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RISING PRISON COSTS: RESTRICTING BUDGETS AND CRIME PREVENTION OPTIONS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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RISING PRISON COSTS: RESTRICTING BUDGETS AND CRIME PREVENTION OPTIONS

WEDNESDAY, AUGUST 1, 2012

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:06 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Grassley, Hatch, and Lee.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Today the Judiciary Committee considers the important issue of prison costs. We find more and more people incarcerated for longer and longer, but what I am hearing from Governors of both parties and certainly seeing at the Federal level is that Federal, State, and local budgets are facing enormous strains, which in turn takes money away from budgets that we might use to prevent crimes in the first place. So, again, the idea of do we have correctional officers or do we have police officers?

At a time when our economy has been struggling to recover from the worst recession in 75 years, everybody's budget is strained, Federal and State, and we have to check whether the money is being wisely spent with overincarceration or whether we should spend elsewhere. There is mounting evidence that building more prisons and locking people up for longer and longer—especially nonviolent offenders—is not the best use of taxpayer money. In fact, it is an ineffective way of keeping our communities safe.

Between 1970 and 2010, the number of people incarcerated grew by 700 percent. If you look at the prisons throughout the whole world, about a quarter of the prisoners are locked up here in the United States. I put that in perspective because we have about 5 percent of the world's population; we have almost 25 percent of the people locked up. There are 1.6 million people in State and Federal prisons, and more than 700,000 are in local jails. Seven hundred thousand is more than the population of my State of Vermont. We incarcerate about one in every 100 adults.

At the Federal level, over the last 5 years, our prison budget has grown by nearly $2 billion. In 2007, we spent approximately $5.1 billion on Federal prisons. This year, the Federal Bureau of Prisons requested over $6.8 billion. To do that, we will have to spend less money for Federal law enforcement, less aid to State and local law enforcement, less funding for crime prevention programs, and less

funding for prisoner reentry programs. As we spend more money to keep people locked up, we have less to spend on the kinds of programs that evidence has shown works to keep crime rates down.

In the States, the problem is also acute. We have seen the U.S. Supreme Court affirm a mandate that California release thousands of prisoners to alleviate unconstitutional overcrowding. We have seen police departments reduce the rolls of officers on the beat. We have seen successful crime prevention programs shutting their doors.

In my State of Vermont, massive increases in prison costs prompted action. Between 1998 and 2008, the prison population had grown by 86 percent, and the projection was it would continue to grow. From 1996 to 2008, spending on prisons almost tripled, from $48 million a year to $130 million a year. Keep in mind this is a State of 650,000 people. With massive additional increases projected, the State instituted sentencing reforms that reduced the number of prisoners and saved $18.3 million in corrections costs—$6 million of which was put into programs to keep people from committing the crimes in the first place. And recidivism dropped by 9 percent. Our violent crime rate dropped 5 percent between 2008 and 2010 while the changes were taking place. The property crime rate dropped 10 percent over the same period of time. The reforms not only save money, they keep communities safer. It is probably one of the reasons why Vermont has one of the two or three lowest crime rates in the country.

Several other States, including very conservative ones, have adopted sentencing reforms and other policy changes. Texas has reduced its prison population by steering nonviolent drug offenders to treatment rather than prisons. They saw their crime rate drop by more than 8 percent, but they also saved $2 billion.

So this is a bipartisan issue. Sentencing reform works. Taxpayer dollars can be used more efficiently to prevent crime rather than just build more prisons.

The U.S. Justice Department seems to finally be recognizing the perils of continuing the current trend. I will put that in the record. I think sometimes Congress has moved in too often the wrong direction—I know I made some mistakes in some of these votes—by imposing new mandatory minimum sentences unsupported by evidence while failing to reauthorize crucial programs like the Second Chance Act.

So there are ways we can save billions of dollars and make the justice system safer. As I said, I will put my full statement in the record.

[The prepared statement of Chairman Patrick J. Leahy appears as a submission for the record.]

Chairman LEAHY. I want to yield to my long-time friend and partner here, the Senator from Utah, Senator Hatch.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman.

Chairman LEAHY. The senior Senator.

Senator HATCH. Thank you, Mr. Chairman. I appreciate you and your leadership.

Good morning to everybody. We are here to discuss a rather important but delicate issue surrounding the rising costs of prisons. The Federal prison population is growing. Over the last 15 years, the Bureau of Prisons' budget has increased from 15 percent to 24 percent, almost one-quarter of the total Justice Department budget. If we do not start to address the issue, it could result in reductions in the budget of Federal law enforcement agencies and pose threats to public safety.

However, it is critical that we approach this issue carefully and reasonably and responsibly. The safety of the American public is of paramount concern, as far as I am concerned. This hearing is a good start to exploring viable and responsible solutions to these rising costs, and I look forward to future hearings and continued discussion on the issue, and I intend to work with our Chairman to resolve these problems.

I am happy to have Brett Tolman here this morning, as well as the other witnesses who are here. We respect you. Brett is Utahan. He is a graduate of BYU Law School and a former Hatch staffer. Brett worked for us on the Committee back in 2003 and 2004 as Counsel on the Senate Judiciary Committee, and in 2004 he became Chief Counsel for Crime and Terrorism on this Committee. He went on to proudly serve as a U.S. Attorney in Utah from 2006 to 2009, and we are proud of him. Brett has a unique perspective as he has experience in this area from both the policy standpoint as well as his experience as a U.S. Attorney prosecuting cases.

I want to apologize to the witnesses this morning because I will have to leave pretty quickly because I have a Finance Committee hearing that is going to start momentarily, but I wanted to be present for the start of this hearing to convey my interest in this serious and important issue.

I am just very pleased to be a member of this Committee. This Committee does an awful lot of important work in this country, and we just really appreciate the time that you witnesses have taken to come and help us to understand these issues better. We are very grateful to you, and I will certainly pay pretty strict attention to whatever your remarks are today.

Thank you, Mr. Chairman.

Chairman LEAHY. Well, thank you, Senator Hatch. Thank you for what you said about Mr. Tolman. I did tell him when he came in here that he was one person that did not need somebody to tell him how to find the room or where to go.

Senator HATCH. That is right.

Chairman LEAHY. And he is probably unique among witnesses. He has the distinction that both you and I have voted for him.

Senator HATCH. That is right. Now, that is a real tribute to you.

[Laughter.]

Senator HATCH. Let me just say this. I am going to ask unanimous consent that a statement by Senator Grassley be placed in the record.

Chairman LEAHY. Of course.

Senator HATCH. Thank you, Mr. Chairman.

[The prepared statement of Ranking Member Chuck Grassley appears as a submission for the record.]

Chairman LEAHY. We have a lot of Utah here. We have Senator Lee, also from Utah. Mr. Tolman was confirmed before Senator Lee was in the Senate.

Our first witness is Edward Davis, Commissioner of the Boston Police Department since 2006. Obviously that is an area I watch. I remember even as a young prosecutor going there and meeting with the district attorney of Suffolk County and talking about what was going on in Boston. In this capacity, Commissioner Davis has emphasized community policing and predictive policing through initiatives like the Safe Street Teams and Operation Ceasefire to reduce gang violence. He had served earlier as superintendent of police in Lowell, Massachusetts, for 12 years, received numerous awards, including the National Leadership Award in 2002 from the Police Executive Research Forum. He is a founding member of the Massachusetts Major City Chiefs. He has an undergraduate degree from New Hampshire College in Manchester, New Hampshire, a master's degree in criminal justice from Anna Maria College in Paxton, Massachusetts.

Commissioner, we are delighted to have you here.

Please go ahead, sir.

STATEMENT OF EDWARD F. DAVIS, POLICE COMMISSIONER, BOSTON POLICE DEPARTMENT, BOSTON, MASSACHUSETTS

Mr. DAVIS. Good morning, Mr. Chairman and Senator Hatch and Senator Lee. It is an honor to be here and to discuss these very important matters. Again, my name is Edward Davis. I am the police commissioner in Boston.

Drug abuse still plagues our Nation. In 2010, an estimated 22.6 million Americans aged 12 or older reported being current illicit drug users, and drug-related crime continues to rise at a strong and steady pace.

From a criminal justice standpoint, I believe that arresting our way out of this problem is not the solution. Addiction and profit are huge motivating factors, making the threat of long-term incarceration alone not enough to prevent recidivism.

In Boston, we use a strategic approach to decrease overall crime. In urban communities across the United States, there are a small number of people committing a disproportionate amount of crime.

Starting in 2006, we carefully targeted these individuals, and our overall crime rate dropped 30 percent at the end of 2011 over those years, with a projection of an even greater decrease in the year 2012. Not only did our crime rate decrease, but so did our arrest rate by 35 percent during the same time period—contradicting the theory that arrest and prosecution alone can solve the problem of crime and violence on our streets.

I have been a police officer for 33 years. I come from a family of police officers. For many years, I was very fortunate to lead a regional unit that investigated organized crime and narcotics while working closely with our partners from the Massachusetts State Police and Drug Enforcement Administration. I even did cases in Burlington, Vermont, Senator.

I did this during a time when harsh penalties were being fully implemented during the Nation's War on Drugs. I, along with every narcotics officer across the Nation during those years, faith-

fully arrested and assisted in the prosecution of thousands of drug users and suppliers.

I witnessed the terrible price of drug abuse and what it does to individuals, families, and society. And I learned that this method of mass arrest and strict prosecution alone will not work.

Arrest is a vital tool but not the key. Incarceration temporarily keeps drug users and dealers off our streets, but does little to impact recidivism, as evidenced in a recent Georgia study that found that the 2-year recidivism rate among drug-court participants was 7 percent, compared with 15 percent for those on probation alone and 29 percent for drug users who simply served time in State prison.

To be successful in reducing the crimes that are fueled by drug abuse, a strategic, thoughtful approach is needed. Our focus must be on the right people, those who are committing the large number of drug and violent offenses.

This is an effort that requires rich partnerships, including other law enforcement agencies, but also health and human service agencies and community stakeholders like businessmen and educators.

In Boston, we have a long history of valuing partnerships. We work closely with the Department of Probation to monitor Boston's most violent probationers with GPS ankle bracelets. GPS have proven to be a valuable tool in helping our investigators identify suspects and witnesses as well as to rule them out, increasing the certainty and swiftness of punishment. GPS mandated post release for drug offenders can be critical in reducing the recidivism rate by allowing enforcement of stay-away orders as well as helping to alleviate the financial burden of incarceration.

We have come to realize that arrest can be more than an enforcement component of this problem. It can also be useful in encouraging if not forcing treatment alternatives. Programs like HOPE—Hawaii's Opportunity Probation with Enforcement—in Hawaii make it clear that a public health response to drug abuse will free up beds in our Nation's prisons—beds that can be better utilized for those who are serving time for violent criminal activity. Results from a 1-year followup evaluation of probationer outcomes found that only 21 percent of HOPE participants had been re-arrested versus 47 percent of those who did not participate in the program.

As a Police Commissioner of a large city in this country, I, along with my colleagues, must focus our resources, our precious resources, and those of the judicial system on those individuals who commit violent crime.

Punishment should target those who cause injury to others and those who commit crimes with weapons of any kind.

Last year individuals randomly sprayed a Boston neighborhood with fire from an AK47. Our laws currently are not equipped to deal with this type of mayhem. And certainly the example foremost in our minds is the recent tragedy in Aurora, Colorado, bringing this problem to the public's attention once more.

A stricter focus on violent offenders is critical to drive down unacceptable levels of homicides in our cities. These are the people that we should be incarcerating. Strong laws on those who use weapons of any sort in perpetrating crimes should also be the priority of our Government.

It is not a secret that our prisons are overcrowded and cost us billions of dollars a year. The U.S. incarcerates some 2.3 million people at an estimated annual price tag of about $70 billion.

We need to continue our focus on taking violent offenders off our streets while creating a comprehensive response to drug offenders—one that encourages treatment and effective supervision when they are released.

By creating a balanced pragmatic approach between enforcement and prevention, we can effectively impact recidivism rates and reduce the unwieldy costs of incarceration.

Thank you.

[The prepared statement of Edward F. Davis appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Commissioner.

What I am going to do is take testimony from each of the witnesses, and then we will open it up for questions.

The next witness is Jeffrey Sedgwick, who is managing director at Keswick Advisors, which he co-founded in 2009. Prior to that he was appointed by President Bush to serve as Assistant Attorney General for the Office of Justice Programs, where he served from 2008 to 2009—another person both Senator Hatch and I voted for. In this capacity, he oversaw the activities of offices including the Bureau of Justice Assistance, the Bureau of Justice Statistics, and the Office of Victims of Crime. From 2006 to 2008, he served as Director of the Bureau of Justice Statistics. Before that, he spent 30 years as a professor at the University of Massachusetts. He earned his undergraduate degree from Kenyon College and his master's and Ph.D. from the University of Virginia.

Dr. Sedgwick, please go ahead, sir.

STATEMENT OF JEFFREY LEIGH SEDGWICK, PH.D., MANAGING PARTNER AND CO-FOUNDER, KESWICK ADVISORS, LLC, RICHMOND, VIRGINIA

Mr. SEDGWICK. Thank you, Chairman Leahy, Senator Hatch, Senator Lee.

We are all facing an unpleasant reality. We live in an austere fiscal environment that shows no sign of lifting in the near future. As a result, the criminal justice community is at a crossroads where it must make public safety expenditures more intelligently and more productively or else see the dramatic progress in reducing crime rates over the past 20 years eroded.

This is a quote from Assistant Attorney General Lanny Breuer speaking last month to the National District Attorneys Association summer conference. I could not agree with him more on the problem. I doubt if anyone in this room disagrees. However, I believe he has oversimplified the tradeoffs in public safety that we need to consider in order to make good decisions.

According to Breuer, we must recognize that a criminal justice system that spends disproportionately on prisons at the expense of policing, prosecutions, and recidivism-reducing programs is unlikely to be maximizing public safety. This suggests quite strongly that maximizing public safety is the result of a proportionate sharing of public safety spending among components of the criminal justice system. But proportionate to what?

This framing of the tradeoffs strikes me as a very incomplete view of the problem for it casts the components of the criminal justice system as rivals for shares of a fixed or, even worse, diminishing budget. A more comprehensive view of the problem would cast the issue somewhat differently. As a first step, the budget of the criminal justice system should be large enough and no larger that it minimizes the total social costs of crime, including not only public expenditures on public safety but also the costs of victimization, tangible and intangible, to the public.

As a second step, the allocation of funds among components of the criminal justice system should be guided by their demonstrated effectiveness in reducing crime. It is all too tempting to look first to the correctional system as a source of savings in a period of austerity. We have heard it said that the United States, along with the former Soviet Union and South Africa, is the most punitive country in terms of incarceration or prison. But this characterization is too simple.

For example, the probability of conviction per offense is lower in the United States than in most industrialized nations. One reason for this may be the relatively high rate of plea bargaining and charge reduction that occurs in our criminal justice system. Also, the probability of being sentenced to incarceration given conviction is not noticeably higher for the United States than for other industrialized countries. Thus, a more nuanced view is that the United States is no more likely than any other industrialized democracy to resort to imprisonment for violent offenses. Rather, our high incarceration rate is the result of our comparatively high violent crime rate. Indeed, the United States reacts to violent crime in roughly the same manner as other industrialized democracies. It just has more of it.

In April of this year, CBS aired a segment on its weekly news program "Sunday Morning" entitled, "The cost of a nation of incarceration." The unmistakable implication was that the United States incarcerates too many at too high a cost. But just how large and costly is the prison population? As we have already heard, there were 2.2 million adults incarcerated in U.S. Federal and State prisons and county jails at the end of 2010, approximately 1 percent of the U.S. resident population. A recent report of the Vera Institute calculated the average cost per inmate of incarceration for a sample of 40 States at $31,286 per person. Hence, one could estimate the total cost of incarceration nationwide in 2010 as $70.9 billion. This is surely a significant sum, but is it either disproportionate in relative terms or too large in absolute terms?

If we look at it on a per capita basis, the total cost per resident of the United States for public safety is $633, allocated $279 per person on police protection, $129 on courts, prosecution, and public defenders, and $225 on corrections. Whether that is too much or too little or disproportionately allocated would depend on the benefit each of those dollars achieves.

Now, what do we know about those benefits? To be brief, we have had an experience in the United States during the decade of 1990's with a very large decrease in crime in the United States. And we know quite a bit from research what caused it. We know that demography had something to do with it. We know that the

economy had something to do with it. We know particularly from the case of New York City that intelligent policing of the sort that Commissioner Davis just spoke about had a lot to do with it. But we also know from research that between 10 and 27 percent of the decrease that we saw in crime in the decade of the 1990's was due to incarceration. The value of that decrease in the crime rate was approximately $180 billion annually. So I think as we talk about the value of incarceration and whether or not too much or too little is being spent, we need to frame it in terms of what was bought with those dollars we invested. Thank you.

[The prepared statement of Jeffrey Leigh Sedgwick appears as a submission for the record.]

Chairman LEAHY. Thank you very much.

Brett Tolman, a shareholder, of course, at Ray Quinney & Nebeker, where he is co-chair of the firm's white-collar criminal defense and corporate compliance practice groups, has been praised by both Senator Hatch and me, and before we embarrass him further, we will ask him to please go ahead.

Mr. Tolman, welcome back to the Committee.

STATEMENT OF BRETT L. TOLMAN, SHAREHOLDER, RAY QUINNEY AND NEBEKER, PC, SALT LAKE CITY, UTAH

Mr. TOLMAN. Thank you, Mr. Chairman, Senator Lee. I appreciate this opportunity——

Chairman LEAHY. Is your machine on?

Mr. TOLMAN. Thank you. I am out of practice.

Chairman LEAHY. As Senator Thurmond used to say, "Turn on your machine."

[Laughter.]

Mr. TOLMAN. Thank you, Mr. Chairman and Senator Lee. I appreciate the opportunity to be here and testify today.

Prior to my service in the U.S. Senate and prior to being the United States Attorney in Utah, I served in perhaps one of my more beloved capacities, and that was an Assistant United States Attorney alongside with Senator Lee in the U.S. Attorney's Office. As a line prosecutor in the Federal system, I personally prosecuted hundreds of felonies. While I prosecuted mostly violent felonies, I participated in the prosecution of white-collar criminals, drug traffickers, and others. Indeed, in my nearly a decade with the Department of Justice, I was responsible for the prosecution of individuals currently serving long prison sentences—some as long as 30-plus years in Federal prison.

As I sit here testifying before this Committee, I am honored to have served in such a remarkable institution as the Department of Justice. However, my years of service also instructed me as to the great deficiencies in the Federal criminal justice system. The current one-size-fits-all approach and the warehousing of prisoners is proving to not only be dangerous to public safety but an unthoughtful misuse of precious taxpayer dollars. Experts across the political spectrum are finding themselves in agreement that the current growth of, and costs associated with, the Federal corrections system is unsustainable.

The Committee has addressed many of the statistics that are plaguing the financial crisis associated. I will not go into great de-

tail. It is interesting, though, from the 1940's and the incarceration of 24,000 Federal inmates to the near quarter of a million inmates currently being incarcerated is growth that was perhaps not anticipated, nor was it prepared for.

Meanwhile, BOP costs are growing at an alarming and unsustainable rate. From 1998 to 2012, the budget has increased 113 percent, from $3 billion to nearly $7 billion.

The BOP budget continues to swallow an increasing amount of the Department of Justice budget. You have heard reference to over the last 15 years, the enacted budget has increased from 15 percent to 24 percent of the Department of Justice's budget.

During my tenure as U.S. Attorney, which included roughly a year as a member of the Attorney General's Advisory Committee, I observed the budget become the absolute center of focus of the Department of Justice and its U.S. Attorneys. More significantly, in individual U.S. Attorney's Offices across the country, lack of funding is increasingly the reason behind failed or abandoned law enforcement obligations and partnerships.

I recently received a phone call from the police chief in West Valley City who indicated his frustration with the U.S. Attorney's Office no longer partnering with him on important task forces that they had formed. This is due solely to budget.

Over the last dozen years, Congress and the Department of Justice have been so focused on prosecuting and punishing crime—emphasizing zero tolerance and tough Federal sentences—that there has been an absolute failure to recognize that without an equal focus on recidivism reduction, the tough sentencing laws of the Federal criminal justice system may well be the downfall of a once proud and effective agency.

Anyone who has worked with me personally or observed my tenure as a Federal prosecutor would not identify me as soft on crime. As United States Attorney, I was noted as being one of the more aggressive appointees when it came to pursuing crime. I personally participated in the prosecution of Brian David Mitchell, the kidnapper of Elizabeth Smart. In my own family, we have been affected by crime, having my older sister, who was kidnapped and raped when she was in college. My father was a peace officer in Los Angeles. We have well endured the impact of crime in my personal family.

Notwithstanding, I can indicate to Congress that the Federal criminal justice system is not the shining example of the fairness in the administration of justice that it should or could be. Budgets for the U.S. Attorney's Offices are being squeezed due to the rapid growth of the BOP budget. Further, the Federal system has neither been thoughtful nor conscientious in its punishment of those it convicts.

However, the States have provided us a model and a test case. Texas, often criticized for its harsh criminal punishments, is a shining example. It was slated to open seven to eight new prisons in the mid-2000's. Instead, Texas allocated $240 million for additional diversion and treatment capacity. The end result of both hard and tough law enforcement policies and recidivism focus was an unprecedented decrease in recidivism, a savings of nearly $2 billion, and a system that informs us in the Federal system that if

we will not use a one-size-fits-all approach but instead categorize our Federal inmates according to their risk of recidivism and then allow for them to earn time rather than just simply expanding good time, as many proposals currently propose to do, this thoughtful approach will result in a decrease in crime rates, a decrease in recidivism, and an increase in budget flexibility for prosecutors.

Thank you.

[The prepared statement of Brett L. Tolman appears as a submission for the record.]

Chairman LEAHY. Well, thank you very much, Mr. Tolman, and I appreciate your personal experience in this area, although I regret that part of that involved the attack on your sister.

Mr. TOLMAN. Thank you.

Chairman LEAHY. Commissioner Davis, as one who used to be in law enforcement, I feel that we should keep our streets safe. You are charged with keeping the streets safe in Boston. But you also said that you do not find incarcerating nonviolent offenders to be the most effective way to reduce crime and reduce recidivism. What are some of the more effective ways?

Mr. DAVIS. Well, the most important thing really is swift and certain punishment, not length of punishment. Making sure that a person who is prone to commit violent crime or narcotics crime understands that ramifications are coming quickly and certainty is really the most important thing.

We do a lot of different programs in the Boston Police Department. Operation Night Light, for instance, is a partnership with our probation people in Massachusetts. We go out to the homes of individuals we have identified as most likely to shoot or be shot, and it is a small universe. It is only 250 or so people in the whole city of Boston. But we are constantly staying on those individuals and letting them know that if they do not get out of that life, there are going to be ramifications to it. So we offer them hope through different programs, but we also deliver a very stern message that if they pick up a gun, they are going to jail.

Chairman LEAHY. Thank you.

Mr. Tolman, you mentioned you served as U.S. Attorney in the District of Utah under President Bush, and you served on the Attorney General's Advisory Committee. Am I correct that you find there has been a tradeoff between the rising prison costs and the ability to have programs that might reduce crime?

Mr. TOLMAN. That is accurate. Mr. Chairman, the U.S. Attorney's Offices in particular are now very focused on budget in ways that they have not previously been. There are partnerships with State authorities that are breaking down and falling by the wayside that were very important partnerships based on the lack of ability to be flexible enough to assist. That concerns me because there are Federal laws that are very important.

I agree with the commissioner when he indicates that swift punishment—I would add that long punishment is often appropriate as well. I personally was involved in the prosecution of the kidnapper of Elizabeth Smart while I was U.S. Attorney, and I cannot in good conscience say that anything less than the many years he received is appropriate punishment. But if we do not focus on recidivism for those individuals that are likely to be rehabilitated, we will con-

tinue to warehouse a greater proportion than we are capable of being able to deter through our prosecutions.

Chairman LEAHY. I was talking to somebody earlier today. The example I used is you have somebody in a white-collar position, a stockbroker or something like that in New York City, buys $250 worth of drugs. If they are caught, they are probably going to get community service and a lecture and so on, and a fine. You have a kid who is a minority living in one of the slum areas and has $250 worth of drugs—the same amount—they are probably going to spend a few years in jail. And they are going to come out unemployable and probably have learned things in jail that they never would have learned otherwise.

Am I overstating that?

Mr. TOLMAN. No, that is not an overstatement. There have been, however, test programs such as Texas and even some of the faith-based rehabilitation and recidivism reduction efforts that were going on in the Federal system that have been able to reveal to us that you can impact those while they are incarcerated so that they are not just a revolving door, as the commissioner indicates, and continuing to commit crime.

Chairman LEAHY. Thank you.

Dr. Sedgwick, I have represented my State for several decades, and before that I was a prosecutor for 8 years. I was very much of a hands-on prosecutor. I went to crime scenes. I tried a lot of my own cases, argued a lot of my appeals. I argued for tough sentences when we had violent criminals. And you have talked about violent offenders, and I think for violent offenses—we talked about the kidnapping case from Utah that shocked the whole Nation. Everybody agrees on the serious penalty there.

But I also hear from somebody like Commissioner Davis who has a finite amount of money, has to protect a city, knows that there are pressures on his budget because of prison costs. And he says that for nonviolent offenders, simply imprisoning them for long terms does not help reduce recidivism.

Do you think there are alternatives for nonviolent offenders that could actually save the taxpayers money and lower recidivism?

Mr. SEDGWICK. In answering your question, let me think back to an article that was written several years ago by James Q. Wilson, who argued that if you look at the American prison population, it is really made up of two separate components, so it is not a homogeneous population.

One part of the American prison population are violent offenders who have done particularly horrific things, like kidnapping and rape. And they may never commit another crime like that again. Their likelihood of recidivism is very low, but we lock them up precisely because of the seriousness of what they did, and justice demands that they serve a sentence.

The other component of the criminal justice system and the prison population in the United States are people who commit less serious crimes but commit them at very high rates, over and over and over again.

The notion that the prison population in the United States is composed of people who have committed a property crime, a non-

violent crime, one or two, and are sentenced to a long period is just simply not supported by the evidence.

Chairman LEAHY. What about States that have mandatory minimums for drug cases?

Mr. SEDGWICK. I think you would have to look at—first of all, you would have to look at how those laws are administered. Given the prevalence of plea bargaining in the United States, my guess is that you are going to find very few cases of a young person with a single drug offense that winds up getting sentenced to a very long period of time, in part because, quite frankly, prosecutors know that is a bad use of resources.

Chairman LEAHY. We can give you a few examples, but go ahead.

Mr. SEDGWICK. Well, my point was simply going to be I could not agree more with the notion that, to the extent that such cases exist, that is a misuse of resources. One caveat, though. You brought up the issue of, you know, a non-minority youth with a drug offense versus a minority youth. I think one of the things that we want to pay attention to—and this gets to an issue that Commissioner Davis raised—we make a big mistake in dealing with drugs when we treat all drugs as if they are the same and they have the same influence on the criminal justice system. There is a tremendous difference in terms of the effect on crime among, for example, marijuana, opiates, and drugs like methamphetamine or cocaine or crack.

Chairman LEAHY. My point was not the two youngsters. My point was—and you know and I know—the well-connected person on Wall Street—or wherever else—who has bought $250 worth of drugs is going to be treated a heck of a lot differently than a minority in an inner city area who bought $250 worth of drugs, no matter what the drugs are. We are talking about $250 worth of drugs. And the treatment is going to be remarkably different. I think that it would be hard to argue that, but feel free if you want.

Mr. SEDGWICK. We can have that discussion another time if you would like.

Chairman LEAHY. All right. Senator Grassley?

Senator GRASSLEY. Since I was not polite enough to be here to listen to all of you, it was because I was at the Agriculture Committee meeting.

Chairman LEAHY. Where I was supposed to be.

Senator GRASSLEY. Yes, okay. Yes, he is a member of the Committee.

Mr. Sedgwick, GAO examined the cost-effectiveness of the Second Chance Act pilot program designed to place elderly, low-risk inmates in community correction. GAO reported that the Bureau of Prisons determined the program cost the Government an average of $4.50 more each day per inmate than leaving them in prison. GAO said that the Bureau of Prisons may have miscalculated this cost, but I think that really is not the relevant point. Even if Bureau of Prison is wrong, it still shows that we do not know enough about the value of such programs.

I have serious questions about the wisdom of expanding this program based upon cost savings. I am also concerned about other grant programs created by the Second Chance Act that would fund nongovernmental organizations to assist released prisoners. So far,

there is little evidence that they work, and recent IG reports suggest many grant programs have accountability and compliance problems.

Mr. Sedgwick, do you think that we should expand pilot programs if we do not know whether they are working?

Mr. SEDGWICK. The simple answer is no. If we do not know that they work, I do not see why we should be investing large amounts of money in them.

Senator GRASSLEY. I think my second question would—you lead into my second question with your answer. As a former head of these justice programs, you know about these grant programs. How can we in Congress determine whether these programs are working or not?

Mr. SEDGWICK. Well, thank you for that question because that is the exactly where I was about to go. During my tenure as the Assistant Attorney General and the head of Office of Justice Programs, we put in place an Office of Audit Assessment and Management precisely to increase the amount of attention that was paid to rigorous evaluation of all of our grant programs. There are certainly grant programs that underlie the types of cooperative relationships that Mr. Tolman talked about and we see on the ground in Boston that have led to very effective cooperation between the community, Federal law enforcement, State and local law enforcement, and have had some tremendous results.

The difficulty is it is easy to find particular programs that appear to be working in a particular setting. It is very hard to find programs that you can scale up to a nationwide implementation that continue to have demonstrated impacts.

I recall visiting Boston in 2006 as part of the Attorney General's 18-city tour when we were looking at the purported crime increase in 2005 and had the opportunity to talk to a group of community leaders in Boston about what had worked in Boston to hold down the rates of violence. And they were quite clear about the fact that, to the extent that those programs worked—and they worked quite well in Boston—they are resource intensive and they are quite fragile; that is, they depend on stable working relationships and trust among partners that are resource intensive. It is not clear that those kinds of programs can be, you know, run up to scale nationwide, implemented and have the same effectiveness that they have had in particular communities like Boston.

It is certainly worth trying them, but I have to say at this point, as someone who used to oversee the grant programs, we do not know as much about what works as we should and can know. I do not think we are in a place now, if you said to me, "Can you give me five or six programs, diversion programs, that we could use that would deal with offenders in alternatives to incarceration?" I would be able to come up with four or five programs that we could implement tomorrow that would have a dramatic impact on recidivism rates.

Senator GRASSLEY. Let me ask, a short lead-in and then just one question that I would like to have all of you give a short answer to. Mr. Tolman testified about these recent proposals of good time calculation and earned time credit are kind of a one-size-fits-all approach and, therefore, not effective. Assistant Attorney General

Breuer recently advocated in a speech both of these policies as ways to deal with increasing costs of prisons. He advocated so. Focusing these savings on new policing, prosecution, and recidivism-reducing programs. So I have got several questions, but just one here that you can answer shortly. Do you agree with Mr. Breuer and the administration that simply letting Federal prisoners out of prison early by recalculating good time credit alone is a sufficient way to deal with increasing costs of Federal prisons? We will start with you, Mr. Davis, and then the other two of you, and then I will yield my time.

Mr. DAVIS. Well, thank you, Senator. No, simply letting people out of jail early is not going to solve the problem. What is happening in Boston, though, is there are too many violent offenders with too many assaultive cases, too many gun possession cases, who are out on the street simply due to the fact that beds are taken by individuals who are in on minimum mandatory. And it is my estimation, after working in the drug field for many years, that a system that bases minimum mandatory sentences on 14 grams or 28 grams is missing the big picture. I want to put kingpins in jail for a long time, but there are a lot of people getting caught up in the dragnet, and it is affecting our relationship with inner-city communities.

Senator GRASSLEY. Mr. Sedgwick.

Mr. SEDGWICK. I could not agree more with the commissioner and would just add this: that I think a policy initiative that ramps up release rates or releases a cohort of individuals in a very short timeframe is a huge mistake, in part because you simply do not have time to do the pre-release programming that these individuals need in order to be successful once they are sent back to the community. Releasing someone from prison without prior preparation is imposing a cost on the community that that person is sent back to.

Senator GRASSLEY. Okay. Mr. Tolman.

Mr. TOLMAN. Thank you, Senator Grassley. The States have really provided the answer to that question, which I think is the most poignant question relative to this issue, and those States that decided to do just as you indicated, to simply address an increase in good time, are not experiencing the reduction in crime rate, the recidivism reduction of those States that determined that they would not just expand good time. And that really is the problem with the Second Chance Act. It simply seeks to expand good time without addressing that not every inmate incarcerated is the same. And so that one-size-fits-all is just that. It is an attempt to try to make a very easy policy to reach, supply the benefit we are all looking for, and Texas proved that in order to do that, you cannot just expand good time. You have to actually make the inmate go through programs, work for it, and you have to assess which ones are willing—you are willing to take the risk to actually transfer to something different than lockdown incarceration.

Chairman LEAHY. Senator Lee.

Senator LEE. Dr. Sedgwick, I thought you made an interesting point and you had some compelling evidence for your point that the fact that we have a higher incarceration rate in the United States generally does not necessarily mean that we are just tougher on

people. It may just mean that we have more people committing crimes. I wanted to ask you about that in the context of some of the statistics that Mr. Tolman gave us and present the question to you in a slightly different way.

As Mr. Tolman has pointed out, in 1998, we were spending about $3.1 billion a year through the Bureau of Prisons, and at the time that was about 15 percent of the Department of Justice's overall budget. In 2012, that number has more than doubled. It has increased by about 113 percent. It is up to about $6.6 billion, 24 percent. In 2013, it is expected to jump to 25 percent of all spending through the Department of Justice.

Does that mean that during that 15-year period between 1998 and now we really have had that many more Federal crimes being committed? Or does that perhaps say something differently about how crimes are being prosecuted?

Mr. SEDGWICK. That is a really good question. I think it is a combination of two things. One is it is a kind of cumulative effect of lengthening sentences, which was a strategy that was pursued beginning in the second half of the 1980's nationwide at all levels of Government in response to a rapidly increasing crime rate. It is worth noting—and I have not heard anybody refer to this yet, but if you look at the latest report on prison populations from the Bureau of Justice Statistics, one of the things that is absolutely striking, the opening graphic shows prison populations in the United States over the past 20 years and shows them steadily going up. Superimposed over that is a graph that says what is the percentage change from year to year in prison populations, and it is steadily going down.

In fact, in the last 2 years, the total population of persons under custodial supervision in the United States has fallen. That is exactly what you would expect if you look at a period where you have had crime go up, then start to go down, and over that period of time you have a fixed—or a given sentence length, you are going to see prison populations in the United States, if we do nothing, they are going to start to fall. Okay? Because the crime rate has been falling, we are adding fewer people to the prison population every year. Now, that is an aggregate figure for the United States.

The case for the Federal Government is a little bit different because there have been policy decisions made at the Federal level to move certain types of offenders—and who they are changes from year to year as, you know, priorities change—and cases from State and local jurisdiction to Federal jurisdiction.

Senator LEE. And that in turn can——

Mr. SEDGWICK. And what that will do is that will rapidly increase the Federal prison population. Okay?

Senator LEE. Thank you. That is helpful. And with that, I am going to switch some of my questions to Mr. Tolman.

By the way, Mr. Chairman, Mr. Tolman and I have been friends since law school, and we even clerked together during our first year out of law school for a U.S. district judge named Dee Benson in Utah, and then we were at the U.S. Attorney's Office together. So we have a long history of reviewing each other's bench memos and draft opinions and briefs. I was in the appellate section when he was in the violent crimes section. I always enjoyed taking Tolman's

cases on appeal. They were very easy to defend because the record was always chock full of really good evidence, and once in a while I got to see Brett's unique sense of humor within the pages of the transcript. And I thought to myself, "There is no way the court of appeals is grasping the fact that he is intending to be funny right here."

Chairman LEAHY. This certainly will not come out of any time to you, Senator Lee, but as you talk about this, it makes this member of the Committee nostalgic for the days of being a prosecutor. And I know in some prosecutors' offices—actually when I graduated from law school, and one of them was eager to get me to come to it, I did not, I went back to Vermont—but they would put a lot of the new lawyers immediately into the appellate division because they learned how they would have to defend mistakes made in the trial division. Then they would put them in the trial division.

Apparently you did not have to defend mistakes of Mr. Tolman.

Senator LEE. I did from others, just not from him.

Chairman LEAHY. And I well remember his work on this Committee, and I expect that it would have been enjoyable to work with him. So that is on my time, not on yours. Please go ahead, sir.

Senator LEE. Thank you. Thank you.

Mr. Tolman, in light of what Dr. Sedgwick said, I would like you to sort of relate that to your experience as a prosecutor, as a Federal prosecutor. Did you see a lot of shifting between 1998, which was about the time that you and I were clerking in the Federal court, up and through now, have you seen a shift, have you seen more cases that could have been prosecuted as State crimes, and in previous decades perhaps would have been, have you seen more of those shift over to Federal prosecution?

Mr. TOLMAN. Thank you, Senator. And just for the record, I think I have a pretty good track record on appeal on my cases because you were in the appellate section. I have always conceded that Senator Lee's legal brain is significantly larger than mine. But I appreciated him in that position.

That truly is my experience, and I will tell you, the Al Capone prosecution in its day was unique, but it is far more unique in this day and age. The prosecutions today are—and I could rattle off for you the many prosecutions from Rubashkin in Iowa, an individual serving a 27-year sentence with no criminal history and no actual victim of fraud.

Senator LEE. This is a rabbi who has nine children.

Mr. TOLMAN. That is right. You know, rather than the Pablo Escobars that we thought would be prosecuted, it is the Weldon Angelos, you know, the street corner dime marijuana dealer that brings a firearm to the corner because he is concerned about his safety, never uses it, never brandishes it, and is facing 30-plus mandatory years.

Now, long sentences——

Senator LEE. Just because he happened to bring a gun to a crime that would otherwise have been a State offense punishable perhaps——

Mr. TOLMAN. That is exactly right.

Senator LEE [continuing]. With little or no prison time.

Mr. TOLMAN. That is exactly right. And the Federal push to prosecute more and more crimes that were traditionally State crimes has been enormous—enormous—from firearms cases to the drug cases, and part of that is out of a frustration of not being able to prosecute the major kingpins in drug investigations.

Senator LEE. How does that end up—and, Mr. Chairman, if I could have just another couple minutes? Thank you. How does that end up impacting the Department of Justice's ability to do other things that it needs to do? In other words, as it takes more and more cases Federal and takes more and more of them Federal in ways that result in these very lengthy sentences, how does that impact their ability to do what they need to do?

Mr. TOLMAN. If anyone observed the mortgage fraud arena, there were some very large pieces missing. Where are the prosecutions of the underwriters, the large lending institutions that were participants in the mortgage fraud? Why are they not there? Because there is an inability to divert the necessary resources to battle at that level. It is much easier to grab the individual from the corner that is distributing small amounts of cocaine or other drugs than it is to invest that significant time it takes to bring down what really should be the targets of the Federal criminal justice system. Those are the large targets that States would have a problem bringing down.

So I agree with you wholeheartedly that it hamstrings the Department of Justice and the U.S. Attorney's Offices, this enormous push to prosecute those State cases.

Senator LEE. To prosecute them federally.

Mr. TOLMAN. Yes.

Senator LEE. Historically, you know, these kinds of offenses that would have been prosecuted by States would have resulted in convictions within the State penal system, and so the State itself would have some impact, would feel some impact from what it was doing. But with these newer pushes to move things along federally, you often have task forces consisting of both State and local and Federal law enforcement officers working together to push things into the Federal criminal justice system so that the State gets kind of a double benefit.

Mr. TOLMAN. Yes.

Senator LEE. It gets the imprisonment and perhaps a more lengthy prison sentence, which a lot of the people involved want to see for one reason or another, and the State does not have to pay for it.

Mr. TOLMAN. That is right.

Senator LEE. Doesn't that create kind of a free-rider problem that we can expect to continue to result in the continued expansion of this kind of problem?

Mr. TOLMAN. That is accurate, and it will continue to expand. Texas' response to this large body of inmates—and keep in mind those incarcerated in Texas are nearly 200,000 individuals. In the Federal system, it is a little over 200,000. So we are talking about the same population of inmates, roughly. And for them to see such a drastic reduction in their crime rate and their recidivism rate, you have to ask yourself, What is it they are doing? They are recognizing that not every inmate is the same, and now the Federal sys-

tem has to do that. Not every inmate that is in there is the same. It is more populated now with the same types of individuals that are prosecuted in the State than it ever has before. And so with that, there must be a system to assess those individuals differently than the Brian David Mitchell kidnapper or the Pablo Escobar or the Al Capone. They have to be assessed differently in terms of being able to earn transfers earlier or have the benefits of working while in prison. Otherwise, that old adage that the costs of incarceration which will always exceed the cost of investigating and prosecuting will continue to bury the Federal system.

Senator LEE. In order to change that, we are going to need a change in policy, probably a change in legislation.

Mr. TOLMAN. Yes, absolutely.

Senator LEE. Thank you.

Chairman LEAHY. Might I also say—and I think Senator Lee's questions are excellent here, and I am concerned that we get into a position—and I have seen it in the past—where we get too worried about the statistics, how many arrests and convictions do we have. The arrest and conviction of an Escobar can be a drug crime arrest and conviction or some kid peddling something can be a drug crime conviction.

I recall once when I was one of the officers the National DAs Association, we met with then-Director J. Edgar Hoover who was making a big point to us that the Congress may complain about his budget—actually, he had such control over the Congress there never were any complaints. But he said by last year, my budget was X number of dollars, but the FBI in just one year, we recovered twice X, or whatever the numbers were in property for the American taxpayers. Well, I recall that very well. We would have a sheriff who might find a stolen car that is now practically a junk heap, and almost immediately the local FBI office would be there and say, "We will take over from here. That car cost $8,000 new. Okay. We recovered $8,000 worth of property." And I worry that we get into these same kinds of things here. I worry, of course, about the cost to the taxpayer. But I also worry about the human costs that we put too much emphasis on the wrong things. You might have a task force spend 3 years to go after a real drug kingpin, and their statistics show one drug arrest. Or they go off a whole lot of minor ones and said, gee, we had real success, we got 300. I would rather get that drug kingpin.

Or, Commissioner Davis, you go arrest everybody or you can put your people out there to say, hey, guys, we are kind of keeping an eye on you, careful what you are doing. And I remember when you first started some of those programs, and as you know, there was a lot of press in New England about that. You also had some naysayers when you first started, and they became some of your biggest backers.

Last, we had a reference to the Second Chance program. That was, of course, championed by President Bush, and I agreed with him on that. I think we have a lot of studies that say it has been very positive and helped on recidivism. One of the reasons we have hearings is to find which things work and which do not. But I think that just as I urged the prosecutors in my office, I am more interested in what was the nature of the case, the quality of the

case. I will judge how well we are doing based on that, not by the number of cases. It is too easy to inflate statistics if you do not care what the costs are down the way.

Gentlemen, I apologize for the voice and the allergies causing it, but I thank you all for being here. Senator Lee, did you have anything further?

Senator LEE. No. Thank you.

Chairman LEAHY. Then we will keep the record open for the rest of the day, and I thank you all for being here.

[Whereupon, at 11:11 a.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"

Wednesday, August 1, 2012
Dirksen Senate Office Building, Room 226
10:00 a.m.

Edward Davis
Commissioner
Boston Police Department
Boston, MA

Jeffrey Sedgwick
Managing Partner
Keswick Advisors
Richmond, VA

Brett Tolman
Shareholder
Ray Quinney & Nebeker
Salt Lake City, UT

PREPARED STATEMENT OF EDWARD F. DAVIS

Hearing before the
Senate Committee on the Judiciary

On

"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"

Wednesday, August 1, 2012
Dirksen Senate Office Building, Room 226
10:00 a.m.

My name is Edward F. Davis, Police Commissioner in Boston, Massachusetts.

Drug abuse plagues our nation. In 2010, an estimated 22.6 million Americans aged 12 or older reported being current (within the past month) illicit drug users.[1] And drug-related crime continues to rise at a strong and steady pace.

From a criminal justice standpoint, we know that arresting our way out of this is not the solution. And incarceration alone is not enough to prevent recidivism.

In Boston, we use a strategic approach to decrease overall crime. In all of our urban communities across the United States, there are a small number of people committing a disproportionate amount of crime.

Starting in 2006, we carefully targeted these individuals and our overall crime rate dropped 30% at the end of 2011, with a projection of an even greater decrease in 2012. Not only did our crime rate decrease, so did our arrest rate by 35% during the same time period...contradicting the old theory that you can arrest your way out of the problem.

I have been a police officer for 33 years. I come from a family of police officers. For many years, I was very fortunate to lead a regional unit that investigated organized crime and narcotics while working closely with our partners from the Massachusetts State Police and Drug Enforcement Agency.

I did this during a time while harsh penalties were being fully implemented during the Nation's War on Drugs. I, along with every narcotics officer during those years, faithfully arrested and assisted in the prosecution of thousands of drug users and suppliers.

I witnessed the terrible price of drug abuse and what it does to individuals, families and society. And I learned that this method of mass arrest and strict prosecution will not work.

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[1] Substance Abuse and Mental Health Services Administration, *Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-41, HHS Publication No. (SMA) 11-4658. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2011.

Arrest is a vital tool but not the key… incarceration temporarily keeps drug users and dealers off of our streets, but does little to impact recidivism, as evidenced in a Georgia study that found that the "two-year recidivism rate among drug-court participants was 7%, compared with 15% for those on probation alone and 29% for drug-users who served time in state prison."[2]

To be successful in reducing the crimes that are fueled by drug abuse, a very strategic, very thoughtful approach is needed. Our focus must be on the right people, those who are committing the large number of drug offenses.

This is an effort that requires rich partnerships, including other law enforcement agencies, health and human service agencies, and community stakeholders.

In Boston, we have a long history of valuing partnerships. We work closely with the Department of Probation to monitor Boston's most violent probationers with GPS ankle bracelets. GPS have proven valuable in helping our investigators identify suspects and witnesses as well as rule them out. GPS mandated post release for drug offenders can be critical in reducing the recidivism rate by allowing enforcement of stay away orders, as well as helping to alleviate the financial burden of incarceration.

We have come to realize that arrest can be more than an enforcement component of this problem. It can also be useful in encouraging treatment alternatives. Programs, like HOPE (Hawaii's Opportunity Probation with Enforcement) in Hawaii, make it clear that a public health response to drug abuse will free up beds in our nation's prisons—beds that can be better utilized for those who are serving time for violent criminal activity. Results from a one-year follow-up evaluation of probationer outcomes found that only 21% of HOPE participants had been re-arrested versus 47% of those who did not participate in this program.[3]

As a Police Commissioner of a large city in the country, I along with my colleagues must focus our resources and those of the judicial system on those individuals who commit violent crime.

Punishment should target those who cause injury to others and to those who commit crimes with weapons of any kind.

Last year individuals randomly sprayed a Boston neighborhood with fire from an AK47. Our laws currently are not equipped to deal with this type of mayhem.

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[22] Drug Courts: Stay out of jail clean. *The Economist*, February 24th, 2011.

[3] Hawken, A. and Kleiman, M. (2009). *Managing drug-involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE*. Washington DC: U.S. Department of Justice.

And, certainly, the example foremost on all our minds is the recent tragedy in Aurora, Colorado.

A stricter focus on violent offenders is critical to drive down unacceptable levels of homicides in our cities. These are the people that we should be incarcerating. Strong laws on those who use weapons of any sort in perpetrating crime should also be the priority of our government.

It is not a secret that our prisons are overcrowded and cost us billions of dollars per year. The U.S. incarcerates some 2.3 million people[4] at an estimated annual price tag of about $70 billion.[5]

We need to continue our focus on taking violent offenders off our streets while creating a comprehensive response to drug offenders – one that encourages treatment and effective supervision when they are released.

By creating a balanced pragmatic approach between enforcement and prevention, we can effectively impact recidivism rates and reduce the unwieldy costs of incarceration.

Thank you.

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[4] Glaze, L. E. (2011). *Correctional population in the United States, 2010.* Washington DC: U.S. Department of Justice, Bureau of Justice Statistics. Appendix Table 2.

[5] Schmitt, J., Warner, K. & Gupta, S. (2010). *The high budgetary cost of incarceration.* Washington DC: Center for Economic and Policy Research.

PREPARED STATEMENT OF JEFFREY LEIGH SEDGWICK

Is Incarceration Too Expensive?: Fiscal Austerity and Public Safety

By
Jeffrey Leigh Sedgwick, Ph.D.
Managing Partner & Co-founder
Keswick Advisors, LLC
1 August 2012

Just last month, in an address to the National District Attorneys Association Summer Conference, Assistant Attorney General Lanny A. Breuer called attention to an unpleasant reality facing all of us, including members of the criminal justice community: we are living in an austere fiscal environment that shows no sign of lifting in the near future. As a result, he said, the criminal justice community is at a crossroads where it must make public safety expenditures more intelligently and more productively or else see the dramatic progress in reducing crime rates over the past twenty years eroded. I couldn't agree with him more on the problem; however, I believe he has oversimplified the tradeoffs in public safety that we need to consider in order to make good decisions.

According to Breuer, "we must… recognize that a criminal justice system that spends disproportionately on prisons – at the expense of policing, prosecutions and recidivism-reducing programs – is unlikely to be maximizing public safety." This suggests quite strongly that maximizing public safety is the result of proportionate sharing of public safety spending among components of the criminal justice system; but proportionate to what? This framing of the tradeoffs strikes me as a very incomplete view of the problem, for it casts the components of the criminal justice system as rivals for shares of a fixed or, even worse, diminishing budget. A more comprehensive view of the problem would cast the issue somewhat differently: as a first step, the budget of the criminal justice system should be large enough, and no larger, that it minimizes the total *social costs of crime* including not only public expenditures on public safety, but also the costs of victimization, tangible and intangible, to the public. As a second step, the allocation of funds among components of the criminal justice system should be guided by their demonstrated effectiveness in reducing crime.

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It is all too tempting to look first to the correctional system as a source of savings in a period of austerity. For many years, we have heard it said that the United States is, along with the former Soviet Union and South Africa, the most punitive country in terms of use of incarceration or prison. But this characterization is largely wrong-headed. For example, the probability of conviction per offense is lower in the United States than for most industrialized nations; one reason for this may be the relatively high rate of plea bargaining and charge reduction that occurs in our criminal justice system. Also, the probability of being sentenced to incarceration given conviction is not noticeably higher for the United States than for other industrialized countries. Thus, a more nuanced view is that the United States is no more likely than other industrialized democracies to resort to imprisonment for violent offenses. Rather, our high incarceration rate is the result of our comparatively high violent crime rate. Indeed, the United States reacts to violent crime in roughly the same manner as other industrialized democracies; it just has more of it.[1]

In April of this year, CBS aired a segment on its weekly news program, *Sunday Morning*, entitled, *The Cost of a Nation of Incarceration* (April 22, 2012). The unmistakable implication was that the United States incarcerates too many at too high a cost. But just how large and costly is the prison population? According to the U.S. Bureau of Justice Statistics (BJS), 2,266,832 adults were incarcerated in U.S. federal and state prisons and county jails at year-end 2010 — about 0.96% of adults in the U.S. resident population.[2] In total, 7,076,200 adults were under correctional supervision (probation, parole, jail, or prison) in 2010 — about 3% of adults in the U.S. resident population. A recent report of the Vera Institute calculated the average per inmate cost of incarceration for a sample of forty States: $31,286.[3] Hence, one could estimate the total cost of incarceration nationwide in 2010 as $70.9 billion. This is surely a significant sum, but is it either disproportionate in relative terms or too large in absolute terms?

Another way to look at correctional spending in context is to examine per capita state and local government expenditures on criminal justice. Examining figures from 2007 (the most recent figures in the 2012 *Statistical Abstract of the United States*), total per capita state and local government expenditures on criminal justice were $633 per resident of the United States. Of that total, $279 per resident was spent on police protection, $129 on courts, prosecution and public

[1] For a useful discussion of this, see James P. Lynch and William Alex Pridemore, "Crime in International Perspective," in *Crime and Public Policy*, ed. James Q. Wilson and Joan Petersilia (New York: Oxford University Press, 2011), pp. 6-7.
[2] Department of Justice, *Correctional Population in the United States, 2010.* (Washington, DC: Bureau of Justice Statistics, 2011), Appendix Table 2.
[3] Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers.* (New York: Vera Institute of Justice, 2012), 9.

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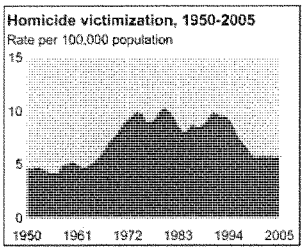
defenders, and $225 on corrections (including prisons, jails, probation and parole).[4] Whether $633 per resident is too great a public expenditure, and whether $225 per resident for corrections is a disproportionate share of the total, cannot be determined from these numbers alone. Rather, we would need to know the benefit of these expenditures both in sum and relative to one another.

Over the past sixty years, the United States has witnessed two trendless periods in homicide victimization between 1950-64 and 1974-92 when crime rates fluctuated but showed no clear sustained pattern.[5]



But as the above graph shows, there were also two distinct trends: 1964 – 1974 when homicide rates more than doubled; and 1991 – 2000 when homicide rates dropped consistently, falling approximately 70%. According to the FBI's *Uniform Crime Report*, between 1960 and 1992, the number of violent crimes in the United States increased nearly sevenfold, from approximately 288,000 to more than 1.9 million, and the violent crime rate increased nearly fivefold from 160.9 to 757.7 per 100,000 population. Thus, the increase in homicides between 1964 and 1974 was not an isolated phenomenon; rather, it was emblematic of a broad-based increase in violent crime in the United States.

Similarly, the abrupt decline in homicide between 1991 and 2000 was emblematic of a broad-based decrease in crime, both property and violent, in the United States. According to FBI *Uniform Crime Report* data, the rate of all seven index offenses (homicide, rape, robbery, aggravated assault, burglary, larceny and auto theft) declined significantly over the 1990s, with the aggregate declines ranging from 23% to 44%. For five of the seven offenses (homicide, rape, robbery, burglary and auto theft), the declines are of a similar magnitude: about 40%. Two crimes (aggravated assault and larceny) dropped by a lesser amount: about 23% to 24%.

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[4] Department of Commerce, *Statistical Abstract of the United States, 2012*. (Washington, DC: Census Bureau, 2012), p. 216.
[5] Much of the following discussion comes from Franklin E. Zimring, *The Great American Crime Decline*. (New York: Oxford University Press, 2007).

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If we look at *National Crime Victimization Survey* (NCVS) data, the crime declines estimated from the household survey are equal to or greater than the FBI/police statistics in all six crime categories (the NCVS does not measure homicide), with the survey showing much larger declines in larceny, assault and rape. The victim survey not only confirms the trends found in the police data, but also moves the larceny and assault declines much closer to the average declines for the other index crimes than do the police statistics. The violent victimization rate in the United States has fallen 67% since its peak in 1994 and now equals the lowest rate measured in the thirty-six year history of the NCVS.

The distinguished criminologist Franklin Zimring has characterized this sustained and broadly based crime decrease during the 1990s as the most important sociological and socioeconomic development of the second half of the twentieth century. This a remarkable statement about a time period that included three assassinations, the Civil Rights revolution, the Great Society, the Vietnam War and the anti-war movement, the feminist movement and the end of the Cold War to mention just a few. Equally important is who benefitted from what has been called, "The Great American Crime Decline."

If we examine the trends in homicide, we find that the benefits of lower crime rates have been spread widely across the social and demographic categories of the American nation. With the exception of children under the age of 14, the homicide rate decline was remarkably similar for all age groups, ranging between 36 and 44%. In terms of gender, the homicide decrease for men was 42%, one-third more than for women. Among races, the homicide decrease for nonwhites was 46%, again one-third more than for whites. In terms of geography, the homicide decrease in big cities was 49%, much more than the drop in other cities, suburbs, or in rural areas. (It is worth noting that New York City, the nation's largest city, experienced crime declines nearly twice the national average. And this steep decline was not characteristic of the region surrounding New York City; it was confined to the city limits.) These data suggest that the benefits of the crime decline of the 1990s were concentrated in those groups with the highest exposure to crime – urban minority males. Indeed, Zimring eloquently notes that "[t]he crime decline was the only public benefit of the 1990s whereby the poor and disadvantaged received more direct benefits than those with wealth. Because violent crime is a tax of which the poor pay much more, general crime declines also benefit the poor, as likely victims, most intensely."[6]

But what explains the decline? We should begin by acknowledging that, like any other complex social problem, variations in crime rates cannot be explained adequately by any single cause. Broadly speaking, the most commonly researched variables affecting crime rates are the economy, demography and criminal justice policies. Among the last, the

[6] Zimring, p. vi.

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most obvious candidate for explaining the crime decline in the 1990s is incarceration; this is because no other change in the operation and output of the American criminal justice system in the generation after 1970 begins to approach the scale of the expansion of incarceration. After small and trendless variation for several decades, the rate of imprisonment in the United States expanded after 1973 more than threefold. However, estimates of how much of the crime decline of the 1990s can be attributed to increased incarceration vary widely, from 10%[7] to 27%[8] of the overall decline.

Before dismissing this contribution as insignificant, we should heed one of Zimring's lessons from the 1990s: "The crime decline of the 1990s was a classic example of multiple causation, with none of the contributing causes playing a dominant role."[9] Such a conclusion is eminently sensible when we consider that the economy and demography also play significant roles in explaining crime rates. But what if we consider just alternative criminal justice policies such as more spending on police or prevention and intervention programs?

Professors John Eck and Edward Maguire summarized research on qualitative and quantitative changes in policing, examined forty-one different statistical studies of the relationship of quantity of police and crime rates, and arrived at the following conclusion: "Even when we examined the most rigorous studies, we could not find consistent evidence that increases in police strength produce decreases in violent crime. Overall, the research suggests that hiring more police officers did not play an independent and consistent role in reducing violent crime in the United States."[10] However, using different research methods, Steven Levitt concluded that increases in police manpower accounted for 5-6% of the observed decrease in crime during the 1990s.[11] Thus changes in police manpower level contributed, at most, one half as much to the crime decline of the 1990s as changes in incarceration rates.

And we should note that Zimring explicitly dismisses correctional or crime prevention programs from having played any plausible role: "Nor were there any indications that correctional or crime prevention programs had national level impact on crime."[12] In a telling portion of his book, Zimring discusses Robert Martinson's 1974 *Public Interest* article entitled, "What Works? Questions and Answers about Prison Reform." Martinson had concluded that "with few isolated exceptions,

[7] William Spelman, "The Limited Importance of Prison Expansion," in *The Crime Drop in America*, ed. Alfred Blumstein and Joel Wallman (New York: Cambridge University Press, 2000), pp. 97-129.
[8] John J. Donohue III and Peter Siegelman, "Allocating Resources Among Prisons and Social Programs in the Battle Against Crime," *Journal of Legal Studies* 27 (January 1998): 1-43.
[9] Zimring, p. 197.
[10] John Eck and Richard Maguire, "Have Changes in Policing Reduced Violent Crime? An Assessment of the Evidence," in *The Crime Drop in America*, ed. Alfred Blumstein and Joel Wallman (New York: Cambridge University Press, 2000), p. 217.
[11] Steven Levitt, "Using Electoral Cycles in Police Hiring to Estimate the Effects of Police on Crime: A Reply," *American Economic Review* 92 (September 2002), 1244-50.
[12] Ibid., p. 69.

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the rehabilitative effects that have been reported so far have had no appreciable effect on recidivism."[13] Zimring then quotes Francis Allen's reflection on Martinson's conclusion: "there was, in fact, little new about the skepticism expressed in the Martinson study of the rehabilitative capabilities of correctional programs or the existence of validated knowledge relevant to the avoidance of criminal recidivism. At least since World War II expressions of such skepticism have abounded in penological literature, as have criticisms of correctional entrepreneurs whose claims of significant reformative achievements were unsupported by scientific demonstration."[14]

To summarize the lessons from the crime decline of the 1990s (which has continued, though at a much slower rate, to the present day), one would fairly say that, among the criminal justice policies proffered as causes, the case for effectiveness is stronger for incarceration than for increased police manpower or crime prevention or intervention programs. And yet there are those who still earnestly advocate a redistribution of criminal justice funds in order to achieve "proportionality."

But there are risks to such a program that should be carefully weighed before acting. Consider the following well-known statistics: according to U.S. Department of Justice surveys and studies, over 60% of prison inmates had been incarcerated previously[15]; and a 2002 Department of Justice study of 272,111 inmates released from prison in 1994 found that they had accumulated 4.1 million arrest charges *before* their most recent imprisonment and another 744,000 charges within 3 years of release.[16] This is an average of 17.9 charges each. The same study found that 67.5% of inmates released were rearrested for a new offense, almost exclusively a felony or serious misdemeanor, within three years of their release. These data suggest that the criminal justice system is hardly incarcerating trivial or non-serious offenders and that the threat of recidivism is quite real. And since most crime in the United States is intra-communal, it should also be pointed out that declining to incarcerate or prematurely releasing individuals with a demonstrated propensity to commit crimes unless incapacitated imposes costs on already distressed inner city, minority communities, thereby adding to their disadvantage.

What is the magnitude of those costs? Estimates vary widely because of the difficulty of placing a value on intangibles such as victims' lost quality of life, general fear, lost use of community spaces, and psychological effects. Added to these are more easily measured tangible victim costs such as lost property, lost productivity and medical treatment. A

[13] Robert Martinson, "What Works? Questions and Answers About Prison Reform," *The Public Interest* (Spring 1974), p. 25.
[14] Francis Allen, *The Decline of the Rehabilitative Ideal*. (New Haven: Yale University Press, 1981) p.57.
[15] Department of Justice, *Survey of State Prison Inmates, 1991*. (Washington, DC: Bureau of Justice Statistics, 1993) 11.
[16] Department of Justice, *Recidivism of Prisoners Released in 1994*. (Washington, DC: Bureau of Justice Statistics, 2002) 1.

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1996 research preview from the National Institute of Justice used data from 1987 to 1990 and estimated the tangible costs of crime to victims at $105 billion annually and the annual intangible costs to victims at another $345 billion for a total cost of $450 billion annually.[17] The approximately 40% reduction in crime rates achieved during the decade of the 1990s was thus worth about $180 billion annually in saved victim costs, tangible and intangible; and this is a significant underestimate since it does not capture the increased quality of life, reduced fear, greater use of community spaces, and reduced psychological effects on non-victims.

In conclusion, we have had demonstrable success in reducing crime rates significantly in the United States. Based on that experience, we have evidence to judge what contributed to that success and how much. And we know who the primary beneficiaries of that success were. As we face the present challenges of fiscal austerity, we ought not ignore those hard-learned lessons. The aggregate size of the criminal justice budget, and its allocation among the component parts of the criminal justice system, should be constantly monitored and reassessed. But that assessment should be done wisely and judiciously by the lamp of experience.

[17] Department of Justice, *The Extent and Costs of Crime Victimization: A New Look.* (Washington, DC: National Institute of Justice, 1996), p. 2.

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PREPARED STATEMENT OF BRETT L. TOLMAN

Testimony

"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"

Testimony before the Senate Judiciary Committee

August 1, 2012

Brett Tolman
Shareholder
Ray Quinney & Nebeker

Chairman Leahy, Ranking Member Grassley and members of the committee:

Thank you for the opportunity to testify today.

My name is Brett Tolman, and I am currently a shareholder at the law firm of Ray Quinney & Nebeker, PC based in Salt Lake City, Utah. I am the former United States Attorney for the District of Utah--a position I held for nearly 4 years from 2006 to 2009. As U.S. Attorney I made it a priority to protect children, to aggressively prosecute mortgage fraud, to preserve American Indian heritage, and to stem the abuse of illicit and prescription drugs. Prior to serving as US Attorney, I was Chief Counsel for Crime and Terrorism for the United States Senate Judiciary Committee under Chairman Specter and before him Chairman Hatch.

Prior to my service in the United States Senate, I was an Assistant United States Attorney for the District of Utah. As a line prosecutor in the federal system I personally prosecuted hundreds of felonies. While I prosecuted mostly violent felonies, I also participated in the prosecution of white collar criminals, drug traffickers, illegal immigrants, and others. Indeed, in my nearly a decade with the Department of Justice I was responsible for the prosecution of individuals currently serving long prison sentences--some as long as 30+ years in federal prison.

As I sit here testifying before this Committee I am honored to have served in such a remarkable institution as the Department of Justice. However, my years of service also instructed me as to the great deficiencies in the federal criminal justice system. The current one-size-fits-all approach and the warehousing of prisoners is proving to not only be dangerous to public safety but an unthoughtful misuse of precious taxpayer dollars. Experts across the political spectrum are finding themselves in agreement that the current growth of, and costs associated with, the federal corrections system is unsustainable.

According to the Bureau of Prisons Fiscal Year 2013 Budget Submission, from the 1940s to the 1980s, the population remained stable at approximately 24,000 prisoners. But it more than doubled in the 1980s, to approximately 58,000, and more than doubled again in the 1990s, to approximately 134,000. In the 2000s, the number of Federal prisoners increased another 45 percent, to approximately 210,000. The Federal prison population now closes in on a quarter-million prisoners--and will increase by an estimated 11,500 by FY2013.

Overall, the BOP is operating at 38 percent above its rated capacity, with 53 percent overcrowding at high security facilities and 49 percent overcrowding at medium security facilities. Since fiscal year 2000, the inmate to staff ratio has increased from about 4:1 to a projected 5:1 in fiscal year 2013. Such overcrowding increases the security risks for correctional officers and prisoners, and undermines the ability to provide effective recidivism reduction programming.

Meanwhile, BOP costs are growing at an alarming and unsustainable rate. From fiscal year 1998 to fiscal year 2012, the BOP enacted budget increased 113 percent, from $3,100,000,000 to $6,600,000,000. And BOP anticipates continued budget growth. The President's fiscal year 2013 budget request for the BOP totaled nearly $7 Billion.

To handle this growth, the BOP has been in the business of building and activating new prisons. The Bureau has already spent $6,200,000,000 on new construction since 1999.

And the BOP budget continues to swallow an increasing amount of the Department of Justice budget. Over the last 15 years, the enacted BOP budget has increased from 15 percent to 24 percent of the Department of Justice budget. In these fiscally lean times, funding the expanding BOP population has become a threat to other priorities, including federal law enforcement and prosecution.

This unsustainable prison growth must be addressed--for it has become a looming threat to public safety and the ironic enemy of so many of the efforts of those with a commitment to law and order.

Congress is becoming more and more aware of the grave horizon that is the federal criminal justice system--quoting from the Senate FY2012 Appropriations legislation for Commerce/Justice/Science:

> *...the Committee is gravely concerned that the current upward trend in prison inmate population is unsustainable and, if unchecked, will eventually engulf the Justice Department's budgetary resources.*

And quoting from this legislation's accompanying report:

> *The Committee must provide an increase of more than $350,000,000 above fiscal year 2011 to safely guard the Nation's growing Federal prison inmate and detention*

populations. While these activities are not considered mandatory for budget purposes, they are not truly discretionary in that the Committee has an obligation to adequately fund them regardless of budgetary constraints. Given the limited flexibility of the Federal prison and detention budget requests, and unless the inmate populations experience unforeseen decreases, the day approaches fast when Federal prisons and detention demands swallow the Justice Department's budgetary resources.

Given these urgent challenges within current budgetary constraints, the Committee was forced to reduce activities for which it has historically provided increases. The Committee's recommendation regrettably cuts nearly all other Federal law enforcement agencies—including the Federal Bureau of Investigation [FBI], Drug Enforcement Administration [DEA], Bureau of Alcohol, Tobacco, Firearms and Explosives [ATF], U.S. Marshals Service, and U.S. Attorneys—by up to 2 percent from fiscal year 2011 enacted levels.

...Faced with these cuts, the Department of Justice, along with its State and local law enforcement and criminal justice partners, will struggle to carry out their mission and mandate to protect our Nation from terrorists, guard our neighborhoods from violent crime, and uphold the rule of law.

The Conference Committee for the FY2012 Commerce/Justice/Science Appropriations bill was able to make adjustments and avoid immediate cuts to federal law enforcement budgets, but the message from appropriators is clear: authorizers must begin to address this problem now in order to avoid catastrophic decisions in the future.

During my tenure as US Attorney, which included roughly a year as a member of the Attorney General's Advisory Committee, I observed the budget become the absolute center of focus of the Department of Justice and its US Attorneys. More significantly, in individual US Attorneys Offices across the country, lack of funding is increasingly the reason behind failed or abandoned law enforcement obligations and partnerships. Over the last dozen years, Congress and the Department of Justice have been so focused on prosecuting and punishing crime--emphasizing "zero tolerance" and tough federal sentences--that there has been an absolute failure to recognize that without an equal focus on recidivism reduction the tough sentencing laws of the federal criminal justice system may well be the downfall of a once proud and effective agency.

Anyone who has worked with me personally or observed my tenure as a federal prosecutor would not identify me as "soft on crime." As United States Attorney I was noted as being one of the more aggressive appointees when it came to pursuing crime. I personally participated in the prosecution of Brian David Mitchell, the kidnapper of Elizabeth Smart. Notwithstanding my efforts, I can indicate to Congress that the federal criminal justice system is not the shining example of the administration of justice that it should or could be. Budgets for the US Attorney's offices are being squeezed due to the rapid growth of the BOP budget. Further, the federal system has neither been thoughtful nor conscientious in its punishment of those it convicts. In the drug arena, DOJ is expected to use the hammer of heavy mandatory minimum sentences to dismantle drug trafficking--but the reality is that most prosecutions, while resulting

in significant prison sentences, are only netting insignificant "mules" or small-time traffickers rather than those of any importance in a given drug organization. In the white collar world, long sentences are too easily the product of manipulating the "dollar-loss figure" -- resulting in baffling and unfortunate prosecutions such as Sholom Rubashkin, a 52 year old Jewish rabbi with no criminal history who is serving 27 years for financial fraud despite there not being any actual victim of fraud. Such sentences can be argued are the result of Congress' right to punish severely particular crimes. However, being tough on crime also means more than just long sentences--it means addressing the issues associated with risk and recidivism reduction in order to offset the out-of-control incarceration costs plaguing the federal criminal justice system.

A thoughtful approach avoids the political divide that occurs between the need to punish and the need to rehabilitate. Fortunately, there are State systems that can serve as labs and test cases for the challenges now facing the federal system. Many States have implemented public policy reforms to control corrections growth and increase the effectiveness of spending in order to enhance public safety. These policy reforms include measures that employed risk and needs assessment tools, good time and earned time credits for prisoners, and improved supervision practices to reduce the likelihood of recidivism--all done with remarkable results.

While some aspects of the Federal system differ, there remain many lessons to be learned from these States. By utilizing public resources more efficiently and effectively, many States have stopped the upward trajectory of their prison populations. Some have actually reversed course. In fact, 2009 was the first time in 38 years in which the combined State prison population declined. At the same time, these States have realized declining crime rates and increased public safety. According to the Federal Bureau of Investigation, violent crime has fallen every year since 2006. The States have proven it is possible to successfully reduce prison populations and costs while maintaining and even improving public safety.

In Texas, for example, the Legislative Budget Board recommended building 7 to 8 new prisons in the mid-2000s. Instead, bipartisan reforms were passed and signed into law. Texas allocated $241,000,000 in 2007 for additional diversion and treatment capacity, and these investments are estimated to have generated a short-term net savings of $443,900,000 by rendering the need to create additional prison units unnecessary. In 2008, Texas' incarceration rate fell 4.5 percent while the average State incarceration rate increased 0.8 percent. In 2009, Texas' prison population dropped by another 1,563 inmates. By the summer of 2011, Texas closed a prison for the first time in its history. They have saved approximately $2,000,000,000 through their thoughtful approach to incarceration, rehabilitation and recidivism reduction. Meanwhile, the crime rate in Texas has dropped by 12.8 percent, and its violent crime rate has dropped at a greater degree than the rest of the Nation.

The federal government should take this opportunity to not only learn from this, but to take the lead in developing a corrections system that metes out punishment but with an eye toward recidivism reduction in order to defray unsustainable costs of incarceration. In fact, the federal system should be the model.

But under our current system we have a one-sized-fits-all approach. And recent proposals to fix the Good Time Calculation and to establish an Earned Time credit to help with overcrowding are no different. Prisoners are all lumped together, without distinctions as to the nature of their federal convictions, or their risk of recidivism. A person who commits a non-violent drug offense or a white collar fraud earns the same amount of time-off of his federal sentence as the person convicted of violent felonies, terrorism, or sexual crimes against children. It is beyond comprehension why the federal system treats all offenders the same--without any analysis of their risk of recidivism.

States such as Texas, oft criticized for being too tough in its enforcement of criminal laws, has proven there is a better approach to incarceration. Many of my colleagues--former US Attorneys and high-ranking former officials in the Department of Justice--are emphasizing the need for "meaningful criminal justice reform" and "overhauling" the federal criminal justice system because of the fear of inaction or wrong action by Congress. Congress needs to recognize now the need to model the federal criminal justice system on many of the proven reforms made by thoughtful state criminal justice systems. If not, then the federal system will be forced to make knee-jerk decisions based on financial crises rather than measured and considered decisions proven to reduce recidivism while lowering costs. Anyone observing the prisoner releases in California, caused by monumental budget crises, understands the need to make more thoughtful and proactive based decisions at the federal level.

Risk assessment tools should be used to classify every Federal offender as low, medium, or high risk of recidivism. Then prisoners should be incentivized to complete recidivism reduction programs, graduate from higher to lower risk levels, and earn early transfers into prerelease custody options, including home confinement for those in the lower risk categories. Likewise, prisoners should be demoted for unsatisfactory performance and repeated violations of rules and requirements. This would make a considerable difference in the costs of incarceration and in avoiding the revolving-door nature of criminal behavior.

While many details must be addressed in fashioning a solution to the current federal incarceration and budget problem, the foundation for meaningful reform already exists in the responses made by States who arrived at such crossroads far earlier.

Proponents of inaction argue that anything done will amount to releasing criminals and consequently result in increased crime. Such conclusions fly in the face of data collected in those states that have discovered a better way and are enjoying the benefits of reduced recidivism, decreased incarceration costs and reductions in crime rates. Further, the fear of being seen as "not tough on crime" is overshadowing the reality of benefits through thoughtful enforcement and correctional reforms.

Ignoring recidivism reduction programs and the lessons learned in states like Texas will ensure that the federal criminal justice system will make decisions born out of crises rather than thoughtful considerations--which very well may simply mean an inability to protect this country from serious federal crimes.

I look forward to working with Senators on both sides of the aisle to craft a bipartisan Federal solution that builds on the successes of the states and helps to make the Federal criminal justice system the model.

Thank you Chairman Leahy, Ranking Member Grassley and members of the Committee.

PREPARED STATEMENT OF CHAIRMAN PATRICK J. LEAHY

Statement Of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee,
On "Rising Prison Costs: Restricting Budgets and Crime Prevention Options"
August 1, 2012

Today the Judiciary Committee considers the important issue of prison costs. As more and more people are incarcerated for longer and longer, the resulting costs have placed an enormous strain on Federal, state and local budgets and have at the same time severely limited our ability to enact policies that prevent crimes effectively and efficiently.

At a time when our economy has been struggling to recover from the worst recession in the last 75 years and governments' budgets are limited, we must look at the wasteful spending that occurs with over-incarceration on the Federal and state levels. There is mounting evidence that building more prisons and locking people up for longer and longer – especially nonviolent offenders – is not the best use of taxpayer money, and is in fact an ineffective means of keeping our communities safe.

Between 1970 and 2010, the number of people incarcerated grew by 700 percent. The United States incarcerates almost a quarter of the prisoners in the entire world, even though we only have 5 percent of the world's population. There are currently more than 1.6 million people in state and Federal prisons and more than 700,000 more in local jails. That means we incarcerate roughly one in every 100 adults.

At the Federal level, over the last five years, our prison budget has grown by nearly $2 billion. In 2007, we spent approximately $5.1 billion on Federal prisons. This year, the Federal Bureau of Prisons requested over $6.8 billion. That means less money for Federal law enforcement, less aid to state and local law enforcement, less funding for crime prevention programs and prisoner reentry programs. As we spend more to keep people locked up, we have less to spend on the kinds of programs that evidence has shown works best to keep crime rates down.

In the states, the problem is also acute. We have seen the United States Supreme Court affirm a mandate that California release thousands of prisoners to alleviate unconstitutional overcrowding. We have seen police departments reduce the rolls of officers on the beat and witnessed successful crime prevention programs shutting their doors.

In my state of Vermont, massive increases in prison costs prompted action. Between 1998 and 2008, the prison population had grown by 86 percent and was projected to continue growing. From 1996 to 2008, spending on prisons almost tripled, from $48 million a year to $130 million. With massive additional increases projected, the state instituted sentencing reforms that reduced the number of prisoners and saved $18.3 million in corrections costs – $6.4 million of which was reinvested in programs to keep offenders out of trouble. Significantly, recidivism also dropped by 9 percent. According to the Council of State Governments Justice Center, Vermont's violent crime rate dropped 5 percent between 2008 and 2010 while these changes were taking place, and the property crime rate dropped 10 percent over the same period of time. These reforms not only save money, they keep communities safer.

Several other states, including very conservative states, have adopted sentencing reforms and other policy changes to address rising prison costs and to more effectively prevent crime. Texas has reduced its prison population by steering nonviolent drug offenders to treatment, rather than prison, among other policy shifts. Researchers estimate that Texas has saved over $2 billion while seeing its crime rates fall by more than 8 percent.

This is a bipartisan issue. Sentencing reform works. Taxpayer dollars can be used more efficiently to better prevent crime than simply building more prisons.

The United States Justice Department seems to finally be recognizing the perils of continuing the current trend. The Assistant Attorney General in charge of the Criminal Division said in a recent speech: "The combination of flat budgets, and ever increasing prison and detention spending, is at odds with achieving further gains in our nation's crime-fighting efforts. ... [A] criminal justice system that spends disproportionately on prisons – at the expense of policing, prosecutions and recidivism-reducing programs – is unlikely to be maximizing public safety." Congress has too often moved in the wrong direction by imposing new mandatory minimum sentences unsupported by evidence while failing to reauthorize crucial programs like the Second Chance Act to rehabilitate prisoners who will be released to rejoin our communities.

We should be focusing on this important policy concern and could save billions of dollars. I hope we can work together to reform our criminal justice system to make it more efficient and effective. I look forward to hearing from today's witnesses who, whose testimony will demonstrate the breadth of support for rethinking our focus on incarceration.

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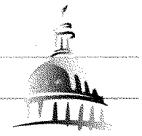
PREPARED STATEMENT OF RANKING MEMBER CHUCK GRASSLEY

U.S. Senator Chuck Grassley • Iowa

Ranking Member • Senate Judiciary Committee

http://grassley.senate.gov



Prepared Statement of Ranking Member Grassley of Iowa
U.S. Senate Committee on the Judiciary
Hearing on "Rising Prison Costs: Restricting Budgets and Crime Prevention Options"
Wednesday, August 1, 2012

Mr. Chairman, thank you for holding this hearing. This is an important subject, and I'm glad the Committee is examining it. I thank the witnesses for being here today, and I look forward to their testimony.

I have, in the past, mentioned my concern about what I call the "Leniency Industrial Complex." There are some people in Congress, the public, academia, and the media, who think that sentences that are being imposed on serious criminal offenders are too stringent and that we need to be finding ways to let prisoners out of prison early.

Despite the repeated calls of this growing industry, keeping criminals in prison makes sense. People should serve the time that the law provides for their crimes. By keeping convicted criminals in prison, it prevents them from committing future crimes. The data supports this common sense fact.

It is true that incarceration is up in recent years, but crime is down, significantly so. Of course, other factors also had a role, like improvements to policing. The tactics adopted by cities across the country in the 1990s—starting with New York City under Mayor Giuliani and Commissioner Bill Bratton—certainly were effective in reducing crime. But there's no serious doubt that incarceration is a major reason for the historically low crime rates that the United States now enjoys.

When considering cost effectiveness of incarceration, we need to remember that there are costs to crime, too. Keeping people in prison reduces costs to society of those people committing more crimes when they are let out. I have to wonder why the one area of domestic spending that the Obama Administration wants to cut is prison funding.

Now, I also believe in being smart about crime. If there are ways to prevent crime and punish criminals, while also saving money, I'm all in favor. But, that cost savings shouldn't be at the expense of public safety.

I have two concerns about moves to release prisoners to reduce costs to the criminal justice system. First, we have to make sure that any programs to reduce incarceration costs will actually work. So far, the evidence isn't promising.

The Bureau of Prisons (BOP) recently found that a pilot program letting elderly prisoner's serve out the ends of their terms in residential facilities cost more money than keeping them in BOP facilities. While a Government Accountability Office review of this data questioned the BOP's data, it raises even more questions about whether this policy is well founded and should even continue, let alone be expanded.

Unfortunately, we have a problem around here continuing to fund programs that don't meet their intended goals. And, just like this elderly offender pilot, a lot of the programs that were created under the Second Chance Act have no empirical evidence to prove that they work in reducing recidivism. So absent this evidence, it's not cost effective to set up programs that don't work.

Second, I'm concerned that efforts to save money will come at the expense of public safety. For example, I often hear about how there are so many "non-violent" offenders in prison who can be let out early. Well, is someone who sells drugs while carrying a firearm a "non-violent" offender? He may not have killed someone this time, but he surely was prepared to.

I also hear about "non-violent," "first time" offenders in the context of white collar crime. Bernie Madoff was a non-violent, first time offender, too. And he got what he deserved. I certainly hope any effort to change incarceration practices doesn't lead to a get-out-of-jail-free card for white collar criminals. I think the victims who lost their life's saving would have something different to say about the cost savings achieved by letting someone like Madoff out early.

This brings up another important element of the debate over what to do about rising costs of incarceration. Maybe this debate is focusing on the wrong end of the process. As I said, I think people who have been convicted should serve their sentences. But if there's a problem with the federal criminal justice system, perhaps we should focus on who and what gets prosecuted.

For example, I am very concerned that no major figures responsible for the financial crisis have been prosecuted. As I understand it, most people being prosecuted for things like mortgage fraud are low-level criminals that feed off the lax oversight. While they were convicted and should serve time in prison, why aren't we asking where the prosecutions of the kingpins of the financial crisis are?

There is also an issue of whether the federal government focuses enough on major crimes that fall squarely into federal jurisdiction or is instead federalizing state crimes. That's a conversation we can and should have. It's also something that we might truly be able to reach a bi-partisan agreement on fixing.

So this issue is more complex than just the dollar cost of building and sustaining prisons. We need to remember that crime has a cost to society and not just the federal budget.

Shortsighted efforts to cut budgets today could cause long-term damage by reversing the decades of falling crime rates.

The public deserves an honest conversation about the costs of prisons, so I'm glad we're having this hearing. I just want to make sure budget costs don't trump public safety. Thank you.

QUESTIONS SUBMITTED TO JEFFREY LEIGH SEDGWICK BY SENATOR LEAHY

QUESTIONS FOR THE RECORD FOR DR. JEFFREY SEDGWICK,
AUGUST 1, 2012
"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"
SUBMITTED BY CHAIRMAN PATRICK LEAHY

1. You have argued that the increasing prison population might be worth the cost and that crime rates decline as incarceration rates rise. Various states, including Texas and my own state of Vermont, have reduced their incarceration rates and yet have seen drops in crime rates and in recidivism.

   Are you opposed to sentencing reforms that these states have done that have saved billions of dollars in taxpayer money, and have also apparently decreased crime rates?

2. At the hearing, you testified that the notion that the prison population is composed of people who have committed one or two nonviolent crimes, and are sentenced to long periods is "simply not supported by the evidence." Based on brief research, I have found several examples where this has occurred, and anecdotal evidence of many more such cases.

   For instance, take the case of Stephanie George, a woman who was sentenced to life in prison when she was 26 years old for conspiracy to possess with intent to distribute cocaine. That conviction, in federal court in Florida, was due to the fact that 500 grams of powder cocaine and 500 grams of crack – belonging to her boyfriend – were found at her residence.

   Prior to that conviction, she had previously been convicted one other time for possession of crack when a bag of cocaine residue was found on her front porch. But because of these two convictions, she was found to be a career criminal. At sentencing, Judge Roger Vinson said to prosecutors: "There's no question that Ms. George deserved to be punished. The only question is whether it should be a mandatory life sentence ... I wish I had another alternative." He then told Stephanie, "Even though you have been involved in drugs and drug dealing for a number of years ... your role has basically been as a girlfriend and bag holder and money holder. So certainly, in my judgment, it doesn't warrant a life sentence."

   (a) For cases like Stephanie's would you support changes to mandatory minimum laws? Please explain why or why not.

   (b) As Commissioner Davis testified at the hearing, he wants to put drug kingpins in jail for a long time, not people who are caught up in the dragnet. He also said that "it is my estimation, after working in the drug field for many years, that a system that bases minimum mandatory sentences on 14 grams or 28 grams is missing the big picture." It seems like Stephanie George's case is one of those that Commissioner Davis was referring to, in that she was simply caught up in the dragnet because her boyfriend dealt drugs, and yet, she has been sentenced to life

in prison. Do you agree with Commissioner Davis that drug kingpins should be the primary target and that we should not be imposing mandatory life sentences on individuals like Stephanie George?

(c) Do you agree with Commissioner Davis that "a system that bases minimum mandatory sentences on 14 grams or 28 grams is missing the big picture"?

3. Statistics show that drug offenders are the largest category of offenders entering federal prison each year. Indeed, in 2009, Grover Norquist testified before the House Committee on the Judiciary and stated:

> [E]xplosion in costs is driven by the expanded use of prison sentences for drug crimes and longer sentences required by mandatory minimums. Drug offenders are the largest category of offenders entering federal prisons each year. One third of all individuals sentenced in federal courts each year are drug offenders. And these convicts are getting long sentences. In 2008, more than two-thirds of all drug offenders receive a mandatory minimum sentence, with most receiving a ten-year minimum… The benefits, if any, of mandatory minimum sentences do not justify this burden to taxpayers.

Do you agree with Grover Norquist that the benefits of mandatory minimum sentences – especially for drug offenders – do not justify the burden to taxpayers?

4. You testified at the hearing that "our high incarceration rate is the result of our comparatively high violent crime rate." Yet, studies show that approximately three-fourths of Federal prisoners are serving time for a non-violent offense and have no history of violence. One-third of our Federal prisoners are first-time, non-violent offenders. Based on these statistics, it appears that a large part of our prison population is due to non-violent offenders.

In these cases, do you believe that there are reforms we can undertake that would continue to keep our communities safe while saving our taxpayers dollars?

QUESTIONS SUBMITTED TO BRETT L. TOLMAN BY SENATOR LEAHY

[NOTE: At the time of printing, after several attempts to obtain responses to the written questions, the Committee had not received any communication from Brett L. Tolman.]

QUESTIONS FOR THE RECORD FOR BRETT TOLMAN
AUGUST 1, 2012
"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"
SUBMITTED BY CHAIRMAN PATRICK LEAHY

1. In recent decades, there has been a proliferation of harsh mandatory minimum sentences in the federal system, in many cases for non-violent offenses like drug offenses.

   Do you believe that these lengthy mandatory minimum sentences have helped reduce crime, or have they been counter-productive?

2. As you have pointed out, sentencing reforms and related initiatives have been led by states that are traditionally considered to be very conservative on criminal justice issues, such as Texas. Studies of states that have instituted sentencing reforms have shown that addressing these issues actually improves our ability to keep our streets safer.

   Why do you think that addressing the increasingly urgent problem of rising prison costs and finding alternative approaches to crime reduction beyond incarceration is an issue that should appeal to all sides of the political spectrum?

3. During the hearing, you discussed the Second Chance Act and were critical of a provision in the pending Second Chance Reauthorization Act dealing with "good time" calculations. The Second Chance Act, as originally passed, and most of the bipartisan Second Chance Reauthorization Act concerns providing federal support to state and local programs aimed at helping prisoners successfully reenter the community and avoid recidivism, as well as more modest substantive reentry programs within the federal system.

   Do you agree that the prisoner reentry programs supported by the Second Chance Act help to reduce recidivism and represent a positive use of criminal justice funds?

QUESTIONS SUBMITTED TO EDWARD F. DAVIS BY SENATOR KLOBUCHAR

QUESTIONS FOR THE RECORD
Senate Judiciary Committee
"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"
August 1, 2012
Senator Amy Klobuchar

Questions for All Witnesses

In my own experience as a prosecutor, I saw how drug courts can be an extremely effective means of reducing the impact of drug crime on communities and families, lowering costs to taxpayers, and rehabilitating offenders. Consequently, I believe we should be looking for ways for the federal government to support the roughly 2,500 drug courts across the country.

- Recognizing that we must balance competing demands from state and local law enforcement for scarce federal dollars, do you agree that we should support drug courts as a potentially cost-effective way to reduce crime?
- Do you agree that drug courts can save taxpayers money? Why?
- Are there other benefits of drug courts?

QUESTIONS SUBMITTED TO JEFFREY LEIGH SEDGWICK BY SENATOR KLOBUCHAR

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Senate Judiciary Committee
"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"
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QUESTIONS SUBMITTED TO EDWARD F. DAVIS BY SENATOR GRASSLEY

Senator Grassley's Questions for the Record from

Senate Committee on the Judiciary

Hearing on "Rising Prison Costs: Restricting Budgets & Crime Prevention Options"

August 1, 2012

Question for Edward Davis
Police Commissioner, Boston, Massachusetts

1. In Massachusetts, possession of up to an ounce of marijuana was made punishable only by a $100 fine in 2008. Boston had a spike in homicides in 2009, after a number of years of decline. In a Boston Globe article last year, you blamed the rise in crime, at least in part, on the decriminalization of marijuana. You were quoted as saying that decriminalization increased demand because more people were no longer afraid of purchasing it. In an expanding market, he said, drug dealers were fighting each other over control, leading to violence. You also noted that lack of jobs because of the poor economy led some people to return to selling drugs after release from prison.

a) Can you please expand on your public comments and describe the connection between decriminalization of marijuana and increased crime in Massachusetts?

b) You also commented that violence was fueled by the release of offenders with drug records from prison. Could you please expand on that point, as well.

2. Earlier this year, I joined Senator Feinstein in co-chairing a hearing of the Senate Caucus on International Narcotics Control. That hearing discussed the impact marijuana being grown on public lands has had. At that hearing, Fresno County Sheriff Mims testified about how so called medical marijuana from Fresno County was found by her investigators to be transported all the way to Massachusetts. She said the reason it moved was that it increased from $1000 a pound in California to $3000 a pound in Massachusetts. This large profit is a huge incentive to move these drugs and fuel violence from coast to coast. Are you aware of these shipment patterns and are you working with partner agencies to address this?

QUESTIONS SUBMITTED TO JEFFREY LEIGH SEDGWICK BY SENATOR GRASSLEY

Senator Grassley's Questions for the Record from

Senate Committee on the Judiciary

Hearing on "Rising Prison Costs: Restricting Budgets & Crime Prevention Options"

August 1, 2012

Questions for Jeffrey Sedgwick
Former Assistant Attorney General for the Office of Justice Programs

1. In 2010, the Office of Inspector General for the Department of Justice (OIG) conducted a review of the Office of Justice Programs' (OJP) management and oversight of offender reentry grant programs. The OIG found that OJP did not "establish an effective system for monitoring...grantees to assess whether they were meeting program goals." The review found little to no documentation for grant monitoring activities and a reduced quality of desk reviews of grants. The OIG found significant design flaws in reentry grant programs and that OJP did not define key terms essential for determining whether program goals were met. The most damaging finding was that the design flaws included failures to provide baselines for calculating recidivism—thus OJP could not accurately determine whether programs reduced recidivism rates. Ultimately the Inspector General made 11 recommendations to improve reentry grant management.

a) The Inspector General recommended that OJP require grantees to establish baseline recidivism rates so they can be compared against non-participants. Is a comparison to baseline recidivism rates enough to determine whether a reentry program is effective? If not, what other factors should OJP use to determine success?

b) As you are aware, most of the raw data on grant performance is usually retained by OJP and not completely shared with Congress. As a former head of OJP, what should we be asking OJP to provide to about the success or failure of grant programs that we may not be receiving?

c) Aside from our usual outlets, GAO and the Inspector General, who should we be asking to review these grant programs to determine whether or not they are actually working to reduce recidivism?

d) The GAO recently released a report regarding the risk of unnecessary duplication among Justice Department grant programs. GAO found that DOJ has "not conducted an assessment of its grant programs to systematically identify and reduce overlap." GAO recommended that DOJ conduct a review of grants to determine if overlap exists. DOJ agreed with the recommendation, but GAO stated, "it is too soon to know...whether they will fully address the intent of the recommendation." In your experience at OJP, is this something DOJ can do if they want to? What are the barriers to DOJ actually conducting a meaningful review of grant duplication?

2. In your testimony, you described research on the different types of crime prevention strategies—incarceration, policing, and social programs. You say that studies show anywhere from a 10 percent to 27 percent contribution of incarceration to the decline in crime rates over the last couple of decades. Meanwhile, there is no evidence that simply hiring more police officers contributed to the decline. Likewise, with a few isolated examples, there is no evidence that social programs designed to rehabilitate criminals reduce recidivism. Furthermore, you testified that it is very hard to find crime prevention programs that have been proved to work in one location that can be scaled up to apply nationally, since local conditions are crucial to a program's success.

a) Overall, what does the evidence show about the most effective crime prevention strategies?

b) Is the federal government currently supporting such work?

c) Can you please provide a few examples of programs that have been proved to work and describe why they might not be able to applied nationally?

d) Professor Matt DeLisi at Iowa State University has calculated the cost of crime victimization. His work found that 500 career criminals accounted for $415 million in victim costs, $137 million in criminal justice costs, and nearly $15 million in lost earnings. So, taking your 10% to 27% crime reduction numbers, along with Professor DeLisi's research, is it possible that the cost of letting prisoners out early could actually cost more than keeping them incarcerated?

3. At the hearing, you mentioned an article by James Q. Wilson that described the prison population as comprising, on the one hand, violent criminals, and on the other hand, less violent criminals who are recidivists.

a) Can you please describe in more detail the article and its conclusions.

b) What implications do the conclusions of the article have for the question of the cost-effectiveness of incarceration?

4. You also noted, in response to a question from Chairman Leahy, that there are very few cases of young, first offenders being sentenced to prison for a long sentences. Can you expand on this statement? Based on existing research, can you describe in more detail what the demographics of the prison population are in the United States, e.g., by age, categories of crime, and length of sentence?

5. You testified that increased incarceration has undoubtedly been part of the reason crime has declined over the last decade and a half. As crime continues to decline, can we expect that incarceration (and associated costs) will decline as well?

QUESTIONS SUBMITTED TO BRETT L. TOLMAN BY SENATOR GRASSLEY

[NOTE: At the time of printing, after several attempts to obtain responses to the written questions, the Committee had not received any communication from Brett L. Tolman.]

Senator Grassley's Questions for the Record from

Senate Committee on the Judiciary

Hearing on "Rising Prison Costs: Restricting Budgets & Crime Prevention Options"

August 1, 2012

Question for Brett Tolman
Shareholder, Ray, Quinney & Nebeker

In a recent speech, Assistant Attorney General Lanny Breuer addressed the topic of prison spending. Breuer highlighted two public safety legislative proposals, the Federal Prisoner Recidivism Reduction Programming Enhancement Act and the Federal Prisoner Good Conduct Time Act. The Federal Prisoner Recidivism Reduction Programming Enhancement Act "would allow prisoners who successfully participate in programs that have been demonstrated to reduce recidivism to earn an incentive of up to 60 days per year of credit toward completion of their sentence." The Federal Prisoner Good Conduct Time Act "would increase the amount of time a federal prison inmate could earn off his or her sentence, for good behavior, by approximately seven days per year—from roughly 47 to 54 days." AAG Breuer also called for a systematic review of federal sentencing policy and stated that DOJ had sent a letter to the Federal Sentencing Commission to that effect. Each of the witnesses at the hearing criticized the notion of simply letting criminals out of their sentences early.

a) You have proposed a more measured approach instead of the one size fits proposal to release federal prisoners early the Obama Administration supports. However, I'm concerned your proposal creating tiers of offenders would lead to a situation where white collar offenders are released early. For example, Bernie Madoff stole billions of dollars and received a sentence of 150 years. Most people think he got what he deserved. But, because he was a white collar criminal with no prior convictions, he would be a low risk offender under your proposal. Under your proposal, isn't it possible that a reduced sentence could go to a white collar criminal such as Bernie Madoff?

b) Giving discretionary decisions on sentencing to unelected bureaucrats with a judicial veto could lead to disparities from district to district. How would we prevent that disparity under your proposal?

c) How would your proposal account for unintended consequences, such as the possibility of racial disparities, which could occur giving the risk determination? Would judges have the power to equalize early release so as to avoid disparate treatment?

RESPONSES OF EDWARD F. DAVIS TO QUESTIONS SUBMITTED BY SENATORS GRASSLEY AND KLOBUCHAR

QUESTIONS FOR THE RECORD
Response to: Senator Grassley
From: Edward Davis Police Commissioner, Boston, Massachusetts

Question 1

In 2010, the number of narcotics-related homicides doubled in the City of Boston. Boston normally averages 8 -10 drug related homicides per year but the year that marijuana was decriminalized, we witnessed an increase to 16 homicides. Also from 2009 to date, the City of Boston experienced an average of 45 home invasions per year. Based upon investigations, these home invasions (approximately 75%) were drug related with a majority centering around the distribution of marijuana.

I attribute three different factors to this increase:

First, marijuana is a commodity, governed by the same rules of supply and demand as any other cash crop. An increase in demand drives prices up and we experienced that here in Boston. This phenomenon led to larger amounts of money moving through the illicit drug markets than had been experienced in the past.

Second, in times of a struggling economy the opportunity for employment becomes significantly reduced. This is especially true for offenders being released from prisons.

And finally, in 2010, the Commonwealth of Massachusetts parole system was broken, returning record numbers of serious offenders to the streets of our city.

These three factors merged to establish an environment where violence was common as hardened criminals worked to establish new drug territories.

Boston also experienced a number of robberies of college aged students who were dealing marijuana. The City of Boston is a college town with the highest density of college students per capita of any American city. Gang members exploited this group of students utilizing firearms to overpower these low level drug dealers and to steal their marijuana and large amounts of cash. Based on my experience, the potential for injury and death is high in these situations.

I believe that the increased demand for marijuana destabilized the drug market and created this public safety challenge.

QUESTIONS FOR THE RECORD

Response to: Senator Grassley

From: Edward Davis Police Commissioner, Boston, Massachusetts

Question 2

The Boston Police Department works closely with the Drug Enforcement Agency (DEA) as well as other federal partners such as Immigrations, Customs & Enforcement (ICE), the United States Postal Inspections Service and has contacts with several delivery services.

Our work with the DEA has shown that over the past year, there has been an increase in marijuana being shipped from California to Boston. For more specific knowledge of the source of shipment, I would concur with the State of California authorities.

We continue to work with the DEA and other law enforcement agencies to monitor and take action against the illegal distribution and possession of marijuana in the City of Boston.

QUESTIONS FOR THE RECORD
Response to: Senator Amy Klobuchar
From: Edward Davis Police Commissioner, Boston, Massachusetts

1) Yes, I agree that we should support drug courts as a potentially cost-effective way to reduce crime.

2) Yes, I agree that drug courts can save taxpayers money. There is an abundance of evidence demonstrating the cost-effectiveness of drug courts already in place in the United States. A recent meta-analysis conducted by the Urban Institute found that drug courts produced an average of $2.21 in direct benefits to the criminal justice system for every $1 invested—a 221% return on investment.[1] When drug courts targeted their services toward the more serious, higher-risk drug offenders, the average return on investment was determined to be even higher: $3.36 for every $1 invested. These savings reflected direct and measurable cost-offsets to the criminal justice system resulting from reduced rearrests, law enforcement contacts, court hearings and the use of jail or prison beds. When indirect cost-offsets are also taken into account, such as savings from reduced foster care placements and healthcare service utilization, studies have reported economic benefits of drug courts ranging from approximately $2 to $27 for every $1 invested.[2]

   Research suggests that these reductions in rearrest extend beyond the first few years following treatment. An evaluation of the Multnomah County, Oregon drug court—the second-oldest in the country—found a 24% reduction in drug arrests for participants 13 years after initial entry into the program.[3] In addition, the drug court was found to cost taxpayers significantly less than "business as usual." Evaluations of 11 drug courts in Oregon, Washington, Kentucky and Missouri found substantial cost savings. For example, six drug courts in Washington saved an average of $6,800 per participant based on reduced reaarrests and victimization costs.[4]

   When evaluating the net costs and benefits of drug courts, various research studies generally find that drug courts save taxpayer dollars compared to simple probation and/or incarceration primarily due to the reduction in arrests, case processing, and jail occupancy. States such as New York are now seeing the benefits of taking the drug court model to scale by furnishing drug courts in every county. In a three-year study, the New

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[1] Bhati, A. S., Roman, J. K., & Chalfin, A. (2008, April). To treat or not to treat: Evidence on the prospects of expanding treatment to drug-involved offenders. Washington, DC: The Urban Institute.
[2] Carey, S. M., Finigan, M., Crumpton, D., & Waller, M. (2006). California drug courts: Outcomes, costs and promising practices: An overview of phase II in a statewide study. Journal of Psychoactive Drugs, SARC Supplement 3, 345-356.
[3] Carey, S. M. &Finigan, M, "Detailed Cost Analysis in a Mature Drug Court Setting: A Cost Benefit Evaluation of the Multnomah County Drug Court," prepared under grant number 2000–DC– VX–K004, which was awarded by NIJ to NPC Research, Inc.
[4] Belenko, 2005, pp. 44-45

York State Court System estimated that $254 million in incarceration costs were saved by diverting 18,000 non-violent drug offenders into Drug Courts.[5] Another program that has proven to be cost-effective is Hawaii's Opportunity for Probation with Enforcement (HOPE). HOPE is a program that has produced a large body of evidence demonstrating its effectiveness when compared with probation as usual (PAU) with respect to increasing the rates of probationer compliance and decreasing their rates of incarceration.[6] It currently costs approximately $50,000 a year to house an individual in prison in the state of Hawaii.[7] HOPE costs approximately $1,000 a year above regular probation per offender, but is estimated to provide savings ranging from $4,000 to $8,000 per offender over the course of probation.[8]

3) Yes, there are many additional benefits of drug courts beyond the cost savings. First, drug courts ensure compliance by providing more comprehensive and closer supervision than other community-based programs, such as probation. Many studies have shown that the offender's relationship with the judge assigned to the court can also play a part in success of the involvement of the participant's compliance.

   Next, the success of drug court programs already in place has led to the formation of other courts similar to the drug court model. These programs include family treatment courts for alcohol- or drug-involved parents, accountability courts and DWI courts.

   In addition, drug courts have been found to have many positive effects for the offenders themselves. For example, the *Multisite Adult Drug Court Evaluation* (MADCE) found that adult drug courts significantly reduced illicit drug and alcohol use, improved family relationships, lowered family conflicts and increased participants' access to needed financial and social services.[9]

   Finally, and perhaps most importantly, drug courts contribute to a reduction in crime. The Government Accountability Office (GAO) concluded that drug courts significantly reduce crime compared to other alternatives.[10] For example, during the entire 15-year time period that drug courts have been in operation throughout New York, the state has witnessed historic reductions in crime, which in turn led to widespread reform measures in 2009. Due to drug courts and other effective alternatives to incarceration, New York

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[5] Rempel, M., Fox-Kralstein, D., Cissner, A., Cohen, R., Labriola, M., Farole, D., Bader, A., & Magnani, M. (2003). The New York State adult drug court evaluation: Policies, participants, and impacts. New York, NY: Center for Court Innovation.

[6] Hawken, A., & Kleiman, M. (December 2009). Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's Hope. Retrieved January 15, 2010, from National Criminal Justice Reference Service www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf

[7] Alm, S. (2010, April 18). HOPE Probation. (R. Kiyabu, J. Steinberg, & M. Yoshida, Interviewers) Honolulu, HI.

[8] Essoyan, S. (2010, March 28). Signs of HOPE - Hawaii News - Starbulletin.com. Hawaii News - Starbulletin.com. Retrieved April 9, 2010, from http://www.starbulletin.com/news

[9] Kralstein, D. (2010). *The impact on drug use and other psychosocial outcomes: Results from NU's Multisite Adult Drug Court Evaluation.* Presentation at the 16th Annual Training Conference of the National Association of Drug Court Professionals, Boston, MA.

[10] U.S. Government Accountability Office. (2005). *Adult Drug Courts: Evidence indicates recidivism reductions and mixed results for other outcomes* [No. GAO-05-219]. Washington, DC: Author.

has closed two of its prisons and left several others half-empty.[11] Seven separate meta-analyses conducted by independent scientific teams have concluded that adult drug courts significantly reduce crime, typically measured by fewer re arrests for new offenses and technical violations.[12]

[11] Tremmel, P. (2009). *Report: New York Offers Model for Cutting Crime and Costs in Illinois.* Retrieved from http://www.northwestern.edu/newscenter/stories/2009/06/crrimestudy.html

[12] Aos et al., 2006; Downey & Roman, 2010; Latimer et al., 2006; Lowenkamp et al., 2005; MacKenzie, 2006; Shaffer, 2006; Wilson et al., 2006

RESPONSES OF JEFFREY LEIGH SEDGWICK TO QUESTIONS SUBMITTED BY SENATORS GRASSLEY, KLOBUCHAR, AND LEAHY

Senator Grassley's Questions for the Record from

Senate Committee on the Judiciary

Hearing on "Rising Prison Costs: Restricting Budgets & Crime Prevention Options"

August 1, 2012

Questions for Jeffrey Sedgwick
Former Assistant Attorney General for the Office of Justice Programs

1. In 2010, the Office of Inspector General for the Department of Justice (OIG) conducted a review of the Office of Justice Programs' (OJP) management and oversight of offender reentry grant programs. The OIG found that OJP did not "establish an effective system for monitoring...grantees to assess whether they were meeting program goals." The review found little to no documentation for grant monitoring activities and a reduced quality of desk reviews of grants. The OIG found significant design flaws in reentry grant programs and that OJP did not define key terms essential for determining whether program goals were met. The most damaging finding was that the design flaws included failures to provide baselines for calculating recidivism—thus OJP could not accurately determine whether programs reduced recidivism rates. Ultimately the Inspector General made 11 recommendations to improve reentry grant management.

a) The Inspector General recommended that OJP require grantees to establish baseline recidivism rates so they can be compared against non-participants. Is a comparison to baseline recidivism rates enough to determine whether a reentry program is effective? If not, what other factors should OJP use to determine success?

Answer: Whether or not a reentry program is successful or not depends first and foremost on how success is defined. For most policymakers, practitioners and researchers, successful reentry is defined as the absence of failure where failure is defined as rearrest or reconviction (or, in some cases, revocation of parole/probation). The challenge with this definition is that it requires a lengthy (and expensive) post-release follow-up period; the standard in recidivism research is three years. This means that the grant period would have to be substantially longer than three years (to allow for pre-release time spent in the funded program, followed by three years of post-release follow-up). The expense is derived from the absence of accurate and complete electronically-retrievable records to track participants' post-release behavior (including across jurisdictional boundaries); when the Bureau of Justice Statistics has reported on recidivism among prison inmates, it has had to obtain paper rap sheets from states and then manually enter that information into computers for analysis – an expensive and time-consuming process. Consequently, grantees often substitute easily obtained output measures (number of inmates participating in a program or number of inmates completing a re-entry program) for the more meaningful outcome measures (number of program participants exhibiting the desired change in post-release behavior). During my

tenure as AAG for OJP, we stood up an Office of Audit, Assessment and Management precisely to push our grant agencies toward uniform and consistent use of appropriate outcome measures in evaluating funded programs. The issue of accurate baseline recidivism rates is quite important in order to determine whether the observed changes in post-release behavior are due to program effects or to other effects such as simple aging.

b) As you are aware, most of the raw data on grant performance is usually retained by OJP and not completely shared with Congress. As a former head of OJP, what should we be asking OJP to provide about the success or failure of grant programs that we may not be receiving?

Answer: I would encourage Congress to think in terms of a hierarchy of information that it expects to receive on funded programs. That hierarchy would include outputs, outcomes and impacts. Outputs, the most traditional data point collected and reported on funded programs, captures simply the number of individuals passing through a program. Typically one would be informed about the number of individuals recruited into the program and the number successfully completing the program. This is an important factor in thinking about program efficiency: the cost per person enrolled. Next would be program outcomes: the observed change in participants' behavior *as a result of program exposure or treatment*. This is an important factor in thinking about program effectiveness: the ability of the program to change participant behavior in positive directions. I believe it entirely appropriate for Congress to require reporting of program outcome measures to Congress; this expectation/requirement would "trickle down" through OJP to the grantees and ensure that such information is routinely collected and reported for all grant-funded programs (as is surely should be). I can tell you from recent personal experience that at least some grantees are already collecting and reporting this information to their OJP grant monitors. Sadly, such information does not appear to always be read by grant monitors nor considered in funding decisions. Congress can be quite helpful in giving OJP a firm nudge on this. Finally, Congress should require reporting about anticipated program impacts: the way in which program outputs and outcomes on the individual level collectively or in aggregate transform communities for the better. Obviously, small scale programs are unlikely to generate measureable community-wide impacts in short time periods, but creating an expectation that program impacts will be defined in concrete terms ensures that grantees locate their program activities in the context of a concrete vision of community improvement.

c) Aside from our usual outlets, GAO and the Inspector General, who should we be asking to review these grant programs to determine whether or not they are actually working to reduce recidivism?

Answer: I would suggest that Congress, as it considers reauthorization of the Second Chance Act, mandate an appropriately-sized carve out of funds for recidivism research and evaluation. The evaluation component could be administered by the National Institute of Justice and take advantage of the wealth of expertise in the academic community on criminal careers, desistance from crime, program evaluation et cetera. Similarly, the Bureau of Justice Statistics has, in the past, done very good work

establishing baseline estimates of recidivism for prison inmates and could clearly handle the research portion. Sadly, funding constraints and competing demands for inmate surveys on other topics (such as prison rape) have delayed updating BJS' estimates of baseline recidivism rates among prison inmates. While there is understandable pressure to maximize the proportion of appropriated dollars that goes to program rather than overhead, it seems prudent to me to make an investment in baseline measures and program evaluation to ensure that our program dollars are targeted on the most pressing needs, efficiently used and effective.

d) The GAO recently released a report regarding the risk of unnecessary duplication among Justice Department grant programs. GAO found that DOJ has "not conducted an assessment of its grant programs to systematically identify and reduce overlap." GAO recommended that DOJ conduct a review of grants to determine if overlap exists. DOJ agreed with the recommendation, but GAO stated, "it is too soon to know...whether they will fully address the intent of the recommendation." In your experience at OJP, is this something DOJ can do if they want to? What are the barriers to DOJ actually conducting a meaningful review of grant duplication?

Answer: Without doubt, DOJ can conduct an assessment of its grant programs to systematically identify and reduce overlap if it wants to; however, *the organizational structure of DOJ makes it unlikely that such an assessment will be a priority activity for anyone with authority over all grant program offices and components*. Consider the organizational structure of DOJ as authorized by Attorney General Holder on 2 May 2012. The principal granting offices lie within the Office of Justice Programs, administered by an Assistant Attorney General, with two significant exceptions: the Community Oriented Policing Services (COPS) and the Office on Violence Against Women (OVW). While the AAG for OJP coordinates the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention and the Office for Victims of Crime, he or she has no jurisdiction or coordinating authority over either COPS or OVW. That authority lies with the Associate Attorney General. And yet the Associate Attorney General also has direct line authority over the Civil Rights Division, the Civil Division, the Antitrust Division, the Environmental & Natural Resources Division, the Tax Division and four other offices. Realistically speaking, that means *grant consolidation and management will likely be a low priority for the Associate Attorney General and an even lower priority for the Deputy Attorney General or the Attorney General*. Thus, one reasonable step toward elimination of grant overlap and duplication would be to bring all grant programs under the OJP umbrella headed by an Assistant Attorney General for whom grant coordination and effective management is the number one priority. Given the similarity of program emphasis in COPS and the Bureau of Justice Assistance or in OVW and the Office for Victims of Crime, such a reorganization makes programmatic good sense while offering opportunities to reduce administrative overhead (possibly through agency consolidation) as well as to achieve better coordination of programs, eliminating needless overlap and duplication.

2. In your testimony, you described research on the different types of crime prevention strategies—incarceration, policing, and social programs. You say that studies show anywhere from a 10 percent to 27 percent contribution of incarceration to the decline in crime rates over the last couple of decades. Meanwhile, there is no evidence that simply hiring more police officers contributed to the decline. Likewise, with a few isolated examples, there is no evidence that social programs designed to rehabilitate criminals reduce recidivism. Furthermore, you testified that it is very hard to find crime prevention programs that have been proved to work in one location that can be scaled up to apply nationally, since local conditions are crucial to a program's success.

a) Overall, what does the evidence show about the most effective crime prevention strategies?

Answer: As I noted in my testimony, the American experience with crime decline during the decade of the 1990s taught us much about crime prevention. Among the criminal justice policies plausibly connected to crime prevention, incarceration (or incapacitation) seems clearly to have been the predominant influence on the nationwide crime decline. (It should be noted that economic and demographic factors also played a significant role as evidenced by the fact that Canada enjoyed a similar crime decline during the same time period without significant changes in its criminal justice policies or practices.) And studies show that the increased number of police, largely funded by federal initiatives such as the Violent Crime Control and Law Enforcement Act of 1994, has not shown a consistent role in reducing violent crime in the United States. *However, more strategic use of police, qualitative rather than quantitative change in policing, along the lines laid out by Commissioner Davis in his testimony have been shown to be effective in crime prevention.* Indeed, Franklin Zimring points to the experience of New York City during the 1990s; during the same time frame the United States as a whole was enjoying a 40% decline in index (felony) crime, New York City was experiencing a decline nearly twice as large as the nation. In investigating possible causes for this greater effectiveness in crime prevention, Zimring concluded it was the use of COMPSTAT and greater accountability within the NYPD management hierarchy that produced these results. *So increased incapacitation through incarceration and smarter policing can both be said to be effective crime prevention strategies.* In neither NYC nor in the United States as a whole can treatment programs be said to have had a significant impact on crime rates. This lack of effectiveness may be attributable to one of two causes: either "nothing works" in rehabilitation (a claim that dates back to a famous article by Robert Martinson[1]); or, alternatively, the current inventory of rehabilitative programs are poorly designed and carelessly implemented.[2]

b) Is the federal government currently supporting such work?

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[1] Robert Martinson, "What Works? Questions and Answers About Prison Reform," *The Public Interest* 35 (Spring 1974): 22-54.

[2] Edward J. Latessa and Alexander Holsinger, "The Importance of Evaluating Correctional Programs: Assessing Outcome and Quality," *Corrections Management Quarterly* 2 (Fall 1998): 22-29.

Answer: My personal opinion is that the federal government places too little emphasis on maintaining a robust set of key indicators to identify emerging problems in the field of public safety and too little emphasis on identifying and disseminating best practices across the spectrum of public safety programs. For example, during my tenure at BJS and then as AAG/OJP, I had the opportunity to sit in at the National Academies of Science on a two-day seminar of thirty of the nation's most distinguished criminologists discussing the state of current research in criminology. One of the most strongly supported conclusions was that the discipline of criminology had systematically undervalued (and thus understudied) policing and the impact it has on crime prevention. That conclusion was underlined at a later international conference I attended on policing where I was impressed by the quantity and quality of research being done in other countries on better techniques of policing and better design of public spaces to discourage crime. In general, I believe we can achieve much more valuable return on our public investment in justice programs by taking strategic policing seriously, emphasizing outcome and impact evaluations, and focusing on better dissemination of best practices (or thinking more clearly about how to transfer research knowledge into practice).

c) Can you please provide a few examples of programs that have been proved to work and describe why they might not be able to applied nationally?

Answer: Two examples come quickly to mind: drug courts and community-based violent crime reduction programs like the Boston Ten Point Plan.

First, from the perspective of crime control, it is important to increase treatment use among those substance abusers who also commit non-drug crimes. The difficulty is that many, if not most, drug-involved offenders will not seek out treatment voluntarily; hence the need for leveraging the threat of prison to secure treatment entry, retention and compliance. Among the various diversion programs that exist, Drug Courts have been a popular option supported by federal funding. However, we should recognize two facts before plunging into significantly increased funding for Drug Courts: First, outcome evaluations of Drug Courts (those that measure changes in the behavior of the drug-involved offender) have produced distinctly mixed results with some Drug Courts producing impressive results and others failing to have any impact on drug involvement.3 This suggests that local and idiosyncratic factors play a prominent role in program success (such as the level of commitment or "buy-in" by the Judge and service agencies whose cooperation is required to support the offender). Second, we have twenty years of experience politically supporting and funding Drug Courts. That investment has produced treatment for approximately 70,000 drug-involved offenders nationwide, one-thirtieth of the estimated total number of seriously drug-involved offenders over the same period. And since the typical drug court judge supervises between 50 and 75 clients, scaling up Drug Courts to handle the volume in question would require massive increases in the number of judges and courtrooms.4 Given the mixed outcome evaluation results,

[3] Office of Justice Programs, U.S. Department of Justice. 1998. "Looking at a Decade of Drug Courts." Prepared by the Drug Court Clearinghouse and Technical Assistance Project. Washington, DC: American University.
[4] John K. Roman, Aaron Chalfin, Jay Reid, and Shannon Reid. 2008. *Impact and Cost-Benefit Analysis of the Anchorage Wellness Court.* Rockville, MD: NCJRS Photocopy Services.

and the dependence on local factors for success, it far from clear that the Drug Court option is ready to "scaled up."

Second, Boston and NYC followed remarkably different paths to cutting crime, and especially violent crime, during the 1990s. As I mentioned earlier, NYC relied on qualitative changes in policing to achieve its crime reduction, while Boston relied on a community-based program called the Ten Point Plan. The Ten Point Plan was based on churches and faith-based agencies in Boston working collaboratively to develop a community action plan aimed at reducing violence and helping youth to develop more positive and productive life-styles.[5] I was fortunate to be a participant in the Attorney General's Eighteen City Tour in 2006 when a group of DOJ officials visited a representative group of communities to investigate the purported "Gathering Storm" of increased crime.[6] One of the cities I visited was Boston since it was experiencing a significant increase in homicide. During that visit, I spoke to several faith community leaders involved for fourteen years in the Ten Point Coalition. Their observations are pertinent to your question; they acknowledged that NYC and Boston had followed different paths to reducing crime in the 1990s and observed that the NYC paths seemed to be more sustainable. In brief, they commented that their successful local approach was heavily dependent on strong commitment and sacrifice by community leaders and admitted, quite frankly, to having become burnt out. They noted that there was not a younger generation of faith community leaders willing to make the personal and family sacrifices necessary to maintain the momentum of the Ten Point Plan and Coalition. In short, it was an idiosyncratic and local set of conditions (strong personal commitment and sacrifice by a particular cohort of faith community leaders) that made the Ten Point Plan work. And those conditions were not sustainable over the long haul. Again, I think it is significant that Commissioner Davis pointed to the adoption of key elements of COMPSTAT and the NYPD management approach in Boston that has achieved and sustained violence reduction in that community.

d) Professor Matt DeLisi at Iowa State University has calculated the cost of crime victimization. His work found that 500 career criminals accounted for $415 million in victim costs, $137 million in criminal justice costs, and nearly $15 million in lost earnings. So, taking your 10% to 27% crime reduction numbers, along with Professor DeLisi's research, is it possible that the cost of letting prisoners out early could actually cost more than keeping them incarcerated?

Answer: That is absolutely correct. I think the consensus opinion among those testifying at the hearing was that indiscriminate early release of prisoners is an especially ill-advised policy. Indeed, treating offenders or inmates as essentially homogeneous is a huge mistake. Among offenders, there are essentially four categories: low volume, non-serious offenders; high volume, non-serious offenders; low volume, serious offenders; and high-volume, serious offenders. There are very few of the first group in American prisons and jails; indeed, the criminal justice system is pretty good at identifying and diverting such offenders into alternative sanctions such as probation. That means the

[5] http://www.bostontenpoint.org/about.php
[6] *Chief Concerns: A Gathering Storm—Violent Crime in America*, Police Executive Research Forum, October 2006.

prison population in the United States is almost totally composed of the other three groups; of those three, early release of high volume, non-serious offenders will impose costs on the community, though not as high as releasing high volume, serious offenders. Low volume, serious offenders could be released without significant impact on public safety, but I suspect that there would be significant opposition on grounds of retribution (or justice) to letting those who have committed, say, a murder or aggravated assault away with little or no prison time. The key point to keep in mind is that any approach to reducing prison populations and their associated costs should be based on culling from the current inmate population those who represent the lowest risk of recidivism, and particularly those with the lowest risk of serious re-offending.

3. At the hearing, you mentioned an article by James Q. Wilson that described the prison population as comprising, on the one hand, violent criminals, and on the other hand, less violent criminals who are recidivists.

a) Can you please describe in more detail the article and its conclusions?

Answer: The James Q. Wilson article I referred to in my testimony is "Dealing with the High-Rate Offender."[7] In it, Wilson discusses the four main justifications for incarceration: deterrence, incapacitation, rehabilitation and retribution, though in truth the bulk of his essay is a reflection on the competing arguments for incapacitation and retribution. He suggests that theories of deterrence require us to make assumptions about human nature (e.g. that humans, and especially offenders, act rationally in calculating the comparative costs and benefits of offending versus legitimate behavior) that may not be uniformly applicable (crimes of passion, for example, or crimes committed under the influence of drugs or alcohol) while theories of rehabilitation require us to believe that the values, preferences, or time-horizon of criminals can be altered by plan. Theories of incapacitation and retribution require no such contentious assumptions; incapacitation works by definition while retribution focuses not on the criminal but on the crime. Further, it is demonstrably the case that at virtually every stage of the criminal justice system, decision makers weigh risk in deciding whether to arrest, charge, prosecute, convict and incarcerate alleged offenders; so the desire for incapacitation is clearly at work in deciding who winds up in prison and who doesn't. Yet it is also demonstrably true that the public demands that those who commit serious crimes pay for their crimes by doing time; hence, retribution is at work in deciding who winds up in prison, as well. These two competing concerns, for incapacitation and for retribution, strongly influence the makeup of today's prison population.

b) What implications do the conclusions of the article have for the question of the cost-effectiveness of incarceration?

Answer: Wilson wrote this particular essay at a time when there already was concern over prison costs, overcrowding and the growing number of prison inmates, so his interest in incapacitation, and particularly selective incapacitation, is understandable. In the early 1980s, many scholars, especially at the Rand Corporation, focused their research on career criminals and criminal careers prompted by hopes that if the high volume, long-duration

[7] James Q. Wilson, "Dealing with the High-Rate Offender," *The Public Interest* 72 (Summer 1983): 52-71.

offender could be identified and incarcerated for longer sentences while other offenders were given shorter sentences, then both crime rates and prison populations could be reduced (or their rates of growth slowed).[8] But Wilson wondered is it fair for a low-rate offender who is caught committing a serious crime to serve a shorter sentence (because he is not much of a threat to society) than a high-rate offender who gets caught committing a relatively minor offense? Retributive justice would say not. Sentences would have to have legal boundaries set so that the use of selective incapacitation could not lead to perverse sentences – low volume armed robbers getting one year, high-volume purse-snatchers getting five.

4. You also noted, in response to a question from Chairman Leahy, that there are very few cases of young, first offenders being sentenced to prison for a long sentences. Can you expand on this statement? Based on existing research, can you describe in more detail what the demographics of the prison population are in the United States, e.g., by age, categories of crime, and length of sentence?

Answer: In terms of my response to Chairman Leahy, I think two points need to be made initially. First is that we need to be clear whether we are speaking of the State prison systems or the Federal system, since their respective compositions are quite different as the graphs to follow will show. Second, my testimony dealt with aggregates or measures of central tendency. He responded with anecdotal evidence about a particular case or instance. I think my characterization of the respective prison populations remains both accurate and more relevant to the issue of policymaking. Anecdotal anomalies are surely interesting and warrant discussion, but they make an infirm basis for policymaking. Were there a large volume of instances of young, first time, non-serious offenders incarcerated in American prisons for lengthy sentences, that would surely be cause for concern; but I have seen no evidence of that in the data that I know.

As for your question about the composition of American prison populations, as of 2010, the State prison population looks like this in terms of categories of crime:[9]

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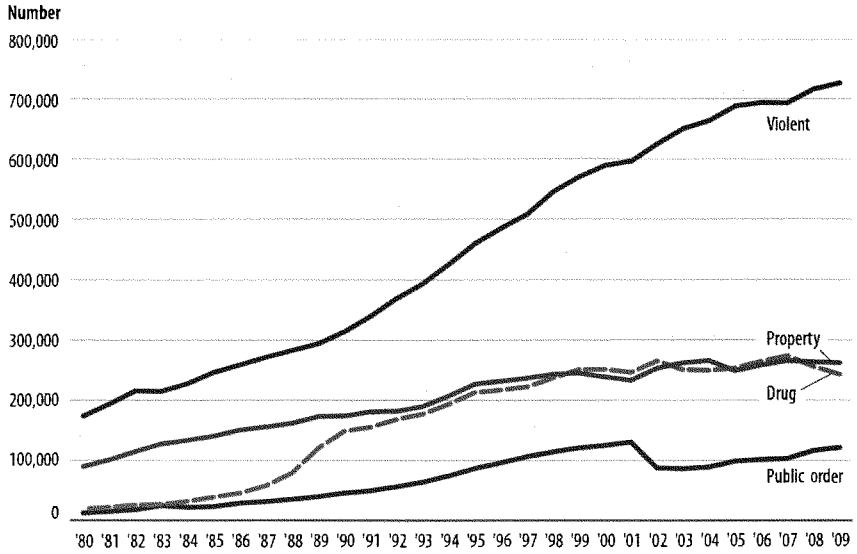
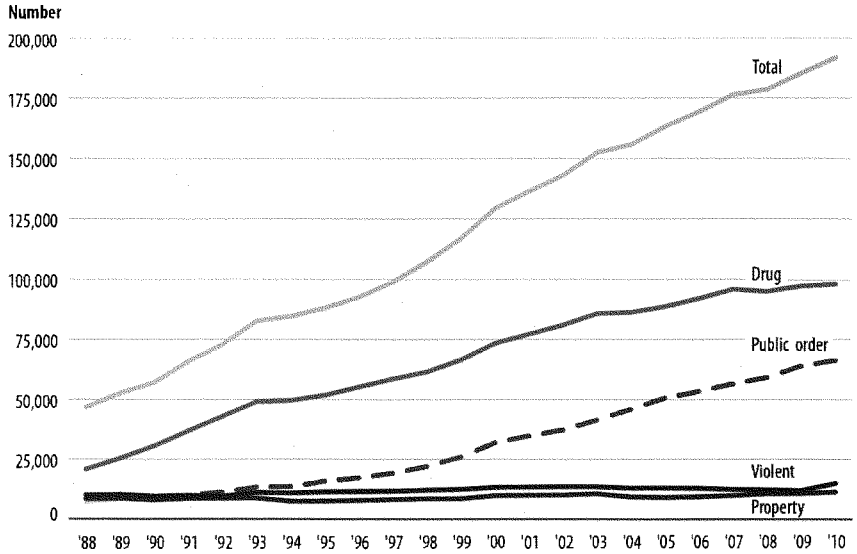
[8] Peter W. Greenwood, *Selective Incapacitation* (Santa Monica, CA.: Rand, 1982), pp. 43-44; Brian Forst et al., "Targeting Federal Resources on Recidivists." *Final Report of the Federal Career Criminal Research Project* (Washington, D.C.: INSLAW, 1982), pp. 18-19; Joan Petersilia and Peter W. Greenwood, "Mandatory Prison Sentences: Their Projected Effects on Crime and Prison Populations," *Journal of Criminal Law and Criminology* 69 (1978): 604-615; and Jan M. Chaiken and Marcia R. Chaiken, *Varieties of Criminal Behavior* (Santa Monica, CA: Rand Corporation, 1982).

[9] The three graphs following are from James P. Lynch, "Corrections in the United States." (Washington, DC: Bureau of Justice Statistics, 4 May 2012).



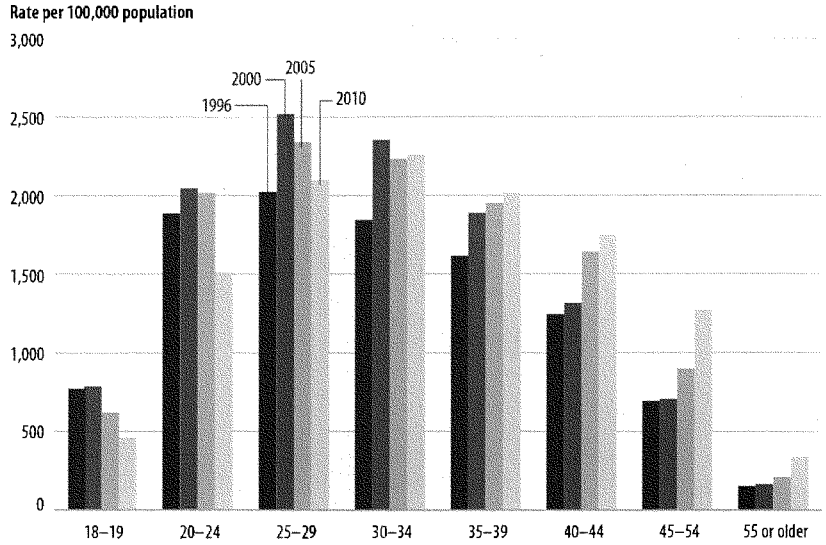
Notice that the predominant population of State prisons is violent offenders who have committed the crimes of homicide, rape, robbery, and aggravated assault. There are approximately equal numbers of property (burglary, larceny and auto theft) and drug offenders (though note that drug offenders comprised a negligible proportion of State prison inmates prior to the late 1980s when their numbers increased rapidly during the crack cocaine epidemic of the early 1990s).

The composition of federal prison inmate is quite strikingly different:



In the federal prison system, violent and property offenders make up a very small proportion of the overall prison population, while drug offenders make up the majority with public order offenses (including, for example, the unlawful sale, distribution, manufacture, alteration, transportation, possession, or use of a deadly weapon or accessory; habitual offender; rioting; treason; and tax law violations).

In terms of age distribution, the total for all inmates, federal, state and local, looks like this:



What is quite readily apparent here is that the prison population is aging as the relatively more crime-prone cohort of the early 1990s that received longer statutory sentences passes through the system and fewer young persons are being admitted to prison (reflecting falling crime rates).

Unfortunately, I am not able to locate any current data on prison population composition by sentence length.

5. You testified that increased incarceration has undoubtedly been part of the reason crime has declined over the last decade and a half. As crime continues to decline, can we expect that incarceration (and associated costs) will decline as well?

Answer: That is certainly true as borne out by the latest data on prison populations in the United States; the overall U.S. prison population declined in 2010 for the first time since 1972. State and federal prisoners numbered 1,612,395 at yearend 2010, a decrease of 0.3% (5,575 prisoners) from yearend 2009. However, the federal prison population increased by 0.8% (1,653 prisoners), while the number of prisoners under state authority declined by 0.5% (7,228 prisoners).[10]

[10] Department of Justice, *Prisoners in 2010*. (Washington, DC: Bureau of Justice Statistics, 2011).

QUESTIONS FOR THE RECORD
Senate Judiciary Committee
"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"
August 1, 2012
Senator Amy Klobuchar

Questions for All Witnesses

In my own experience as a prosecutor, I saw how drug courts can be an extremely effective means of reducing the impact of drug crime on communities and families, lowering costs to taxpayers, and rehabilitating offenders. Consequently, I believe we should be looking for ways for the federal government to support the roughly 2,500 drug courts across the country.

- Recognizing that we must balance competing demands from state and local law enforcement for scarce federal dollars, do you agree that we should support drug courts as a potentially cost-effective way to reduce crime?

  Answer: From the perspective of crime control, it is important to increase treatment use among those substance abusers who also commit non-drug crimes. The difficulty is that many, if not most, drug-involved offenders will not seek out treatment voluntarily; hence the need for leveraging the threat of prison to secure treatment entry, retention and compliance. Among the various diversion programs that exist, Drug Courts are certainly one option; however, we should recognize two facts before plunging into significantly increased funding for Drug Courts:
  - First, outcome evaluations of Drug Courts (those that measure changes in the behavior of the drug-involved offender) have produced distinctly mixed results with some Drug Courts producing impressive results and others failing to have any impact on drug involvement.[1]
  - Second, we have twenty years of experience politically supporting and funding Drug Courts. That investment has produced treatment for approximately 70,000 drug-involved offenders nationwide, *one-thirtieth* of the estimated total number of seriously drug-involved offenders over the same period. And since the typical drug court judge supervises between 50 and 75 clients, scaling up Drug Courts to handle the volume in question would require massive increases in the number of judges and courtrooms.[2]

- Do you agree that drug courts can save taxpayers money? Why?

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[1] Office of Justice Programs, U.S. Department of Justice. 1998. "Looking at a Decade of Drug Courts." Prepared by the Drug Court Clearinghouse and Technical Assistance Project. Washington, DC: American University.
[2] John K. Roman, Aaron Chalfin, Jay Reid, and Shannon Reid. 2008. *Impact and Cost-Benefit Analysis of the Anchorage Wellness Court*. Rockville, MD: NCJRS Photocopy Services.

Answer: It is true that Drug Courts typically operate at modest cost, but that should be placed in the context of their limited effectiveness in changing drug-involved offenders' behavior and the significant cost of scaling up the existing program of Drug Courts to meet the need. For those offenders who respond positively to Drug Court incentives, such Courts are certainly cheaper than lengthy incarceration which does little to treat or rehabilitate most drug-involved offenders.[3] But as mentioned in my answer to your previous question, there are serious scale limits on Drug Courts that limit both their effectiveness and cost savings in addressing a significant national problem.

- Are there other benefits of drug courts?

Answer: If we consider Drug Courts as an alternative to the more traditional probation agency-based diversion program, then it can be said that Drug Courts, relying on the power of judges, are likely to be more effective in inducing drug-involved offenders to enter treatment. Research shows that the mandate to treatment under many traditional diversion programs is merely nominal with low sanction rates resulting in high violation rates.[4]

But perhaps there is another, more effective, cost-saving alternative to incarcerating drug-involved offenders. An alternative to mandating treatment is to mandate desistance for persons on probation or parole. This mandate can be enforced by frequent drug tests, with predictable and nearly immediate sanctions for each missed test or incident of detected drug use. Since probationers and parolees account for approximately one-half of all the cocaine and heroin sold in the United States, and therefore for most of the revenues of illicit markets, an effective testing-and-sanctions program would have a large impact on the volume of the illicit trade – and presumably on the side effects it generates, including the need for drug law enforcement and related imprisonment.

Such an approach has been taken in Hawaii (for chronic methamphetamine users) and in South Dakota (for chronic alcohol abusers). Both programs have been rigorously evaluated with very positive results.[5]

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[3] For an examination of the limited effectiveness of in-prison drug treatment programs, see Dean R. Gerstein and Henrick J. Harwood. 1990. *Treating Drug Problems*, Vol. 1. Washington, DC: National Academy Press.

[4] See M. Prendergast, Douglas M. Anglin and J. Wellisch. 1995. "Treatment for Drug –abusing Offenders under Community Supervision." *Federal Probation* 9: 66-75; Douglas M. Anglin, D. Longshore and S. Turner. 1999. "Treatment Alternatives to Street Crime." *Criminal Justice and Behavior* 26 (2): 168-95; and D. Urda, Angela Hawken, Bradley Conner, Elizabeth Evans, et al. 2008. *Evaluation of Proposition 36: The Substance Abuse and Crime Prevention Act of 2000*. 2008. Los Angeles, CA: UCLA.

[5] For Hawaii, see Angela Hawken and Mark A.R. Kleiman, 2007. "H.O.P.E. for Reform: What a Novel Probation Program in Hawaii Might Teach Other States." *American Prospect Online*, April 10; Mark A.R. Kleiman and Angela Hawken. 2008a. "Fixing the Parole System." *Issues in Science and Technology* (Summer): 45-52; Mark A.R. Kleiman and Angela Hawken. 2008b. "Research Brief: Evaluation of HOPE Probation." Washington, DC: Pew Center on the States. Available at http://www.pewcenteronthestates.org/upladedFiles/HOPE_Research_Brief.pdf; Mark A.R. Kleiman. 2009a. *When Brute Force Fails: How to Have Less Crime and Less Punishment*. (Chap. 3) Princeton, NJ: Princeton University Press; and Mark A.R. Kleiman. 2009b. "Jail Break." *Washington Monthly* (July-August): 56-60. For South Dakota, see Larry Long. 2009. Address given at the Cosmos Club, Washington, DC, June 30, 2009, upon receipt of the John P. McGovern Award for Drug Abuse Prevention.

QUESTIONS FOR THE RECORD FOR DR. JEFFREY SEDGWICK,
AUGUST 1, 2012
"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"
SUBMITTED BY CHAIRMAN PATRICK LEAHY

1. You have argued that the increasing prison population might be worth the cost and that crime rates decline as incarceration rates rise. Various states, including Texas and my own state of Vermont, have reduced their incarceration rates and yet have seen drops in crime rates and in recidivism.

   Are you opposed to sentencing reforms that these states have done that have saved billions of dollars in taxpayer money, and have also apparently decreased crime rates?

   Answer: Absolutely not, Mr. Chairman. As I noted in my written statement to the Committee, we should begin by acknowledging that, like any other complex social problem, variations in crime rates cannot be explained adequately by any single cause. Broadly speaking, the most commonly researched variables affecting crime rates are the economy, demography and criminal justice policies. Incarceration is but one of several criminal justice policies that may affect crime rates, and I was very careful in my written testimony to quantify how much of the historically large crime decrease of the 1990s is attributable to increased incarceration. Intelligent policing is certainly another influence on crime rates as Commissioner Davis eloquently testified, though research demonstrates that changes in policing were not as influential in the nationwide reduction in crime during the 1990s as increased rates of incarceration.

2. At the hearing, you testified that the notion that the prison population is composed of people who have committed one or two nonviolent crimes, and are sentenced to long periods is "simply not supported by the evidence." Based on brief research, I have found several examples where this has occurred, and anecdotal evidence of many more such cases.

   For instance, take the case of Stephanie George, a woman who was sentenced to life in prison when she was 26 years old for conspiracy to possess with intent to distribute cocaine. That conviction, in federal court in Florida, was due to the fact that 500 grams of powder cocaine and 500 grams of crack – belonging to her boyfriend – were found at her residence.

   Prior to that conviction, she had previously been convicted one other time for possession of crack when a bag of cocaine residue was found on her front porch. But because of these two convictions, she was found to be a career criminal. At sentencing, Judge Roger Vinson said to prosecutors: "There's no question that Ms. George deserved to be punished. The only question is whether it should be a mandatory life sentence ... I wish I had another alternative." He then told Stephanie, "Even though you have been involved in drugs and drug dealing for a number of years ... your role has basically been as a

girlfriend and bag holder and money holder. So certainly, in my judgment, it doesn't warrant a life sentence."

(a) For cases like Stephanie's would you support changes to mandatory minimum laws? Please explain why or why not.

Answer: As a general proposition, Mr. Chairman, I am more in favor of sentencing guidelines than mandatory minimums. The former facilitate equal treatment of offenders across jurisdictions (a desirable quality) without inhibiting the use of discretionary judgment to achieve equitable outcomes in unusual or idiosyncratic cases.

(b) As Commissioner Davis testified at the hearing, he wants to put drug kingpins in jail for a long time, not people who are caught up in the dragnet. He also said that "it is my estimation, after working in the drug field for many years, that a system that bases minimum mandatory sentences on 14 grams or 28 grams is missing the big picture." It seems like Stephanie George's case is one of those that Commissioner Davis was referring to, in that she was simply caught up in the dragnet because her boyfriend dealt drugs, and yet, she has been sentenced to life in prison. Do you agree with Commissioner Davis that drug kingpins should be the primary target and that we should not be imposing mandatory life sentences on individuals like Stephanie George?

Answer: I most certainly do agree with both my fellow witnesses that effective and efficient criminal justice policy is based on the exercise of good judgment to make nuanced distinctions among offenses and offenders. Blunt policy responses like mandatory minimums for broad categories of offenses and offenders or accelerated "good time" credits for all inmates rarely, if ever, achieve optimal results.

(c) Do you agree with Commissioner Davis that "a system that bases minimum mandatory sentences on 14 grams or 28 grams is missing the big picture"?

Answer: Yes; however, I would want to know the content of the phrase "big picture." For example, I am less concerned about the quantity of drugs than in the type of drug, intent to use versus intent to distribute, and the character of the drug market the offender participates in. Consider the current homicide problem in Chicago; it is the intersection of particular drugs, particular youth gangs, and a particular type of drug market (open air marketing among strangers all of whom are heavily armed because disputes over price, quantity or quality cannot be referred to the legal system for adjudication) that has produced a public safety catastrophe most heavily impacting already disadvantaged communities. A sentencing policy based solely on quantity of drugs in the possession of the offender is ill-equipped to respond to the Chicago crises in an efficient and effective way without significant collateral or unintended consequences.

3. Statistics show that drug offenders are the largest category of offenders entering federal prison each year. Indeed, in 2009, Grover Norquist testified before the House Committee on the Judiciary and stated:

> [E]xplosion in costs is driven by the expanded use of prison sentences for drug crimes and longer sentences required by mandatory minimums. Drug offenders are the largest category of offenders entering federal prisons each year. One third of all individuals sentenced in federal courts each year are drug offenders. And these convicts are getting long sentences. In 2008, more than two-thirds of all drug offenders receive a mandatory minimum sentence, with most receiving a ten-year minimum... The benefits, if any, of mandatory minimum sentences do not justify this burden to taxpayers.

Do you agree with Grover Norquist that the benefits of mandatory minimum sentences – especially for drug offenders – do not justify the burden to taxpayers?

Answer: Based on the quote provided, Mr. Chairman, I can neither agree nor disagree with Mr. Norquist. He proffers conclusions without supporting evidence. He quantifies neither the cost of incarceration nor its benefits in terms of reduced crime rates. Without such information, reaching a position on whether we incarcerate too many or too few drug offenders is impossible.

4. You testified at the hearing that "our high incarceration rate is the result of our comparatively high violent crime rate." Yet, studies show that approximately three-fourths of Federal prisoners are serving time for a non-violent offense and have no history of violence. One-third of our Federal prisoners are first-time, non-violent offenders. Based on these statistics, it appears that a large part of our prison population is due to non-violent offenders.

In these cases, do you believe that there are reforms we can undertake that would continue to keep our communities safe while saving our taxpayers dollars?

Answer: Yes, Mr. Chairman, I do believe that there are reforms we can undertake that would continue to keep our communities safe while saving our taxpayers dollars. Many of our States have reduced prison populations, reduced recidivism rates, and achieved continued crime rate reductions by intelligent prevention, policing and sentencing. All of these are based on a more nuanced, evidence-based discussion of issues at the heart of the criminal justice system. For example, if the issue at hand is the growth of the *Federal* prison population, then citing statistics about the overall incarceration rate in the United States compared to other countries is irrelevant at best and misleading at worst. The size and composition of the Federal prison system is the result of policy choices that dictate where Federal resources will be focused. Over time, those choices change. At the federal level, are we prioritizing guns, drugs, illegal immigration or white collar crimes? That priority will dictate who is in federal prison and who is in State prisons or local jails.

Second, are our performance metrics sensible? If U.S. Attorneys and their offices are evaluated and rewarded by crude measures of productivity where every arrest and conviction is treated alike, then we can be sure that those offices, to maximize their ratings, will concentrate on "easy" arrests and convictions rather than on the most serious offenders and offenses where cases may take longer to investigate and complete. Quantity rather than quality of arrests and convictions will drive the system. And finally, are we making sensible distinctions of seriousness within and among categories of crime and are those gradations of seriousness reflected in sanctions imposed? Here sentencing guidelines rather than mandatory minimums on broad categories may be more productive. By addressing each of these issues in a thoughtful and evidence-driven way, we have protected and can continue to protect public safety in an efficient and effective manner.

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The Role of Risk Assessment in Enhancing Public Safety and Efficiency in Texas Corrections

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Recommendations

- Incorporate risk assessment in probation revocation cases involving a violation or misdemeanor.
- Improve the Texas version of the Wisconsin instrument used by probation departments or adopt a new instrument.
- Explore the viability of risk assessments to predict the severity of re-offense.
- Use risk assessments to identify offenders who are appropriate for early discharge.
- Revise the risk factors used in the Parole Guidelines to eliminate or adjust factors not correlated with recidivism for some or all inmates.
- Reexamine the risk assessments used by the Parole Division in setting supervision levels.
- Ensure risk assessments are validated for female offenders.
- Explore feasibility of electronically sharing risk assessment tools used from entry to reentry.

Introduction

With limited corrections resources, how can Texas best protect public safety and reform offenders with every dollar spent? One answer lies in the more effective use of risk assessment for the more than half a million adults on probation or parole in Texas. Research indicates that harnessing the power of risk assessment tools and matching supervision and treatment strategies to the offender's risk and needs produces the best correctional outcomes. Offenders who need the most supervision and treatment to succeed will be more likely to receive it while resources are not inefficiently spent on the lowest-risk offenders who are unlikely to commit another offense regardless of the supervision strategy.

Risk assessment should include many dynamic factors, as the risk an offender poses changes over time. For example, a 2009 actuarial study commissioned by the U.S. Department of Justice found that, after 3.8 years of not re-offending, a first-time burglar at the age of 18 is no more likely to be re-arrested than a 22 year-old in the general population.[1] Indeed, their re-offense rate dips below the general population after that time, eventually falling to less than half of the baseline.[2]

What Is a Risk Assessment Instrument?

Risk assessment instruments are inventories containing questions about a defendant or offender that are designed to be predictive of whether the individual will recidivate. Risk factors may include age, criminal record, employment status, substance use, and age of first offense. Points are assigned to each factor, resulting in a total score. Instruments are designed to inform decisions regarding custody, supervision, and referral for services. Risk assessment instruments should be verified, meaning that they should be retrospectively tested to demonstrate that each factor and the total risk score are highly correlated with recidivism.

What Are Examples of Risk Assessment Instruments?

Two of the most commonly used assessments are the Wisconsin risk assessment instrument and the Level of Service Inventory (LSI-R). A version of the Wisconsin instrument is used by all but three Texas adult probation departments and the Parole Division of the Texas Department of Criminal Justice (TDCJ)—three of the larger probation departments use the LSI-R.

The Wisconsin instrument measures 11 risk factors. It was verified most recently in Wisconsin in an August 2009 study by the Council of State Governments Justice Center (CSG), which also made recommendations for improvement.[3] In addition to the Wisconsin instrument, which is in the public domain, there are many competing proprietary risk assessment instruments, such as the LSI-R developed by Canadian researchers. It includes 54 risk and need factors. The domains measured by the LSI-R are criminal history, education/employment, financial situation, family/marital relationships, accommodation, leisure and recreation, companions, alcohol or drug use, emotional/mental health, and attitudes and orientations.

continued on next page

However, more factors is not necessarily better, as one review of the research found a version of the LSI-R confined to eight factors and other shorter instruments outperformed longer instruments in predicting the probability of a new offense.[4] Also, if an instrument is overly long, the time involved in administering it at can result in probation and parole officers spending too much time on assessments that they could be allocating to supervision. Another challenge is consistency of scoring across multiple users. Although the use of subjective factors such as an offender's attitude may well warrant inclusion, the challenge in consistent scoring and the need to train officers is likely to grow in proportion to the number of subjective factors included.

When Is It Used?

In Texas and many other jurisdictions, a risk assessment instrument is administered when an offender begins probation or parole, primarily to determine the level of supervision. As some of the elements in the assessment are dynamic, state standards require that probationers be reassessed at least every 12 months and parolees at least every six months.[5] A few states are incorporating risk assessment into sentencing, revocation of probationers to prison, and reentry.

Why Use Risk Assessment?

Individuals who commit the same offense may have very different risk profiles. Evidence shows that limited supervision resources can be most efficiently allocated to prevent recidivism among probationers and parolees by matching the offender's risk level with the level of supervision—usually low, medium, or high.[6] A higher supervision level generally means more contacts with the probation officer are required and there may be additional conditions of probation such as electronic monitoring. Prior to the development and implementation of risk assessment instruments, all probationers and parolees often received the same level of supervision or, if distinctions were made, they were based on a purely subjective evaluation by one person, which was frequently inaccurate. Not only can more intensive supervision of high-risk offenders reduce recidivism, but conversely high levels of supervision for low-risk offenders have actually been found to increase recidivism.[7] It is not surprising, for example, that requiring a low-risk probationer who is employed to report twice a week to the probation office during the work day may jeopardize the offender's employment status and, ultimately, increase risk.

Accordingly, some states focus their resources on high-risk offenders and place the lowest-risk probationers in an administrative category, or "case banking," such as Delaware, Iowa, Oregon Vermont, and Washington where conditions may be limited to submitting monthly pay stubs and proof of residency.[8] In fiscal year 2008, 1.3 percent of Texas probationers reported by mail.[9] Additionally, based on the results of a risk assessment, probation caseload sizes can be varied according to the risk level composition of each officer's caseload and the corresponding supervision level. Increasing state funding for probation has reduced the average caseload from 121.3 to 107.9 from the 2004-05 to 2008-09 biennium.[10] Probation and parole departments may also find that some officers' skills are better suited to supervising numerous low-risk offenders while others excel at supervising a smaller number of high-risk offenders.

While some risk assessments incorporate needs, such as addiction and mental health treatment, a separate needs instrument can also be used. Identified needs can be addressed through adjustments to the offender's supervision plan and referral to community resources such as treatment and job placement and training. Though it is appropriate to use one instrument containing risk and needs factors in determining supervision strategies, to the extent an assessment is used in sentencing and revocation decisions, an assessment based primarily or entirely on risk factors, not needs factors, may be more appropriate.

How is Risk Assessment Used in Texas?

Probation

The Legislature has not created a policy regarding risk assessment of probationers, but standards promulgated by the Texas Department of Criminal Justice Community Justice Assistance Division (CJAD) require that, unless they receive a waiver, each adult probation department must use an instrument promulgated by the state that includes the same factors as the Wisconsin instrument. The only difference is the factor of whether an offender committed an assault in the last five years which is weighted more heavily in the original Wisconsin instrument.[11] CJAD has validated the instrument on a sample of the Texas probation population in 1987, 1990, and 2005. The 2005 study found:

- 10 percent of minimum risk offenders were incarcerated within two years of assessment as compared to 18 of medium risk offenders and 30 percent of maximum risk offenders.[12]

- 24 percent of minimum risk offenders were arrested within two years of assessment as compared to 32 percent of medium risk offenders and 40 percent of maximum risk offenders.[13]

As shown above, all of the factors except an alcohol problem related to the offender's criminal activity are correlated with re-incarceration. This instrument is available at no charge to departments. While they must pay a $5 per use fee for the proprietary LSI-R, CJAD has granted waivers to Dallas, Harris, and Potter (Amarillo) counties to use the LSI-R. The LSI-R has been validated in at least six studies, including a 2007 study on Iowa probationers and parolees.[14] Both CJAD and Travis County are looking into possibly utilizing a version of the Ohio Risk Assessment System (ORAS) Community Supervision Tool, a public domain instrument with 35 questions created by University of Cincinnati Professor Ed Latessa, the nation's leading authority on offender risk assessment.

Results of Texas Probation Departments' Use of Wisconsin Risk Assessment Instrument

Risk Assessment Factors		Characteristics	Percent Arrested	Percent Incarcerated
Address Changes:	None	56%	32%	19%
	One	25%	31%	22%
	Two or more	19%	38%	27%
Employed:	60% or more	61%	29%	16%
	40%-59%	19%	34%	22%
	Under 40%	20%	41%	31%
Alcohol:	Unrelated	53%	32%	19%
	Probable relationship	23%	36%	24%
	Definite relationship	24%	39%	18%
Drugs:	Unrelated	48%	28%	14%
	Probable relationship	19%	36%	23%
	Definite relationship	34%	38%	27%
Attitude:	Motivated to change	53%	31%	16%
	Somewhat motivated	37%	35%	23%
	Not motivated to change	10%	32%	29%
Age:	24 or older	39%	23%	12%
	20-23	21%	34%	20%
	19 or younger	40%	41%	28%
Prior Supervision:	None	50%	29%	17%
	One or more	50%	36%	24%
Prior Revocations:	None	85%	32%	18%
	One or more	15%	39%	33%
Prior Guilt Adjudications:	None	79%	31%	18%
	One	15%	38%	28%
	Two or More	7%	40%	30%
Adjudications for:	None	60%	30%	18%
	Burglary, theft, auto theft, robbery	27%	36%	25%
	Worthless checks or forgery	13%	44%	28%
Assaultive:	No	79%	32%	19%
	Yes	21%	34%	23%

Source: TDCJ-CJAD

Note: 2005 sample of 3,994 felony probationers with a two year follow-up. Approximately half of incarcerations are for rule violations, not new convictions.

**The age factor refers to age of first conviction, not current age.*

Although risk assessment is not incorporated into sentencing decisions in most Texas jurisdictions, a partnership between CSG and the Travis County Community Supervision and Corrections Department called the Travis Community Impact Supervision Initiative has strengthened the use of risk assessment, including incorporation of the results of a risk assessment into the pre-sentencing investigative report filed by the probation department with the court.[15] This provides guidance to the court as to the appropriate supervision strategy for the offender if placed on probation. Prior to the recent change, the report simply contained the offender's biography and descriptions of the crime by law enforcement and the offender. Also, Travis County ensured that the results of the risk and needs assessment of its probationers were used in crafting supervision strategies and case management, not simply placed in a file. Combined with other strategies such as enhanced risk and needs assessment while a probationer is on supervision and assignments of probationers to neighborhood officers that have been implemented beginning in 2006, Travis County has saved the state $4.88 million in fewer prison and state jail commitments while reducing its probationer re-arrest rate by 17 percent.[16]

Risk assessment is used in Texas parole decisions, but all of the factors utilized may not be correlated with recidivism. Prior to consideration for release to parole, inmates are assessed by institutional parole officers using the Parole Guidelines. The Guidelines assist the Board of Pardons and Paroles (BPP) in making discretionary parole release decisions. The Guidelines consist of two major components—risk assessment and offense severity—that interact to provide a single score indicating an inmate's probability for success if released to parole. The 10 risk factors used are:

- age at first admission to a juvenile or adult correctional facility,
- history of supervisory release revocations for felony offenses,
- previous incarceration(s),
- employment history,
- commitment offense,
- inmates' current age,
- gang membership,
- educational or vocational training completion while in prison,
- prison disciplinary record, and
- current prison custody level.

A 2009 study by a Sam Houston State University professor and doctoral candidate that examined a sample of 12,894 Texas inmates approved for parole between September 2001 and August 2003 found that not all of these variables were predictive of the three-year re-incarceration rate.[17] For example, gang membership and custody level were not statistically significant predictors for parolees of any age level. Additionally, they found that a different combination of the factors listed above were predictive of recidivism for each age group of inmates approved for parole. Accordingly, the authors recommend that the BPP vary their use of these risk factors by age group.

Parole

Risk assessment is also part of parole supervision. Parole officers use a risk and needs assessment tool in the Offender Information Management System to evaluate offenders and the evaluation is reviewed and approved by the officer's super-

Parole Supervision Risk and Needs Assessment

Risk Factors Initial Assessment	Risk Factors Six Month Reassessment	Needs Factors
Prior felony convictions	Employment status	Academic level
Prior incarcerations	Financial status	Vocational skill level
Age at first commitment	Alcohol usage	Employment status
Commitment offense	Drug usage	Alcohol use
Supervisory release revoked	Interpersonal relationship problems	Drug use
Substance abuse history	Living arrangements	Mental illness
Employment history	Address changes	Mental ability
Education level	Officer assessment	Sexual behavior
Release plan		Officer impression

Source: TDCJ Parole Division

visor. Upon reassessing the parolee at the six month interval, officers may decide to change the supervision level. Risk and needs factors are included in the table on the previous page.

According to the Parole Division, this assessment was validated on the state's parole population, but this last occurred many years ago and the study is not readily available.[18] While the Parole Division has long used graduated sanctions to respond to rule violations, they have enhanced this approach in recent years. Funding for drug treatment was restored starting in late 2005. Also, a new type of drug test implemented in 2007 created instant results instead of the previous testing that required a few weeks of processing. Funding for parole chaplains was restored in the 2007 budget and job placement and training were expanded starting in late 2007 through local workforce centers.

Employment is highly correlated with probationer and parolee success and Texas' unemployment rate, though it has increased during the recession, is substantially below California's rate. At least 65 percent of Texas parolees are employed, compared with an 80 percent parolee unemployment rate in California.[19]* Allegations of new crimes committed by Texas parolees have fallen 7.6 percent from the 2006 to 2008 fiscal years, and preliminary data shows a continued decline in parole revocations in 2009.[20]

Living arrangements, which is listed as a risk factor, could also be listed as a needs factor. Most prisoners believe that finding a stable place to live upon release is necessary to successful reintegration.[21] While Texas paroles must have a valid home plan prior to release, which may involve living with family or a halfway house, some parolees may later become transient or homeless. California has a notorious parole revolving door where more than twice the percentage of parolees return to prison as in Texas.[22] The many dysfunctions in California's parole system have been well documented, though the state's leaders enacted landmark parole reforms in 2009, including case banking for the lowest-risk parolees so more supervision can be focused on higher-risk parolees.[23]

One often overlooked fact, however, is that up to 50 percent of parolees in Los Angeles and San Francisco are estimated to be homeless, which likely leads to more property and drug offenses.[24] Apartment rental rates in these two metro areas are more than a third higher than those in Houston and Dallas; and the cost of living in California, which also includes items such as groceries and transportation but does not include taxes, is 32.7 percent more than in Texas.[25]

House Bill 3226 enacted in 2009 authorizes TDCJ to provide selected parolees with temporary housing vouchers.[26] The bill had no fiscal note. As of December 2009, about 300 inmates had been approved for parole but had not been released due to lack of a valid home plan. However, a new halfway house in Austin that will have 300 beds is expected to clear out the remaining backlog. Parole-subsidized halfway houses cost the state 40.2 percent less than a state-operated prison, including correctional health care costs.[27]

What Are Some Recent Developments and Innovations in Other States?

In 2009, Illinois enacted Senate Bill 1298 that will create a shared electronic risk assessment capability from sentencing to parole, although each tool will differ somewhat since the most predictive factors tend to vary at each stage in the process.[28]

The Policy Framework to Strengthen Community Corrections published by the Pew Center on the States Public Safety Performance Project documents several other examples of risk assessment provisions.[29] For example, the pre-sentencing risk assessment statute[30] adopted in Virginia in 1994 directed the Virginia Criminal Sentencing Commission to:

- "Develop an offender risk assessment instrument for use in all felony cases, based on a study of Virginia felons that will be predictive of the relative risk that a felon will become a threat to public safety."
- Apply the risk assessment instrument to offenders convicted of any felony that is not among a list of the most serious violent, sex, and drug dealing offenses that are specified in another statute.[31] The exclusion of more serious offenses may be due to the strong likelihood that such defendants will be sentenced to prison regardless of the risk assessment.

*The actual rate is higher, as this figure includes parolees who can't work, such as those in nursing homes.

- "Determine, on the basis of such assessment and with due regard for public safety needs, the feasibility of achieving the goal of placing 25 percent of such offenders in one of the alternative sanctions including but not limited to: (i) fines and day fines, (ii) boot camp incarceration, (iii) local correctional facility incarceration, (iv) diversion center incarceration, (v) detention center incarceration, (vi) home incarceration/electronic monitoring, (vii) day or evening reporting, (viii) probation supervision, (ix) intensive probation supervision, and (x) performance of community service."

This statute for nonviolent offender risk assessment is more easily replicated in the 16 states with sentencing commissions and guidelines, which do not include Texas. The questions on the Virginia risk assessment, which was validated in 2001 and implemented statewide in 2002 for all felony larceny, fraud, and drug cases, include age, prior offense record, offense type, employment status, prior adult incarceration, prior arrest, additional offenses, and whether or not the offender married by the age of 26.[32] Since the goal of the Virginia nonviolent risk assessment instrument is to divert low-risk offenders who under the state's sentencing guidelines are recommended from prison or jail, it is not administered to offenders who the guidelines recommend for probation. This feature, which depends on the existence of sentencing guidelines, is designed to avoid widening the net of incarceration. It also addresses any potential constitutional issue that may arise from imposing a barsher sentence based on risk level rather than would otherwise be imposed given the seriousness of the offense, prior offenses, intent, and other more traditional factors. Also, the instrument is not applied to offenders convicted of distributing one ounce or more of cocaine, those who have a current or prior violent felony conviction, or those subject to a mandatory minimum term of incarceration.

In 2008, the Virginia pre-sentencing risk assessment instrument was applied to 7,060 drug and property offenders, resulting in a recommended alternative to incarceration in 50.4 percent of cases.[33] In these cases, judges imposed an alternative to incarceration nearly 41 percent of the time and used a short jail sentence (less than 12 months) instead of a longer prison term recommended by the guidelines in 49.5 percent of cases.[34] The other most frequently used alternatives were probation in 84.9 percent of cases and restitution in 27.7 percent of cases.[35] The original threshold score for recommended diversion from incarceration was 35, which was associated with a 12.4 percent three year re-incarceration rate.[36] In July 2004, the threshold score was raised to 38, resulting in another 511 offenders being recommended for an alternative sanction and a 13.6 percent total three year re-incarceration rate.[37] Since larceny offenders have been found to re-offend at a higher rate than drug offenders, they are diverted from incarceration in a relatively fewer number of cases.[38]

Not only has Virginia's use of risk assessment in sentencing helped prioritize prison utilization, but there is no evidence that it has diminished public safety.

Not only has Virginia's use of risk assessment in sentencing helped prioritize prison utilization, but there is no evidence that it has diminished public safety. In fact, the violent crime rate in Virginia declined 12.7 percent from 2002 when the sentencing risk assessment procedure was implemented statewide to 2008 with the total crime rate falling 11.7 percent.[39] Moreover, while incarcerating a low-risk, non-violent offender incapacitates that individual for the brief period of time that such offenders typically spend in prison, those benefits may be offset by higher long term recidivism as incarceration disrupts employment, family, and religious ties and may co-mingle such offenders with more hardened inmates. Also, many offenders serving the shortest prison sentence may not have time to complete a rehabilitation program in prison. Indeed, research has found that short prison sentences do not result in fewer re-convictions and may actually increase re-convictions as compared with community sanctions.[40]

Additionally, pursuant to a legislative directive in 2004, the Virginia Criminal Sentencing Commission developed a risk assessment tool for technical probation violators who are recommended by the violation guidelines for incarceration. It was recently recommended for statewide implementation by Virginia's Task Force on Alternatives for Nonviolent Offenders.[41] Technical violators are offenders who fail to comply with one or more terms of their probation. Violations may range from missing appointments to a positive drug test. Unlike the goal of placing 25 percent

of sentenced offenders in alternative sanctions, there is no target set for technical violators. The most predictive factors of recidivism for technical violators were found to be, in order of importance, mental illness, offender age at revocation, offender absconded or moved, substance abuse, ever convicted of a violent crime, new arrests for violent crimes, previous revocation requests, and number of co-defendants in the original offense.[42]

The potential value of a standardized risk assessment is illustrated by the Commission's finding that the single most important factor in whether a technical violator was revoked to prison was the judicial circuit or region of the state—indeed it is more than twice as influential as any offender-specific factor such as seriousness of the underlying offense and technical violation.[43] While this data is not available for Texas, there is wide regional variance in the percent of probationers revoked for technical violations. For example, in fiscal year 2008, 8.3 percent of Harris County probationers were revoked for technical violations, compared to 3.4 percent of Travis County probationers, even though Travis County's caseload consists of more higher risk offenders.[44]*

The validation results of the Virginia technical violator risk assessment tool are impressive. The Commission adopted a threshold of 52 points, with offenders at or above this score recommended for diversion from incarceration. The 18-month re-arrest rate for offenders at our below this threshold was 21.5 percent compared with 52 percent for violators above the threshold.[45] Unlike the implementation of the sentencing risk assessment in Virginia, the targeted method of administering the risk assessment tool is readily applicable to states, such as Texas, without sentencing guidelines or commissions, since there are motions to revoke probation in many of these states that could be accompanied by the results of a risk assessment.

In 2008, Vermont adopted House Bill 859 through which the Department of Corrections sets levels of supervision for each offender based on risk assessment with caseload limits varying according to different levels of supervision.[46]

Finally, the Ohio Risk Assessment System (ORAS) commissioned by the Ohio Department of Corrections has been partially implemented. The ORAS was created through in-depth interviews with over 1,800 offenders at pretrial, community supervision, prison intake, and community re-entry as reported in a July 2009 study.[47] After interviews were conducted, offenders were tracked for one year to gather follow-up information on recidivism. Five assessment instruments were created using factors that were related to recidivism: The Pretrial Assessment Tool, The Community Supervision Tool, The Community Supervision Screening Tool, The Prison Intake Tool, and the Re-entry Tool. The tools themselves are included in the study, which is available online.[48] In the Community Supervision Tool, for example, each offender is assigned a quantitative score based on information relating to criminal history; education, employment and financial situation, family and social support; neighborhood problems; substance use; peer associations; and criminal attitudes and behavior patterns. The ORAS was validated in the study, which found 66 percent of high-risk probationers were re-arrested, followed by 48.7 percent of medium-risk offenders, and 19.5 percent of low-risk offenders.[49]

The Pretrial Tool and Community Supervision Tool have been implemented and training on the other instruments is underway. Prior to adopting the ORAS, other risk assessment tools were used, many of which were locally developed and not validated. Professor Latessa is now working with corrections officials in Alabama to implement a version of the ORAS there.

Future Directions for Texas

Policy options supported by research include:

Enhance the use of risk assessment in probation revocation cases involving a violation or misdemeanor

This approach could provide a more cost-effective strategy for handling low-risk probationers. In fiscal years 2008 and 2009, there were 25,633 probationers revoked to prison for technical violations.[50] This refers to cases in which the motion to revoke did not include an allegation of a new offense. Based on an average length of stay of 2.5 years and the 2008 prison cost per day of $47.50 including $8.60 in health care costs, these revocations result in $444 million in incarceration costs.[51] Research has found that swift, cer-

*These figures include a small number of revocations from county jails, as the state data system cannot segregate these revocations on a county level from revocations to state prisons and jails.

tain, and proportionate community sanctions can be used in lieu of incarceration for many technical violators who do not pose a high risk with no detrimental impact on public safety.[52]

Probation departments and prosecutors could be required to submit an alternative plan with the motion to revoke for technical violators and misdemeanants who are classified as low-risk at the time of the motion to revoke. The alternative plan would specify available options such as more intensive supervision, drug or mental health treatment, placement in a community corrections facility, a brief period in county jail which could be weekend jail if the probationer is employed, or placement in an Intermediate Sanctions Facility (ISF). Offenders typically stay at an ISF for 90 days, far less than if revoked to prison. Each ISF varies in programming, but the ISF in downtown Houston offers substance abuse treatment provided by the Gateway Foundation, an adult basic education and literacy program, GED preparation, computer skills training, and job placement.

As part of the prison diversion package enacted by the 2007 Legislature to address the projected need for 17,000 new prison beds by 2012, lawmakers funded 1,400 additional ISF beds for probation and parole. While the Parole Division has used some of their new beds, they have found that they do not need all of the 700 proposed beds, which may be due to increased parolee compliance. Accordingly, there are 650 additional ISF beds allocated for probation that will come online in Jones County, outside of Abilene, in September 2010. To the extent these beds are used for technical and misdemeanor probation violators who would otherwise be revoked to prison, instead of for probationers who are currently kept in the community, they will reduce the prison population and, therefore, costs to taxpayers. This could contribute either to eliminating any need for new prisons or even help facilitate the closing of one or more prisons or state jails.

Improve the Texas version of the Wisconsin instrument used by probation departments or adopt a new instrument

CJAD Director Carey Welebob has expressed support for reshaping the current version of the Wisconsin instrument, and CJAD has begun consultations with local probation department directors on this. She notes that, while the Texas probation risk instrument is fairly effective at sorting offenders by the odds of re-incarceration, it provides much less information on the offender's needs than the LSI-R and ORAS.[53] Such information is useful in guiding probation officers' decisions regarding the assignment of offenders to programs and referral to services. Welebob suggests that options include revising the current instrument, adopting an entirely new statewide instrument, or continuing to use the current instrument as an initial screen and subsequently administering a more comprehensive instrument similar to the LSI-R or ORAS, which is more time consuming, only to probationers who are determined to be medium or high-risk on the current instrument. A new instrument adopted by CJAD should be a public domain tool like the ORAS so departments do not incur a cost to administer it. CJAD has a training division that would be available to provide technical assistance to departments in proper implementation of a new instrument.

> The fact that an offender was an alcoholic several years ago and that contributed to the offense may be largely irrelevant at the current time if the offender has been successfully treated.

Also, there are a few factors in the Texas instrument that may not be as correlative as other factors that are not included. The relationship of alcohol to criminal activity is still used in the Texas instrument even though CJAD's 2005 validation study found it is not correlated with re-arrest or re-incarceration. To the extent departments are scoring the alcohol factor based on the role of alcohol in criminal activity several years ago, that may be one of the reasons that alcohol use is not correlative. Probation terms are a maximum of 5 to 10 years depending on the offense, and offenders are typically on probation for close to the maximum. Accordingly, the fact that an offender was an alcoholic several years ago and that contributed to the offense may be largely irrelevant at the current time if the offender has been successfully treated.

The August 2009 CSG validation in Wisconsin found that the three least effective factors in predicting a new offense were assaultive condnct, alcohol use, and address changes,

in that order.[54] For example, the study found that age at the time of probation placement, which is not in the current instrument, has as a correlation with a new offense of .117 compared to .029 for the assaultive risk factor.[55] The report also recommended more research on whether the five year timeframe for the assaultive factor that is also used in Texas is the most correlative timeframe.[56] Additionally, the 2005 Texas validation study found address changes are correlated with re-incarceration but not re-arrest. Similarly, while the study found motivation to change is correlated with re-incarceration, it was not correlated with re-arrest. This may be because the factor is particularly subjective for the officer to measure and, according to Bell and Lampasas County Adult Probation Department Director Todd Jermstad, many offenders may express a desire to change, but don't see how they can do so.[57] A somewhat more precise question on the ORAS asks whether the offender believes it is possible to overcome the past.

The degree to which a factor differentiates offenders may also be useful in determining the weight to assign the factor. The CSG study suggests that, though a factor may be highly correlative of recidivism, it should be assigned a limited weight in the instrument if nearly all offenders score one way or another.[58] In the Texas probation validation study, at least 79 percent of probationers have no prior revocations, assault within the last five years, or prior guilt adjudications.

There may be other factors that could be added to make the Texas probation instrument even more predictive of re-offending. The LSI-R and ORAS both include many elements that are unaddressed by the Texas instrument. Some of the areas covered in the ORAS that are not in the Texas instrument include peer associations, neighborhood problems, family and social support, and questions relating to criminal attitudes and behavior patterns, such as pride in criminal behavior, level of concern for others, including whether the offender believes in "Do Unto Others Before They Do Unto You," and risk-taking behavior. The recent Department of Justice study on recidivism among first-time burglars also suggests that the amount of time that has passed since the person's last offense may be worth studying as an additional risk factor.

Virginia Criminal Sentencing Commission Director Rick Kern believes the Wisconsin instrument is no longer the most effective and fully inclusive approach and recommends that states develop their own instruments validated on their offender populations, as variables such as demographics and the distribution of offender types that can affect validation differ by state.[59] The Texas Probation Association, which represents the state's probation leaders, supports the ongoing collaborative effort between CJAD and some local departments to jointly develop an advanced risk and needs assessment tool based on the most recent research on best practices.

Probation departments may be less likely to recommend an early discharge because they rely on offender fees (approximately $60 per month for a felony probationer) for nearly half of their revenue.

Explore the viability of risk assessments to predict the severity of re-offense

While all new offenses by probationers or parolees must be sanctioned, public safety is most impacted when a probationer or parolee commits a violent, sex, or serious property offense, as opposed to a misdemeanor such as possession of a small amount of marijuana. Predicting a violent offense is particularly difficult as such offenses are much less common than non-violent offenses. Non-violent offenses account for the vast majority of new offenses committed by probationers and parolees. However, a three-factor Violence Risk Screening Instrument has been developed by researchers and validated on probationers in Multnomah County, Oregon (Portland).[60] Texas authorities should explore the use of this or other similar instruments for evaluating the seriousness of risk that an offender poses.

Use risk assessments to identify offenders who are appropriate for early discharge

Early discharge from felony probation, which must be approved by the sentencing court, has historically been a rare event. Probation departments may be less likely to recommend an early discharge because they rely on offender fees (approximately $60 per month for a felony probationer) for nearly half of their revenue. Moreover, the other share of funding that comes from the state is largely based on the

number of probationers, so this funding also disappears when an offender is early discharged. Indeed, a 2006 State Auditor's report found that some probation departments have inflated the number of probationers they report to the state by as much as 13 percent, perhaps to collect more funding.[61] CJAD performs audits of selected departments, but does not have the resources to audit all 121 departments. In short, a low-risk, regularly-paying probationer who requires little supervision is in many ways the ideal client. However, every hour an officer spends on supervising such offender is one less hour that can be spent supervising a medium or high-risk offender.

Legislation enacted in 2007 prohibits technical revocations solely based on failure to pay fees, but this is usually alleged in a motion for technical revocation along with other factors, such as a failed drug test or missing appointments. One solution is using risk assessment to identify more probationers who are good candidates for early discharge. Based on the above-referenced research indicating that burglars who do not re-offend for 3.8 years pose no greater risk than any other person their age, keeping such offenders on probation may do more to detract from public safety as fewer supervision resources are available for other higher-risk offenders. Also, any reduction in the probation population results in lower costs to the state. Early discharges from felony probation have increased from 5,625 in fiscal years 2004-05 to 8,556 in 2008-09, but this number of early discharges over two years is still a small percentage of the 173,698 felony probationers under direct supervision.[62]*

Lawmakers should consider a revised version of House Bill 3200 in 2007 that would have instructed CJAD to develop a probation funding formula that reduces the fiscal incentive to keep fee-paying probationers under supervision for as long as 10 years even when they have met all of their obligations and demonstrated exemplary compliance. While fees paid by probationers only cover about half of the average cost of supervision cost with the state picking up the remainder, departments' marginal costs do not necessarily decline in proportion to each additional probationer who is early discharged. For example, although a model probationer who has been under supervision for many years may report every few months or even by mail, departments obtain their full share of state funds for that type of probationer but incur little actual supervision expenses. Interestingly, this problem does not exist in the juvenile probation system since fees are nominal and state funding is based on referrals and the county's population, not the number of youths under supervision.

Parole Policy 3.2.30 effective June 2009 authorizes early discharge if certain conditions are met and also permits quarterly or annual reporting in limited circumstances. Early discharges are rare, but in general fewer cases involving parolees are likely to warrant early discharge as compared with probationers. On average, parolees have a more serious criminal record than probationers and they face the unique challenges associated with adjusting from prison life to the free world, including identifying work, housing, and positive family and peer supports.[63]

Revise the risk factors used in the Parole Guidelines to eliminate or adjust factors that are not correlated with recidivism for some or all inmates

The Sam Houston State study suggests different factors may be warranted for inmates based on age level and other groupings.[64] The BPP should review their Guidelines in light of this study's findings.

Reexamine risk assessments used by the Parole Division in setting supervision levels

While many of the items are identical or similar to items on assessments validated in other jurisdictions, the Parole Division has not validated its instruments on the state's parole population in recent years to determine if the items used are the most predictive of recidivism. Dr. Latessa suggests that, though education level has been used on other instruments, given the limited number of instruments on the initial parole supervision assessment, it is likely not among the most correlative factors that could be used.[65] The average education level of all prison releases is 8th grade, so it is not particularly useful in distinguishing among parolees, since relatively few are highly educated.[66] Based on research, he believes that financial status, which is part of the re-assessment, is also not among the most predictive factors that could be used given the limited number on the assessment.[67] While parole fees at $18 a month are less than a

*Direct supervision refers to probationers who are currently reporting to a probation department and does not include those in other categories. These categories include those who have absconded and those who are moving from one county to another.

third of probation fees, some parolees can't or won't pay and this may be used in some instances as part of the financial status factor to increase their level of supervision. However, risk of re-offense should drive supervision levels since it relates directly to public safety.

Ensure risk assessments are validated for female offenders

Because women represent a relatively small share of correctional populations, most validation studies primarily consist of male offenders. A recent analysis of the parole risk assessment instrument used in Georgia found that 46 percent of females were classified as high-risk compared to 36 percent of males. However, 44 percent of males were re-arrested compared with 28 percent of females.[68] Somewhat different factors predict recidivism for males and females, as women have been shown to follow different pathways to crime. In response to the study showing this disparity, Georgia tested and implemented a separate parole risk assessment instrument for females.[69]

The BPP uses the same guidelines and risk factors for all parole candidates and does not report parole decisions by gender. Similarly, Texas adult probation and parole departments use the same risk assessment without regard to gender, but when the Texas Juvenile Probation Commission promulgated a risk assessment for the disposition of youths in February 2010, there was a separate instrument for females.[70] A separate instrument is not necessary, however, if the primary instrument accurately predicts risk for women. The House Corrections Committee is conducting an interim study relating to the more than 100,000 women in the state corrections system, including the approximately 12,000 female inmates.[71] This presents an opportunity to examine this issue.

Explore feasibility of electronically sharing risk assessment tools used from entry to reentry

The most predictive factors in assessing risk vary at different points in the justice system and needs factors continually evolve. Nonetheless, electronic sharing of assessment results among different agencies, from entry to reentry, may promote the development of more effective supervision and treatment strategies that are based on the longitudinal progression of an offender.

Conclusion

In sum, there are many opportunities for improved use of risk assessment in the Texas corrections system that may result in a more cost-effective allocation of limited resources to better protect public safety and reform offenders. The value in improved assessments is likely to be most fully realized through utilizing the results, along with needs evaluations, to develop and implement individualized evidence-based supervision and treatment strategies. In this regard, there is also a need for more precise data that demonstrates the effectiveness of various available non-residential and residential programs for offenders with the same or similar offense type and risk and needs level. ★

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TEXAS PUBLIC POLICY FOUNDATION
PolicyPerspective

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Center for Effective Justice

Unlocking the Key Elements of the Adult Corrections Budget

by Marc Levin, Esq.
Director, Center for Effective Justice

Recommendations

- Enact numerous reforms to reduce the prison population and reallocate a share of the savings to strengthen probation, TCOOMI, and parole.
- Add provisions to pending legislation that would reduce the prison population to allocate a share of the savings to probation and/or parole if that legislation would result in more offenders on probation and/or parole.

Executive Summary

The tentative budget decisions made by the conference committee maintain nearly all of the funding added for incarceration alternatives in 2005 and 2007, and carried though in 2009.* At the same time, the conferees opted to close the Central Unit in Sugar Land by December 2010. This will be the first time in Texas history that a state-run adult prison will have been shuttered.

Given that the state's adult prison system is currently at its operating capacity, the conferees' decisions assume that lawmakers will pass sufficient reforms to reduce the state's prison population by between 1,071 and 2,071 inmates relative to the level that it is currently projected to reach by the end of the fiscal year 2013. The conferees' budget fully funds existing prisons other than the Central Unit, and includes a $15 million contingency rider for temporary contract capacity, which would be sufficient to fund about 500 beds over the biennium.

When the Legislative Budget Board's January 2011 projection of 1,121 additional inmates by the end of the biennium is added to the 950 Central Unit beds, the total is 2,071 beds. Contingent temporary contracted capacity funds have met the line item veto in recent years. Assuming they are not stricken by the Governor, they would be enough to pay for about 500 beds over the biennium or 1,000 beds for the 2013 fiscal year alone.

The conference committee budget positions Texas to continue its progress in reducing both its crime and incarceration rates, particularly in conjunction with some of the pending statutory changes outlined below. By strategically reducing overall corrections expenditures with an emphasis on maintaining the recent shift towards more cost-effective community-based approaches, this budget confronts the fact that the state simply has less to spend and provides a useful impetus for advancing legislation in the session's closing weeks that not only saves money but, more important, constitutes good policy.

Introduction

As a conference committee finalizes decisions on reconciling the House and Senate budget proposals, corrections expenditures are receiving far less attention than those in other areas, such as education and health care. Corrections may receive less notice even though there is a $360 million gap between the Senate's larger budget for the Texas Department of Criminal Justice and the House's blueprint because in the last few years expenses have not skyrocketed as they have in areas such as Medicaid. Nonetheless, cost-effective policies in corrections are just as important as elsewhere in the budget.

Corrections spending has stabilized in the last several years following an increased emphasis on alternatives to incarceration in the 2005, 2007, and 2009 budgets that is described in

* *The tentative decisions are likely to be the final decisions since no corrections items were pending. However, the conference committee has indicated it will not issue any report on the budget if it does not reach an agreement on all budget articles. Currently, the Committee is deadlocked on education funding. If this is unresolved, leaders have indicated a special session will be needed at which time the entire budget will be reopened, though the conference committee's agreed recommendations in the other areas will likely serve as the starting point.*

continued on next page

greater detail in the appendix. However, this occurred after TDCJ's budget had grown from $793 million in 1990 to nearly $2.5 billion in 2004,[1] primarily because the prison population grew 278 percent during this period.[2] The 2010 fiscal year TDCJ budget was $3.1 billion.[3] Although Texas' overall per capita spending is 50th among the states, it spends more than the median state per capita on corrections.[4]

Table 1: Texas Trend: Lower Incarceration Rate & Less Crime

Year	Incarceration Rate Per 100,000 Residents	Serious Crimes Per 100,000 Residents
2004	704	5,039
2009	648	4,506
% Change	-8.0%	-10.6%

Sources: Bureau of Justice Statistics and Texas Law Enforcement Agency Uniform Crime Reports[5]

The Senate budget, unlike those of the House and the Governor, maintains funding for the 950-bed Sugar Land Central unit at a biennial operational cost of $25.2 million. There are differences in other areas of the corrections budget relating to prison operations that are not the focus of this report, most notably the $104 million for 2,800 contract prison beds the he House does not appropriate and the $196 million less the House spends on correctional health care as compared to the Senate and the current biennium.

Key TDCJ Budget Facts

- Prisons cost Texas taxpayers $50.79 per inmate per day or $18,031 per year. This is lower than in most states.
- Each new state prison bed costs more than $60,000 to build.
- Probation costs the state $1.30 per person per day, with the other half paid for through offender fees.
- Parole costs the state $3.74 per person per day, or $1,365 per year.

Currently, TDCJ houses 156,099 inmates with an operational capacity of 155,689 and a total capacity of 159,967.[6] The system cannot function at total capacity due to factors such as some cells being unavailable due to renovations and daily changes in classification and placement of inmates. In January 2011 the Legislative Budget Board forecast prison population growth of only 1,121 during the 2012-13 biennium, taking into account current funding levels for probation and diversion programs.[7] This lower than 1 percent projected growth in the prison population would be less than the state's overall population growth.

In analyzing the House budget, the House Research Office concluded, based on the LBB projection model, that "The projected number of incarcerated offenders are (sic) not fully funded for fiscal years 2012-13, and TDCJ is expected to exceed capacity by at least 4,700 beds by the end of fiscal year 2013."[8] This projection was based on the House funding 3,750 fewer prison beds and less capacity in the probation system, including 540 fewer community corrections beds that are used as shorter-term alternatives in lieu of revoking probationers to prison.

Both chambers are considering numerous bills relating to sentencing, probation, and parole that, in various combinations, could free up at least this many beds. The bills summarized in the chart that appears towards the end of this document are among those that may reduce the prison population. While the Senate budget funds TDCJ at approximately the same dollar figure and capacity level as the House budget, the House budget seeks to downsize corrections along with the rest of state government to align with the state's diminished available revenues.

Given that prison costs taxpayers $50.79 per day vs. $1.30 for probation, Texas can continue to reduce crime and incarceration costs by strengthening forms of probation for many nonviolent offenders. These include drug courts, mandatory work and restitution, treatment, and electronic monitoring. Savings can also be achieved through identifying operational efficiencies, such as pending proposals to require prison officials to pay for housing on the units increase health care co-payments for inmates who can afford it, and turn over nonviolent, parole-eligible illegal immigrant inmates for immediate deportation.

The Senate Budget

The Senate budget for 2012-13 essentially funds alternatives to incarceration at the same level as in the current biennium. This does not account for projected increases in the probation and parole caseloads in the next biennium as well as inflationary pressures in areas such as health care and energy. Nonetheless, state and local agencies have been on notice for some time concerning the state's fiscal situation. It is reasonable to

Table 2: Texas Probation & Parole State Cost vs. National Average

Jurisdiction	Probation Cost Per Day Per Offender	Parole Cost Per Day Per Offender
Texas[9]	$1.30	$3.74
National Average[10]	$3.42	$7.47

Note: Neither the state nor the national average figures include fees paid by probationers—about $1.62 per day in Texas, which covers more than half of total supervision costs.

assume they are prepared to achieve sufficient operational efficiencies that will allow them to continue current levels of supervision and treatment based on a flat budget. Also, public sector fields such as corrections may be better able to attract and retain more productive employees at the same salaries than prior to the downturn in 2008, when private sector opportunities were more lucrative and abundant.

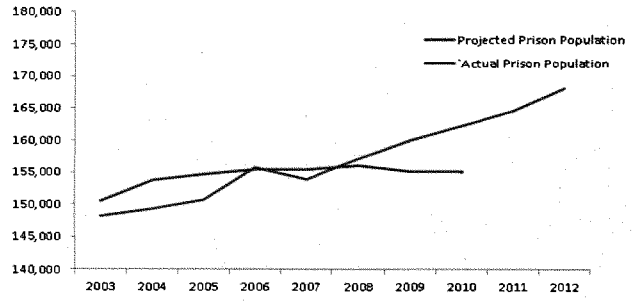
Both budgets fund parole supervision at a slightly greater level than the current biennium, with this being the one area in which the House appropriates slightly more, spending $10.2 million more than the Senate. This difference is entirely attributable to the Senate's decision to close the Burnet County Intermediate Sanctions Facility (ISF), which has 456 beds. TDCJ currently has enough empty ISF beds, which provide a 60 to 90 day time-out in lieu of revocation for parolees who commit technical violations, to do without this facility, though it could be repurposed.[11]

Both chambers also spend slightly more than the current biennium on the line items for Substance Abuse Felony Punishment Facilities (SAFPFs), In-Prison Therapeutic Communities (IPTCs), and treatment services, with the House spending $9.0 million more than the Senate. Accordingly, when the higher level of House spending on parole and SAFPFs, IPTCs, and treatment service is offset against the higher Senate spending on probation and specialized supervision of mentally ill probationers and parolees, the net difference is that the Senate total is higher for these items by $34.84 million.

The House Budget

House budget funding for alternatives to incarceration diverges more from current levels than does the Senate budget. Some of the largest differences can be found in two probation line items: diversion programs and Treatment Alternatives to Incarceration (TAIP). As their names would suggest, these funds support diversion of nonviolent offenders who, instead of going to prison, are assigned to residential or out-

Figure 1: 2007 Budgetary Initiatives Supporting Alternatives to Incarceration Avoided Huge Projected Increase in Prison Population



Sources: 2012 projections from January 2007 LBB report, http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Projections_Reports_2007.pdf; 2003-2006 projections from June 2004 LBB report, http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Projections_Report_2004.pdf.

Table 3: Budget Breakdown: 2010-11 House, Segment, and Conference Proposals

Item	2010-2011	House	Senate	Conference Conference
Basic Supervision	$[illegible]	$[illegible]	$[illegible]	$[illegible]
Diversion Programs	$240,062,841	$213,469,430	$253,452,421	$233,460,936
Community Corrections Programs	$75,940,176	$72,498,406	$77,540,176	$72,498,406
Treatment Alternatives to Incarceration (TAIP)	$23,209,824	$12,258,692	$23,209,824	$22,258,692
Substance Abuse Felony Punishment Facilities, In-Prison Therapeutic Communities & Treatment Services	$215,531,245	$231,799,090	$222,768,594	$222,768,594
Special Needs Projects (TCOOMI)	$40,877,198 (28,500 on specialized caseloads)	$31,859,890 (21,500 on specialized caseloads)	$40,877,198 (28,500 on specialized caseloads)	$37,859,890
Parole System (parole population projected to increase)	$309,901,011	$321,819,594	$311,619,594*	$311,619,594*
Board of Pardons and Paroles	$50,852,310	$50,796,022	$50,796,022	$50,796,022
Sugar Land Central Unit Operations Costs	$25,232,576 (operations) $11,697,200 (benefits)**	$0	$25,232,576 (operations) $11,697,200 (benefits)**	$0

**Estimate based on allocation of biennialization of 3.5 percent pay raise, adjusting for number of prison guards vs. number of parole officers.*
***$11.7 million was a technical adjustment by the LBB for the benefits charged to TDCJ.*
Note: In addition to the closure of the 950-bed Sugar Land Central Unit, the House budget does not include approximately $103.8 million needed to cover 2,800 other unspecified contract beds, which would be in privately operated facilities.
Note: The total Senate proposed TDCJ budget is $6.15 billion compared to the House's proposal of $5.79 billion, a difference of $360 million. Both budgets contain the same approximately $1.3 billion allocated for TDCJ employee benefits and debt service in other budget articles.

patient substance abuse treatment programs. This line item provides up to 700 beds at intermediate sanctions facilities (ISFs) for probationers and also funds up to 800 beds at residential facilities run by probation departments and known as community corrections facilities (CCFs). The funds for approximately 2,500 other CCF beds fall under the community corrections line item. Nonviolent offenders are typically sent for a few months to either an ISF or CCF as an alternative to being sentenced or revoked to prison for several years. Also, about $2.5 million per year is currently spent from the diversion programs line item on drug and DWI courts. Some probation departments, such as Dallas County's, also receive grants from TAIP to perform risk/needs assessments to help judges identify those nonviolent offenders who are low-risk and suitable for diversion and determine the appropriate level of supervision for each offender.

The other large gap lies in the funding for TCOOMI, which funds specialized caseloads and continuity of care case management for severely mentally ill felony probationers and parolees. These specialized caseloads, which are typically 30 to 45 per officer as opposed to more than 100, enable the officer to provide closer supervision and work with the treatment provider to ensure that offenders maintain their regimens of therapy and medication.

These specialized caseloads have been associated with a significant reduction in the number of new crimes and revocations by mentally ill probationers and parolees.[12] Particularly worrisome is a related factor. With funding withdrawn for half of present specialized parole caseloads, many inmates receiving a cocktail of psychiatric drugs but lacking post-release supervision could fail to participate in treatment and suddenly go off their medications. The House cut to TCOOMI, even though it is within the TDCJ budget, would eliminate all TCOOMI services for juvenile offenders, which involve continuous case management and the purchasing of mental health treatment services from local mental health agencies.

Specifically, the projected 4,700-bed shortfall stems from several cuts in the House budget, including closing the 950-bed Sugar Land Central Unit, withholding funding for 2,800 con-

Table 4: Texas Probation Department Have Turned Funding into Results, with Revocation Rate Falling from 16.7% in 2004 to 14.7% in 2010

Average Felony Community Supervision Revocation Rates, Fiscal Years 2001–2010

FISCAL YEAR	AVERAGE FELONY DIRECT SUPERVISION POPULATION	FELONY REVOCATIONS	REVOCATION RATE
2001	160.457	22.164	13.8%
2002	159.352	22.876	14.4%
2003	158.075	24.838	15.7%
2004	157.216	26.249	16.7%
2005	157.323	25.741	16.4%
2006	158.479	24.921	15.7%
2007	161.999	25.830	15.9%
2008	168.788	25.782	15.3%
2009	172.514	26.194	15.2%
2010	172.893	25.456	14.7%

tract beds (privately operated lockups), and the ripple effect from the reduction of $39.98 million for the diversion line item. That would reduce from 3,284 to 2,744 the number of community corrections beds operated by probation departments. These beds are currently being fully utilized.[13] The average length of stay in these beds is six months; probationers revoked to prison would be incarcerated for several years. Thus, the loss of 540 CCF beds could translate into 2,160 more prison beds needed. The LBB, however, conservatively assumes only half of these are true diversions. This would mean 1,080 more prison beds needed.

The LBB prison projection model also forecasts that House budget reductions in the diversion and other probation and TCOOMI line items would result in diminished supervision and less funds for community-based residential placement into treatment programs. This in turn, according to the LBB, would lead to more probationers being revoked to prison for either new crimes or rules violations. As noted above, the other contributing factors to the projected shortfall in prison beds under the House are the loss of 950 beds through closure of the Sugar Land Central Unit and the defunding of 2,800 unspecified contract beds in prisons, state jails, and/or pre-parole transfer facilities.

The Sugar Land Central Unit was built in 1905, costs 14 percent more to operate than the average prison, and sits on land that has been appraised at $30 million, with a taxable redeveloped value of $240 million.[14] The approximately $30 million that would be generated from selling the facility would shore up the state's finances, and the operational savings of $25.23 million free up funds that can be used an ongoing basis for other corrections priorities such as diversion programs. As indicated above, closing this lockup is also projected to save more than $11 million in employee benefits costs. Even if the beds were eventually needed, they could be rented from county jails or private operators at a much lower cost. Some county jails in Texas have recently offered beds to Harris County at $30 a day, which is about half of the Central Unit's cost. However, the better approach is to enact policies that

A Local Perspective from Teresa May Williams, Assistant Director, Dallas County Community Supervision and Corrections Department (CSCD)

"In Dallas County, courts rely heavily on solid assessments from our TAIP/Assessment Unit to make sentencing decisions during the plea process on new cases and to determine whether an offender should be revoked. In both new pleas and pending revocations, an assessment from this unit is the first thing requested by courts. In fact, the courts and attorneys declare in many cases that the assessment is the key factor in a plea agreement to probation and is in many cases is the deciding factor in a decision to divert offenders from revocation.

Source: Teresa May Williams, Assistant Director, Dallas County Community Supervision and Corrections Department (CSCD), email, April 13, 2011.

Table 5: Dallas County Adult Probation Department Projection Under CSHB1

Year	Diversion and TAIP Funding	Prison Revocations	TDCJ Incarceration Cost Difference
2011	$15,926,808	3,149	------
2012	$11,637,037	5,503	$25,198, 221

divert more nonviolent offenders to cost-effective alternatives and make better use of existing capacity through safely reducing the nearly 9,000 inmates in solitary confinement.

Conference Committee's Tentative Decisions

On probation, basic supervision funding remains virtually the same for the forthcoming biennium as in the current biennium, just as in both chambers' budgets. The conference committee split the difference between the House and Senate on the largest disparate line item, diversion programs. This decision would fund diversion programs at only a 2.75 percent lower level than in the current biennium. This contrasts with the 20 percent cut made to adult probation in the budget crisis session of 2003, which was followed by a surge in the prison population. Legislative leaders say this modest cut can be absorbed by departments by narrowing the reach of the 7 percent salary increase over the last biennium which some departments applied to upper level staff, though the Legislature had intended only for rank-and-file probation officers.

Community corrections programs, a smaller probation line item, would be cut 4.53 percent relative to the current biennium under the conferee's tentative decision. Similarly, TAIP would be cut by 4.10 percent. It is envisioned that the conferee's tentative funding levels for probation will allow all CCF's, which are currently at 92 percent of capacity, to continue to house the same number of probationers, thereby providing the same number of diversions from prison.

Special needs projects (TCOOMI) was funded by the conferees at 7.38 percent below the current level. This will, however, provide sufficient funds to continue all of their current adult services, most notably specialized caseloads and continuity of care for mentally ill offenders, as well as identifying and recommending inmates for medical parole. Any reduction in services will, per a rider, come from TCOOMI's juvenile services, though the new juvenile justice agency may be able to shift resources to fill this gap.

Conferees adopted the Senate's figure for Substance Abuse Felony Punishment Facilities, In-Prison Therapeutic Communities (IPTC) & Treatment Services, which is more than $7 million above the funding level for the current biennium, though less than the House's proposed figure. Accordingly, the increased capacity that was funded in 2007 to eliminate waiting lists for these programs will remain. This accomplishes two purposes. First, many substance abuse offenders are sentenced or revoked from probation or parole to SAFPFs for six months in lieu of going to prison for several years. Second, the expanded number of IPTC slots created in the 2007 package cleared out the backlog of inmates waiting in prison for months after being approved for parole with a condition of completing the six-month treatment program. New data released by TDCJ this month found that those released from SAFPF in 2007 had a three-year re-incarceration rate that was 13.90 percent less than that of the comparison group.[15] The IPTC offender recidivism rate was 4.75 percent less than that of the comparison group.

With regard to prisons, the conference committee opted in its tentative decisions for the Senate's figure on state jails and private prisons, which is approximately the current expenditure level and $46 million more than the House. This eliminates the 2,800 bed shortfall that the LBB attributed to this item in the House budget. However, the conferees sided with the House's decision close the Sugar Land Central Unit. At the same time, they added a new $15 million contingency rider not in either chamber's budget for temporary contracted capacity to provide extra beds if needed. The only difference to be bridged on parole concerned the Burnet County ISF, and the conferees opted to go with the Senate's closure recommendation which will take these 456 beds offline, thereby saving more than $10 million.

On correctional health care, the conferees went with the Senate budget minus $44.7 million over the biennium, which totals $867.48 million. That is less than the current biennial budget of approximately $929 million.

Recommendations

Enact numerous reforms to reduce the prison population and reallocate a share of the savings to strengthen probation, TCOOMI, and parole.

Many bills pending would free up more than enough prison beds to align with the assumptions of the conferees' tentatively adopted decisions, and furthermore avoid the need to trigger the $15 million contingent rider for temporary contracted capacity.

Some savings from these bills can also be used in the event of cost overruns that lead to a TDCJ supplemental request, as has happened prior to nearly every recent legislative session. Such a supplemental request could involve tens of millions of dollars if energy costs remain high (TDCJ transports many inmates and goods across the state), and reforms to the delivery of inmate health care do not produce savings that are hoped for. Because federal courts have decided that inmates are constitutionally entitled to health care, these expenses, just like Medicaid caseload growth that is tied to federal eligibility criteria, can often run over budget. The conferees appropriated $61.5 million less for correctional health care than is currently spent.

A prime example of pending legislation that would deliver savings is the committee substitute of Madden's correctional savings bill (HB 3386). It could save $65.39 million over the biennium through key provisions such as imposing a $100 health care copayment on financially able inmates; deporting parole-eligible non-violent illegal alien inmates; reducing subsidies for TDCJ staff housing; and limiting to one year the prison term for probationers revoked for technical violations (not new crimes). Although HB 3386 did not make it out of the House Calendars Committee, it is anticipated that most of the provisions will be attached to other legislation.

However, numerous pending bills highlighted below would go even further. There are many combinations of these proposals that would, in fact, not only meet the budget assumptions without any temporary contracted capacity, but even generate leftover savings to address a possible TDCJ supplemental funding request or be returned to taxpayers in the next biennium.

Add provisions to pending legislation that would reduce the prison population to allocate a share of the savings to probation and/or parole if that legislation would result in more offenders on probation and/or parole.

Like most agencies, TDCJ can pursuant to Article 9, Section 14.01 of the General Appropriations Act transfer up to 20 percent of funds between budget items without the approval of the LBB during the interim. Thus, a budget rider is not needed to provide such authority since the agency's authority is more than ample to deal with any of the pending proposals. Accordingly, should the Legislature finally approve any of the bills highlighted below that would substantially reduce the prison population and result in more offenders on probation and/or parole, a provision to the bill should be added that would instruct the agency to use its budget transfer authority to make probation and parole whole at a level that is at least commensurate with the increased number of offenders that will be supervised.

Conclusion

The conference committee budget accomplishes the goal of holding the line on overall corrections spending through continuing Texas' recent emphasis on more cost-effective alternatives to incarceration for many nonviolent offenders. By making the historic decision to close the Central Unit and declining to fund a moderate projected increase in the prison population, the tentative decisions reached by the conference committee also provide a useful impetus for advancing pending legislation that not only saves money but, more important, constitutes good policy.

Furthermore, SB 1055—which passed the Senate unanimously—offers a solution that could greatly alleviate capacity pressures during the coming biennium by better aligning state corrections funding. It creates an incentive funding fiscal partnership between the state and local jurisdictions whose District Attorney and probation department choose to participate. To the extent counties project that they will have more offenders to supervise without a commensurate level of funding, they can take advantage of this incentive funding provision to access the funds needed to preserve, and even strengthen, their level of supervision and programming. Since the incentive funding model is based on diverting nonviolent offenders from prison, the state achieves net savings even after giving a share of funds saved on prisons to the counties. Moreover, because part of the savings are distributed based on probation departments reducing recidivism and increasing the percentage of offenders current on their restitution, this approach incentivizes better results for public safety, victims, and taxpayers. ✯

Savings Through Smart Sentencing, Probation & Parole Reforms*

Bill Number & Description	Estimated Savings & Status	
HB 3386 (Madden): Omnibus corrections savings bill.	$65.39 million (in House Calendars Committee). Fiscal note indicates savings of $17.26 million. Larger number is based on language stating that eligible illegal aliens should be prioritized for release and deportation. Fiscal note assumes this would not be implemented because language is not clearly mandatory.	Saves $65.39 million over the biennium through key provisions such as imposing a $100 health care copayment on financially able inmates; deporting parole-eligible, nonviolent illegal alien inmates who are not members of transnational gangs; reducing subsidies for TDCJ staff housing; and limiting to one year the prison term for probationers revoked for technical violations (not new crimes).
SB 976 (Hinojosa) and **HB 1299** (Guillen): Allows parole-eligible individuals nearing their full end-of-sentence dates to be released for a period of supervision.	$33.1 million (SB 976 on Senate Intent Calendar)	SB 976 and HB 1299 address the efficiency recommendations report from the LBB.[6] Individuals must meet statutorily imposed criteria and be parole-eligible to qualify for release under this program. Without this bill that transitions inmates to parole supervision after completing 90% of their sentences behind bars, they would continue to be discharged without supervision. This means they would not have to report to a parole officer, take drug tests, stay away from gang activity and gang members, or otherwise be accountable.
CSHB 2352 (Allen): Mandatory supervision for certain low-level and nonviolent offenders when good/earned time plus time served equals the sentence.	$84.4 million (in House Calendars Committee)	CSHB 2352 creates a transitional reentry mechanism for inmates whose current offense and any prior record involves only specific low-level and/or nonviolent offense categories defined by statute, provided they have behaved well while incarcerated and their time served plus good/earned time equals the sentence. No inmate would be transitioned to supervision prior to their good/earned time plus time served equaling the sentence. Inmates with two or more prior convictions (three strikes provision) are excluded. By creating greater certainty in the process and a clear linkage between an inmate's behavior and length of stay, this measure will provide a positive incentive for compliance with programming while behind bars and enable TDCJ to better utilize its pre-parole facilities, since there will be a clearer sense of when various inmates should receive pre-release programming that is designed to reduce recidivism.
HB 3538 (Thompson): Increases the use of Medically Recommended Intensive Supervision (MRIS) and geriatric release rates.	$18.46 million (in House Calendars Committee)	HB 3538 streamlines the parole process for inmates who are 65 or older or have a crippling medical condition that renders them incapacitated and safe for release. Currently, some elderly inmates cost the state more than $1 million in annual health care costs, even though statistics show inmates over 60 have a recidivism rate as low as 3.8%—between 2% and 8% in the case of those over 55.[7] Expanding geriatric role has been recommended by the Legislative Budget Board and by the Texas Conservative Coalition in their blueprint for a balanced budget.
SB 1076 (Ellis): Emphasizes community-based solutions such as drug courts and mandatory treatment for low-level, nonviolent substance abuse offenders who do not have a prior violent, sex, or property conviction.	$51.52 million (in Senate Criminal Justice)	SB 1076 redirects certain low-level drug possession offenders to mandatory treatment, drug courts, probation, and six month substance abuse felony punishment facilities (SAFPFs). This legislation has been endorsed by judges, probation department leaders, and the Texas Association of Business. Kentucky recently passed similar legislation during its legislative session, and the Indiana State Senate voted in favor of similar legislation with the support of Governor Mitch Daniels. This bill is limited to offenders charged with drug possession only (not dealing) and who have no prior other type of offense except a fine only traffic misdemeanor. Also, a judge can sentence covered offenders to up to 10 years in prison if they determine the person is a danger to public safety and can revoke them to prison for the same period if they are not complying with probation and treatment.

HB 1205 (Turner/Allen): Creates incentives for probationers to participate in self-improvement programming.	Positive fiscal impact anticipated. Exact savings cannot be determined. (Passed by House)	HB 1205, which has been adopted as model legislation by the American Legislative Exchange Council (ALEC), encourages positive behavioral changes and personal betterment for probationers through the use of time credit incentives for completion of treatment and programming (e.g., education, vocation, life skills courses). Receipt of credit toward each probationer's sentence would be contingent upon full satisfaction of victim restitution and judicial consent. Encouraging treatment programming and skills training can reduce recidivism by incentivizing life changes while on probation and discouraging criminal behavior.
SB 1055 (Carona): Requires community justice plan submissions during even-numbered years; and creates an incentive-based funding program in which counties could voluntarily participate by setting goals to reduce the number of nonviolent prison commitments.	Positive fiscal impact to both the state and counties anticipated. Exact savings depend on level of participation. Texas' juvenile commitment reduction program implemented through a similar 2009 incentive funding budget provision has led to a 36 percent decline in TYC commitments in the last fiscal year even as crime has continued to decline. (Approved by the Senate and by the House Corrections Committee)	This legislation brings fiscal balance to the criminal justice system by giving local jurisdictions the opportunity to receive a share of the state's savings to strengthen local public safety strategies when they send fewer nonviolent offenders to prison and reduce recidivism, increase restitution collections, and increase the percentage of probationers who are employed. Counties could submit a plan to the state whereby they would receive between 35% and 60% of the state's savings on prison costs based on sentencing and revoking fewer nonviolent offenders to prison and reducing recidivism among probationers, increasing the percentage of probationers current on their victim restitution payments, and increasing the percentage of probationers who are employed. Similar legislation adopted in Arizona that became effective in December 2008 led to a 31% decline in new felony convictions among probationers and a 28% decline in revocations of probationers to prison. [7]
HB 2649 (Allen) and HB 3366 (White): Allows diligent participation credits for state jail felons.	$48.99 million (HB 2649 Approved by the House)	Unlike state prisons and county jails, individuals in state jail are ineligible for good time credits and must serve their sentence day for day. Under HB 2649 and HB 3366, state jail felons could earn credits of 15 to 20% towards satisfying their sentences through successful completion of self-improvement programming, including work and vocational, educational, and treatment programs. This would encourage personal responsibility, provide wardens a free tool for inmate management, and reduce costs by decreasing recidivism.
HB 3764 (Marquez): Amends and improves TDCJ policies regarding the use of administrative segregation, as well as the treatment of individuals confined in administrative segregation.	Positive fiscal impact anticipated. Exact savings cannot be determined at this time, but reducing the nearly 9,000 inmates in administrative segregation would free up savings through the consolidation of cells and prison units. Michigan and Mississippi have recently achieved savings through this approach with no negative impact on prison security. (In House Calendars)	HB 3764 requires TDCJ to perform a review of its use of administrative segregation and report to the Legislature on the results of that review. Current TDCJ policy allows inmates, including those who have committed no institutional offenses, to be placed in segregation as a preventative measure rather than as punishment for misbehavior. This bill encourages the adoption of policies that limit the use of administrative segregation in TDCJ, except in necessary circumstances. The bill also encourages TDCJ to consider more frequent reviews of individuals housed in administrative segregation and eliminate the practice of releasing individuals to the street directly from solitary confinement.

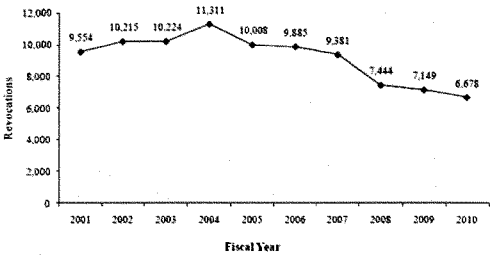
Note: While the deadline has passed for some of these bills to be enacted, the sponsors are in many cases planning to amend the entire bill or key provisions to other legislation.

** Other bills not in this chart, such as sentencing enhancements, could increase the prison population, but it is anticipated that few, if any, bills with fiscal notes will be enacted this session. While some minor sentencing enhancements may be enacted, these measures typically have no fiscal note. This is because they are specific to relatively uncommon circumstances or else deal solely with misdemeanors. In the latter case, any additional county jail costs would fall on counties, not the state. Additionally, lawmakers are looking at several measures projected to result in operational efficiencies that could free up funds the budget conference committee could allocate to other strategies within corrections, such as diversion programs.*

Appendix: Background on Recent Texas Corrections Budget Reforms

Legislative initiatives, beginning in 2005, have expanded capacity in alternatives to incarceration that hold nonviolent offenders accountable and provide effective supervision. Since 2004 Texas has seen a double-digit reduction in crime, reaching its lowest crime rate since 1973.[19] In this same period, the state's adult incarceration rate has fallen 10 percent. Texas, which in 2004 had the nation's second highest incarceration rate, now has the fourth highest.[20]

Texas Parole Revocations to Prison Fall By Nearly Half from 2004 to 2010



Sources: Legislative Budget Board; Texas Department of Criminal Justice, Statistical Report.

The expansion in capacity of alternatives to prison culminated in 2007 with a $241 million alternative package in place of spending $2 billion on new prisons. The search for alternatives came in response to statements from judges, prosecutors, and corrections officials, bolstered by data, indicating that increasing numbers of low-level, nonviolent offenders were being directly sentenced, or revoked from probation, to prison. Why? Because of long waiting lists for many alternatives. Furthermore, inmates granted parole often remained in prison because of waiting lists for halfway houses and programs they had to complete before release, a backlog addressed by the 2007 package. Based on the budget conferees' tentative decisions, the 2007 budget package of alternatives survives almost completely intact.

Two key budgetary strategies enabled Texas to avoid building the 17,332 prison beds that would have cost $2 billion over five years that the Legislative Budget Board (LBB) had projected were needed.

The first strategy involved appropriating $55 million in 2005 for probation departments that agreed to target 10 percent fewer prison revocations and to implement graduated sanctions—issuing swift, sure, and commensurate sanctions (e.g. increased reporting, extended term, electronic monitoring, weekend in jail, etc.) for rules violations such as missing meetings rather than letting them pile up and then revoking the probationer. Most of the funding went towards reducing caseloads from approximately 125 to 110 probationers per officer in major metropolitan areas, facilitating closer supervision, and the application of such sanctions. The second strategy, enacted in 2007, was the appropriation of $241 million for a package of prison alternatives that included more intermediate sanctions and substance abuse treatment beds, drug courts, and substance abuse and mental illness treatment slots. Some of the money was also used to clear out the waiting lists of parolees not being released because of waiting lists for in-prison treatment programs and halfway houses.[21] All told, the 2008-09 budget added 4,000 new probation and parole treatment beds, 500 in-prison treatment beds, 1,200 halfway house beds, 1,500 mental health pre-trial diversion beds, and 3,000 outpatient drug treatment slots.

Texas has more than 170,000 felony probationers—for nearly all of whom probation and prison are options. Sentencing trends, although influenced by many factors such as the crime rates and changes in who holds the District Attorney and judicial offices, may also reflect the confidence that judges and prosecutors have in the effectiveness of probation. Although the LBB has traditionally assumed an annual 6 percent increase in the number of offenders sentenced to prison due to population growth and other factors, sentences to prison actually declined 6 percent in 2009.[22] The data also shows that during 2009 more nonviolent offenders were placed on probation.[23]

In addition to the impact of sentencing decisions, probation and parole revocations together account for approximately half of the annual prison intakes, and both have declined over the last several years as supervision has been strengthened.[24] This illustrates the role that effective supervision can play in controlling the prison population by keeping more offenders on the right track. Also, since fiscal year 2005, the parole rate has also increased from 27.50 to 31.11 percent.[25] Parole officials attribute this to more inmates entering and completing treatment programs, thus becoming more attractive candidates for parole.[26]

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About the Author

Marc A. Levin, Esq., is the director of the Center for Effective Justice at the Texas Public Policy Foundation. Levin is an attorney and an accomplished author on legal and public policy issues.

Levin has served as a law clerk to Judge Will Garwood on the U.S. Court of Appeals for the Fifth Circuit and Staff Attorney at the Texas Supreme Court.

In 1999, he graduated with honors from the University of Texas with a B.A. in Plan II Honors and Government. In 2002, Levin received his J.D. with honors from the University of Texas School of Law.

Levin's articles on law and public policy have been featured in publications such as *The Wall Street Journal, USA Today, Texas Review of Law & Politics, National Law Journal, New York Daily News, Jerusalem Post, Toronto Star, Atlanta Journal-Constitution, Philadelphia Inquirer, San Francisco Chronicle, Washington Times, Los Angeles Daily Journal, Charlotte Observer, Dallas Morning News, Houston Chronicle, Austin American-Statesman, San Antonio Express-News* and *Reason Magazine.*

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The TEXAS Model
A TEXAS PUBLIC POLICY FOUNDATION PUBLICATION
September 2011
Center for Effective Justice

Adult Corrections Reform: Lower Crime, Lower Costs

RIGHT ON CRIME

by Marc Levin, Director, Center for Effective Justice

In the last several years, Texas has become emblematic of the growing movement to be both tough and smart on crime, as it has achieved significant declines in both its crime and incarceration rates. Policies initiated since 2005 have expanded capacity in alternatives to incarceration that hold nonviolent offenders accountable and provide effective supervision. Since that time, Texas has seen a double-digit reduction in crime, reaching its lowest crime rate since 1973.[1] In this same period, the state's adult incarceration rate has fallen 9 percent. Texas, which in 2004 had the nation's second highest incarceration rate, now has the fourth highest.[2]

Texas Crime and Incarceration Rates Tumble[3]

Year	FBI Index Crime Rate	Incarceration Rate Per 100k
2005	4,857.1	681
2010	4,236.4	620
% Change	-12.8%	-9.0%

Two key budgetary strategies enabled Texas to cut crime and avoid building more than 17,000 new prison beds.

The first strategy involved appropriating $55 million in 2005 for probation departments that agreed to target 10 percent fewer prison revocations and to implement graduated sanctions. Graduated sanctions ensure swift, sure, and commensurate sanctions (e.g., increased reporting, extended term, electronic monitoring, weekend in jail, etc.) for rules violations, such as missing meetings, rather than letting them pile up and then revoking that probationer to prison. Most of the funding went towards reducing caseloads from nearly 150 (in major urban areas) to 110 probationers per officer, and expanding specialized, much smaller caseloads for subgroups such as mentally ill probationers. This facilitated closer supervision, and the consistent application of such sanctions, which led to a decline in revocations in these departments, saving taxpayers $119 million.[4]

The second strategy, in 2007, was the appropriation of $241 million for a package of prison alternatives that included more intermediate sanctions and substance abuse treatment beds, drug courts, and mental illness treatment slots. This package was in lieu of spending $2 billion on 17,332 new prison beds that the Legislative Budget Board (LBB) had otherwise projected would be needed by 2012.[5] The search for alternatives came in response to statements from judges, prosecutors, and corrections officials, bolstered by data, indicating that increasing numbers of low-level, nonviolent offenders were being directly sentenced, or revoked from probation, to prison. Why? Because of long waiting lists for many alternatives.

Furthermore, parolees often remained in prison because of waiting lists for halfway houses and programs they had to complete before release, a backlog addressed by the 2007 package.[6] All told, the 2008-09 budget added 4,000 new probation and parole treatment beds, 500 in-prison treatment beds, 1,200 halfway house beds, 1,500 mental health pre-trial diversion beds, and 3,000 outpatient drug treatment slots.

Perhaps reflecting increased confidence by judges, juries, and prosecutors in probation, sentences to prison actually declined 6 percent in 2009 while more nonviolent offenders went on probation.[7] This reversed the historical increase of 6 percent per year in prison commitments.[8]

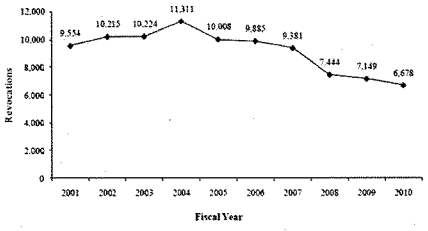
Furthermore, probation and parole revocations together account for approximately half of the annual prison intakes, and both have declined recently as supervision has been strengthened.[9] From 2005 to 2010, Texas' probation revocation rate fell from 16.4 to 14.7 percent.[10]

Similarly, during the last several years, parole offices have improved supervision by expanding the use of graduated sanctions, implementing instant drug testing, and restoring the parole chaplaincy program. Thus, despite there being more parolees, the number of new crimes committed by

continued on back

parolees declined 8.5 percent from 2007 to 2010, contributing to a sharp reduction in parole revocations.[11]

Texas Parole Revocations to Prison[12]



Capitalizing on Texas' recent success, the Legislature in 2011 followed the recommendation of both the Texas Public Policy Foundation and Governor Rick Perry in ordering the closure of the Sugar Land Central Unit, the first such prison closure in Texas history. This will save taxpayers approximately $20 million over the biennium in operating costs, in addition to the one-time proceeds from the sale of the property.

In 2011, Texas policymakers also took many additional steps to continue the new Texas trend of lower crime and incarceration rates. First, lawmakers grappling with a challenging budget environment found operational savings such as closing one adult and three juvenile lockups and reducing subsidized housing for high-level corrections officials, rather than cutting back on cost-effective alternatives to prison and in-prison treatment programs that have paid dividends since being expanded in 2007.

In 2011, lawmakers also passed, and the Governor signed, several key bills. SB 1055 allows counties to opt for performance incentive funding based on reducing commitments to prison of low-level offenders while also reducing recidivism, increasing the share of probationers making victim restitution, and increasing the employment rate among probationers. Second, HB 1205 creates a positive incentive for probationers to pursue self-improvement by allowing judges to award time credits for exemplary behavior, such as earning a degree, fully paying restitution, and completing treatment programs.

Finally, HB 2649 is projected to save $49 million by incentivizing state jail inmates, the lowest-level, nonviolent offenders in state lockups, to complete educational, treatment, and vocational programs and exhibit exemplary behavior. Under this legislation, judges can require those offenders who demonstrated such exemplary conduct to spend several months of their sentence on probation, whereas under the former law most state jail felons had no opportunity for probation or supervision upon release. Transitioning exemplary state jail inmates upon rentry to probation ensures that they will be held accountable to an officer, directed to find a job and housing, and required to comply with restrictions such as drug testing, curfews, and avoiding anti-social peers.

While Texas, like all states, has more work to do to strengthen its criminal justice system, Texas' progress over the last several years is a shining example of how states can adopt strategies that deliver less crime and a lower bill to taxpayers. ✯

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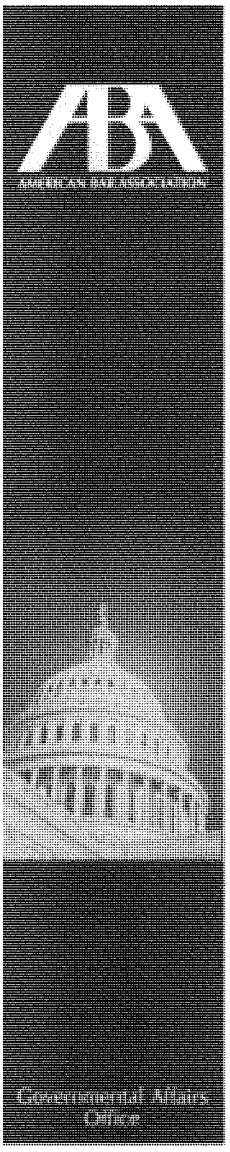

Statement of

WM. T. ROBINSON III

President

on behalf of the

AMERICAN BAR ASSOCIATION

for the record of the hearing on

RISING PRISON COSTS: RESTRICTING BUDGETS AND CRIME PREVENTION OPTIONS

before the

Committee on the Judiciary

of the

UNITED STATES SENATE

August 1, 2012

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Chairman Leahy, Ranking Member Grassley, and Members of the Committee:

I am Wm. T. Robinson III, President of the American Bar Association (ABA), and I am submitting this statement on behalf of the ABA for the Committee's consideration for its August 1, 2012 hearing on "Rising Prison Costs: Restricting Budgets and Crime Prevention Options."

The ABA, with nearly 400,000 members, commends the Committee for holding this hearing. In the debate over addressing the country's finances, many are rethinking our nation's approach to criminal justice and corrections spending. A growing number of states have done so on a bipartisan basis, in the name of fiscal responsibility, accountability, and public safety. These state successes offer ideas for what can also be done on at the federal level. We believe this hearing can serve as an important step toward generating a higher level of congressional scrutiny of costly, outdated, and, in important respects, ineffective federal corrections spending policies and related sentencing laws.

The ABA believes that the same level of scrutiny that is applied with regard to federal spending in other areas must be applied to spending on prisons, corrections, and criminal justice policies. We must ask whether these crime and corrections policies are cost-effective and evidence-based, and whether they are more or less effective in reducing crime and serving public safety than other alternatives. We look to the continued leadership of this Committee to reconsider overly costly federal corrections policies and to replace them with less costly and more effective alternatives.

In 1980, the federal prison system housed 24,000 people at a cost of $333 million. Since then, the federal prison population has exploded, now housing 217,000 people at an annual cost of $6 billion – an increase of 700% in population and 1700% in spending. Overcrowding plagues the federal system, operating at almost 40 percent over capacity, but we cannot build ourselves out of this crisis. Disproportionate investment in prison expansion has diminished attention to viable and fiscally sound alternatives to prison and weakened the concept that prison should be the sanction of last resort. It is critical that the crisis of the surging, unsustainable federal prison population be addressed, as it will increasingly engulf federal law enforcement resources.

The most significant source feeding this growth is the increased incarceration of nonviolent drug offenders. The federal government wastes precious taxpayer dollars when it incarcerates nonviolent offenders whose actions would be better addressed through alternatives that will hold them equally accountable at a substantially lower cost to taxpayers. Being sentenced to prison is always one option, but there should be others. We must expand and make broader use of proven alternatives to prison, especially for low-level and nonviolent offenders. Experience at the state-level has demonstrated legislators can make changes that safeguard the public and save money. Examples of successful bipartisan state-level reforms include:

- In Texas, requiring all drug possession offenders with less than a gram of drugs to be sentenced to probation instead of jail time;
- In Oklahoma, expanding eligibility for community sentencing and increase the use of parole for nonviolent offenders;
- In Kentucky, strengthening parole eligibility for certain low-level felony offenses and make individuals who complete drug treatment or education programs eligible to receive an earned discharge credit of 90 days;
- In Mississippi, reducing time-served for certain categories of nonviolent offenders; and
- In South Carolina, removing mandatory minimums for first-time offenders.

Reforms similar to these are being implemented in a variety of states, and these changes have led to the first overall decline in state prison populations since 1980. These reforms can and should serve as a model for the federal criminal justice system. Alongside many legal, criminal justice, civil rights, and faith-based organizations, the ABA urges you and other policy leaders in Congress to support the following criminal justice reforms designed to increase public safety while reducing the federal deficit.

The Bureau of Prisons (BOP) should be required to better utilize existing authority to cut costs while protecting safety

- BOP, as has been urged by House and Senate Appropriations Committees, should use its existing statutorily authorized operational discretion to, among other things: maximize the reentry time people spend in residential reentry centers as well as home confinement; expand the criteria for and use of "compassionate release" for compelling and extraordinary circumstances; and expand the use of the Residential Drug Abuse Program by removing barriers to full use of the program.

Congress should take legislative action to address out-of-control prison costs and respond to the prison crowding crisis

- **Expand Use of Probation and Expungement of Criminal Convictions for Low-Level Offenders**
  Congress should enact legislation to allow, but not require, judges to sentence certain first-time drug offenders to probation instead of incarceration.

- **Institute Review Process to Accelerate Supervised Release Eligibility**
  Federal prisoners leaving custody often spend part of their sentence on supervised release. Congress should authorize expedited consideration of prisoner eligibility for supervised release. This policy will reduce overcrowding and costs, while also creating additional incentives for inmates to engage in service, education and vocational activities.

- **Make Retroactive Congressional Reforms to Crack Cocaine Sentencing**
  Congress should pass legislation to extend the application of the Fair Sentencing Act of 2010 to people whose conduct was committed prior to enactment of the new law. If both the statute and guideline changes were made retroactive, U.S. Sentencing Commission estimates that as many as 24,000 people would be eligible to apply for and potentially receive relief over a 30-year period. Within the first year of retroactive implementation, as many as 7,000 people could be eligible for early release, generating a cost savings of over $200 million in the first year alone.

- **Enhance Elderly Nonviolent Offender Early Release Programs**
  Housing elderly prisoners can cost two and three times that of younger prisoners. At the same time, aging is linked to a diminishing risk of recidivism. Incarcerating elderly, nonviolent inmates who no longer pose a threat wastes enormous sums of federal resources. And, these costs will continue to rise as the elderly prison population grows. Forty-one states have already embraced some version of a limited early release program for elderly inmates, and Congress, for example, could reauthorize and expand the provision of the Second Chance Act that included a pilot program to allow for the early release of elderly prisoners.

- **Expand Time Credits for Good Behavior**
  The federal prison system's method of calculating earned credit reduces a prisoner's sentence to a maximum credit of 47 days per year – below the 54 days intended. This results in unnecessary,

costly increases in prison sentences. By clarifying the statutory language, Congress could save an estimated $41 million in the first year alone. Congress should also quickly implement a Department of Justice proposal creating a new good time credit that can be earned for successful participation in recidivism-reducing programs, such as education or occupational programming.

- **Restore Proportionality to Drug Sentencing**
  The excessive mandatory minimum sentences associated with drug offenses have led to an overrepresentation of low-level and nonviolent drug offenders in the federal criminal justice system. Restoring federal judicial discretion in drug cases by eliminating mandatory minimum sentences would not ignore culpability but would ensure that defendants receive punishments that are proportional to the offense they committed.

There is a growing recognition that our criminal justice system – like other government systems – must be based on what actually works, meet clear performance measures, and withstand fiscal scrutiny of cost-benefit analysis.

Policy makers can replace unnecessary and excessive prison sentences with proven alternatives that hold people accountable while, at the same time, saving taxpayer dollars. The American Bar Association looks forward to working with the Committee to advance these important principles.

WASHINGTON
LEGISLATIVE OFFICE

August 1, 2012

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
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The Honorable Charles E. Grassley
Ranking Member
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ROBERT REMAR
TREASURER

RE: Senate Judiciary Committee Hearing on "Rising Prison Costs: Restricting Budgets and Crime Prevention Options"

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of individual liberty and justice embodied in the U.S. Constitution, we offer this statement for the record of the August 1, hearing on, "Rising Prison Costs: Restricting Budgets and Crime Prevention Options." This hearing is an important first step in addressing our country's current incarceration crisis.

For years, the ACLU has been at the forefront of the fight against overincarceration due to its devastating impact on those who become ensnared in the criminal justice system, its failure to produce a proportional increase in public safety, and its disproportionate effect on poor communities of color.

The U.S. prison population has expanded at an unprecedented rate over the last 40 years. With more than 2.3 million people behind bars, we house 25 percent of the world's prison population but only account for 5 percent of its total population. Approximately 1 in 100 American adults is currently behind bars, and about 1 in 33 is either in prison, jail or on parole or probation.

A record 218,000 people are confined within Federal Bureau of Prisons (BOP) operated facilities or in privately managed or community-based institutions and jails. This population is projected to increase to approximately 229,300 by the close of FY 2013. Indeed, over the last 30 years the population of the federal prison system has increased exponentially, nearly 800 percent, largely due to the overrepresentation of those convicted of drug offenses, many of whom are low-level and non-violent.

In conjunction with this massive increase in prison population, we have also witnessed skyrocketing prison expenditures. In the last 30 years, the cost to maintain the federal prison population has grown by 1700 percent and shows no signs of abating. In fact, President Barack Obama's FY 2013 budget request for the BOP totals $6.9 billion, which is an increase of $278 million over the FY 2012 enacted budget for the Bureau.

Ballooning incarceration rates and corrections spending is not unique to the BOP. Notably, corrections is the second fastest-growing category of state budgets, behind only Medicaid. Despite this bleak reality, a number of states have already demonstrated that bipartisan criminal justice reform can reduce the prison population, cut corrections expenditures and maintain public safety.

For example, in 2006, Kansas' prison population was estimated to increase by 26 percent in ten years and cost the state approximately $500 million in additional prison construction and operating expenses.[1] In response to these alarming projections, the Kansas legislature passed a set of bipartisan criminal justice reform bills in 2007. At the center of this package was legislation that provides financial incentives to counties committing to cut the number of individuals returning to prison for probation and parole violations by at least 20% and expanding the use of earned credit programs for individuals convicted of nonviolent offenses. Thus far, two-thirds of all Kansas county agencies have surpassed the goal of a 20% reduction in individuals sent to prison for parole or probation violations, and this reduction is projected to save $80.2 million in additional prison costs by 2012.[2]

In 2010, South Carolina passed the Omnibus Crime Reduction and Sentencing Reform Act (SRA) by unanimous consent in the state Senate and nearly unanimous support in the House of Representatives. The SRA was designed to address a prison population that had increased nearly 270 percent over 25 years and a corrections budget that had increased over 500 percent in 15 years. Key features of the SRA include ending mandatory minimum sentences for simple drug possession, eliminating the crack-cocaine sentencing disparity, creating a medical parole program for terminally ill or ailing prisoners to apply for parole, mandating that people convicted of nonviolent offenses be released to mandatory supervision 180 days before their release date after serving at least two years in prison, and creating an earned credit program for probation giving individuals up to 20 days off of their supervision period for every 30 days of time on probation without violations or arrests. The SRA is projected to reduce the state's prison population by 1,786 prisoners by 2014 and save South Carolina $241 million by 2014, including $175 million in construction costs and $66 million in operating costs saved from avoided prison construction.[3]

Last year in Ohio, a Republican majority legislature passed a measure that is projected to save $1 billion over the next four years by – among other things – increasing the amount of time a

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[1] Council of State Governments, Justice Center, *Policy Options to Increase Public Safety & Manage the Growth of the Prison Population*, March 2007, Available at http://justicereinvestment.org/files/KS%20Policy%20Impact%20Chart%20Final%20LetterSize.pdf.

[2] American Civil Liberties Union, *SMART REFORM IS POSSIBLE: States Reducing Incarceration Rates and Costs While Protecting Communities*, August 2011, Available at http://www.aclu.org/files/assets/smartreformispossible_web.pdf#page=26

[3] *Id.*

prisoner can earn towards early release, eliminating the crack-cocaine sentencing disparity, removing mandatory minimum sentences for certain low-level drug offenses, and increasing the use of diversion programs for low-level drug offenders.

Just as a multitude of states have worked in a bipartisan manner to curb overincarceration, it is critical that the expansion of the federal prison population be addressed, lest it "engulf the Justice Department's budgetary resources."[4] The ACLU applauds the Committee's decision to take a serious look at rising prison costs, and while we believe adequate grounds exist right now to implement substantive reform, we also recognize the value in conducting a comprehensive review in an attempt to achieve bipartisan consensus on the best course for true reform.

Accordingly, we urge passage of S. 306, the National Criminal Justice Commission Act of 2011 (NCJCA), which was introduced by Senator Jim Webb (VA) and has the bipartisan support of 30 Senators. The measure would create a bipartisan commission tasked with examining the nation's criminal justice system and offering reform recommendations in a number of important areas including sentencing policy, rates of incarceration, law enforcement, crime prevention, corrections, and re-entry.

In addition to passage of the NCJCA, the ACLU also urges the Committee to take modest legislative action – following the lead of many states – to address the prison crowding crisis while maintaining public safety. Specifically, we endorse offset proposals offered in the President's budget request that would adjust the method of calculating good time credits for federal prisoners. Under the BOP's interpretation of current law, the good time allocation only reduces a federal prison sentence to a maximum credit of 47 days per year, which is 7 days less than the 54 days intended. The Administration's legislative proposal to increase good time credits by 7 days, coupled with its proposal to adopt time credits that can be earned for successful participation in recidivism-reducing programs, such as education or occupational programming, would be effective at enhancing rehabilitation efforts and limiting overcrowding.

Additionally, the Committee should pass legislation to expand the use of home confinement for elderly prisoners. The average cost of confining elderly people is between two and three times that of younger people.[5] At the same time, aging is correlated with diminishing risk of recidivism. Incarcerating elderly, nonviolent people who no longer pose a threat to the community wastes enormous sums of federal resources and these costs will continue to rise as the elderly prison population grows. Forty-one states have already embraced some version of a limited early release program for the elderly and Congress should follow suit.

Addressing mass incarceration and restoring fairness to the criminal justice system will require the continued commitment of lawmakers, judges, law enforcement, advocates and concerned citizens who recognize that the system is in need of reform. While attitudes towards crime have been politically divisive in the past, the current climate has narrowed these gaps by revealing the waste and ineffectiveness of overincarceration. The movement for reform represents an

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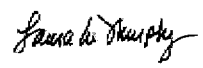
[4] Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012, H.R. 2596, 112th Cong. (2012).
[5] Anno, B.J., Graham, C., Lawrence, J.E., & Shansky, R. (2004). Correctional Healthcare: Addressing the needs of elderly, chronically ill, and terminally ill inmates. Washington, DC: U.S. Department of Justice, National Institute of Corrections. Available at http://static.nicic.gov/Library/018735.pdf.

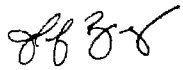
important opportunity for both parties to work together in support of evidence-based policy that is targeted, just, and cost-effective. Far from compromising public safety, these reforms will strengthen our communities and preserve the core constitutional values that protect us all. As Assistant Attorney General Lanny Breuer explained in a July 23, 2012 annual report to the U.S. Sentencing Commission, "Maximizing public safety can be achieved without maximizing prison spending."[6]

If you have any additional questions about this issue, please feel free to contact Jennifer Bellamy, Legislative Counsel, at jbellamy@dcaclu.org or at (202) 715-0828.

Sincerely,



Laura W. Murphy,
Director
Washington Legislative Office



Jennifer Bellamy
Legislative Counsel

[6] Lanny A. Breuer and Jonathan J. Wroblewski, *2012 Annual Report to the U.S. Sentencing Commission*, U.S. Department of Justice, Criminal Division, July 23, 2012, Available at http://www.justice.gov/criminal/foia/docs/2012-annual-letter-to-the-us-sentencing-commission.pdf.

WRITTEN TESTIMONY OF ADAM GELB
Director, Public Safety Performance Project, the Pew Center on the States
Senate Judiciary Committee, August 1, 2012 hearing
"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"

Chairman Leahy, Senator Grassley and members of the Committee, thank you for the opportunity to submit this testimony.

My name is Adam Gelb, and I am director of the Public Safety Performance Project of the Pew Center on the States, a division of the Pew Charitable Trusts, that helps states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.

In June of this year, our Project issued its most recent research report - *Time Served: The High Cost, Low Return of Longer Prison Terms.* I would like to provide the Committee with a summary of what our research found.

Over the past four decades, criminal justice policy in the United States was guided largely by a central premise: the best way to protect the public was to put more people in prison. A corollary was that offenders should spend longer and longer time behind bars.

The logic of the strategy seemed inescapable—more inmates serving more time surely equals less crime—and policy makers were stunningly effective at putting the approach into action. As the Pew Center on the States has documented, the state prison population spiked more than 700 percent between 1972 and 2011, and in 2008 the combined federal-state-local inmate count reached 2.3 million, or one in 100 adults. Annual state spending on corrections now tops $51 billion and prisons account for the vast majority of the cost, even though offenders on parole and probation dramatically outnumber those behind bars.

Indeed, prison expansion has delivered some public safety payoff. Serious crime has been declining for the past two decades, and imprisonment deserves some of the credit. Experts differ on precise figures, but they generally conclude that the increased use of incarceration accounted for one-quarter to one-third of the crime drop in the 1990s. Beyond the crime control benefit, most Americans support long prison terms for serious, chronic, and violent offenders as a means of exacting retribution for reprehensible behavior.

But criminologists and policy makers increasingly agree that we have reached a "tipping point" with incarceration, where additional imprisonment will have little if any effect on crime. Research also has identified new offender supervision strategies and technologies that can help break the cycle of recidivism.

Across the nation, these developments, combined with tight state budgets, have prompted a significant shift toward alternatives to prison for lower-level offenders. Policy makers in several states have worked across party lines to reform sentencing and release laws,

including reducing prison time served by non-violent offenders. The analysis in our *Time Served* report shows that longer prison terms have been a key driver of prison populations and costs, and the study highlights new opportunities for state leaders to generate greater public safety with fewer taxpayer dollars.

A State-Level Portrait of Time Served

Prison populations rise and fall according to two principal forces: 1) how many offenders are admitted to prison, and 2) how long those offenders remain behind bars. In our report, we sought to help policy makers better understand the second factor—time served in prison.

Historically, published statistics on offenders' length of stay in prison consisted only of national estimates by the U.S. Department of Justice's Bureau of Justice Statistics. The goal of the Pew report is to go beyond the national numbers and present a state-level portrait of how time served has changed during the past 20 years, how it has impacted prison populations and costs, and how policy makers can adjust it to generate a better public safety return on taxpayer dollars.

Toward that end, the study identifies trends in time served by state and by type of crime from 1990 to 2009, using National Corrections Reporting Program data collected from 35 states by the U.S. Census Bureau and the Bureau of Justice Statistics. States not included in the study had not reported sufficient data over the 1990-2009 study period. Pew also worked with external researchers to analyze data from three states to assess the relationship between time served and public safety.

A Longer Stay in Prison

According to Pew's analysis of state data reported to the federal government, offenders released in 2009 served an average of almost three years in custody, nine months or 36 percent longer than offenders released in 1990. The cost of that extra nine months totals an average of $23,300 per offender. When multiplied by the hundreds of thousands of inmates released each year, the financial impact of longer length of stay is considerable. For offenders released from their original commitment in 2009 alone, the additional time behind bars cost states over $10 billion, with more than half of this cost attributable to non-violent offenders.

Although nearly every state increased length of stay during the past two decades, the overall change varied widely among states. In a few states, time served grew rapidly between 1990 and 2009, among them Florida (166 percent), Virginia (91 percent), North Carolina (86 percent), Oklahoma (83 percent), Michigan (79 percent), and Georgia (75 percent). Eight states reduced time served, including Illinois (down 25 percent) and South Dakota (down 24 percent). Among prisoners released from reporting states in 2009, Michigan had the longest average time served, at 4.3 years, followed closely by Pennsylvania (3.8 years). South Dakota had the lowest average time served at 1.3 years, followed by Tennessee (1.9 years).

The growth in time served was remarkably similar across crime types. Offenders released in 2009 served:

- For drug crimes: 2.2 years, up from 1.6 years in 1990 (a 36 percent increase)
- For property crimes: 2.3 years up from 1.8 years in 1990 (a 24 percent increase)
- For violent crimes: 5.0 years up from 3.7 years in 1990 (a 37 percent increase)

Again, the national numbers mask large interstate variation. For violent crimes, Florida led the way among states with a 137 percent increase in length of stay, while prison stays for New York's violent inmates rose only 24 percent. Property offenders in nine of 35 states served less time on average in the last available year of data compared with 1990, even as those in Georgia, Florida, Virginia, and West Virginia saw average increases of more than a year. States such as Arkansas, Florida, and Oklahoma more than doubled average time served by drug offenders, even as Illinois, Missouri, and Nevada cut average time served for the same group.

A Questionable Impact on Public Safety

Despite the strong pattern of increasing length of stay, the relationship between time served in prison and public safety has proven to be complicated. For a substantial number of offenders, there is little or no evidence that keeping them locked up longer prevents additional crime.

A new Pew analysis conducted by external researchers using data from three states—Florida, Maryland, and Michigan—found that a significant proportion of non-violent offenders who were released in 2004 could have served shorter prison terms without impacting public safety. The analysis identifies how much sooner offenders could have been released, based on a risk assessment that considers multiple factors including criminal history, the amount of time each person has already served in prison, and other data. Looking only at non-violent offenders, the analysis identified 14 percent of the offenders in the Florida release cohort, 18 percent of the offenders in the Maryland release cohort, and 24 percent of the Michigan release cohort who could have served prison terms shorter by between three months and two years without jeopardizing public safety.

Using this type of empirical analysis to inform release policies could reduce state prison populations and costs. If the reductions in length of stay identified by the risk analysis had been applied to non-violent offenders in Florida, Maryland, and Michigan in 2004, the average daily prison population in those states would have been reduced by as much as 2,600 (3 percent), 800 (5 percent), and 3,300 (6 percent) respectively. These reductions represent substantial cost savings in each state: $54 million in Florida, $30 million in Maryland, and $92 million in Michigan.

States Begin to Moderate Time Served

Policy makers in all three branches of government can pull a variety of levers to adjust the amount of time offenders serve in prison. Prison time is influenced by both front-end (sentencing) and back-end (release) policy decisions. In several states, policy makers have undertaken reforms intended to stem the growth in time served, or actually reverse it, for certain offense types. These initiatives include:

- Raising the threshold dollar amount required to trigger certain felony property crime classifications. States include Alabama, Arkansas, California, Delaware, Montana, South Carolina, and Washington.
- Revising drug offense classification in the criminal code to ensure the most serious offenders receive the most severe penalties. States include Arkansas, Colorado, and Kentucky.
- Rolling back mandatory minimum sentencing provisions. States include Delaware, Indiana, Michigan, Minnesota, and New York.
- Increasing opportunities to earn reductions in time served by completing prison-based programs. States include Colorado, Kansas, Pennsylvania, and Wisconsin.
- Revising eligibility standards for parole consideration. States include Mississippi and South Carolina.

Strong Public Support for Reform

Recent opinion polling suggests that these reforms are being received well by the public. A national January 2012 poll of 1,200 likely voters revealed that the public is broadly supportive of reductions in time served for non-violent offenders as long as the twin goals of holding offenders accountable and protecting public safety still can be achieved. Voters overwhelmingly prioritize preventing recidivism over requiring non-violent offenders to serve longer prison terms. Nearly 90 percent support shortening prison terms by up to a year for low-risk, non-violent offenders if they have behaved well in prison or completed programming, and voters also support reinvesting prison savings into alternatives to incarceration.

The past five years have seen significant shifts in corrections policy across the nation, prompted both by tight budgets and by increasing understanding that there are more effective, less expensive ways to handle non-violent offenders than lengthy spells of incarceration. Public opinion, long concerned with controlling crime, is now focused more on cost-effectiveness and recidivism reduction than on traditional measures of "toughness."

Today, policy makers have a much better idea of what works to increase public safety than they did in the 1980s and early 1990s. Research clearly shows there is little return on public dollars for locking up low-risk offenders for increasingly long periods of time and, in the case of certain non-violent offenders, there is little return on locking them up at all. In addition, actors at both sentencing and release stages of the system have increasingly sophisticated tools to help them identify these lower-risk offenders.

States have been using this new information to improve results and reduce costs, and the analysis in this report shows that more savings can be garnered by thoughtfully calibrating time served, and thus ensuring there is adequate prison space for the most serious offenders. These promising practices and many others can serve as models for states looking to conserve precious public dollars while keeping communities safe.

Thank you again for this opportunity to present testimony to this Committee.

The Pew Charitable Trusts

The Pew Charitable Trusts was founded 61 years ago by the sons and daughters of Joseph N. Pew., the founder of Sun Oil Company. Pew has three primary areas of interest: improving public policy, informing the public and stimulating civic life. Pew partners with a diverse range of donors, public and private organizations.

The Pew Center on the States (PCS), a division of The Pew Charitable Trusts, identifies and advances effective policy approaches to critical issues facing states. It researches emerging topics, develops 50-state comparisons, and highlights innovative approaches among states to complex problems. When the facts are clear, PCS advocates for nonpartisan, pragmatic solutions.

With a staff that includes researchers, policy analysts, journalists, campaign strategists and issue experts, PCS works across a range of topics to ensure states have what they need to make smart, data-driven investments and adopt fiscally sound policies. PCS focuses principally on three areas of interest: (1) investing in human capital, with campaigns addressing early education, children's dental health and home visiting; (2) maximizing government performance, with an elections project, a sentencing and corrections initiative, and work on government management; and (3) ensuring states' fiscal health. To learn more about the Pew Center on the States, please visit www.pewcenteronthestates.org.

PREPARED STATEMENT OF

DALE DESHOTEL

PRESIDENT
COUNCIL OF PRISON LOCALS
FEDERAL BUREAU OF PRISONS
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE THE

SENATE JUDICIARY COMMITTEE

ON

"RISING PRISON COSTS: RESTRICTING BUDGETS AND CRIME PREVENTION OPTIONS"

AUGUST 1, 2012

Mr. Chairman, Mr. Ranking Member, and Members of the Committee -

My name is Dale Deshotel. I am the President of the Council of Prison Locals, American Federation of Government Employees (AFGE), AFL-CIO. On behalf of the more than 37,000 federal correctional workers at the U.S. Department of Justice's Bureau of Prisons' (BOP) correctional institutions, I want to thank you for the opportunity to submit our prepared statement for the hearing record on the important issue of "Rising Prison Costs: Restricting Budgets and Crime Prevention Options."

A. Rising Prison Costs and the Recidivism-Reducing Option

1. The Federal Prison Industries (FPI) prison inmate work program is an important rehabilitation tool that provides BOP inmates with job skills and values that will allow them to reenter – and remain in – our communities as productive, law-abiding citizens. The FPI program, which has been proven to have a strongly positive effect on recidivism, could – if strengthened – help decrease the federal prison inmate population and its attendant costs.

More than 217,000 prison inmates are incarcerated in BOP correctional institutions today, up from 25,000 in FY 1980, 58,000 in FY 1990, and 145,000 in FY 2000. About 81% - or 176,540 – of the inmate population are confined in BOP-operated institutions while 19% - or 40,612 – are managed in private prisons and residential reentry centers. By the end of FY 2013, it is expected there will be 229,268 prison inmates confined in BOP institutions.

Such an exploding prison inmate population has had many negative consequences:

- Prison inmate overcrowding is an increasing problem at BOP institutions despite the activation of new prisons over the past few years. BOP-operated institutions at the end of FY 2011 were overcrowded by 39%, with 55% overcrowding at high security prisons and 51% at medium security prisons. By the end of FY 2013, it is expected the BOP system will be overcrowded by 43%.

- The number of correctional workers who work in BOP-operated prisons, is failing to keep pace with the tremendous growth in the prison inmate population. As of December 31, 2011, the BOP-operated institutions were staffed at an 88% level, as contrasted with the 95% staffing levels in the mid-1990s. This 88% staffing level is *below* the 90% staffing level that BOP believes to be the minimum level for maintaining the safety and security of BOP institutions.

- The current inmate-to-staff ratio at BOP-operated prisons is 4.94 inmates to 1 staff member, as contrasted with the 1997 inmate-to-staff ratio of 3.57 to 1. BOP believes this substantial increase in the inmate-to-staff ratio causes negative impacts on its ability to effectively supervise prison inmates. Indeed, rigorous research by BOP's Office of Research and Evaluation has confirmed that the greater the inmate-to-staff ratio the higher the levels of serious assaults by prison

> inmates. (*The Effects of Changing Crowding on Inmate Violence and Administrative Remedies Granted, 2010*)

As more and more people are incarcerated in BOP correctional institutions, BOP prison costs have significantly increased. From FY 2000 to FY 2012, the BOP enacted budget for the Salaries and Expenses account has grown by nearly $3.5 billion, from $3,089,110,000 to $6,551,281,000. In addition, BOP has spent $6.2 billion on building new prisons since FY 2000. This means increasingly less money for other Department of Justice agencies, such as the Federal Bureau of Investigation, Drug Enforcement Administration, Bureau of Alcohol, Tobacco, Firearms, and Explosives, etc.

Congressional appropriators are becoming increasingly aware of this fiscal and programmatic problem:

> "...the [Senate Appropriations] Committee is gravely concerned that the current upward trend in prison inmate population is unsustainable and, if unchecked, will eventually engulf the Justice Department's budgetary resources."
>
> "The [Senate Appropriations] Committee must provide an increase of more than $350,000,000 above fiscal year 2011 to safely guard the Nation's growing Federal prison inmate and detention populations. While these activities are not considered mandatory for budget purposes, they are not truly discretionary in that the Committee has an obligation to adequately fund them regardless of budgetary constraints. Given the limited flexibility of the Federal prison and detention budget requests, and unless the inmate populations experience unforeseen decreases, the day approaches fast when Federal prisons and detention demands swallow the Justice Department's budgetary resources." *(FY 2012 Commerce-Justice-Science Appropriations, S. Rept. 112-78, pages 37 and 62)*

It is time that Congress began to consider different options for decreasing the federal inmate population and its attendant costs. One option involves sentencing reforms that limit excessive mandatory minimum sentences for low-level offenses. Another option includes recidivism-reducing programs that provide BOP prison inmates with job skills and values that will allow them to reenter – and remain in – our communities as productive, law-abiding citizens. This is what Attorney General Eric Holder discussed in his May 22, 2012 speech at the National Second Chance Act Conference:

> "There's a theme here: developing job skills during incarceration can improve public safety, reduce recidivism, and have lasting positive effects. And as many of you have pointed out – to leaders across and beyond government – it is time we started to think about reentry in this context. And it is critical that we turn to sound science and evidence-supported strategies to guide our work."

The BOP's Federal Prison Industries (FPI) prison inmate work program is exactly that kind of recidivism-reducing program. It is an important rehabilitation tool that provides BOP inmates an opportunity to develop job skills and values that will allow them to reenter – and remain in – our communities as productive, law-abiding citizens.

The Post-Release Employment Project (PREP), a multi-year study of the FPI prison inmate work program carried out and reported upon in 1996 by William Saylor and Gerald Gaes of the BOP Office of Research and Evaluation, found that the FPI prison inmate work program had a strongly positive effect on post-release employment and recidivism. Specifically, the study results demonstrated that:

- In the short run (i.e., one year after release from a BOP institution), federal prison inmates who had participated in the FPI work program (and related vocational training programs) were: (1) 35% less likely to recidivate than those who had not participated, and (2) 14% more likely to be employed than those who had not participated.

- In the long run (i.e., up to 12 years after release from a BOP institution), federal prison inmates who participated in the FPI work program were 24% less likely to recidivate than those who had not participated in the FPI work program. (*PREP: Training Inmates Through Industrial Work Participation, and Vocational and Apprenticeship Instruction,* by William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 24, 1996.)

Later in 1999, Saylor and Gaes published a follow-up paper to report further analyses of the PREP data which focused on the differential effect of the FPI prison inmate work program on the post-release recidivism of four groups: (1) non-Hispanic whites, (2) non-Hispanic blacks, (3) Hispanic whites, and (4) Hispanic blacks. Their analyses revealed that the FPI prison inmate work program provides even greater benefit to the three minority groups that are at the greatest risk for recidivism (non-Hispanic blacks, Hispanic whites, and Hispanic blacks) than it does for the non-Hispanic white group. In general, the recidivism improvement rates for minority inmates who participated in the FPI work program compared to those minority inmates who did not participate were between 37% and 147% higher than the recidivism improvement rates for non-Hispanic white inmates who participated in the FPI work program compared to those non-Hispanic white inmates who did not participate. As Saylor and Gaes concluded:

> "Regardless of whether a minority was defined on the basis of race or ethnicity, and despite their being at a higher risk of recidivism, minority groups benefited more from [FPI work program] participation than their lower risk non-minority counterparts. While the absolute differences may not appear that large, the relative improvements [in recidivism rates] indicate a much larger program effect for minority program participants who are otherwise more likely to be recommitted to prison." *(The Differential Effect of Industries Vocational Training on Post-Release Outcome for Ethnic and Racial*

Groups, William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 6, 1999.)

2. In addition to being an important prison inmate rehabilitation – and recidivism-reducing - tool, the FPI prison inmate work program is an important management tool used by understaffed BOP correctional workers to help deal with the exploding prison inmate population.

Hundreds of serious inmate-on-worker assaults have occurred in the past several years at BOP correctional institutions – the result of an exploding prison inmate population and correctional worker understaffing. The understaffing problem is a consequence of underfunding:

> "Chronic underfunding based on inadequate budget requests and lack of resources have forced BOP to rely excessively on correctional officer overtime and the diversion of program staff instead of hiring additional correctional officers, leaving the workforce spread dangerously thin and compromising BOP's ability to operate in a safe and efficient manner." *(FY 2013 Departments of Commerce, Justice and Science Appropriations, H. Rept. 112-158, page 65)*

AFGE and its Council of Prison Locals strongly support the FPI prison inmate work program because it is an important management tool used by understaffed BOP correctional workers to deal with the exploding prison inmate population. It helps keep thousands of inmates productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives to encourage good inmate behavior, as those who want to work in FPI factories must maintain a record of good behavior and must complete high school or be working toward a General Education Degree (GED).

3. Despite the fact that the FPI prison inmate work program is a proven rehabilitation and management tool, the program has experienced a significant decline in sales revenues, a significant increase in factory closings and downsizings, and a significant decline in the number of prison inmates employed by the FPI program. This deterioration of the FPI program is the result of various limitations imposed by Congress on the program, particularly Section 827 of the National Defense Authorization Act for FY 2008 (P.L. 110-181).

Over the past several years, the FPI prison inmate work program has experienced a significant decline in its ability to remain financially self-sustaining while providing "employment for the greatest number of inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible." (18 U.S.C. 4122) For example, FPI has experienced a:

- <u>Significant decline in FPI sales revenues</u>: While FPI in FY 2009 had sales

revenues of $889,355,000 in FY 2009, it only had revenues of $745,423,000 in FY 2011 – a decline of $143,932,000 or 16% over three years.

- Significant closing and downsizing of FPI factories: On July 15, 2009, FPI closed factory operations at 14 BOP prisons and downsized operations at four other BOP prisons. The next year on July 13, 2010, FPI closed 12 more factories and downsized three. And on September 7, 2011, FPI announced that it would close and downsize 12 additional factories at 10 different BOP prisons. According to then-FPI Chief Operating Office Paul Laird, these closings and downsizings were cost control actions taken to bring production capacity and expenses in line with FPI's level of business.

- Significant decline in the number of prison inmates employed by FPI: While the FPI program employed 18,972 inmates in FY 2009, it employed only 14,200 at the end of FY 2011 and 13,466 in April 2012.

These significant declines are the result of the various limitations imposed by Congress and the FPI Board of Directors on FPI's mandatory source authority relating to DoD's and federal civilian agencies' purchases from FPI. But of the many imposed limitations, Section 827 in the National Defense Authorization Act for FY 2008 (P.L. 110-181) – which is statutorily 10 U.S.C. 2410n - is probably the most significant impediment to the FPI prison inmate program.

The FPI Board of Directors in 2003 administratively ended the application of mandatory source authority for those FPI-made products where FPI had a share of the Federal market that was greater than 20%. But Section 827 took a much more stringent approach, ending the application of the mandatory source authority with regard to DoD purchases of FPI-made products where FPI's share of the DoD market for those products was greater than 5%. Initial analyses of the effect of this reduction of the "significant market share" from 20% to 5% projected an eventual loss of up to $241 million in FPI sales revenues and 6,500 FPI prison inmate jobs.

4. The FPI program, a proven recidivism-reducer, could help decrease the federal prison inmate population and its attendant costs if it were strengthened via new inmate work program authorities.

As can be seen above in #3, FPI is in desperate need of new inmate work program authorities if it is to remain financially self-sustaining while providing "employment for the greatest number of inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible." (18 U.S.C. 4122) Indeed, such new authorities could strengthen the FPI program, a proven recidivism-reducer, and thereby help decrease the federal prison inmate population and its attendant costs.

AFGE was pleased when Congress included language (Section 221) in the FY 2011 Commerce-Justice-Science Appropriations bill (P.L. 112-55) that extended – for the first time - the Prison Industry Enhancement (PIE) inmate employment program to the

federal BOP system. The PIE program was created by Congress in 1979 to encourage state prison systems to establish employment opportunities for inmates that approximate private-sector work opportunities. The program is designed to place inmates in a realistic work environment, pay them the prevailing local wage for similar work, and enable them to acquire marketable skills to increase their potential for successful rehabilitation and meaningful employment upon release.

AFGE also was pleased that Section 221 authorized FPI to carry out pilot "off-shore repatriation" projects to produce items not currently produced in the United States. It is believed that FPI, if allowed to enter into partnerships with private businesses, could bring lost production back into the United States while providing BOP prison inmates with opportunities to learn skills that will be marketable after their release.

However, these two exciting prison inmate programs are only in their incipient phase. It is much too early to evaluate and determine whether they will substantially strengthen the FPI program.

B. Rebuttals to Arguments Opposing the FPI Prison Inmate Work Program

Opponents of the FPI prison inmate work program often make the following arguments: (1) FPI wins contracts through unfair competition (via mandatory source preference), (2) FPI is a federal procurement behemoth, (3) this FPI federal procurement behemoth is adversely impacting private companies' sales and non-inmate workers' jobs, particularly in the office furniture and textile/apparel industries, and (4) therefore, eliminating the FPI mandatory source will significantly help private companies and non-inmate workers.

However, the existing evidence would seem to not support the opponents' arguments:

1. Opponents of the FPI prison inmate work program ignore the extent to which current law requires DoD and civilian agencies – when they are considering buying a FPI product – to: (a) use competitive procedures and (b) determine that the FPI product is comparable to products available from the private sector that best meet their needs in terms of price, quality, and time of delivery.

FPI program opponents argue many times that FPI wins contracts through unfair competition, that is, via mandatory source preference. But the opponents often ignore the many congressional reforms of the FPI product procurement process that occurred in the 2003-2008 period. These FPI reforms mandate that both DoD and civilian agencies (a) use competitive procedures and (b) determine that the FPI product is comparable to products available from the private sector that best meet their needs in terms of price, quality, and time of delivery.

DoD Procedures for Purchasing from FPI

DoD purchasing activities vis-a-vis FPI are subject to 10 U.S.C. 2410n, Subpart 208.6 of the Defense Federal Acquisition Regulation Supplement (DFARS), and Subpart 8.6 of the Federal Acquisition Regulation (FAR).

These statutory and regulatory provisions provide the following:

(a) *Products for Which Federal Prison Industries Has Significant DoD Market Share.* DoD may purchase a product listed in the latest edition of the FPI catalog for which FPI has a "significant DoD market share" – that is, a market share greater than 5% of the DoD market – only if DoD uses competitive procedures for the procurement of the FPI product. In conducting such a competition, DoD shall consider a timely offer from FPI.

(b) Products for Which Federal Prison Industries Does Not Have Significant DoD Market Share. Before purchasing a product listed in the latest edition of the FPI catalog for which FPI does not have a "significant DoD market share" – that is, a market share 5% or less – DoD shall conduct market research to determine whether the FPI product is comparable to products available from the private sector that best meet the needs of DoD in terms of price, quality, and time of delivery.

- If DoD determines that a FPI product is NOT comparable in price, quality, and time of delivery to products of the private sector that best meets the needs of DoD in terms of price, quality, and time of delivery, DoD shall use competitive procedures for the procurement of the product. In conducting such a competition, DoD shall consider a timely offer from FPI.
- If DoD determines that a FPI product IS comparable in price, quality, and time of delivery to products of the private sector that best meets the needs of DoD in terms of price, quality, and time of delivery, DoD must purchase the FPI product under the mandatory source preference – or request a FPI waiver to purchase it from a private sector company.

Attached at the end of this written testimony is a decision path flow chart that clarifies DoD procedures for purchasing from FPI.

Civilian Procedures for Purchasing from FPI

Civilian purchasing activities vis-à-vis FPI are subject to Section 637 of the Consolidated Appropriations Act, 2005 (P.L. 108-447) and Subpart 8.6 of the FAR.

These legislative and regulatory provisions provide the following:

(a) Market Research

- Before purchasing a product listed in the latest edition of the FPI catalog, a civilian agency is required to conduct market research to determine whether the FPI product is comparable to products available from the private sector

that best meets the needs of the civilian agency in terms of price, quality, and time of delivery.

- Determining comparability is a unilateral determination made at the discretion of the civilian agency's contracting officer.
- The civilian agency must prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research comparing the FPI product to products available from the private sector.

(b) Competitive Procedures or Mandatory Source

- If the civilian agency determines that the FPI product is NOT comparable to private sector products in one or more categories of price, quality, and time of delivery, the agency shall use competitive procedures for the procurement of the product. In conducting such a competition, the civilian agency shall consider a timely offer from FPI.
- If the civilian agency determines that the FPI product IS comparable to private sector products in all three categories of price, quality, and time of delivery, the agency must purchase the product from FPI under the mandatory source preference – or request a FPI waiver to purchase it from a private sector company. (Emphasis added)

Attached at the end of this written testimony is a decision path flow chart that clarifies civilian agency procedures for purchasing from FPI.

2. FPI is not a federal procurement behemoth because its total product sales, even its office furniture sales, are relatively small.

FPI opponents often contend that FPI is a federal procurement behemoth. For example, Rep. Howard Coble (R-NC), then-chairman of the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, stated at his Subcommittee's July 1, 2005 hearing on H.R. 2965, an anti-FPI bill, that he was "proud to be a cosponsor of this legislation" because "[among other things] FPI is a large and growing Government-owned corporation. In 1998, FPI had total sales in excess of $534 million and employed 20,200 inmates. In 2004, [FPI] employed 19,337 inmates with total sales of $802 million."

But while Rep. Coble and others seek to portray FPI as this "large and growing" behemoth, the fact is that FPI's total sales represent only a very small percentage of the total federal procurement market.

- FPI's total sales in FY 2004 - $802,720,000 – were less than one quarter of 1% (.2350934% to be exact) of the total federal agency procurement market - $341,447,181,612. FPI's total sales in FY 2007 - $852,724,000 – were less than one fifth of 1% (.1926680%) of the total federal agency procurement market - $442,587,106,986. (Source: *"Federal Contract Actions and Dollars by Executive*

Department and Agency, FY 2004 and FY 2007", Federal Procurement Data System website.)

- FPI's total sales in FY 2011 - $745,423,000 – were even less – 0.1393314% of the total federal agency procurement market - $535 billion. (Source: *"Contracting Smarter, Savings More,"* by Danny Werfel, OMB Controller of the Office of Federal Financial Management, and http://www.usaspending.gov.)

Similarly, FPI opponents who support the office furniture industry argue that the FPI office furniture business segment is an increasingly "large and growing" portion of the total U.S. office furniture market. For example, then-Rep. Pete Hoekstra (R-MI), the primary sponsor of H.R. 2965, the anti-FPI bill, who represented a Michigan congressional district heavily involved with the office furniture industry, testified at the July 1, 2005 House Crime Subcommittee hearing on H.R. 2965 that:

> "It [the FPI office furniture business segment] is not a minuscule part [of the U.S. furniture industry]. The furniture industry is about – probably somewhere in the neighborhood of a $12 to $14 billion industry, depending on exactly what year you're taking a look at. Office furniture in FPI was a $250 million business within the last couple of years. It was a fast growing industry. It was the fastest growing office furniture company in America as the office furniture industry was going through its tough times.

However, contrary to then-Rep. Hoekstra's testimony, the fact was - and is - that the FPI office furniture business segment is only a very small part of the total U.S. office furniture market. As the table shows below, FPI office furniture sales in FY 2005 (when Rep. Hoekstra testified) - $139,773,000 – were only 1.39% of the total U.S. office furniture market - $10,070,000,000. In addition, the FPI office furniture sales decreased in absolute terms - dropping from $217,852,000 in FY 2002 to $115,993,000 in FY 2007 – and as a relative percentage of the total U.S. office furniture market – decreasing from 2.45% in FY 2002 to 1.02% in FY 2007. Even with the beginning of the serious recessionary downturn in 2008, FPI furniture sales as a percentage of the U.S. office furniture market still remained at a very low 1.16%

FPI Office Furniture Sales and U.S. Office Furniture Market (2002-2008)

Fiscal Year	FPI Office Furniture Sales	U.S. Office Furniture Market	FPI Office Furniture Sales as % of U.S. Furniture Market
2002	$217,852,000	$8,890,000,000	2.45%
2003	$151,996,000	$8,505,000,000	1.79%
2004	$140,935,000	$8,935,000,000	1.58%
2005	$139,773,000	$10,070,000,000	1.39%
2006	$118,179,000	$10,820,000,000	1.09%
2007	$115,993,000	$11,420,000,000	1.02%
2008	$129,100,000	$11,160,000,000	1.16%

Sources: *"The U.S. Office Furniture Market, Statistics,"* compiled by The Business and Institutional Furniture Manufacturer's Association; FPI Annual Report, seven annual FPI reports for FY 2002-2008.

(3) FPI is not the cause of the U.S. private companies' sales losses and non-inmate workers' job losses in the office furniture and textile/apparel industries. Instead these sales and job losses are being caused by foreign competition.

FPI's opponents argue the FPI mandatory source preference should be eliminated because the FPI prison inmate work program is adversely impacting private sector companies and non-inmate workers, particularly in the office furniture and textile/apparel industries. But FPI's opponents have failed to present hard evidence to substantiate their assertion that the FPI program is systemically causing such company sales losses and non-inmate worker job losses.

An example of this inability occurred at the July 1, 2005 House Crime Subcommittee hearing on H.R. 2965. Then-Subcommittee Chairman Coble asked the following two questions of Mr. Paul Miller, Director of Government Affairs, Independent Office Products & Furniture Association: "A, has any member of your association experienced detrimental effects as a result of FPI programs? And B, have you had any small businesses that have been forced out of business as a direct consequence of competing with FPI?" In response, Mr. Miller said the following:

> "Let me answer the second question first. **To our knowledge, no, there has not been. We cannot point to a direct relationship of any business going out of business because of FPI.** But we do see our industry – the economy has struggled the last few years and our industry has struggled a great deal. We lost 30,000 jobs, our companies were losing business. So we do see a correlation that had they been able to compete with that Government business they may have been able to do a little bit better. They may not have had to lay employees off, or they may not have had to close down for work periods at a time, weeks at a time. So, we have been harmed, **but I can't say that we've closed our doors directly because of FPI.** It doesn't help." (Emphasis added)

Later at the same hearing, Rep. Dan Lundgren (R-CA) asked this question of Mr. Miller:

> "Mr. Miller, with all due respect, you've got to come and show me that this [FPI prison inmate work program] is really hurting the industry. I mean, to come here and say, well, I can't show you any loss of jobs anywhere and I can't show you any particular business going out of business but we know it hurts us, frankly is insufficient to convince me that we've got to do something. **Now, if you've got some real hard data to show how this [FPI] program is really hurting your industry in a substantial way, I'd like to hear it."** (Emphasis added)

In response, Mr. Miller failed to present any "real hard data" to show how FPI is adversely impacting office furniture companies and non-inmate workers "in a substantial way." Instead, he said his office furniture association has no problem with FPI "legitimately" making office furniture with prison inmate labor but is opposed to FPI's alleged use of the business practice referred to as "pass-through" in which the FPI program would purchase finished products from its private sector partners for resale to its federal agency customers if circumstances prevented FPI from fulfilling an order. But contrary to Mr. Miller's statement, the "pass-through" issue was resolved administratively in 2002, and there is no evidence that FPI has employed the "pass-through" practice since that time.

The reason why Mr. Miller and other FPI opponents have failed to present hard data to show that the FPI program is systematically causing losses of business sales and non-inmate worker jobs is simple. *The FPI prison inmate work program is not causing these losses.* These sales and job losses, particularly in the office furniture and textile/apparel industries, are being caused by foreign trade competition and the outsourcing of American jobs to other countries.

The very real adverse impact of foreign competition on the office furniture and textile/apparel industries has been documented again and again in federal government and trade association analyses, the office furniture and textile/apparel companies own stock reports to the Securities and Exchange Commission, and in the business media. For example, the U.S. Department of Commerce's comprehensive analysis of the health and competitiveness of the U.S. textile and apparel industries demonstrated how rising textile and apparel imports have caused substantial reductions in U.S. textile and apparel production as measured by the value of industry shipments, job losses and reductions in the number of textile and apparel establishments. *("The U.S. Textile and Apparel Industries: An Industrial Base Assessment,"* conducted by the U.S. Department of Commerce's Bureau of Industry and Security, as requested by the Joint Statement of Managers accompanying the Conference Report on the Consolidated Appropriations Resolution, 2003 (H.Rpt. 108-10.)

An example of both the adverse impact of foreign trade and the outsourcing of American jobs to other countries is a Business Week article on Haworth Furniture, a $1.4 billion Holland, MI-based maker of office furniture, and its increasing success in China. In addition to discussing how successful Haworth has been in moving a significant part of its manufacturing capacity to Shanghai, the August 22, 2005 article points out the adverse impact of Chinese imports on U.S. office furniture companies.

> *"What's particularly impressive is that Haworth is beating many Chinese manufacturers at their own game – and doing it on the locals' turf.* ***For the past five years, U.S. furniture manufacturers have been under siege from Chinese imports. Hundreds of U.S. furniture factories have shut, unable to compete with high-quality Chinese-made furniture costing 30% to 40% less.*** *Few U.S. furniture makers have even contemplated taking*

the fight to China by manufacturing there and selling to the domestic market.

[But] the family-owned company has seen its Middle Kingdom sales grow 50% annually for the past three years. From its 250,000-square-foot factory in Shanghai, Haworth is selling more than 100,000 chairs a month, priced at $250 to $2,000 apiece, and around 100,000 office work stations, which go for up to $2,500 apiece." ("Sitting Pretty in Shanghai," Business Week, August 22, 2005)

So why the anti-FPI animus? U.S. office furniture and textile/apparel companies and labor unions, who have suffered tremendous sales and job losses, and the legislators who represent the congressional districts in which these companies reside, are attempting to mitigate these losses somewhat by gaining better access to federal procurement contracts and the relatively few jobs that FPI prison inmates perform. Mr. Miller explained this in his response to Chairman Coble when he said "We lost 30,000 jobs, our companies were losing business. So...had [we] been able to compete with [FPI, we] may have been able to do a little bit better. [We] may not have had to lay employees off..."

But it would seem to be wrong-headed, policy-wise, to legislate the elimination of the FPI mandatory source - thereby endangering a successful correctional work program that is both an essential prison management tool and an important prisoner rehabilitation tool - simply to gain a few federal contracts and jobs. It would be better public policy - and more helpful to those living in North Carolina and Michigan - to directly deal with the root causes for the tremendous losses in sales and jobs in the office furniture and textile/apparel industries – foreign trade competition and outsourcing of American jobs.

To be fair, there have occurred isolated instances over the past two decades in which the FPI prison inmate work program adversely impacted an individual business whose primary customer is the federal government. One example often presented is the Glamour Glove Company problem a decade ago, in which Glamour Glove's production of gloves for the Department of Defense was being adversely impacted by FPI's increased glove production. Glamour Glove and FPI, of course, were able to negotiate a reasonable compromise to ensure that FPI no longer threatened the company's military glove production.

But again it would seem to be wrong-headed, policy-wise, to legislate the elimination of the FPI mandatory source - thereby endangering a successful correctional work program that is both an essential prison management tool and an important prisoner rehabilitation tool - when the isolated instances where the FPI program is adversely impacting individual businesses can be resolved administratively.

4. The legislative elimination of the FPI mandatory source preference will not significantly help private companies and non-inmate workers, even in the office furniture and textile/apparel industries. But it will have a significantly adverse impact on the many private companies and non-inmate workers that supply FPI with raw materials, equipment, and other services.

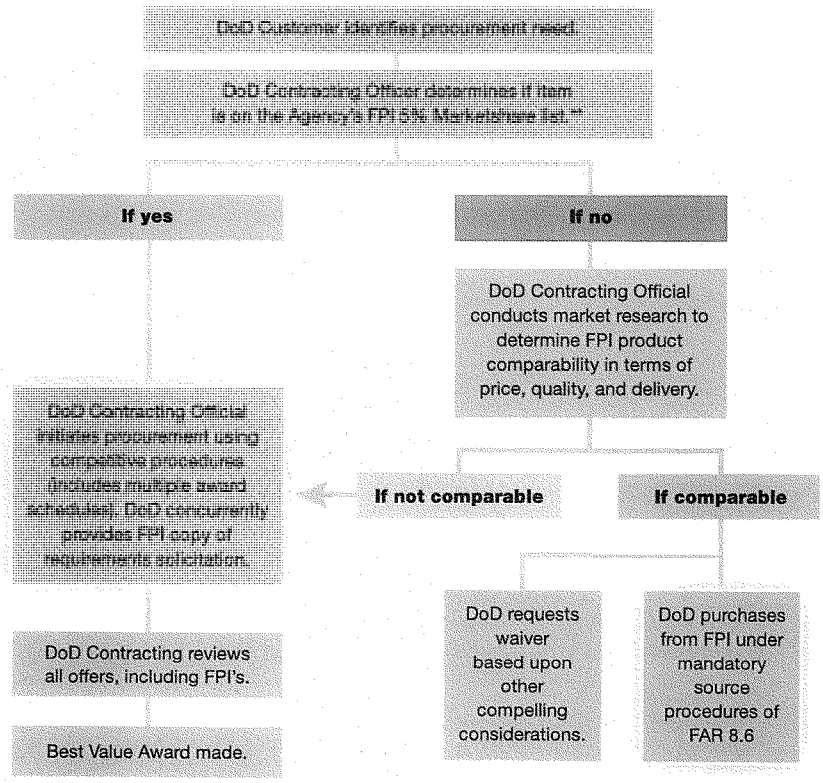
FPI's opponents argue that eliminating the FPI mandatory source preference will significantly help those private companies and non-inmate workers, particularly in the office furniture and textile/apparel industries, who have suffered tremendous sales and job losses. But, since the FPI inmate work program is not a federal procurement behemoth, and the FPI program is not systemically causing the losses in U.S. business sales and non-inmate worker jobs, the elimination of the FPI mandatory source preference will *not* provide significant help to those companies and workers.

Ironically, most of the impact of the legislative elimination of the FPI mandatory source preference will be adverse and will fall on those private companies (and their non-inmate workers) that provide the materials and equipment FPI factories need to produce their products. In FY 2009, FPI spent $705.6 million, or 79.7% of its net sales revenue of $885.3 million, on purchases of raw materials, supplies, equipment, and services from these private sector companies. About 63.7% of those purchases – or $449 million – were from small businesses, including businesses owned by women, minorities, and those who are disadvantaged. In addition, FPI estimates that these contractual relationships have generated about 5,000 U.S. non-inmate worker jobs, many of which are unionized.

Each of these private companies has played by the rules, competing fair and square for the FPI contracts. They responded to solicitations issued by FPI and were awarded contracts through competitive procedures. In order to fulfill their contractual obligations, these companies often have hired law-abiding citizens as workers, added equipment, and some have opened entire new plants. These private companies and their non-inmate workers do not deserve to be on the receiving end of a wrong-headed, policy-wise, animus toward the FPI prison inmate work program.

This concludes my written statement. I thank you for including it in the hearing record.

Decision Path of DoD Procedures for Purchasing from FPI*



* Derived from:

- Sections 827 of the National Defense Authorization Act for Fiscal Year 2008; Public Law 110-181 (effective 3/31/08)

** See the most recent Marketshare List at www.unicor.gov (click on "Purchase/Waiver Procedures and Policy")

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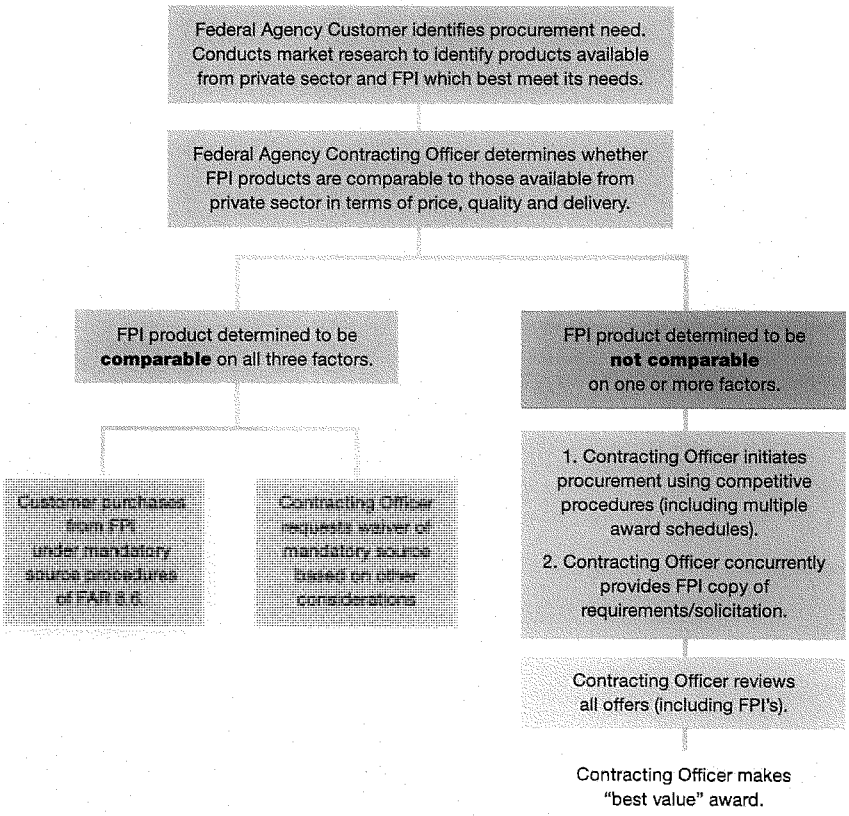
Decision Path of Civilian Agency Procedures for Purchasing from FPI*



* Derived from:

- Sections 811/819 of the DoD Authorization Acts of FY 2002 and FY 2003, the implementing regulation for DoD at 68 Federal Register 64559 (11/14/03); affecting 48 CFR Parts 208, 210, 219, and 252.
- Section 637 of the Consolidated Appropriations Act, 2005, modifying FAR 8.6 (1/3/06).

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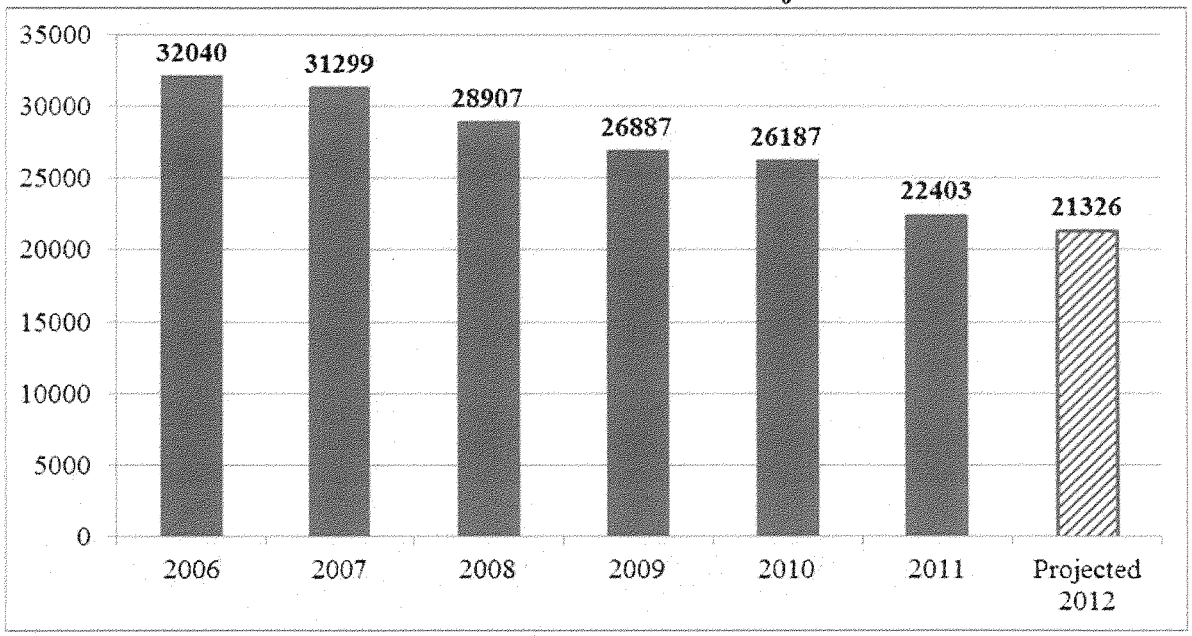
City of Boston
Boston Police Department

BRIC

Total Part 1 Crime 2006 – 2011 & Projected 2012

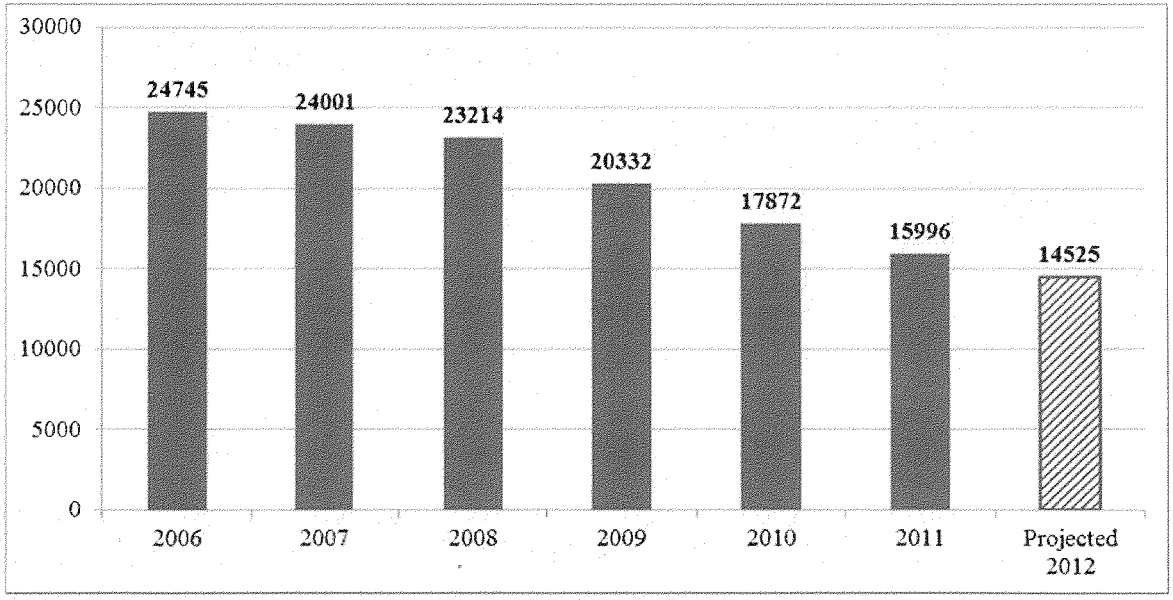


Please see slide 5 for details on projection methodology.

Data Compiled by BRIC

City of Boston
Boston Police Department

Total Arrests Crime 2006 – 2011 & Projected 2012



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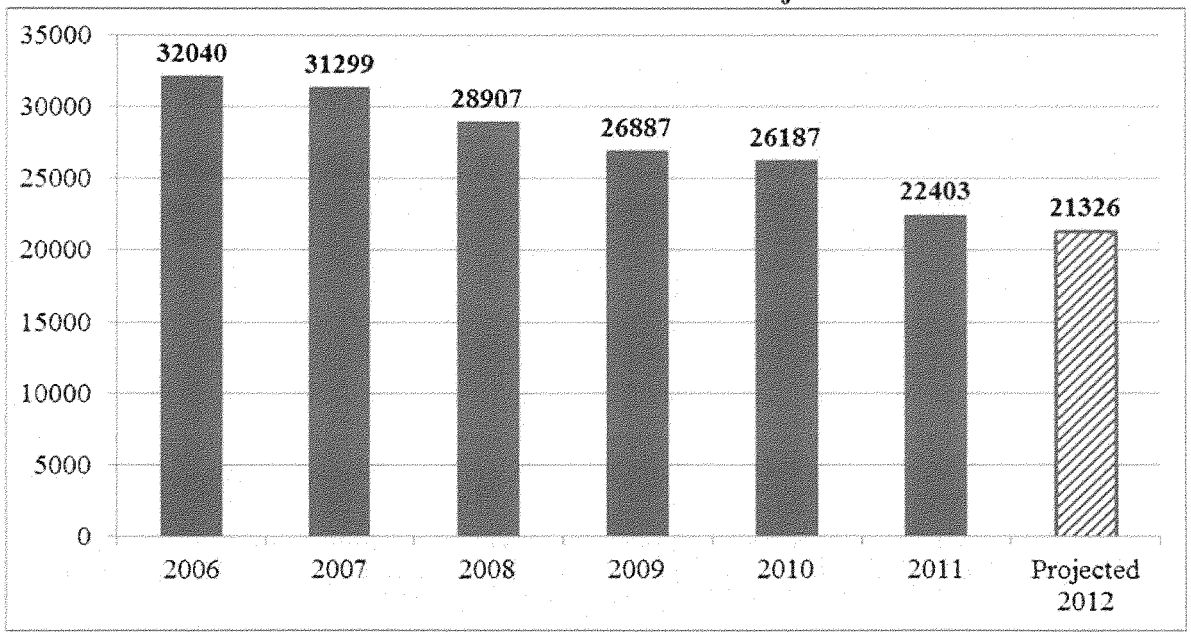
Data Compiled by BRIC

City of Boston
Boston Police Department

BRIC

Total Part 1 Crime 2006 – 2011 & Projected 2012



Please see slide 5 for details on projection methodology.

Data Compiled by BRIC

Department of Justice

STATEMENT FOR THE RECORD

OF

CHARLES E. SAMUELS, JR.
DIRECTOR
FEDERAL BUREAU OF PRISONS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ENTITLED

"RISING PRISON COSTS: RESTRICTING BUDGETS AND CRIME PREVENTION OPTIONS"

AUGUST 1, 2012

Statement for the Record
Charles E. Samuels, Jr.
Director
Federal Bureau of Prisons
U.S. Department of Justice

Committee on the Judiciary
United States Senate

"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"
August 1, 2012

Overview

The Federal Bureau of Prisons (Bureau) is committed to the dual mission of keeping offenders confined in prisons that are safe, secure and humane, and providing opportunities for prisoners to prepare themselves for a productive life when they return to the community. The agency has had great success on both fronts, measured by key indicators such as escapes, disturbances, the rates of assaults and homicides, and rates of recidivism (significantly lower than the rates for large states, as reported by the Bureau of Justice Statistics).

From the agency's inception in 1930 until 1980, the number of federal inmates remained fairly stable. But in the 1980s, with the enactment of new drug legislation and other changes, the number of inmates (and staff and facilities) increased exponentially (from 24,640 inmates in 1980 to over 218,000 today). Additionally, the types of offenders in Federal custody have changed, with the majority of new admissions being drug offenders (followed by weapons offenders and now immigration offenders) as opposed to bank robbers and white collar offenders.

Even during this time of tremendous growth, the Bureau has continued to focus on both aspects of its mission – security and reentry – by developing and later enhancing a state-of-the-art drug treatment program, expanding Federal Prison Industries (FPI), creating a residential faith-based program, and many others. At the same time, the Bureau developed and validated the first objective risk assessment classification system, constructed a "supermax" facility, and introduced many sophisticated technologies and inmate management procedures to enhance safety and security.

Prison crowding remains a significant challenge for the Bureau, and the inmate population continues to grow. While the rate is somewhat less than was seen in the late 1990s and early 2000s, on average the prison population has grown by 6,400 inmates each year from 2001 to 2010 (the equivalent of about four prisons).

In the past, the Bureau has faced numerous fiscal challenges caused by the rapidly growing prison population and increasingly overcrowded conditions. In response, the Bureau

implemented a number of initiatives to streamline operations, centralize and automate functions, and reduce management positions. The cost savings initiatives implemented by the Bureau have enabled it to operate more efficiently and remain within total funding levels through fiscal year (FY) 2007. In FY 2008, BOP required supplemental funds to maintain basic operations. Since that time, BOP has been able to manage to operate within funding levels provided. The Bureau operates with an average daily cost per offender ($77.49) that is slightly less than the average for the states ($79.84) (American Corrections Association 2011 Directory of Adult and Juvenile Corrections). But with increasing populations, the overall Bureau budget continues to rise. The FY 2012 enacted budget was $6.64 billion dollars, and this increase is directly tied to the increasing number of federal prisoners.

Prisons are essential to public safety. They must be safe and secure, and we must maintain our capacity to imprison those who commit crimes. The collective challenge is to figure out how to control prison spending without compromising public safety or programs that are proven to lower crime rates and recidivism. Our ability to increase the productivity of public safety spending of all kinds will largely determine whether we build on the reductions in crime that we've experienced since the early 1990s, or whether we see setbacks.

The Federal Inmate Population

The Bureau is the Nation's largest corrections system with responsibility for incarcerating more than 218,000 inmates. The Bureau confines over 176,000 inmates in 117 facilities with a total rated capacity of 128,236, with the remaining 41,000 managed in contract care consisting primarily of privately operated prisons. Drug offenders comprise the largest single offender group admitted to Federal prison and sentences for drug offenses are much longer than those for most other offense categories.

Over 45 percent of the inmate population housed in Bureau facilities is confined in medium and high security facilities – at the medium security level about 66 percent of the inmates are drug or weapon offenders, approximately 76 percent have a history of violence, 42 percent have been sanctioned for violating prison rules, and half of the inmates in this population have sentences in excess of 8 years. At the high security level, more than 70 percent of the inmates are drug offenders, weapons offenders, or robbers, another 10 percent have been convicted of murder, aggravated assault, or kidnapping, and half of the inmates in this population have sentences in excess of 12 years. Moreover, approximately 70 percent of high security inmates have been sanctioned for violating prison rules, and more than 90 percent have a history of violence. One out of every six inmates at high security institutions is gang affiliated.

Institution Crowding

Crowding is one of the most significant issues facing the Bureau today. As noted earlier, the Bureau confines over 176,000 inmates in Bureau-operated facilities with a total rated capacity of just 128,800 beds. The Bureau has managed overcrowding by double and triple bunking inmates throughout the system, or housing them in space not originally designed for inmate housing, such as television rooms, open bays, program space, etc. Crowding also strains facilities' infrastructure like water, sewage, and power systems.

The Bureau relies on multiple approaches to house the increasing federal inmate population, such as contracting with the private sector and state and local facilities for low-security inmates; expanding existing institutions where infrastructure permits, and it is programmatically appropriate and cost effective to do so; and acquiring, constructing, and activating new facilities as funding permits. In light of overcrowding and stresses on prison staffing, the Bureau's ability to safely manage the increasing federal inmate population is one of the Department's top ten management and performance challenges identified by the Office of the Inspector General in the Department's Performance and Accountability Report, stating "In sum, the Department continues to face difficult challenges in providing adequate prison and detention space for the increasing prisoner and detainee populations and in maintaining the safety and security of prisons."

In the past, we have been able to take a variety of steps to mitigate some of the effects of crowding in our facilities. For example, we have improved the architectural design of our newer facilities and have taken advantage of improved technologies in security measures such as perimeter security systems, surveillance cameras, and equipment to monitor communications. These technologies support Bureau employees' ability to provide inmates the supervision they need in order to maintain security and safety in our institutions. We have also enhanced population management and inmate supervision strategies in areas such as classification and designation, intelligence gathering, gang management, use of preemptive lockdowns, and controlled movement.

The inmate-to-staff ratio is an important factor in maintaining institution safety. In 2005, the Bureau performed a rigorous analysis of the effects of crowding and staffing on inmate rates of violence. Data were used from all low-security, medium-security, and high-security Bureau facilities for male inmates for the period July 1996 through December 2004. We accounted for a variety of factors known to influence the rate of violence and, in this way, were able to isolate and review the impact that crowding and the inmate-to-staff ratio had on serious assaults. This study found that increases in both the inmate-to-staff ratio and the rate of crowding at an institution (the number of inmates relative to the institution's rated capacity) are related to increases in the rate of serious inmate assaults.[1] The analysis revealed that an increase of one inmate in an institution's inmate-to-custody-staff ratio increases the prison's annual serious assault rate by approximately 4.5 per 5,000 inmates. This demonstrates through empirical research that there is a direct relationship between crowding, staffing, and institution safety.

FY 2013 Budget Request

The President's FY 2013 Budget request for the Bureau is $6.820 billion for the Salaries and Expenses (S&E) account. The S&E base budget incorporates increases in costs for inmate medical care, food, utilities, and existing contract beds. With respect to the Bureau's methods for cost estimation, the Government Accountability Office (GAO) released report GAO-10-94 in November 2009 and concluded that the Bureau's methods for cost estimation largely reflect best practices as outlined in GAO's *Cost Estimating and Assessment Guide*.

[1] Federal Bureau of Prisons (2010). The Effects of Changing Crowding on Inmate Violence and Administrative Remedies Granted. Office of Research and Evaluation, Federal Bureau of Prisons, Washington, DC.

For FY 2013, a net increase of $23.4 million in program changes is proposed. The request includes $81.4 million in program enhancements to begin the activation process for two institutions, the United States Penitentiary (USP) at Yazoo City, Mississippi and the Federal Correctional Institution (FCI) at Hazelton, West Virginia, and to acquire 1,000 private contract beds.

The Administration has proposed legislation that would provide inmates with enhanced incentives for good behavior and for participation in programming that is proven to reduce the likelihood of recidivism. The first proposal increases good conduct time credit availability by seven days per year for each year of the sentence imposed. This would result in a reduction, within a year, of approximately 4,000 federal inmates in custody, yielding significant savings of taxpayer dollars. If enacted before FY 2013, this proposal could result in a significant cost avoidance of up to $41 million. The second proposal creates a new sentence reduction credit that inmates could earn for successful participation in recidivism-reducing programs, such as FPI, education, and occupational/vocational training. We cannot estimate the number of inmates who will choose to participate in these programs. However, we can assume this proposal would reduce the future anticipated growth in the inmate population, thereby reducing long-term costs.

For FY 2013, a total of $99.2 million is requested for the B&F appropriation. Additionally, a rescission of $75 million in prior years' New Construction unobligated balances is proposed. With the continued and future projected inmate growth and age of existing prisons, the Bureau continues to allocate Modernization and Repair (M&R) funds primarily for emergencies as major infrastructure and life safety systems begin to fail and to address a limited number of high priority major projects, annually. Approximately one-third of the Bureau's 117 institutions are 50 years or older. The aging and failing infrastructure at these locations exacerbates our challenges in maintaining our Federal prisons.

Inmate Reentry

It is our philosophy that "reentry begins on the day of incarceration," and we work with inmates to address identified skill deficiencies and weaknesses, provide appropriate treatment programs and assist with preparation for reintegration. Over the past few years we have made great strides in enhancing collaboration both within and outside our agency to ensure we are providing offenders the best opportunities for success once back in the community.

Almost all federal inmates will be released back to the community at some point. Each year, over 45,000 federal inmates return to our communities. Most need job skills, vocational training, education, counseling, and other assistance such as drug abuse treatment, anger management, and parenting skills if they are to successfully reenter society. Federal prisons offer a variety of inmate programs to address reentry needs, including work, education, vocational training, substance abuse treatment, observance of faith and religion, psychological services and counseling, release preparation, and other programs that impart essential life skills. We also provide other structured activities designed to teach inmates productive ways to use their time.

Rigorous research has found that inmates who participate in FPI are 24 percent less likely to recidivate; inmates who participate in vocational or occupational training are 33 percent less

likely to recidivate; inmates who participate in education programs are 16 percent less likely to recidivate; and inmates who complete the residential drug abuse treatment program are 16 percent less likely to recidivate and 15 percent less likely to relapse to drug use within 3 years after release.[2]

In 2001, the Washington State Institute for Public Policy evaluated the costs and benefits of a variety of correctional, skills-building programs. The study examined program costs; the benefit of reducing recidivism by lowering costs for arrest, conviction, incarceration, and supervision; and the benefit by avoiding crime victimization. The study was based on validated evaluations of crime prevention programs, including the Bureau's assessment of our industrial work and vocational training programs (the Post Release Employment Project study) and our evaluation of the Residential Drug Abuse Treatment program (the TRIAD study). The "benefit" is the dollar value of criminal justice system and victim costs avoided by reducing recidivism, and the "cost" is the funding required to operate the correctional program. The benefit-to-cost ratio of residential drug abuse treatment is as much as $2.69 for each dollar invested in the program; for adult basic education, the benefit is as much as $5.65; for correctional industries, the benefit is as much as $6.23; and for vocational training, the benefit is as much as $7.13. The study clearly indicates these inmate programs result in significant cost savings through reduced recidivism, and their expansion is important to public safety.[3]

Federal Prison Industries

FPI directly supports the mission of the Bureau by increasing the likelihood of inmates successful reentry and by keeping inmates productively occupied, both at no cost to the taxpayer. As noted above, inmates who participate in FPI are significantly less likely to return to a life of crime, less likely to engage in disruptive behavior while in prison, and more likely to be employed upon release as compared to similar inmates who did not participate in the program.

Moreover, FPI positively impacts the US economy through the purchase of raw materials from suppliers around the country and the payment of staff salaries that are spent in the community without additional tax burden to society. Seventy-eight percent of FPI expenditures

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[2] Federal Bureau of Prisons (1985). PREP: Post Release Employment Project Interim Report, Office of Research and Evaluation, Federal Bureau of Prisons, Washington, DC.

Federal Bureau of Prisons (2000). TRIAD Drug Treatment Evaluation Project Final Report of Three-Year Outcomes: Part I, Office of Research and Evaluation, Federal Bureau of Prisons, Washington, DC.

Harer, M. D. (1995). Prison Education Program Participation and Recidivism: A Test of the Normalization Hypothesis. Office of Research and Evaluation, Federal Bureau of Prisons, Washington, DC.

Saylor, W. G. and Gaes, G. G. (1997). PREP: Training Inmates Through Industrial Work Participation and Vocational and Apprenticeship Instruction. Corrections Management Quarterly, 1(2).

[3] Aos, Stever, Phipps, P., Barnoski, R., and Lieb, R. (2001). The Comparative Costs and Benefits of Programs to Reduce Crime, Washington State Institute for Public Policy.

during FY 2011 were for the purchase of raw materials, supplies, equipment, and services from private sector businesses. More than 40 percent of FPI's purchases were from small businesses.

By design, FPI's authorizing statute limited the sale of products only to agencies of the Federal Government. As created in the authorizing statute, FPI was given a procurement preference that required Federal agencies to look first to FPI to purchase needed products before considering outside vendors. This preference was necessary because FPI is structured such that it does not have significant marketing and business development capabilities, as compared to large, commercial businesses. Indeed, its primary mission is to provide meaningful work and training opportunities to federal inmates so that they can acquire the necessary knowledge, skills, and work habits which will be required upon their release from prison.

Opposition to this procurement preference—commonly referred to as "mandatory source"— led the Congress to enact legislation over the past ten years that has severely eroded FPI's procurement preference resulting in numerous factory closures and significant declines in inmate employment. As a result of this legislation, FPI now competes for all of its business. Moreover, in order to adequately continue to provide work and training opportunities for inmates, prepare inmates for release to the community, and continue to lower the rate of recidivism, it is critical that FPI be able to expand its potential customer and product base.

While the FY 2012 Commerce Justice Science Appropriations bill provided FPI with two important new marketing authorities – repatriation authority and interstate commerce authority under Prison Industries Enhancement Certification Program – these new authorities alone are not enough to stave off the erosion caused by prior legislative changes.

Conclusion

The Bureau of Prisons prides itself on being a leader in the field of corrections, and rightly so. We have long been viewed as a model for the states in developing treatment modalities, inmate programs, security technology, prison architecture, training programs, and more. We continually strive to gain efficiencies and enhance operations while remaining good stewards of taxpayer dollars.

But the mission of the Bureau of Prisons is challenging – indeed the challenges have never been greater. While there are many facets to our operations, the foundation for it all is safe, secure, orderly institutions, and every staff member in the Bureau is critical to this mission. Through the continuous diligent efforts of our staff who collectively work 24 hours each day, 365 days per year – weekends and holidays – we protect the public. By maintaining high levels of security and ensuring inmates are actively participating in evidenced-based reentry programs, we continue to serve and protect society.

Statement of Julie Stewart, President
Families Against Mandatory Minimums (FAMM)
Submitted to the Senate Committee on the Judiciary for a hearing titled
"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"
August 1, 2012

Chairman Leahy, Ranking Member Grassley, and members of the committee, we appreciate your taking the time to hold this important hearing today. I submit this statement on behalf of FAMM, whose 30,000 members support policies that promote individualized and proportionate sentencing. In addition to our longstanding concerns about the lack of individualization and proportionality in mandatory minimum sentencing laws and misguided corrections policies, we have long believed that these policies are not cost-effective and could be modified without compromising public safety. We now believe, based on data recently cited by the Department of Justice, that the failure to reform current sentencing and corrections policies will actually endanger public safety by forcing cuts in more critical areas of the federal criminal justice budget.

As the members of the committee know, record federal deficits and a ballooning national debt have forced the president and Congress to look throughout the federal budget for places to reduce or freeze spending. The criminal justice budget has not been spared. According to Assistant Attorney General Lanny Breuer's recent letter to the U.S. Sentencing Commission:

> [T]he Budget Control Act sent a clear signal that the steady growth in the budgets of the Department of Justice, other federal enforcement agencies, and the federal courts experienced over the past 15 years has come to an end. Overall budgets have mostly been flat over the past three years. However, as prison and detention spending has increased, other criminal justice spending, including aid to state and local enforcement and prevention and intervention programs, has decreased. In fact, the trend of greater prison spending crowding out other criminal justice investments goes back at least a decade and has caused a significant change in the distribution of discretionary funding among the Department's various activities.
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> In FY 2002, funding for federal law enforcement, prisons and detention, and prosecution programs accounted for 75 percent of DOJ's total budget, while funding for state, local, and tribal justice assistance and prevention and intervention programs made up 24 percent. By FY 2012, however, funding for federal law enforcement, prisons and detention, and prosecution programs had risen to 91 percent of the DOJ annual budget, while just 8 percent of that budget was allocated to funding for state, local, and tribal assistance and prevention and intervention programs. In FY 2012, overall funding for state, local, and tribal justice assistance and prevention and intervention programs reached its lowest level in the past 15 years.

Because of the economic downturn, states have not been in a position financially to make up for the stagnating and smaller federal anti-crime grants. Something has had to give. State lawmakers in dozens of states who watched corrections spending become the fastest growing area of their budgets behind Medicaid have gotten busy implementing cost-cutting sentencing and corrections measures. States as red as Louisiana, South Carolina and Georgia, as blue as New York, Rhode Island, and Delaware, and as divided politically as Ohio and Pennsylvania, all reformed their sentencing and corrections laws to varying degrees. Lawmakers in these states have not turned "soft on crime," but rather, they studied their criminal justice systems, reviewed the latest research and data regarding recidivism-reducing programs, and decided that they could improve safety even while reducing their corrections budgets.

DOJ - and, we hope, the members of this committee - recognizes that it is time for the federal government to make its own criminal justice budget more cost-effective. Again, from Assistant Attorney General Breuer's recent letter to the Sentencing Commission:

> [P]risons are essential for public safety. But maximizing public safety can be achieved without maximizing prison spending. In an era of governmental austerity, maximizing public safety can only be achieved by finding a proper balance of outlays that allows, on the one hand, for sufficient numbers of police, investigative agents, prosecutors and judicial personnel to investigate, apprehend, prosecute and adjudicate those who commit federal crimes, and on the other hand, a sentencing policy that achieves public safety correctional goals and justice for victims, the community, and the offender. The federal prison population - and prison expenditures - have been increasing for years. In this period of austerity, these increases are incompatible with a balanced crime policy and are unsustainable.
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> * * *
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> The Bureau of Prisons is currently operating at 38% over rated capacity. This is of special concern at the prisons housing the most serious offenders, with 53% crowding at high-security facilities and 49% at medium security facilities. This level of crowding puts correctional officers and inmates alike at greater risk of harm and makes recidivism reduction far more difficult.

When the Justice Department, which has, under control of both political parties, consistently recommended longer sentences to the U.S. Sentencing Commission, says that current sentencing policies are making it more difficult to reduce recidivism, Congress should take heed. In a report last year on the impact of mandatory minimums, the Sentencing Commission laid a significant share of the blame for overcrowding on mandatory minimums and related changes:

> Statutes carrying mandatory minimum penalties have increased in number, apply to more offense conduct, require longer terms, and are used more often than they were 20 years ago. These changes have occurred amid other systemic changes to the federal criminal justice system . . . that also have had an impact on the size of the federal prison population. Those include

> expanded federalization of criminal law, increased size and changes in the composition of the federal criminal docket, high rates of imposition of sentences of imprisonment, and increasing average sentence lengths. [T]he changes to mandatory minimum penalties and these co-occurring systemic changes have combined to increase the federal prison population significantly.[1]

Prison costs become a waste of taxpayer dollars when they are run up without advancing the congressionally delineated purposes of punishment, including the need to protect public safety. Thus, so long as elderly, disabled, and terminally ill offenders are forced to serve out their full sentences; so long as mandatory minimum laws are used to punish low-level and less culpable offenders without any consideration of the circumstances of the crime or the offender; so long as new technologies and methods that make it possible for low-level, non-violent offenders to be held in the community are underutilized by the Bureau of Prisons, and so long as inmates are not motivated to earn early release through participation in proven, effective programs that reduce the likelihood of re-offending, then American taxpayers are paying far too much for their federal criminal justice system.

In April 2011, FAMM hosted a panel briefing on Capitol Hill to discuss cost-effective alternatives to wasteful, federal criminal justice policies.[2] Our panelists were prominent national conservatives who supported rigid sentencing laws in the past but who now believe that reform is both achievable and necessary. They were Asa Hutchinson, former U.S. Attorney, member of Congress from Arkansas, DEA Administrator under President George W. Bush and then-Undersecretary of the Department of Homeland Security; Grover Norquist, president of Americans for Tax Reform; and Tim Lynch, director of Cato Institute's Criminal Justice Project. Pat Nolan, president of the Justice Fellowship and a former California state representative, was unable to attend but submitted remarks. In anticipation of the event, FAMM prepared a list of sentencing and corrections reforms that could save hundreds of millions of dollars without jeopardizing public safety.[3] Indeed, in light of the warning delivered by Assistant Attorney General Breuer, savings from these reforms are desperately needed to restore cuts in funding for state and local police and prosecutors.

We hope today's hearing ignites a long-overdue conversation about how to be tough on crime without being tough on taxpayers. We urge the members of this committee to apply

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[1] U.S. SENT'G COMM'N, REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 63 (Nov. 2011), *available at*: http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_Mandatory_Minimum.cfm.

[2] A video of the panel discussion can be found at: http://www.youtube.com/watch?v=J4aHKqBSNEY&list=UUBPqM58ndY32gFwLCPoGYSw&index=28&feature=plpp_video

[3] FAMM's cost savings briefing paper can be found at: http://www.famm.org/Repository/Files/Cut%20Prison%20Costs%20Briefing%20factsheet%204.14.11.pdf

the same cost-benefit analysis applied to so many other policies and regulations to the criminal justice system. To be clear, when we talk of cost-benefit analysis, we do not mean that society should tolerate more crime to save money. Further, we realize that the cost of many crimes - measured in lost property and money, in personal injury, and, tragically, in lost lives - far exceeds the cost of incarceration. Compared to losing a loved one or losing one's life savings, the $28,284 per year it costs to keep a dangerous person in federal prison seems like a bargain.[4] But when that money is spent on excessive and one-size-fits-all prison terms for those who are not a threat or would thrive with better programming and smarter alternative punishments, we waste scarce resources and put society at risk.

Thank you again for holding today's hearing, and FAMM looks forward to working with the members of the committee on this important issue.

[4] *Annual Determination of Average Cost of Incarceration*, 76 Fed. Reg. 57,081 (Sept. 15, 2011) (annual cost of incarceration is $28,284 in fiscal year 2010).

Testimony on Rising Prison Costs: Restricting Budgets and Crime Prevention Options

Submitted to the United States Senate Judiciary Committee
August 8, 2012

Justice Strategies
The Sentencing Project
Justice Policy Institute
Grassroots Leadership
Detention Watch Network
In the Public Interest
Mississippi Immigrant Rights Alliance
Private Corrections Working Group
Private Corrections Institute

Our organizations work to ensure civil liberties and human rights in our communities. We are concerned that the proposed 2013 Commerce, Justice, Science Appropriations bill includes an appropriation for the Bureau of Prisons (BOP) of $25,865,000 for 1,000 new low security contract confinement beds. The BOP intends to designate these funds for the creation of new "Criminal Alien Requirement" (CAR) prison beds.

CAR prisons use taxpayer funds to warehouse non-violent federal immigrant prisoners, primarily prosecuted for immigration violations through the highly controversial and abuse-ridden program, "Operation Streamline." These facilities are substandard privately-owned, privately-operated segregated immigrant prisons. For the reasons set forth below, we call upon you to redirect this funding from the needless prosecution of low-level immigration violations and focus resources instead on correctional programs that will better prepare federal prisoners for constructive lives when they are released from confinement.

"Operation Streamline" has clogged federal court dockets, diverted prosecutorial and judicial resources, gravely compromised due process and funneled an unprecedented number of Latinos into federal prison during the last seven years.

The BOP's request for additional funding to incarcerate immigrants is the direct result of an enforcement program known as Operation Streamline. Prior to Operation Streamline, which launched in 2005, the majority of immigrants apprehended after entering the United States without inspection documentation were simply deported. Under Operation Streamline, those same immigrants are instead charged with one of two crimes – unlawful entry to the U.S. (8 U.S.C. § 1325), usually prosecuted as a misdemeanor with defendants facing a sentence of up to

180 days; or unlawful re-entry after deportation (8 U.S.C. § 1326), a felony charge carrying a federal prison sentence of up to 20 years.

Immigrants prosecuted under Operation Streamline are often arraigned, convicted and sentenced to federal prison within the span of a few hours. This is unheard of in any other area of the justice system and raises serious constitutional concerns. The program has resulted in mass court hearings and mass sentencing of as many as 70 unlawful entry defendants at once. Operation Streamline has overwhelmed federal court districts all along the border with Mexico. Just five of the nation's 94 federal court districts now handle 41 percent of all federal cases. Prosecutors overwhelmed with immigration cases cannot focus resources on prosecuting violent crimes. When federal court dockets become clogged with Operation Streamline cases, judges cannot move other civil and criminal cases, resulting in delayed justice for other litigants.

The most severe consequence of Operation Streamline is the drastic increase in the number and proportion of immigrants in the federal criminal justice system. A majority of those prosecuted under Operation Streamline are Latino. In the first nine months of 2011, Latinos made up 50 percent of all those who were sentenced to federal prisons, though they constitute just 16 percent of the total U.S. population. Sentences for felony immigration crimes account for about 87 percent of the increase in the number of Latinos sent to prison over the past decade. Immigrants convicted of § 1326 are sentenced to an average of 13 months in prison before being deported. Operation Streamline and the massive expansion of immigrant prisons have had a devastating impact on Latino and immigrant families nationwide.

Immigrants are sentenced to private, for-profit CAR prisons operated by companies that charge the federal government exorbitant rates to provide unsafe conditions, endangering both guards and prisoners.

Once sentenced under Operation Streamline, immigrants are segregated from other federal prisoners and sent to CAR facilities to serve their time. Unlike federal prisons operated directly by the BOP, CAR prisons are operated under contract with multi-billion dollar for-profit prison companies, including Corrections Corporation of America (CCA) and the GEO Group. Also unlike BOP facilities, CAR facilities are governed by policies that are maintained as "trade secrets" instead of open and transparent to the public. CAR facilities are often located in remote parts of the country, where prisoners are far from lawyers, courts, advocates and family members. Finally, unlike BOP, the corporations that operate CAR prisons have an incentive to ensure the immigrant prisoner population continues to increase, because every prison bed with a body in it means higher profits.

Not surprisingly, the CAR facilities have become infamous for maintaining some of the worst conditions in this country's prison system – physical and sexual abuse, substandard medical care, poor nutrition and race-based discrimination are just some of the violations that immigrants regularly report to the few advocates and legal service providers working on behalf of this invisible population. In 2009, at the Reeves County Detention Center, a GEO-operated CAR prison located in remote Pecos, West Texas, immigrant prisoners organized an uprising after an immigrant prisoner with epilepsy died from a seizure. He had been locked down alone in a solitary cell for complaining about inadequate medicine. More recently, prisoners at another

CAR facility, the CCA-operated Adams County Correctional Center in Natchez, Mississippi, caused a disturbance to call attention to substandard prison conditions and inadequate medical care.

Both Operation Streamline and CAR prisons are enormously expensive to maintain at a time when budgets are tight and federal dollars are sparse. The federal government has spent an estimated $5.5 billion incarcerating border-crossers in the federal prison system since 2005, and the primary beneficiary of this massive cash flow is the private prison industry. Even as the American economy has faltered and businesses across the country have been forced into bankruptcy, the private prison industry is booming. Three companies – GEO Group, CCA, and the Management Training Corporation (MTC) – monopolize federal prison contracting. CAR contracts are very lucrative – the most recent CAR contract, issued to house up to 3,000 prisoners at the infamous Willacy County Processing Center, the "Tent City" located in Raymondville, Texas, was valued at $532,318,724 over 10 years. MTC won the contract.

The proposed CJS FY 2013 appropriations bill stipulates explicitly that the 1,000 additional beds be run by private contractors. The number of undocumented immigrants entering the United States without inspection has been steadily declining for the last several years. Yet private prison corporations, motivated by their record profit margins, continue to benefit directly from the laws and policies that pull more and more people into the federal prison system, and from federal contracts to build more prisons. Increasing funding for the needless imprisonment of non-violent immigrants implicitly sanctions wasteful and abusive enforcement programs like Operation Streamline that are driving the increase in the federal prison population in the first place. It is up to policy makers like you to put a stop to the widespread suffering of immigrant families and wasteful spending which benefits no one except the private prison operators.

For all of the above reasons, we ask that you consider ending Operation Streamline in the Federal District Courts, and that you move to eliminate BOP reliance on privately-operated immigrant prisons.

The New York Times

June 14, 2012

Sensible Sentences for Nonviolent Offenders

The enormous strain prison costs put on state budgets has led some conservatives and liberals to do something sensible together. Democrats and Republicans in several states are pushing to reform criminal justice policies based on strong evidence that imprisoning nonviolent offenders for ever longer terms adds huge costs with little benefit to public safety.

Texas closed a prison last year, for the first time in its history, after reducing its prison population by steering nonviolent drug offenders to treatment and adopting other policies. South Carolina and Mississippi eased eligibility standards for parole. South Carolina, Alabama, Arkansas and other states have raised the dollar amount that triggers felony property crimes.

The number of inmates in state and federal prisons has doubled in the past 20 years to more than 1.5 million. Annual spending on state and federal corrections systems is more than $57 billion, with prisons getting most of the money. A primary cause of rising costs is longer sentences. Offenders released in 2009 from state prisons served, on average, almost three years behind bars, nine months longer than those released in 1990. A new study by the Pew Center on the States reports that additional time in prison costs states more than $10 billion. More than half the extra cost was for nonviolent offenders.

The study also found that earlier release for nonviolent offenders would not have jeopardized public safety based on an analysis of arrest and incarceration data from Florida, Maryland and Michigan. Risk could be further reduced with better prerelease planning and strong community supervision. After decades of lengthening sentences, state leaders are realizing that it is possible to cut sentences and prison spending without harming the public.

http://www.nytimes.com/2012/06/15/opinion/sensible-sentences-for-nonviolent-offenders.html?_r=1

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August 7, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Re: Rising Prison Costs: Restricting Budgets and Crime Prevention Options

Dear Chairman Leahy and Ranking Member Grassley:

The United States Sentencing Commission (Commission) commends you and the Judiciary Committee for holding a hearing on the costs of incarceration in this country. Under the Sentencing Reform Act of 1984,[1] the Commission is responsible for promulgating sentencing guidelines that reflect the seriousness of the offense, deter criminal conduct, protect the public from further crimes by the defendant, and provide the defendant with needed educational training, medical care, or other correctional treatment.[2] Furthermore, in promulgating sentencing guidelines, the Commission is required to take into account the capacity of the penal, correctional, and other facilities and services available.[3] Accordingly, the Commission understands the importance of the issues raised in this hearing.

The Commission's October 2011 report to Congress on mandatory minimum penalties documented the tripling of the federal prison population from 71,608 inmates on December 31, 1991 to 208,188 on December 31, 2009, which resulted in a corresponding dramatic increase in the federal prison appropriations from $1.36 billion for fiscal year 1991 to $6.09 billion for fiscal year 2010.[4] At a Commission hearing in February 2012, Bureau of Prisons (BOP) director

[1] Title II, Comprehensive Crime Control Act of 1984, Pub. L. No. 98–473, 98 Stat. 1837 (1984).

[2] 28 U.S.C. § 991(b)(1); 18 U.S.C. 3553(a)(2).

[3] 28 U.S.C. § 994(g).

[4] USSC, REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2011) ("Mandatory Minimum Report"), at 76, 83.

Charles Samuels informed the Commission that federal prisons are 38 percent over rated capacity, and the rate of overcrowding is 53 percent in high security facilities.[5] The BOP releases about 61,000 inmates annually, but it takes in about 67,000 inmates every year.[6]

The Commission's mandatory minimum report discussed some of the factors that have contributed to the increased number of inmates in the custody of BOP, perhaps the most significant of which are changes in the size and composition of the federal criminal docket. The total number of federal cases, like the prison population, has also almost tripled from 29,011 in fiscal year 1990 to 83,946 in fiscal year 2010.[7] Furthermore, immigration offenses – which are generally ineligible for sentences of alternatives to incarceration – now constitute the largest percentage of the federal criminal docket, 34.4 percent in fiscal year 2010, compared to only 7.0 percent in fiscal year 1991.[8] And the number of federal offenders convicted of violating a statute carrying a mandatory minimum penalty has increased from 6,685 cases in fiscal year 1990 to 19,896 in fiscal year 2010.[9]

In the report, the Commission makes several recommendations that may assist Congress in focusing increasingly strained resources on the offenders who commit the most serious offenses. Among them, the Commission recommends that Congress request prison impact analyses from the Commission as early as possible in its legislative process whenever it considers enacting or amending criminal penalties.[10]

The Commission also recommends that Congress study and consider a number of statutory changes. The Commission recommends that Congress consider whether to marginally expand the statutory "safety valve" provision at 18 U.S.C. § 3553(f) for certain low-level, non-violent drug trafficking offenders to include such offenders who receive two, or perhaps three, criminal history points under the guidelines, as well as consider whether similar provisions may be appropriately tailored for low-level, non-violent offenders convicted of other offenses carrying mandatory minimum penalties.[11] Although further study would be needed before considering any specific proposals (for example, study of the type of prior offenses committed by offenders who receive two and three criminal history points), the Commission's review of available data for fiscal year 2010 indicates that 1,127 offenders would have been eligible for the

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[5] Testimony of Charles Samuels, Director, Bureau of Prisons, at the USSC Public Hearing on Federal Sentencing Options after Booker (Feb. 16, 2012).

[6] *Id.*

[7] Mandatory Minimum Report at 66.

[8] *Id.* at 68.

[9] *Id.*, at 66.

[10] *Id.* at 348-49.

[11] *Id.* at 368.

safety valve if it had included non-violent drug offenders with up to three criminal history points.[12]

In addition, the Commission recommends that Congress reassess the severity and scope of the recidivist provisions at 21 U.S.C. §§ 841 and 960. The mandatory minimum penalties provided in these provisions are doubled (from five to ten years of imprisonment, and from ten to 20 years of imprisonment) if the offender has a prior conviction for a "felony drug offense." An offender with two or more prior drug felonies is subject to a mandatory minimum term of life imprisonment. These penalty increases are sometimes viewed in individual cases as excessively severe, far exceed the more graduated, proportional increases provided by the guidelines for such prior conduct, and are inconsistently applied.[13]

With respect to firearms offenses, the Commission recommends that Congress consider amending 18 U.S.C. § 924(c) so that the enhanced mandatory minimum penalties for a "second or subsequent" offense apply only to prior convictions, and consider amending the penalties for such offenses to lesser terms. In addition, Congress should eliminate the "stacking" requirement for 18 U.S.C. § 924(c) offenses to give the sentencing court discretion to impose sentences for multiple violations of section 924(c) concurrently with each other.[14] Unlike other statutes and sentencing enhancements that apply based on an offender's prior convictions, section 924(c) requires the "stacking" of its mandatory minimum penalties based on multiple offenses charged in the same indictment. Thus, an offender convicted of an underlying offense and two counts of an offense under section 924(c) and will receive consecutive mandatory minimum penalties of at least 5 years and 25 years of imprisonment, in addition to any term of imprisonment imposed for the underlying offense and other counts of conviction. An offender charged with three counts of an offense under section 924(c) will face another consecutive 25-year mandatory minimum penalty, even if the offender has no prior record. While only 147 cases sentenced in fiscal year 2010 involved multiple violations of section 924(c), many stakeholders agree that the stacking of section 924(c) penalties produces excessive penalties in some cases and, as a result, the penalties are inconsistently applied.[15]

In addition to these statutory recommendations, the Commission is undertaking a number of initiatives that in the future may assist Congress in its effort to conserve increasingly strained prison resources. A Commission priority for the 2012-13 amendment cycle is to begin a comprehensive, multi-year study of recidivism, including (A) examination of circumstances that correlate with increased or reduced recidivism; (B) possible development of recommendations for using information obtained from such study to reduce costs of incarceration and overcapacity of prisons; and (C) consideration of any amendments to the Guidelines Manual that may be

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[12] *Id.* at 355-56.

[13] *Id.* at 356.

[14] *Id.* at 368.

[15] *Id.* at 359-62.

appropriate in light of the information obtained from such study.[16] The Commission also hopes to begin a new effort in collecting supervised release and modification data. Recidivism statistics can assist Congress's ongoing assessment of the federal criminal justice system to perhaps improve the allocation of scarce resources.

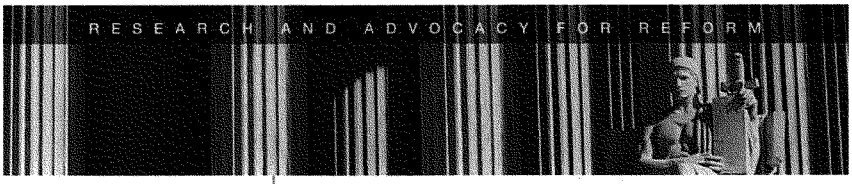
The Commission again commends you and your committee for holding this hearing and looks forward to working with Congress and other stakeholders on this important topic.

Sincerely,

Patti B. Saris
Chair

[16] The Commission recently published a report on recidivism, available at www.ussc.gov, that found that crack cocaine offenders who benefitted from the retroactive application of the Commission's 2007 crack cocaine guidelines amendment were no more likely to recidivate than similarly situated offender who served their full original sentence.

THE SENTENCING PROJECT



Testimony of Marc Mauer
Executive Director
The Sentencing Project

Prepared for Senate Judiciary Committee Hearing:

"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"

August 1, 2012

I am Marc Mauer, Executive Director of The Sentencing Project, a national nonprofit organization engaged in research and advocacy on criminal justice policy. I commend Chairman Leahy and the Senate Judiciary Committee for holding today's hearing, "Rising Prison Costs: Restricting Budgets and Crime Prevention Options."

I am writing to express our support for reducing prison costs, as can be accomplished through legislative changes in federal sentencing policy and administrative actions to reduce unnecessarily lengthy incarceration.

The Sentencing Project has long been engaged in research and advocacy regarding federal and state sentencing policy and alternatives to incarceration. In the area of sentencing policy, we have published broadly, engaged with policymakers nationally, and frequently presented testimony before Congress and state legislative bodies.

In this written testimony, I seek to highlight a number of ways that we might curb the unprecedented size of the federal prison system and the burdensome cost associated with its continued growth. I urge the members of this Committee, the Congress as a whole, and the Obama Administration to take action to address rising costs caused by the unsustainable growth of recent decades.

DRAMATIC GROWTH OF INCARCERATION

The growth of our prison system is well documented. The United States is the world's leader in incarceration with 2.2 million people currently in the nation's prisons or jails – a 600% increase over 40 years. These trends have resulted in prison overcrowding and state governments being overwhelmed by the burden of funding a rapidly expanding penal system, despite increasing evidence that large-scale incarceration is not the most effective means of achieving public safety.

Throughout the last decade, prison growth moderated substantially, and by 2008 the population growth in state prisons had stabilized. Even prior to the recent fiscal crisis lawmakers had become increasingly interested in adopting evidence-based policies directed at producing more effective public safety outcomes. Indeed, today's hearing suggests bipartisan support for addressing the cost of incarceration by reducing the number of people in our federal prisons.

In addition, other factors give us reason for guarded optimism about the prospects for reform. Significant drops in crime rates have contributed to a lessening of the "tough on crime" rhetoric of the past. Moreover, we now have a generation of reforms and alternatives to incarceration that have been implemented throughout the country, including community service programs, victim restitution, restorative justice, and a host of treatment and community supervision programs.

Despite this progress, a stabilizing prison population hardly represents a reversal of mass incarceration. Even if we were somehow able to cut the prison population in half over the next decade, the United States would still incarcerate people at three to four times the rate of other industrialized nations. There is much more work to be done to address the burgeoning costs caused by our nation's excessive use of incarceration.

PROMISING STATE REFORMS

After nearly four decades of unprecedented expansion, a number of states have reduced prison capacity, even closing prisons, in recent years. Such reductions have been made possible by a mix of reforms, including changes in sentencing and parole release and revocation. Notably, these reforms have created no observable adverse impacts on public safety.

For example, in New York and Michigan, reforms to mandatory sentencing for drug offenses have had a significant role in reducing prison populations. In other states, such as Colorado and Kentucky, parole eligibility rules have been changed to allow earlier parole consideration for nonviolent offenders. In Kansas, evidence-based practices and other tools have been adopted for use in parole determinations, resulting in a significant decrease in parole revocations in recent years.

OPPORTUNITIES FOR FEDERAL REFORM

In order to capitalize on this momentum for reform, there are a variety of measures that can be undertaken by Congress and the Administration to reduce the federal prison population without adverse affects on public safety. These include:

Congressional Action to Reduce Costs: Examine the Implications of the USSC Report on Mandatory Sentencing

Last year, the United States Sentencing Commission (USSC) released an exemplary report to Congress, "Mandatory Minimum Penalties in the Federal Criminal Justice System," which provides a comprehensive assessment of the impact of mandatory minimum penalties on federal sentencing. I urge this Committee to hold a hearing on the findings of the report and in particular to consider the following key issues suggested by the Commission's analysis:

- Examine those mandatory minimum penalties that are rarely used to determine whether they are necessary and appropriate. Of the 194 current statutory provisions requiring mandatory minimum terms of imprisonment, six (6) provisions accounted for 65% of all convictions. Under 116 of the mandatory minimum provisions, ten or fewer individuals were convicted, and dozens of these provisions appear to have never been used.

- Analyze and respond to the racial disparities documented in the imposition of mandatory penalties, and consider the effect of prosecutorial discretion in this regard, as documented in several recent analyses. Take up legislation such as the *Justice Integrity Act*, which has called for the establishment of task forces in federal districts to assess whether unwarranted disparities exist in federal prosecutions.

Administrative Actions

Reduce Federal Drug Prosecutions

In his recent testimony before the House Appropriations Committee, Bureau of Prisons (BOP) Director Charles Samuels singled out increasing prosecutions for drug offenses as one of the primary contributors to population growth in our federal prisons – and thus to rising costs.

Despite its public commitment to make more effective use of criminal justice resources, the Obama Administration has made few significant changes in the scale of drug offense prosecutions. For example, 25,275 individuals were convicted in 2011 for federal drug

offenses compared to 25,337 drug convictions in 2008 under the previous administration. In addition, as documented by the USSC and others, a substantial proportion of federal drug offenders are in the lower levels of the drug trade, and not high level importers or sellers.

The Department of Justice should examine whether its drug offense cases are appropriate for federal prosecution and whether the punishment of such offenders accomplishes sound criminal justice objectives.

Alleviate Overcrowding and Lengthy Incarceration

In addition, the Administration should take the following steps, none of which would require new statutory authority, to reduce prison costs while ensuring public safety:

- Expand the Residential Drug Abuse Treatment Program (RDAP). Though Congress has mandated that the Bureau of Prisons make available substance abuse treatment for those in BOP custody, the potential cost-savings of the RDAP program have not been realized. According to a recent GAO study, only 19% of qualifying RDAP participants received a full 12-month sentence reduction. BOP should change its policy to prioritize RDAP participants who are eligible for a reduction in sentence. Moreover, BOP should expand the pool of offenders who are eligible for sentence reduction by revising its definition of "violent offender" to ensure that only truly violent individuals are excluded. Finally, BOP should allow completion of RDAP by undocumented immigrants – a step that would save $25 million each year.

- Expand invocation of Compassionate Release. BOP may ask a court to reduce a sentence under "extraordinary and compelling circumstances." Under this provision, BOP has sought sentence reductions in cases where the prisoner has a terminal illness with less than a year of life expectancy or has a profoundly debilitating medical condition. The Bureau should expand the use of its authority to seek sentencing reductions as well as taking steps to broaden its interpretation of "extraordinary and compelling circumstances."

- Consider commutation for persons incarcerated for crack cocaine offenses. Following passage of the Fair Sentencing Act in 2010, the USSC revised its guidelines for these offenses and made them apply retroactively, so that there is no distinction between those convicted before or after adoption of the new law. The harsher mandatory sentences that apply to persons convicted prior to the change in the law, though, still apply to those in prison, thus creating a "fairness gap" based merely on date of conviction. In the interests of both fairness and reducing unnecessarily lengthy incarceration, the President should examine the cases of these individuals and consider commutation of sentences to a level that would comport with sentencing ranges under the new law.

EXPANDING PRISON CAPACITY IS COUNTERPRODUCTIVE

Analyzing the efforts of state lawmakers to maintain public safety while working to contain correctional costs can provide an example to Congress. In recent years, strained state budgets have encouraged a new political environment that does not rely on the costly approach of expanding prison capacity. Rather, state lawmakers have focused efforts on the diversion of people charged with lower-level drug offenses, developing graduated sanctions for people on probation and parole who violate rules, and enhancing reentry strategies.

Developments at the state level demonstrate that controlling prison growth is not an intractable problem. In recent years lawmakers and practitioners have worked together to assess the sources of growth in incarceration and have developed policy responses that have reversed those trends while promoting public safety.

The result has been a new trend of closing prisons rather than building them. Last year, at least thirteen states closed or contemplated closing prison institutions, potentially reducing prison capacity by over 15,500 beds. Since 2002, Michigan has led the nation in this regard. The state has closed 21 facilities, including prison camps, as a result of sentencing and parole reforms. Overall, the state has reduced capacity by over 12,000 beds for a total cost savings of $339 million. Other states, including New York, Florida, and Texas, have also closed prisons in recent years amid changes in sentencing policy and parole decision-making that have resulted in a leveling of state prison populations.

CONCLUSION

Though prison populations are stabilizing at the state level, this development should be considered in context. Even if population growth levels off, prison populations would remain at highs unprecedented in American history or that of any other democratic nation. The consequences for fiscal spending, public safety, and the impact on communities are very troubling.

Congress should build on the work of the USSC by examining unnecessary and excessive mandatory minimum penalties. Congress should respond to racial disparities in the imposition of mandatory penalties, and examine the effect of prosecutorial discretion on such disparities.

In addition, the Administration should fulfill its "smart on crime" promise by decreasing prosecutions of low-level drug traders and expanding its use of existing tools that provide drug treatment to those in custody and compassionate release in appropriate cases.

We welcome this opportunity to explore strategies to reduce the number of people in our prisons. I urge this Committee and this entire Congress to take up legislation to build on the progress we have made in reforming our approach to incarceration.

United States Committee on the Judiciary
"Rising Prison Costs: Restricting Budgets and Crime Prevention Options"

Written Testimony of Michael Jacobson
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August 1, 2012

Thank you, Chairman Leahy, Ranking Member Grassley, and members of the Committee, for the opportunity to discuss important matters of crime prevention and public safety during times marked by rising prison costs, shrinking budgets, and limited resources. My name is Michael Jacobson and I serve as President and Director of the Vera Institute of Justice. Vera is an independent, nonpartisan, nonprofit center for justice policy and practice, with offices in New York City, Washington, D.C., Los Angeles and New Orleans. Since 1961, Vera has combined expertise in research, technical assistance, and demonstration projects to help develop justice systems that are fairer and more effective. This testimony summarizes Vera's work and findings related to incarceration costs, as well as the use of cost-effective and evidence-based strategies in a time of diminishing budgets.

I. Vera's History and Expertise: 50 Years of Innovation

On October 16, 1961, philanthropist Louis Schweitzer and Herb Sturz, a young magazine editor, quietly launched a program with a new approach to bail. Their small, but revolutionary, idea was that many people accused of committing a crime can be relied on to appear in court. Within a few years, they had demonstrated that New Yorkers too poor to afford bail but with strong ties to their communities could be released and still show up for trial.

Evidence of a viable alternative to bail forever changed how judges make release decisions in criminal courts around the world, while also reducing costs and minimizing disruption in the lives of innocents. What started with the Manhattan Bail Project in New York City soon led to similar bail reform in jurisdictions across the country and, in 1966, to the first federal bail reform since 1789. The idea behind Schweitzer's humble initiative led ultimately to the founding of the Vera Institute of Justice to pursue similar initiatives.

During the past 50 years, Vera's projects have raised awareness about the plight of men and women confined in unsafe and unhealthy correctional facilities, expanded opportunities to people with developmental disabilities, and protected children in foster care. Informed by our government partners' input on their own needs, Vera's experts approach each project with a detailed analysis of existing data, policies, and practices. In-depth learning about a locality or jurisdiction allows Vera to tailor our recommendations and expert assistance to specific conditions. We foster collaboration and information sharing among all those inside and outside government with a stake in solving the problems we've identified. Then we work with our partners to help them gather their own data and track their ongoing performance.

Today, Vera staff is leading more than two dozen separate projects that aim to increase the efficacy of justice systems while also working to make a difference in the lives of individuals. Born from a single innovative idea, Vera is currently active in 43 states and across the globe.

II. Rising Prison Costs

Vera's recent work has made significant contributions to the field's understanding of the true costs of incarceration and the use of cost-benefit analysis to ensure that limited resources are effective and achieving intended goals. The Federal Bureau of Prisons estimates the incarcerated population at 2,418,352, so the Committee's consideration of these issues is timely given the current fiscal climate.[1]

On the general topic of rising costs of prisons, the February issue of the Federal Sentencing Reporter, "*Considering Costs and Other Data*," offers perspectives on whether and how to factor the financial cost of sentences into sentencing decisions.[2] The Missouri Sentencing Advisory Commission's recent decision to provide judges with a sentence's cost and recidivism data has produced an animated debate among experts and practitioners. This debate has raised important questions about the decision's implications, including: whether factoring in financial cost affects the retributive goal of punishment, how to ensure fairness given that judges may weigh the importance of costs differently (or not at all), whether this type of cost consideration should take place in the legislature or the judiciary, and how great an impact Missouri's decision will have on its overall corrections budget.[3]

A. Vera's Analysis: *The Price of Prisons, What Incarceration Costs Taxpayers*

Decades of escalating incarceration rates and soaring corrections costs have been well documented and are a familiar story to policy makers and the public.[4] Over the past 40 years, state prison populations have grown by more than 700 percent; today, more than 1 in 100 adults nationwide are in prison or jail.[5] Rising incarceration rates have come with great costs to taxpayers. States' correctional spending—on prisons, jails, probation, and parole—has nearly quadrupled over the past two decades. Aside from Medicaid, corrections is now the fastest-growing budget item for states.[6]

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[1] U.S. Department of Justice, Federal Bureau of Prisons, " Weekly Population Report", (July 31, 2012) http://www.bop.gov/news/weekly_report.jsp; Matthew Cooper, William J. Sabol, Heather C. West, Prisoners in 2008, Bureau of Justice Statistics (July 31, 2012), http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763.

[2] Douglas A. Berman, *Are Costs a Unique (And Uniquely Problematic) Kind of Sentencing Data?*, 24 FED. SENT'G REP. 159, 159-160 (2012).

[3] Michael A. Wolff, *Missouri Provides Cost of Sentences and Recidivism Data: What Does Cost Have to Do with Justice?*, 24 FED. SENT'G REP. 161, 161-163 (2012).

[4] This section is adapted from Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers*. New York: Vera Institute of Justice, 2012.

[5] Pew Center on the States, *Prison Count 2010: State Population Declines for the First Time in 38 Years* (Washington, DC: The Pew Charitable Trusts, April 2010); Pew Center on the States, *One in 100: Behind Bars in America 2008* (Washington, DC: The Pew Charitable Trusts, February 2008).

[6] Analysis by Pew Center on the States based on National Association of State Budget Officers, "State Expenditure Report" series, http://nasbo.org/Publications/StateExpenditureReport/tabid/79/Default.aspx (accessed December 1, 2011).

Despite this reality, existing figures often underestimate the total cost of state prisons—and in some states, these overlooked costs are substantial. To address this information gap, Vera's staff developed a method to comprehensively measure the taxpayer cost of prison in a consistent manner across the states. The full report provides both a big picture view of the taxpayer cost of incarcerating a sentenced adult offender to state prison, along with individual state profiles in 40 states.[7] Among the participating states in the survey, the cost of prisons was $39 billion in fiscal year 2010, $5.4 billion more than what their correctional budgets reflected.

In six states, including a few with some of the largest prison systems in the country, more than 20 percent of prison costs are outside the corrections budget. Contributions for retiree health care and the underfunding of retiree health care plans is, in the aggregate, the largest taxpayer cost outside the corrections budget.

However, smaller corrections budgets do not necessarily correlate with safer community outcomes. For example, overcrowding might result in a lower per-inmate cost, but may have negative consequences for staff and inmate safety as well as recidivism rates, increasing long-term costs. On the other hand, treatment and programming may result in a higher per-inmate cost but improve staff and inmate safety and/or help lower recidivism rates, thus lowering overall costs over time. Policy reforms need to adhere to constitutional safeguards surrounding incarceration, as well as the safety of the facility itself.

It is important to note that some states have decreased their prison populations while reducing violent crime. In New York and New Jersey, violent crime has declined dramatically at the same time that both states have relied less on the use of incarceration. From 1999 to 2009, the incidence of violent crime declined by 30 percent in New York and 19 percent in New Jersey, while going down by only 5 percent in the rest of the country. At the same time, the prison population decreased by 18 percent in both New York and New Jersey after sentencing reform and changes in policing and parole practices.[8] As the Committee considers proposals to address rising prison costs, these examples provide evidence that crime rates may continue to decline in parallel with the implementation of sound policies that reduce reliance on incarceration.

As Vera's report documents in great detail, prisons are expensive—and even more expensive than we thought. These costs will continue to increase, so policy makers should consider using scarce prison resources only for those people who pose the greatest risk to public safety. For the non-violent, and low-level offenders, less expensive alternatives can save taxpayers money without jeopardizing public safety.

B. Cost-Benefit Knowledge Bank for Criminal Justice

Vera understands that few jurisdictions have a sense of the return they receive on their financial investment made in criminal justice. In order to provide greater expertise and assistance in this area, Vera established a cost-benefit analysis unit to track the efficiency and effectiveness of justice programs in 2009.

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[7] The full report and state-by-state analysis are available on our website: http://www.vera.org/priceofprisons.
[8] Vera calculations using data from Uniform Crime Reporting Statistics.

Vera's Cost-Benefit Knowledge Bank for Criminal Justice (CBKB) now has support from the U.S. Department of Justice's Office of Justice Programs' Bureau of Justice Assistance. CBKB aims to broaden the knowledge of practitioners and policymakers about criminal justice cost-benefit analysis by supporting the capacity of state and local governments to promote, use, and interpret cost-benefit analyses in criminal justice settings.

CBKB has a website that serves as a clearinghouse for resources and research on cost-benefit analysis in criminal justice and as an active center for a growing community of practitioners.[9] Vera staff has developed original materials available on the website—including podcasts, videos, and a cost-benefit toolkit—for CBKB to provide general education and training on criminal justice cost-benefit analysis to a variety of national audiences. Vera has also convened policymakers, practitioners, and experts in roundtable discussions of cost-benefit topics of emerging interest. Currently, Vera is providing targeted technical assistance for 1) Allegheny County, Pennsylvania; 2) Denver, Colorado; 3) Kent, Washington; and 4) York County, Pennsylvania. The goal is to assist these jurisdictions in their effort to build their capacity to use cost-benefit analysis as a tool while enhancing Vera's efforts to educate policymakers across the country about the use of this methodology.

C. Cost-Benefit Analysis: A Tool for Analysis and Planning

In 2010, Vera's Cost-Benefit Analysis Unit partnered with the North Carolina's Youth Accountability Planning Task Force to examine a proposed justice system policy change. This project demonstrates the advantages of this methodology to review policies during a time of limited government resources. North Carolina is one of only two states that automatically prosecute all 16- and 17-year-olds as adults. The Task Force asked Vera to assess the economic implications of raising the age of juvenile jurisdiction in the state – specifically handling 16- and 17-years-olds charged with misdemeanors and low-level nonviolent offenses in juvenile courts instead of in the adult system. Although many experts believe that the juvenile justice system is more effective than the adult criminal justice system in discouraging delinquent behavior, it is more expensive to operate.

Vera found that the proposed shift to "raise the age" would cost North Carolina $71 million annually but would generate $123 million in recurring benefits to youth, victims, and taxpayers. The analysis not only factors in savings that accrue from preventing future crimes and incarceration, but also projects increased lifetime earnings for young people whose convictions are sealed in juvenile court and cannot become a barrier to employment. To date, although proposals continue to circulate, North Carolina has not raised the age of juvenile jurisdiction.

III. Restricting Budgets at the State & Federal Level

As corrections costs rise during a period of decreased revenue, governments are pressed to do more with less. States can decrease their prison costs substantially by changing their sentencing and release policies. This means reserving the use of prison for offenders who pose the greatest risk to public safety and relying on community-based alternatives for people who commit low-

[9] Availible here: http://cbkb.org

level, nonviolent crimes. State policy makers are also focusing on strategies and services shown to reduce recidivism, including: effective reentry planning; validated risk and needs assessments in community supervision; treatment and other services; and swift, certain sanctions for violations of probation or parole.

Putting policy into practice, Vera is providing crucial assistance to its state partners seeking to implement these strategies through the Justice Reinvestment Initiative and the Segregation Reduction Project, both of which demonstrate effective ways of reducing costs while maintaining public safety.

A. Justice Reinvestment Initiative (JRI)

Justice reinvestment is a data-driven approach to corrections policy that seeks to cut spending and reinvest savings in practices that have been empirically shown to improve safety and hold offenders accountable. Supported by U.S. Department of Justice's Office of Justice Programs' Bureau of Justice Assistance, Vera is currently providing technical assistance to support the implementation of justice reinvestment strategies in Arkansas, Delaware, Kentucky, Louisiana, and South Carolina. This assistance includes implementing new programs and policies, translating the new policies into practice, and ensuring that related programs and system investments achieve projected outcomes. Vera's JRI staff provides expert assistance throughout the legislative process, followed by intense technical and policy support to ensure effective implementation of legislative reforms.

For example, in Delaware, Vera staff worked closely with the Delaware Justice Reinvestment Task Force, established by Governor Jack Markell in July 2011. After an intensive period of outreach to criminal justice stakeholders in Delaware, Vera worked with state agencies to analyze administrative data—from crime and arrest through parole and probation supervision—to determine the factors that contribute to the size of the prison population. With this analysis—in combination with a thorough qualitative analysis of community supervision practices, victims' needs, and the use of assessment throughout the system—Vera assisted the Task Force in developing practical, evidence-based policies to reduce spending while maintaining public safety. The resulting JRI legislation, SB 226, passed both houses of Delaware's General Assembly with large margins of support. The Governor plans to sign the bill in August 2012.

B. Vera's Segregation Reduction Project

As detailed extensively in the first federal hearing on segregation—also known as solitary confinement--just weeks ago, the Senate Judiciary's Crime Subcommittee is also examining a practice that contributes significantly to prison costs. Since the 1980s, prisons in the United States have increased their reliance on segregation to manage difficult populations in their overcrowded systems. According to the U.S. Department of Justice's Bureau of Justice Statistics (BJS), the number of people in restricted prison housing units nationwide increased from 57,591 in 1995 to 81,622 in 2005.[10] Segregation was originally developed as a method for handling

[10] James J. Stephan, *Census of State and Federal Correctional Facilities* (Washington, DC: U.S. Bureau of Justice Statistics, National Prisoner Statistics Program, 2008, NCJ 222182). BJS requests information on individuals being held in "restricted housing units," but does not provide definitions for restricted housing units or for different types

highly dangerous people, but it is increasingly used to punish minor violations that are disruptive but not violent, such as talking back (insolence), being out of place, failure to report to work or school, or refusing to change housing units or cells. In some jurisdictions, according to analysis conducted by Vera, these prisoners—who do not pose a threat to staff or other prisoners—constitute a significant proportion of the population in segregated housing.

Significant fiscal costs are associated with housing people in segregation. In 2003, Ohio reported that it cost $149 a day per person to house a prisoner in the Ohio State Penitentiary—Ohio's supermax— compared with $101 per day per person in a maximum-security facility and $63 per day for a person incarcerated in the general prison population.[11] The majority of the higher costs come from the need for additional staff to monitor segregation units. For example, the supermax required one corrections officer for every 1.7 prisoners; maximum-security housing required one officer for every 2.5 prisoners.[12]

Mississippi provides a clear example of the fiscal benefits of reducing the use of segregation. Commissioner of Corrections Christopher Epps described the changes as follows: "The Mississippi Department of Corrections administrative segregation reforms resulted in a 75.6% reduction in the administrative segregation population from over 1,300 in 2007 to 316 by June 2012. The administrative segregation population reduction has not resulted in an increase in serious incidents. The administrative segregation reduction along with the implementation of faith-based and other programs has actually led to 50% fewer violent incidents at the penitentiary. The Mississippi Department of Corrections was able to close Unit 32 [administrative segregation unit] in January 2010 due to the reduced administrative segregation population, resulting in an annual savings of approximately $5.6 million."[13]

Given the current fiscal crisis, many more jurisdictions now are looking for new and effective paths forward, away from reliance on this expensive, and--at times--inappropriate, form of incarceration.[14]

C. In practice: Vera in New Orleans

New Orleans is a compelling example of a local government trying to meet complex needs with stretched resources. Although local officials have restored much of the justice system in the

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of segregation for respondents. As a result, the "restricted housing" category may include prisoners held in protective custody and death row units, as well as special needs and mental health units. BJS statistics may not accurately capture the numbers of prisoners in segregated settings. The BJS census includes both state and federal prisons, but excludes military facilities, local detention facilities, Immigration and Customs Enforcement facilities, and facilities that only house juveniles.

[11] Daniel P. Mears "Evaluating the Effectiveness of Supermax Prisons" (Urban Institute Justice Policy Center, 2005). Available at https://www.ncjrs.gov/pdffiles1/nij/grants/211971.pdf.

[12] Ibid.

[13] *Reassessing Solitary Confinement: TheHuman Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of Christopher B. Epps, Commissioner of Corrections, State of Mississippi).

[14] Angela Browne, Alissa Cambier, and Suzanne Agha, "Prisons Within Prisons: The Use of Segregation in the United States," *Federal Sentencing Reporter* 24, no. 1 (2011): 46-49.

aftermath of Hurricane Katrina, serious challenges remained. People routinely sat in jail for up to two months before being charged; capacity to treat people with mental illness and drug addiction was limited; and violent crime rates were uncommonly high.

At the request of the New Orleans City Council in 2007, Vera proposed several initiatives to make the city's criminal justice system fairer and more effective, based on national best practices. Vera helped facilitate a groundbreaking retreat for the city's criminal justice leaders, an event that led to the formation of the Criminal Justice Leadership Alliance (CJLA) and a Statement of Commitment to specific reforms. With support from the Baptist Community Ministries, the Open Society Foundation, Vera, and the CJLA, New Orleans business and civic leaders are working to put these ideas for reform into practice.

This collaboration resulted in a range of improved practices and a new ethic of reform that culminated recently in the city council's decisions to significantly downsize the jail, which in 2010 held more people per capita than any other urban jail in the country. The collaboration has also helped to reduce the time between arrest and the filing of criminal charges from as many as 90 days to five days and to encourage police use of summonses rather than arrests for nonviolent offenses, which means that people are spending less time in jail. With support from the Department of Justice, Vera and its partners are now developing the city's first comprehensive pretrial services program—much like the one Vera piloted in New York City five decades ago—as well as a sobering center. That many of Vera's earliest projects continue to be models for reform in New Orleans is a testament to their efficacy and a reminder that justice is always a work in progress.

D. Future Federal Cuts to Nondefense Discretionary Spending

Although Vera has always approached its work mindful of the need for cost-effective spending, the looming additional cuts to core federal programs could have a dramatic impact on public safety and law enforcement. The Budget Control Act of 2011, Public Law 112-25, (BCA) established caps on discretionary spending for fiscal years (FY) 2012 through 2021. Intended to force legislative action on the federal deficit, the BCA also included an automatic enforcement mechanism to reduce spending through a "sequester." The sequester means $1 trillion in automatic, across-the-board spending cuts split equally between defense programs and non-defense programs.

There is bipartisan agreement that further cuts could jeopardize essential functions and responsibilities of the federal government. The impact of sequestration will be devastating on the hundreds of millions of Americans who support and benefit from nondefense discretionary (NDD) programs. NDD supports core services the government provides for the benefit of all Americans, including medical and scientific research; education and job training; infrastructure; public safety and law enforcement; public health; weather monitoring and environmental protection; natural and cultural resources; housing and social services; and international relations. Within this Committee's jurisdiction, there could be significant implications given the potential impact on law enforcement, public safety, youth violence prevention and crime victim services.

Although NDD programs represent a small and shrinking share of the federal budget and our overall economy, spending on NDD programs is scheduled to decrease even if a sequester is avoided. In 2011, NDD spending represented less than one-fifth of the federal budget and 4.3 percent of our country's Gross Domestic Product. By 2021, under strict discretionary caps in the BCA, NDD spending will decline to just 2.8 percent of GDP, the lowest level in at least 50 years. The proposed cuts to the Department of Justice will eliminate approximately 10 percent of existing positions, with estimates that positions for 3,700 FBI, DEA, ATF agents, and U.S. Marshals, along with 975 attorneys, would be eliminated. This loss will be in addition to the 6,000 positions already vacant, as well as the high number of law enforcement personnel likely subject to furlough. Federal assistance to state and local law enforcement has already been reduced significantly, with cuts ranging from 25 to 61 percent for critical programs.

On July 12, 2012, Vera was one of nearly 3,000 national, state, and local organizations to sign a letter to Congress in support of a balanced approach to deficit reduction.[15] NDD programs have recently borne the brunt of deficit reduction efforts and can little afford the indiscriminate, across-the-board cuts that are imminent under sequestration. While it is critical to implement measures to ensure wiser use of limited government resources, the federal government plays an important role in the development of national standards and innovative practices. In light of our present and future fiscal challenges, the rising costs associated with higher incarceration rates will be increasingly difficult to justify.

E. Federal Paths to Reform

A variety of opportunities to control prison spending without compromising public safety exist at the federal level. The Department of Justice recently put forward two significant legislative proposals taking steps in this direction.[16] It is encouraging that the Justice Department is willing to consider incentives to encourage prisoner participation in programs demonstrated to reduce recidivism, including allowing prisoners to earn early release upon successful completion of a residential drug abuse program (RDAP). Moreover, increasing the amount of time a federal prisoner could earn off his or her sentence for good behavior could also have a significant impact on rising costs. Consistent with Vera's research and assessment of policies' effectiveness, action at the federal level should follow the principle of targeting the needs of moderate- to high-risk people—and focusing appropriate resources on them.

Although the legislative process is at an early stage, Vera supports the goals underlying these proposals. Heightened efforts to teach reentry skills to people in prison and provide them with clear incentives for good behavior will have the combined effect of improving public safety and reducing prison costs.

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[15] Letter from various organizations to Members of Congress (July 12, 2012), http://publichealthfunding.org/uploads/NDDLetter.Final.July2012.pdf.

[16] Lanny A. Breuer, Assistant Attorney General, Address at the National District Attorneys Association Summer Conference (July 23, 2012), http://www.justice.gov/criminal/pr/speeches/2012/crm-speech-120723.html.

IV. Prevention, Innovation and a Victim-Centered Approach: Vera Demonstration Projects

Crime prevention remains a key strategy for averting the high costs of crime. Vera's model centers on the dual approach of working closely with government partners and using on-the-ground pilot demonstration projects. When there is no existing "evidence-based practice" that can be readily adapted to serious problems like violent crime and chronic truancy, Vera partners with government officials to develop new solutions. Providing national support for localized decisions establishes buy-in among stakeholders and allows flexibility for communities to assess and determine their own assets and challenges. Effective crime prevention requires an integrated approach that seizes the earliest opportunities for intervention, wherever they may appear.

Together, Vera and its partners plan and implement practical demonstration projects to test and refine these innovations. Vera demonstration projects are practical and inexpensive. They allow government officials to get buy-in from stakeholders before applying the solutions to a large government system, such as parole, juvenile justice, or child welfare. Successful demonstration projects spin off from Vera either to become separate nonprofits or to be integrated into their government sponsor.

1. Common Justice

Based on best practice principles of restorative justice, Common Justice tests bold ideas about what is most effective in preventing and responding to crime, with special attention to the needs of young African American males. In New York City and other urban centers men of color between the ages of 16-24 make up the majority of those responsible for and victimized by violent crime. Based in Brooklyn and working in partnership with the district attorney, Common Justice aims to break this pattern while offering cutting-edge service to victims.

Common Justice is pursuing this goal by inviting people harmed by violent crime to participate in a guided dialogue with the responsible party. The goal is to reach an agreement about what the responsible person must do to acknowledge what happened and repair the damages. The legally binding agreements, which take the place of a jail or a prison sentence if successfully completed, include written apologies, financial restitution and community service, requirements to finish school and receive mental health services, and creative remedies such as constructing a memorial at the site of an assault or making a movie about the crime and its impact. Common Justice continues to refine a process that operates outside of courtrooms and without the use of incarceration to promote accountability, healing, and public safety—all at a fraction of the cost of more typical responses to crime.

2. The Guardianship Project

The Guardianship Project is a demonstration project that provides court-appointed guardianship services for older adults and people with disabilities in New York City who have been determined by a judge to be unable to care for themselves and need help making decisions about housing, health care, and finances. In this frequently invisible area of practice, persons in need of a guardian are too often neglected or exploited by the very guardians who have been entrusted

with their care. As the Government Accountability Office has pointed out in various reports on the subject, lack of state court resources and systems to adequately pre-screen and monitor guardians in many states have led to the appointment of unscrupulous guardians who have stolen, improperly billed, and grossly mismanaged their clients' assets, and in some cases have even physically abused their clients.

The Guardianship Project provides an essential support network for people who require services and helps clients improve their quality of life. Furthermore, the project's team model ensures that lawyers, social workers, property and financial managers address the complex needs of incapacitated people. Its experts aim to move people out of hospitals and nursing homes and back into their communities whenever it is safe to do so. These efforts have resulted in more than $2.5 million annual savings in Medicaid costs in New York; we anticipate that these savings will grow as the effort expands into new jurisdictions.

I commend the Committee for its recent action on Senator Klobuchar's legislation, S. 1744, the Guardian Accountability and Senior Protection Act. Vera supports this important legislation in order to expand technological resources, funding, and best practices in the court appointment and oversight of guardians to help improve the ailing and under-resourced court systems in many states. If enacted, this measure would provide sorely needed funding and support for projects that promise to help strengthen state court systems with the goal of ensuring guardian accountability in reporting and, perhaps most importantly, the guardians' suitability for service in this critical fiduciary role through background checks.

3. Adolescent Portable Therapy

One of Vera's other demonstration projects that uses innovative solutions to improve outcomes for people involved in the justice system is Adolescent Portable Therapy (APT). APT is a treatment intervention, which has been implemented at various points along the continuum of justice involvement for adolescents – from early intervention through re-entry. Established in 2001, Vera's APT project provides substance use and mental health treatment for these adolescents. The program's family counseling model of service helps families build on their inherent strengths to support adolescents in making positive changes in their lives. APT also helps other programs to improve their practice through training and technical assistance. APT is portable, meaning that clients receive counseling sessions in their homes and communities. Our commitment to bringing quality treatment directly to our clients allows us to serve families who do not have access to more traditional clinical services. APT is another example of how Vera focuses on developing innovative programs for at-risk youth while working to reduce long term costs in the justice system.

4. Vera's Work with Victims

Vera's Center on Victimization and Safety (CVS) works to ensure that un-served and underserved victims of crime have equal access to victim services and criminal justice supports by fostering collaboration and building organizational capacity among victim service providers, population and/or culturally specific service providers, and the criminal justice system. To that end, CVS combines research and technical assistance to assist policy-makers and practitioners to

close gaps for under-served survivors and ensure all survivors has access to the services and supports they need and want. CVS projects have addressed a wide-range of topics, including domestic violence in the African-American community, sexual assault in detention settings, supervised visitation for families experiencing domestic violence, and access to services for lesbian, gay, bisexual, and transgender victims of crime, as well as victims with disabilities. By combining staff expertise and skills with the practical knowledge of professionals in the field, CVS' research and technical assistance is timely, relevant, and reflective of current best practices.

Vera also recognizes that it is critical to address the larger systemic issues facing at-risk communities to realize its long-term goals of reduction of prison populations and justice for victims. Vera's Center on Victimization and Safety's Accessing Safety Initiative (ASI) is helping to improve services for women who are Deaf or have disabilities have disabilities, who are at high risk of domestic and sexual violence. ASI provides support and training to promote collaboration among practitioners with different areas of focus but similar goals. ASI helps its partner jurisdictions—states and cities—enhance the capacity of their social services and criminal justice systems to assist women with disabilities and deaf women who have experienced domestic violence, sexual assault, and stalking.

In collaboration with the Department of Justice Office of Victims of Crime, Vera also supported the development of a comprehensive research agenda in the area of victimization to strengthen the use of evidence-based practices on the State, local and tribal levels. There is a critical need to prioritize research focused on those crime victims most at-risk or in geographic areas with the greatest unmet need. In particular, federal support for research and evaluation relating to basic incidence and prevalence rates among marginalized communities, especially among communities of color and in the areas of youth victimization, victimization of American Indian and Alaskan native people, elder abuse, victimization of people with disabilities and Deaf individuals, and victims of human trafficking is sorely needed. In the current era of limited resources, Vera also supports initiatives to improve the ability of federal grantees to conduct evaluations of their program's effectiveness.

V. Concluding Statement

Every Vera project begins with an examination of how a targeted part of the justice system really works. Often, this inspires the design of a practical experiment or the development of a rational course for reform. Whatever path our work takes, Vera's goal is to help government partners achieve measurable improvements in the quality of justice they deliver and to share what they've learned with people around the world. The time has come to address the rising costs of prisons during this time of fiscal austerity. The question before us is not "How can we run a cheaper prison?" Instead, we need to ask, "How can we best use scarce resources to keep the public safe?"

With that in mind, I would like to thank the Chairman and Ranking Member for holding this important hearing on rising prison costs. I look forward to continuing our dialogue on this serious and far-reaching issue.

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