

# INSIDE *ALEC*

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

 **FOCUS ON  
PUBLIC SAFETY**

**ALEC Defends  
Second Amendment**

**The National Popular Vote  
Threatens Federalism**

**Principles to Improve  
Corrections Policy on  
Tight Budgets**

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# Getting Corrections Policy Right

## 10 Tips for Tough Budget Times

BY MARC LEVIN, Texas Public Policy Foundation

Americans are increasingly recognizing that public policies must not only be tough on crime, but also smart so that government is not too tough on taxpayers.<sup>1</sup> At a time when many priorities are competing for a smaller pool of funds, policymakers across the nation are looking for cost-effective strategies to reduce crime, restore victims, and reform offenders so that they can be productive members of society, helping to pull the wagon rather than riding in it.

Texas' recent corrections reforms redirected a small share of funds that would otherwise have gone for new prisons and reinvested them into less costly crime-fighting programs that deliver more public safety bang for the buck. From 2004 to 2008, the Lone Star state's crime rate per 100,000 residents declined 10.8 percent while the incarceration rate dropped 9.2 percent. Also, the number of crimes alleged against parolees has declined by more than 1,000 from 2007 to 2008, as parole and work-force agencies have increased the use of graduated sanctions, implemented an instant drug test followed by immediate referrals to treatment, and enhanced

parolee job training and placement.

Texas is not alone. Connecticut has pursued a similar strategy of strengthening the front end of the criminal justice system instead of building more prisons and recently was able to close a prison, thereby saving \$3.4 million, due in part to declining crime.

Since Connecticut began its justice reinvestment initiative in 2003 to strengthen probation supervision and treatment, more offenders are successfully completing their probation and the index crime rate declined 8.2 percent from 2003 to 2008.<sup>2</sup>

The trend in Texas and Connecticut in recent years of both lower crime and incarceration rates went nationwide in 2009. After 38 straight years of increases in state prison populations, state prison populations dropped 0.4 percent in 2009 at the same time the violent crime rate fell 5.5 percent and the property crime rate fell 4.9 percent.<sup>3</sup>

By keeping 10 key concepts in mind, policymakers can achieve further gains



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for public safety, victims, and taxpayers.

**Criminal justice is different from many other policy areas because there is clearly a legitimate and vital role for government; therefore, public safety must be prioritized over non-core governmental functions.** When one person harms another by violating a criminal law, only the government has the authority to determine guilt, hold the offender accountable, and restore the victim. Particularly when it comes to serious and/or chronic violent and sexual offenders, there is little dispute that incarceration does one thing well—protect the public by incapacitating these offenders for long periods. Just as importantly, the criminal justice system, and particularly the probation system which handles the greatest number of offenders, must ensure victims receive restitution and, whenever possible, reform offenders, most of whom are non-violent.

**Criminal justice agencies must be held accountable just like other government programs.** While performance measures and accountability are often discussed in areas such as education, too often they receive short shrift in criminal justice, though no goal is of greater importance than public safety. For the prison, probation, and parole systems, policymakers must insist that benchmarks such as the rate of re-offending and serious re-offending, victim restitution collected, and offender employment rate be measured and reported.<sup>4</sup> Furthermore, funding should be based not solely on the number of individuals incarcerated or supervised as is currently typical, but partly on the results achieved. In 2008, Arizona lawmakers enacted Senate Bill 1476 that gives local probation departments a share of the savings to the state from fewer probationers going to prison if they reduce both the number of their probationers revoked to prison and the number convicted of

new crimes. There are additional incentives for increasing restitution collections, probationers' employment rate, and the percent of probationers who pass drug tests.<sup>5</sup>

**Criminal justice spending can be trimmed, but cuts must be made in the right places so that public safety is maintained or enhanced.** On average, states spend 88 percent of their corrections budgets on prisons.<sup>6</sup> Therefore, the greatest savings to be gained are typically through closing unneeded prisons by diverting more appropriate, non-violent offenders to probation and other alternative sanctions. Yet New York, for example, has kept partly empty prisons fully staffed simply as government jobs programs.<sup>7</sup> More than twice as many offenders are on probation or parole as are in prison, though these systems account for only 12 percent of the typical state corrections budget.<sup>8</sup> In many states, each county has their own probation department and bears some or all of the cost. Accordingly, there may be an incentive for local jurisdictions to revoke probationers to prison for a rules violation—not a new offense—rather than place them in a more intensive probation supervision program, in a substance abuse or mental health treatment program, or even in county jail for a brief period because the revocation shifts the cost and headache to the state. While policymakers should seek to identify efficiencies in the probation system, budget policies that result in increased caseload sizes or reduce the capacity of treatment and alternative sanctions programs may lead to much higher overall costs by increasing prison revocations.

**Gather data on who is entering prison and why, as well as sentence length.** Improving corrections policies requires basic information that is often elusive. Here are some key questions to ask:

- What percentage of inmates are non-violent offenders? How many offenders enter prison in your state for low-level drug possession?
- What percentage of these offenders had no prior convictions for a property, violent, or sex offense? How long is their prison sentence on average?
- What percent of probationers and parolees sent to prison are revoked solely for rules violations, not a new crime, and how long is their average prison term?
- Are some counties over-utilizing the prison system for low-risk, non-violent offenders? Creating a funding incentive system that allows counties that reduce their use of prisons for such offenders to keep part of the savings for community-based corrections programs can be a win-win for public safety and state taxpayers.

**Ensure that all bills that create new crimes or enhance penalties have accurate fiscal notes.** Many states have a process for evaluating pending legislation to determine if it will result in costs to state or local taxpayers. Sometimes efforts to get tougher on offenders through creating more crimes and enhancements can be too tough on taxpayers. Consider that every prosecution requires the valuable time of prosecutors, judges, and, in many cases, appointed counsel for indigent defendants paid for by taxpayers, along with the cost of whatever sentence is imposed. Too often, fiscal notes don't account for many of these actual costs.

**Examine less costly alternatives to the traditional criminal justice process such as victim-offender mediation.** In a mediation, the victim and offender reach a binding agreement that typically requires restitution and community service. If the offender fully performs the agreement, the case is not referred for prosecution. Mediation is often used in

property offense cases, particularly for first-time offenders, and must be chosen by both the victim and the offender, since the offender is required to take responsibility for his conduct. Statutes authorizing mediation have been enacted in 14 states.<sup>9</sup> Restitution agreements are fulfilled in 89 percent of cases whereas most court-ordered restitution is never collected.<sup>10</sup> A multi-site study found that 79 percent of victims who participated in mediations were satisfied, compared with 57 percent of victims who went through the traditional court system.<sup>11</sup> In mediation programs in the U.S. and Canada, victims who went through mediation were more than 50 percent less likely to express fear of re-victimization than victims who participated in the traditional adversarial process.<sup>12</sup> Mediation can also reduce recidivism as the offender often realizes the harm they have caused, develops empathy, and, without a criminal record, is better able to maintain or obtain employment. A meta-analysis found that 72 percent of programs lowered recidivism.<sup>13</sup> Mediation costs as little as \$75 per case, far less than the traditional system.

#### **Utilize risk and needs assessments.**

Quantitative instruments that evaluate the individual risk and needs factors of each offender can help achieve recidivism reduction and efficiency by matching risk and needs to the correctional strategy. Accordingly, probationers and parolees who pose a greater risk receive the most supervision, while avoiding counterproductive over-supervision of low-risk offenders. Research has found that when probation departments focus a greater share of their resources on high-risk offenders, these offenders are less likely to recidivate and be revoked to prison and that, conversely, over-supervising low-risk offenders can increase recidivism.<sup>14</sup> For example, for an employed first-time drunk driver with no other risk factors, coming to the proba-

tion office a couple times a week during business hours may do more harm than good at the same time it wastes taxpayers' money. The *Illinois Crime Reduction Act* passed in 2009 requires the system-wide use of risk and needs assessment tools that will be integrated electronically throughout an offender's involvement in the system, eliminating duplication in the administration of these instruments.<sup>15</sup> For states with a parole system, risk assessment instruments can assist in parole decision making by helping to identify those individuals who are least likely to re-offend. It is vital that any sort of parole or earned release program include such screening to identify the appropriate, low-risk inmates, as well as evidence-based reentry policies that have been demonstrated to increase the success rate in the difficult transition from incarceration to a productive, law-abiding lifestyle.<sup>16</sup>

#### **Review inmate health care costs and consider alternatives for geriatric inmates who no longer pose a danger to the public.**

Federal courts have held that inmates have a constitutional right to health care, which after staffing is the second largest component of incarceration costs. States vary widely in spending on inmate medical care, as California spends more than twice as much as Texas.<sup>17</sup> In Texas alone, there are 4,252 inmates age 61 or over who consume a highly disproportionate share of health care costs.<sup>18</sup> Some states have implemented or are considering policies to identify elderly inmates who no longer are a risk to public safety and create a special parole process, including possible transition to a nursing home facility where most of their health costs would be covered through Medicare, Medicaid, or veterans' benefits.<sup>19</sup> Incarcerated individuals are ineligible for these programs.

#### **Rethink sentencing laws to determine whether some of these poli-**

#### **cies are requiring that funds be used for incarceration which could instead be used in a way that produces more public safety for every dollar spent or returned to taxpayers.**

Sentencing statutes that require mandatory minimum prison terms, particularly for non-violent offenses, should be subject to particularly close scrutiny to evaluate the cost and benefits. The late Supreme Court Chief Justice William Rehnquist said mandatory minimums are "perhaps a good example of the law of unintended consequences."<sup>20</sup> Americans for Tax Reform President Grover Norquist recently noted, "Viewed through the skeptical eye I train on all other government programs, mandatory minimum sentencing policies are not worth the high cost to America's taxpayers." Cookie-cutter mandatory minimums prevent judges and juries from crafting a just sentence based on the individual facts of the case. Since 2009, New York, Rhode Island, Minnesota, and New Jersey have either repealed or significantly scaled back their mandatory minimums applicable to drug offenders.

#### **Avoid the temptation to resort to warehousing.**

In-prison educational, treatment, and vocational programs are vulnerable in tight budget times since inmates are understandably not the most popular constituency. But these programs aren't primarily about them; they are about those of us who will be living among the 95 percent of inmates who are ultimately released. To be sure, all prison programs should be closely scrutinized to determine whether they reduce recidivism and those that are not cost-effective should be revised or eliminated. However, a meta-analysis of the best existing empirical research finds that in-prison vocational programs where inmates earn certificates to enter a trade upon release produce the greatest net benefit of any correctional program.<sup>21</sup> The study further found that

in-prison literacy and basic education programs as well as drug treatment programs also produce greater savings to victims and taxpayers in crime reductions and re-incarceration than their upfront cost.<sup>22</sup> In states with parole, there is anecdotal evidence that decision makers are more likely to approve an inmate for release who has completed such a program, which can result in fur-

ther savings. Policies that divert appropriate non-violent offenders from prison and into evidence-based probation programs can generate savings within the corrections budget. That may then leave sufficient funds for programs through which those who require incarceration spend that time doing what it takes to reenter society as an asset rather than as a menace.

While incarceration will always be necessary for some offenders, there is growing evidence and support for policies that recognize that prison is not the answer for every problem and that emphasizing other strategies to hold offenders accountable and restore victims can achieve greater results for every taxpayer dollar spent. ■

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