Sentencing Reform

Since the early 1990s, the number of inmates in state prisons has almost doubled. This unprecedented increase was caused not by a rise in crime rates, but by "tough-on-crime" legislation.

Sentencing Reform

Summary

- **State prison populations and spending on corrections have skyrocketed.**
- **The unprecedented increase in the prison population has been caused not by a rise in crime rates, but by "tough-on-crime" legislation.**
- **A massive racial disparity has resulted from sentencing laws.**
- **States have been reforming harsh drug sentencing laws.**
- **States have been curtailing the use of mandatory minimum sentencing.**
- **States have been relaxing Three-Strikes-And-You're-Out laws.**
- **Sentencing reform can help balance state budgets.**
- **The public strongly supports sentencing reform.**

State prison populations and spending on corrections have skyrocketed.

From 1990 to mid-2002, state prison populations almost doubled from nearly 685,000 to more than 1.2 million.[1] Including federal prisons and local jails, the total number of people held behind bars in the United States now exceeds 2 million, far more than the number of inmates in China (1.4 million) or Russia (920,000). This staggering increase in the number of prisoners was accompanied by similar increases in cost. During the 1990s, aggregate state spending on corrections more than doubled from $17.2 billion to almost $35 billion.

The unprecedented increase in the number of prisoners has been caused not by a rise in crime rates, but by "tough-on-crime" legislation.

In fact, both violent and property crime rates declined more than 50 percent during the 1990s. By 2002, crime rates were at their lowest levels in 30 years. But because a wave of harsh anti-crime laws—mostly enacted over a decade ago—curtailed parole and imposed strict mandatory minimum sentencing, 25 state prison systems are operating at or above capacity.

A massive racial disparity has resulted from sentencing laws.

In 2002, African Americans, who comprise only 12 percent of the U.S. population, represented about 45 percent of all prisoners with sentences of one year or more. That same year, about 10 percent of all black males in America between the ages of 25 and 29 were in prison. At the state level, this disparity can be astonishing. For example, a recent report by the Justice Policy Institute revealed that while African Americans make up only 28 percent of Maryland's population, they account for 90 percent of people incarcerated for drug offenses in that state.

States have been reforming harsh drug sentencing laws.

Of the 1.2 million inmates in state prisons, about 250,000 are imprisoned for drug offenses. Half of those—about 125,000—are nonviolent offenders who would be appropriate candidates for diversion to drug treatment programs. A growing body of research shows that treatment, rather than incarceration, is the most effective tactic to fight drug abuse—a tactic which can also save billions of taxpayer dollars. Putting this strategy into effect in 2002, Hawaii and Washington replaced prison sentences with treatment for first-time nonviolent drug offenders. Kansas, Missouri, Nebraska and Texas followed suit in 2003.

States have been curtailing the use of mandatory minimum sentencing.

Mandatory sentencing laws have resulted in disproportionately long prison terms, ranging from five years for simple possession of crack cocaine to 20 years for distribution of any narcotic. Many of the offenders subject to mandatory sentencing are guilty of relatively minor crimes for which they should be held accountable—but for which long prison terms are unjustified. In a sweeping reform effort, eighteen

states have rolled back mandatory minimum sentences or restructured other harsh penalties. For example, Michigan repealed almost all of its mandatory minimum drug sentencing statutes in 2002, and Delaware reduced mandatory minimums and provided judges more latitude in sentencing in 2003.

States have been relaxing Three-Strikes-And-You're-Out laws.

Approximately 65 percent of the inmates serving two- or three-strikes sentences were convicted of non-violent, fairly minor crimes.[2] Three-Strikes-And-You're-Out is an effective slogan, but no evidence proves that it works to prevent crime. Both Indiana and Kansas have relaxed their three-strikes laws.

Sentencing reform can help balance state budgets.

States save tens of millions of dollars when they reform their sentencing rules. For example, Michigan is saving taxpayers $41 million a year, Washington is saving $45 million a year, and Texas is saving $30 million over two years through the adoption of sentencing reforms.[3]

The public strongly supports sentencing reform.

Public attitudes toward crime and corrections have been shifting for more than a decade. Eighty-nine percent of Americans now favor treatment instead of incarceration for first-time drug offenders. Seventy-six percent also oppose mandatory life imprisonment for anyone convicted of a non-violent felony for the third time.[4]

This policy summary relies in large part on information from the Sentencing Project.

Endnotes

[1] Bureau of Justice Statistics, "Prisoners in 2002," U.S. Department of Justice, July 2003.

[2] U.S. Department of Justice, "Three Strikes and You're Out: A Review of State Legislation," September 1997.

[3] Judith A. Green, "Positive Trends in State-Level Sentencing and Corrections Policy," Families Against Mandatory Minimums, November 2003.

[4] ABC News Poll, March 2002.

Sentencing Reform

For more information...

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Drug Treatment Instead of Incarceration Act

SECTION 1. SHORT TITLE

This Act shall be called the "Drug Treatment Instead of Incarceration Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Substance abuse treatment is a proven public safety and health measure. Nonviolent drug-dependent criminal offenders who receive treatment are much less likely to abuse drugs and commit future crimes, and are likely to live healthier, more stable, and more productive lives.

2. When nonviolent persons convicted of drug possession or drug use are provided appropriate community-based treatment instead of incarceration, communities are healthier and safer, while taxpayer dollars are saved.

(B) PURPOSE—This law is enacted to enhance public safety by reducing drug-related crime, to improve public health by reducing drug abuse and drug dependence through proven and effective drug treatment strategies, and to halt the wasteful expenditure of millions of dollars each year on the incarceration and re-incarceration of nonviolent drug offenders who would be better placed in community-based treatment.

SECTION 3. DRUG TREATMENT INSTEAD OF INCARCERATION

(A) DEFINITIONS—In this section:

1. "Rehabilitative treatment program" means the least restrictive rehabilitative treatment program appropriate, as determined by clinical assessment. Such a program shall include drug treatment provided by a certified community drug treatment program. Such a program may include one or more of the following: outpatient treatment, halfway house treatment, narcotic replacement therapy, drug education or prevention courses, vocational training, family counseling, literacy training, community service, and inpatient or residential drug treatment as needed to address severe dependence, special detoxification, or relapse situations.

2. "Nonviolent drug offense" means an offense involving the possession or sale of a controlled substance, as defined in [insert appropriate citation], and which offense did not involve the use, attempted use, or threatened use of physical force against another person.

(B) APPROPRIATE ASSIGNMENT OF NONVIOLENT DRUG OFFENDERS

1. After arraignment, the court shall direct that a clinical assessment be performed of all persons charged with a nonviolent drug offense, with the consent of the person arrested. Such clinical assessment shall form the basis for all orders pursuant to this section.

2. There shall be a presumption that any person who would otherwise be arraigned for a nonviolent drug offense for the first time shall, prior to the entry of a guilty plea, be ordered by the court to participate in and complete a rehabilitative drug treatment program. This section shall apply to all first-time felony and all misdemeanor drug offenders.

3. Upon application by the defendant, and upon good cause shown, the court may allow a repeat nonviolent felony drug offender to plead guilty to the drug offense and subsequently order the person to participate in and complete a rehabilitative treatment program. The repeat nonviolent felony drug offender shall be sentenced in accordance with applicable provisions of the criminal code, but such sentence shall be suspended following the defendant's participation in and completion of appropriate rehabilitative treatment.

4. Paragraphs (B)(2) and (B)(3) shall not apply to any person who:
   a. Has been convicted within the previous five years of a felony involving the use, attempted use, or threatened use of physical force against another person.
   b. In addition to the conviction of the nonviolent drug offense, has been charged and / or convicted in the same proceeding of a felony not related to the use of drugs.
   c. Refuses participation in a clinical assessment or rehabilitative treatment program.
   d. Has two separate convictions for nonviolent drug offenses, has participated in two separate courses of rehabilitative treatment under this section, and is found by the court by clear and convincing evidence to be unsuitable for any available form of rehabilitative treatment.

5. If, during the course of rehabilitative treatment, the treatment provider determines that the defendant is unsuitable for the treatment being provided, but may be suitable for other rehabilitative treatment programs, the court may modify the terms of its order to ensure that the person receives the alternative treatment or program.

6. Nothing in this section precludes a defendant from declining to participate in a clinical assessment or rehabilitative treatment program. A person who declines participation shall be prosecuted and sentenced in accordance with otherwise applicable provisions of the criminal code.

(C) SUBSEQUENT PROSECUTION

1. Where any person participating in a rehabilitative treatment program pursuant to section (B) is arrested for an offense other than a nonviolent drug offense or violates a non-drug-related condition of the order directing that person to a rehabilitative treatment program, or non-drug-related condition of probation, the District Attorney may move to proceed with prosecution, at which time the court shall conduct a hearing. If the alleged violation is proven, the court may modify its order or the conditions of probation, or may direct prosecution to proceed.

2. Where any person participating in a rehabilitative treatment program pursuant to section (B) is arrested for a nonviolent drug possession offense, or violates a drug-related condition of the order directing that person to a rehabilitative treatment program, or a drug-related condition of probation, the District Attorney may move to proceed with prosecution, and the court shall conduct a hearing. If the alleged violation is proved, and the state proves by clear and convincing evidence that such person poses a danger to the safety of other persons, the court may direct prosecution to proceed. Otherwise, the court may order that the rehabilitative treatment program be intensified or modified.

3. Where the court directs prosecution to proceed, in no event shall any person who has failed to successfully complete a rehabilitative treatment offense pursuant to this section receive a sentence that exceeds the sentence to which the person would have been subject had the person declined to participate in the rehabilitative treatment program.

4. Where the court directs prosecution of a first-time felony or any misdemeanor nonviolent drug offense to proceed because the defendant has failed to successfully complete a rehabilitative treatment program pursuant to this section, notwithstanding any other provision of law, the trial court shall not sentence the defendant to a term that exceeds 30 days in jail.

5. Where a defendant has two separate convictions for a nonviolent possession offense, has participated in two separate courses of drug treatment, and is found by the court, by clear and convincing evidence to be unsuitable for any available form of drug treatment, the defendant is not eligible for continued probation under section (B). Notwithstanding any other provision of law, the trial court shall not sentence the defendant to a term that exceeds 90 days in jail.

6. At any time after completion of treatment, a defendant subject to section (B)(2) may petition the court for dismissal of the charges. If the court finds that the defendant successfully completed the prescribed course of treatment and substantially complied with the conditions of probation, the charges against the defendant will be dismissed in accordance with section [insert appropriate citation].

7. At any time after completion of treatment, a defendant sentenced pursuant to (B)(3) may petition the court for dismissal of the charges. If the court finds the defendant successfully completed the prescribed course of treatment, the conviction on which the sentence was based shall be set aside. The plea entered by the defendant will be withdrawn and the charges dismissed.

SECTION 4. SUBSTANCE ABUSE TREATMENT TRUST FUND

(A) ESTABLISHMENT OF FUND—A special fund to be known as the "Substance Abuse Treatment Trust Fund" is created within the [Department of Justice].

1. Upon passage of this Act, $XXXXX shall be appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2003-04 fiscal year.

2. There is hereby continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund an additional $XXXXXX annually. These funds shall be transferred to the Substance Abuse Treatment Trust Fund on July 1 of each fiscal year.

3. Nothing in this section shall preclude additional appropriations by the legislature to the Substance Abuse Treatment Trust Fund.

(B) FUNDING ALLOCATION

1. Monies deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the [CONTROLLER] through the [State Department of CORRECTIONS] to counties to cover the costs of placing persons in and providing drug treatment programs under this Act.

2. Such monies shall be allocated to counties through a fair and equitable distribution formula as determined by the Department as necessary to carry out the purposes of this Act. That includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload.

Sentencing Reform

3. The Department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the Department has determined that demand for drug treatment services is not adequately met by existing rehabilitative treatment programs. However, nothing in this section shall be interpreted or construed to allow any entity to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment.

(C) ACCOUNTABILITY AND EVALUATION

1. The Department shall annually conduct a study to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this Act.

2. The study shall include, but not be limited to, a study of the implementation process, a review of incarceration costs, crime rates, prison and jail construction, welfare costs, the adequacy of funds appropriated, and any other impacts or issues the Department can identify.

SECTION 5. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of the Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on July 1, 2004 and its provisions shall be applied prospectively.