of prison population growth under control. The program promoted improvements in sentencing practice and correctional systems through efforts to improve the policy process and enhance the capacity state-level officials and policymakers to reduce reliance on incarceration and foster development of alternatives to incarceration for appropriate offenders.

1985 – 1993: **VERA INSTITUTE OF JUSTICE**, Director of Court Programs

Responsible for planning and development of demonstration programs designed to improve the efficiency of pretrial release, sentencing practices, and administration of intermediate criminal penalties. These activities included initiation of pilot projects in Staten Island, New York, and Phoenix, Arizona, introducing the European day fine system to American courts, and direction of the technical assistance component of the "Structured Fines National Demonstration Project" for the Bureau of Justice Assistance; responsibility for development of Vera's Community Service Sentencing Project in the New York City Criminal Courts; and both design and management of a three-site demonstration of an innovative intensive supervision program for pretrial releasees.

1986 – 1989: **PROSECUTING ATTORNEYS RESEARCH COUNCIL**,  
Program Consultant

Assisting prosecuting attorneys with the development of sentencing alternatives in their local jurisdictions.

- 1982 – 1985: **VERA INSTITUTE OF JUSTICE**, Community Service Sentencing Program Director.  
Responsible for management of Manhattan, Brooklyn and Bronx Borough Projects; planned and directed an expansion into the Borough of Queens in 1985.
- 1981 – 1982: **VERA INSTITUTE OF JUSTICE**, Borough Director, Manhattan Community Service Sentencing Project.  
Planned and initiated the Manhattan Borough Project.
- 1980 – 1981: **NATIONAL INSTITUTE FOR SENTENCING ALTERNATIVES, BRANDEIS UNIVERSITY**, Director  
Developed and managed a training and technical assistance program designed to foster the use of alternatives to traditional criminal sanctions in local court jurisdictions.
- 1978 – 1980: **NATIONAL CENTER FOR YOUTH LAW/YOUTH LAW CENTER**, Research Associate/Planner  
Analyzed public policy and advocated legislative reforms to improve the legal rights of poor and minority youth. Primary concentration in juvenile justice and youth employment rights. Designed and implemented an evaluation component for a project which entailed litigation and law reform activities in six target states.
- 1978 - 1979: **NATIONAL ECONOMIC DEVELOPMENT LAW CENTER**, Training Consultant  
Gave technical assistance to community development organizations in planning CETA services linked to community economic development.
- 1977 – 1978: **APPROACH ASSOCIATES**, Research Analyst  
Planned and evaluated programs in criminal justice and substance abuse treatment. Primary concentration in alternatives to incarceration and community corrections; correctional work programs, vocational training, and prison industries.
- 1977: **SAN FRANCISCO PHOENIX CORPORATION**, Planning Director  
Responsible for planning and fund raising for a demonstration project providing employment and training services for criminal offenders on parole.

1975 – 1977: **SAN FRANCISCO SHERIFF'S DEPARTMENT**, Director of Women's Resources

Planned and developed programs for three women's jail facilities. Designed and implemented a work release program for women prisoners. Developed citation release guidelines for both the Sheriff's Department and the San Francisco Police Department. Conducted field research on the enforcement of the prostitution laws by the police, the courts, and corrections.

1975: **NORTHEAST COMMUNITY MENTAL HEALTH CENTER**, Vocational Counselor

Assisted criminal offenders with substance abuse problems.

1974: **SAN FRANCISCO SHERIFF'S DEPARTMENT**, Deputy Sheriff

Performed duties as a correctional officer assigned to the maximum security women's jail.

1973 – 1974: **MEHARRY MEDICAL SCHOOL ALCOHOL AND DRUG ABUSE PROGRAM**, Offender Services Coordinator

Developed services for incarcerated offenders with substance abuse problems. Designed and implemented court advocacy unit for alternative sentencing component of a multi-modal drug treatment program. Conducted group counseling for prisoners in state institutions.

1974: **VANDERBILT UNIVERSITY HOSPITAL**, Substance Abuse Counselor

Conducted group counseling for first offenders in a diversion program.

1971 – 1973: **THE HOUSE BETWEEN**, Project Coordinator

Developed program services for residential alternative project serving adult and juvenile women offenders. Provided counseling and developed educational and employment resources.

## **PUBLICATIONS, MONOGRAPHS, AND REPORTS**

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“Misplaced Priorities,” with Eric Cadora and Jason Ziedenberg. Baltimore: forthcoming from the NAACP.

“NUMBERS GAME: The Vicious Cycle of Incarceration in Mississippi’s Criminal Justice System,” with Patricia Allard. New York: forthcoming from Justice Strategies.

“Downscaling Prison: Lessons from four states.” Washington, DC: Joint publication of the Sentencing Project and Justice Strategies. March 2010.

“Winds of Change: New Developments in Criminal Justice Politics and Policies in the USA.” Paper presented in Berlin at the national conference of DBH Fachverband für Soziale Arbeit, Strafrecht und Kriminalpolitik (the German Association for Social Work, Criminal Law and Crime Policy). September 2009.

“Market Madness: How Neo-Liberal Dogma Has Speeded Growth of the Vast American Gulag.” Paper presented at the International Prison Privatization Experience: A Transnational and Transpacific Dialogue, Barbara Jordan Mickey Leland School of Public Affairs Texas Southern University. August 2009

“Positive Trends and Best Practices in Criminal Justice Reform: A National Overview.” Report presented at the “Counting the Costs” hearing convened by New Jersey General Assembly Majority Leader Bonnie Watson Coleman on May 6, 2009.

“Reducing Recidivism: A Review of Effective State Initiatives,” with Nestor Rios. New York: Justice Strategies. April 2009.

“Maryland’s Parole Supervision Fee: A Barrier to Reentry,” with Rebecca Diller and Michelle Jacobs. New York: The Brennan Center of the New York University School of Law. March 2009.

“Local Democracy on ICE: Why state and local governments have no business in federal immigration law enforcement,” with Aarti Shahani. New York: Justice Strategies. February 2009.

“Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers,” with Mark Mauer and Ashley Nellis. Washington DC: The Sentencing Project. August 2008.

“Diversion Works: How Connecticut Can Downsize Prisons, Improve Public Safety and Save Money with a Comprehensive Mental Health and Substance Abuse Approach,” with Russ Immarigeon. New York: Drug Policy Alliance. April 2008.

“Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies,” with Kevin Pranis. Washington, DC: Justice Policy Institute. July 2007.

“Banking on the Prison Boom,” in *Prison Profiteers: Who Makes a Buck from Mass Incarceration*, Eds, Paul Wright and Tara Herival. New York: The New Press. 2007.

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“Cutting Correctly in Maryland: New Prison Policies for Times of Fiscal Crisis.” A Justice Policy Institute Report. Washington, DC: Center for Juvenile and Criminal Justice. February, 2003.

“Bailing Out Private Jails.” In *Prison Nation: The Warehousing of America’s Poor*. Eds. Tara Herival and Paul Wright. London and New York: Routledge Press. 2003.

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"Governmental Restraints on the Employment of Sixteen- and Seventeen-year-olds: Vestiges of a Bygone Era." *Clearing-House Review*, Vol. 13, No. 12, April, 1980. With James Morales.

*Youth Employment Advocacy Issues.* 1979. Washington, D. C.: Legal Services Corporation Research Institute. With Deborah Bachrach and Larry Glantz.

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*Master Plan for New Mexico Mental Health Services.* 1978. Oakland: Approach Associates. With Mark Morris, Howard Schecter and others.

*Master Plan for New Mexico Corrections.* 1977. Oakland: Approach Associates, 1977. With Alan Kalmanoff, Mark Morris and others.

*Women Patrol Officers in Newton Massachusetts.* 1977. Oakland: Approach Associates. With Carol Kizziah and others.

*Alternatives to Incarceration in Alaska.* 1977. Oakland: Approach Associates. With Alan Kalmanoff and others.

## PRESENTATIONS AND MEDIA APPEARANCES

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“Drug Enforcement and Racial Disparity.” Panel presentation at the “Transforming Race 2010: Crisis and Opportunity in the Age of Obama,” national conference of the Ohio State University’s Kirwin Institute. Cincinnati, OH. March 2010.

“Expanding Freedom of Information Act Accountability to all Federal Prisons and Detention Facilities.” Testimony at a Congressional Briefing convened by Representative Shirley Jackson Lee. Washington, DC. January 2010.

“Winds of Change: New Developments in Criminal Justice Politics and Policies in the USA.” Presentation in Berlin at the national conference of DBH Fachverband für Soziale Arbeit, Strafrecht und Kriminalpolitik (the German Association for Social Work, Criminal Law and Crime Policy). Berlin. September 2009.

“Positive Trends and Best Practices in Criminal Justice Reform.” Lead testimony before the “Counting the Costs” hearing, convened by of New Jersey General Assembly Majority Leader Bonnie Watson Coleman. May 2009.

“Reducing Recidivism: Evidence-Based Practices.” Testimony before a special joint session of the Colorado House and Senate Judiciary Committees. April 2009.

“The Impact of ‘Drug-Free School Zones’ on Racial Disparity.” Testimony before the Judiciary Committee of the Connecticut Legislature. March 2009.

“Alternatives to Detention: Decarceration or Widening Nets?” Presentation for the Detention Watch Network, Washington, DC. January 2009.

“Gang Interventions: What Works, What Doesn’t.” Panel presentation at Congressman “Bobby” Scott’s Youth Violence Summit. Washington, DC. December 2008.

“Mass Incarceration of Immigrants.” Panel Presentation at the NAACP Annual Conference. Cincinnati, Ohio. July 2008.

“Confidential Informants: Foot Soldiers in Mississippi’s War on Drugs.” Panel presentation for the ACLU Drug Law Reform Project Informant Roundtable. Washington, DC. June 2008.

“The Failed War on Gangs: Is There a Way Out?” Panel presentation for the Open Society Institute Justice Fellows Retreat. San Francisco. June 2008.

“School Zones: Disparity by Design.” Panel presentation for “Break the Chains” Annual Conference. Baltimore, MD. June 2008.

“Justice Reinvestment.” Testimony before a joint public hearing of the New York State Assembly Standing Committee On Codes, the Assembly Standing Committee On Judiciary, the Assembly Standing Committee On Correction, the Assembly Standing Committee On Health, the Assembly Standing Committee On Alcoholism And Drug Abuse, and the Assembly Standing Committee On Social Services. May 2008

“Prisons for Profit.” Interview on PBS Now, national broadcast. May 2008.

“Effective Gang Interventions.” Panel presentation for the New Jersey Institute on Social Justice. Newark, NJ. May 2008.

“Prisons for Profit.” Interview appearance on PBS Now, broadcast May 5, 2008.

“The Immigrant Detention Boom.” Seminar for 2008 Coro Foundation Fellows. New York City. April 2008.

“Gang Ties: the Untold Truths.” Panel presentation for the Ohio ACLU. Cleveland, OH. January 2008.

“Cracking Connecticut’s Crack/Powder Disparity Law.” Panel presentation at Rainbow/Push Annual Conference. Chicago, June 2007.

“Not Far Enough: Taking Stock of Progress in the National Reentry Effort.” Panel presentation at the Open Society Institute’s Reentry Advocates Retreat. November 2006.

“Sentencing Reform and Justice Reinvestment.” Testimony at the New York State Commission on Sentencing Reform. New York City. November 2007.

“Opportunities and Obstacles to Correctional Reform.” Benedict Center Annual Address. Milwaukee, Wisconsin. April 2006.

“The Federal Immigrant Detention Industry.” American Bar Association Panel presentation at the National Press Club. Washington, DC February 2006.

“Criminal Justice Reforms: Implications for Immigrants’ Rights Advocates.” Paper presented at a national convening of criminal justice and immigrant advocates jointly sponsored by the Open Society Institute, the JEHT Foundation, and the Ford Foundation. New York. December 2005.

“Sentencing and Reentry Reforms: Research Findings and Future Prospects.” General Session at the National Task Conference in Arlington, Virginia. September 2004.

“Privatization of County Jails: Prospects and Pitfalls,” Debate panel at the National Association of Counties Annual Conference. Phoenix, Arizona. July 2004.

“The Abu Ghraib Factor: American Prison Tactics at Home and Abroad.” The Books in Berlin Lecture Series. June 2004.

“Secret Detention of Immigrants After 9/11 – The Human Rights Crisis in New York City.” Panel presentation at the Second German-American Symposium on Preventing Bias-motivated Violence. Berlin, Germany. June 2004.

“Positive Trends in State Sentencing and Corrections Policy.” Panel moderator at the State Strategies for Criminal Justice Reform conference. Baltimore, Maryland. November 2003.

“Entrepreneurial Corrections: Incarceration as a Business Opportunity.” Lecture at Cornell University. Ithaca, New York. November 7, 2002.

“Immigrant Detention and Incarceration: Reform Strategies.” Panel moderator at the Detention Watch Conference. Washington, D.C. September 21, 2002.

“Private Police and Private Prisons.” Presentation at the Police Associations and Community Conflict seminar for the National Coalition of Public Safety Officers. San Diego, California. September 4, 2002.

“Private Prison Pitfalls.” Presentation for Citizens Against Private Prisons. Jackson Hole, Wyoming. July 27, 2002

“Broken Promises: Two Decades of Experience with Prison Privatization in the United States.” Panel presentation at a public forum sponsored by the Canadian Centre for Policy Alternatives. Vancouver, Canada. May 29, 2002.

“Prison Privatization: Best Practices; Worst Practices.” Lecture at the Campbell Public Affairs Institute, Maxwell School of Citizenship and Public Affairs, Syracuse University. March 7, 2002.

“Cutting Correctly: Corrections Policies for a Time of Fiscal Crisis.” Panel presentation for Families Against Mandatory Minimums. February 22, 2002.

“Debates, Debates.” A nationally-syndicated TV broadcast debate on prison privatization in the US. New York, NY. January 2002.

Canadian Broadcasting Company “Counterspin.” A live national TV broadcast debate on prison privatization in North America. Toronto, Canada. March 2001.

“The Federal Bail Out of Private Prisons.” Presentation at the Corrections and Criminal Justice Coalition annual conference. Orlando, FL. January 2001.

"Getting Tough: A Quarter Century of Sentencing Policy in the U.S." Presentation at the British Columbia Provincial Court Fall Education Seminar. Vancouver, Canada. November 2000.

"Private Prisons for Immigrant Prisoners." Panel presentation at the annual Detention Watch conference. Chevy Chase, MD. November 2000.

"Private Prison Deficiencies and Human Rights Abuses." World Research Group annual conference on Prison Privatization. San Antonio, TX. September 2000.

"Preliminary Findings of a Privatization Study in Minnesota." Panel presentation at the Academy of Criminal Justice Sciences. Orlando, FL. March, 1999.

"Preliminary Findings from the Minnesota Study of Prison Privatization." Presentation and Workshop Moderator for the University of Minnesota Law School Private Prison Workshop. Minneapolis, MN. January, 1999.

"Privatization of Prisons: Critical Issues for State Policymakers." Presentation for the RAND Criminal Justice Program Workshop. Santa Monica, CA. January, 1999.

"Prison Privatization: Punishment for Profit?" Panel moderator for the Campaign for Effective Crime Policy conference. Washington, DC. November, 1998.

"Privatization of Correctional Services: Critical Issues for State Policymakers." Briefing panel presentation for the Center on Crime, Communities and Culture. New York, NY. May, 1998.

"Zero Tolerance Policing in New York City" International Conference on Crime Prevention sponsored by the Friedrich Ebert Stiftung. Berlin, Germany. May 1998.

"Critical Issues in Privatization of Correctional Services." Presentation for the Institute on Criminal Justice, State Partnership Workshop. Phoenix, AZ. October, 1997.

"The Future of Sentencing Policy." Lead panel presentation at the Academy of Criminal Justice Sciences. Louisville, KY. March, 1997.

"Correctional Options in Community Corrections." Presentation for the Maryland Commission on Criminal Sentencing Policy. The Aspen Institute, Maryland. December, 1996.

"Best Practices for Non-Incarcerative Sentencing Options." Presentation for the Maryland Commission on Criminal Sentencing Policy. Great Oaks Center, Maryland. October, 1996.

"Recent Trends in Public Opinion about Crime and Criminal Justice." Workshop for the National Foundation for Women State Legislators. New York, NY. July, 1996.