
Sentencing Policy in Tough Budget Times: What Are States Doing?

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This chapter discusses how states' budget shortfalls are playing out against a backdrop of changed public attitudes about crime and incarceration. The author explains that, while perhaps immediately cost effective, prison closings, layoffs, and program eliminations often fail to address the broader issue of how to better manage a state's fiscal resources. The chapter also provides examples of states that have taken up this broader challenge by effecting systemic change to sentencing and corrections policy as a way to enhance efficiency, predictability, and fairness. For example, Kansas, North Carolina, and Virginia created state entities to inform sentencing and corrections policy by providing data-based information that can both predict a system's needs and guide the development of responsive laws and policies. Perhaps most importantly, the innovations in these three states show that such reform-minded responses need not compromise public safety.

Economists across the country agree that the U.S. is facing its most serious economic downturn in decades. Fiscal Year (FY) 2004 is the third consecutive year of significant budget shortfalls in all but a few states—the result of lower-than-expected revenues in an economic recession and increasing expenses. According to the National Conference of State Legislatures (NCSL), states faced aggregate shortfalls of \$75 billion for FY 2003 and \$78 billion for FY 2004. Moreover, 34 of 40 states responding to an NCSL survey reported that FY 2004 shortfalls would exceed 5% of their general fund budgets and 18 reported shortfalls exceeding 10%. Aggregate year-end balances, an important barometer of fiscal health, fell from \$22.4 billion (6% of general fund spending) at the end of FY 2002 to \$11.6 billion (3% of the general fund) at the end of FY 2003.

During the same period, the growth of state general fund spending, which averaged nearly 7% during the 1990s, will decline to 1% in FY 2004. At the same time, many states have faced mid-year or mid-biennium gaps totaling 10% to 15% of their general fund budgets and have had to make repeated cutbacks to keep pace with the revenue shortfalls.

As a result, cuts are on the table in most states, and at least fourteen states reduced their corrections budgets for FY 2004. In the words of one Oregon corrections official, "Budget problems are making people ask fundamental questions about whether we can afford to keep doing what we've been doing."

During the last two decades of the twentieth century, expenditures for state and local corrections increased over 600%. In large part, this change came from the growth in economically-costly measures such as mandatory minimum sentences, three-strikes legislation, and truth in sentencing laws. Meanwhile, as carcera-

tion rates climbed, crime rates across the country began to fall. Although violent crime rates fluctuated in the 20 years between 1970 and 1990, between 1993 and 2000 they declined dramatically. According to the Bureau of Justice Statistics, violent crimes fell by almost half (44%); homicides (not included in the previous figure) dropped 61%; and property crimes fell 44%.

At the same time that economic shifts have begun to influence thinking about sentencing and incarceration policy, public attitudes toward crime underwent a change of their own. In a 1994 survey by the Pew Research Center for the People and the Press, nearly one third (29%) of respondents thought that crime was the most important problem facing their community. By 2001, only 12% gave the same response. Public attitudes toward incarceration appear to be changing as well. In 1994, an opinion poll by Peter D. Hart Associates found that 48% of Americans surveyed said they favored addressing the underlying causes of crime, while 42% preferred deterrence through stricter sentencing. In 2001, the same poll found a substantial change in these sentiments, with 65% of respondents preferring to address the root causes of crime and only 32% opting for more stringent sentencing. The survey specifically found a change in attitudes toward mandatory sentencing. In 1995, 55% of those surveyed said that mandatory sentences were a good idea, while 38% said that judges should be able to determine a defendant's appropriate sentence. In 2001, those numbers had reversed: only 38% responded that mandatory sentences were a good idea, whereas 45% said they preferred judicial discretion. These changes in attitude may be due to the precipitous drop in the crime rate that occurred during this time period.

In recent polls, 65% preferred addressing the root causes of crime, whereas 32% preferred more stringent sentencing.

How Are State Corrections Programs Responding to the Budget Crisis?

State legislatures are responding to the effects of current fiscal downturn on corrections in a number of ways (see Table 1). The nature and breadth of the challenges each state faces are different and the political cultures each must work in are unique, yet some common cost-cutting strategies have emerged.

Prison closings. Eleven states, including Illinois, Massachusetts, and Ohio are shutting down correctional facilities or reducing beds. Seven others are delaying or aborting the opening of similar facilities.

Cuts to corrections staff. Prison closings and program cuts have resulted in staff reductions in 14 states, including Illinois, Minnesota, and Wisconsin. Fifteen states have instituted freezes or purposely have allowed staff vacancies to go unfilled.

Cutting programs considered nonessential. These cuts have primarily affected educational, substance abuse, and vocational treatment programs. For example, nine states, including Florida, Illinois, and Oregon are eliminating programs to help save costs.

Notes for Table 1: Page 11

¹ Correction figures providing the basis for this table include only expenditures for adult incarceration, except where noted. All figures are general fund, non-capital expenses only.

² Includes probation and parole.

³ Includes aid to local jails.

⁴ Includes Department of Corrections and Community Corrections.

⁵ Includes parole.

⁶ Includes community services and parole board expenses.

⁷ Includes probation and parole.

⁸ Includes probation.

⁹ Includes parole.

¹⁰ Includes juvenile corrections and parole.

¹¹ Includes juvenile corrections and programming, parole services, and community corrections.

¹² Includes probation and parole.

¹³ Includes probation, parole, and aid to local jails.

¹⁴ Includes juvenile corrections, probation, and parole.

¹⁵ Includes parole, felony probation, and state community corrections.

¹⁶ Includes probation and parole.

¹⁷ Includes probation and parole.

¹⁸ Includes juvenile institutions, probation, and parole.

¹⁹ Includes probation, parole, and community corrections.

²⁰ Includes juvenile corrections, probation, and parole. North Dakota corrections budgets are biennial; FY 2003 percent change reflects percent change from FY 2002-2003 biennial budgeted appropriations and FY 2002-2003 actual expenditures.

²¹ Includes juvenile corrections.

²² Includes probation and parole.

²³ Includes probation and parole.

²⁴ Vermont's FY 2004 budget reduced general fund appropriations to corrections by \$50 million and supplemented the budget with a one-time federal grant of \$50 million.

²⁵ Includes parole.

²⁶ Includes juvenile institutions, probation, and parole.

²⁷ Unconfirmed.

**Table 1. Changes in State Corrections Budgets and Cost-Saving Efforts
in Fiscal Year (FY) 2002, 2003, and 2004¹**

State	FY 2002 Change in Corrections Budget in Millions of Dollars	FY 2003 Percent Change in Corrections Budget	FY 2004 Percent Change in Corrections Budget	Closed Facilities/ Reduced Beds	Delayed/ Aborted/ Openings	Staff Reductions	Staff Vacancies/ Freezes	Program Elimination
AL								
AK ²		4.4	-4.2					
AZ	\$22.2	-0.2	4.4				■	■
AR ³	\$22.5 ⁴	-3.9	10.4		■		■	
CA ⁵	\$37.4		4.5	■			■	■
CO ⁶	\$23	2.9	3.2		■	■	■	
CT		-0.6	6.1					
DE ⁷		3.3	1.4				■	
FL	\$2.8	1.0	6.0	■	■	■		■
GA ⁸	\$30	1.4	-1.2		■		■	
HI ⁹	\$1.4	1.2	6.4		■		■	■
ID	\$3.6	-12.3	2.4			■	■	
IL ¹⁰	\$35.4		6.3	■		■	■	■
IN ¹¹		0.5	3.5	■	■		■	
IA ¹²	\$2.6	1.1	5.1		■	■	■	■
KS		0.1	-0.4		■			■
KY ¹³	\$9.0	-6.0	8.2			■	■	
LA	\$2.2	5.3	1.5			■		
ME ¹⁴		5.1	12.4					
MD		4.2	-1.5					
MA	\$2.7			■	■	■	■	■
MI ¹⁵	\$54.9	0	2.1	■	■	■	■	■
MN		4.7	1.2			■		
MS ¹⁶		1.4	-7.7					
MO ¹⁷	No change	7.1	2.5		■	■	■	
MT ¹⁸		0.7	10.0					
NE	\$2.7	12.2	5.8	■	■	■		
NV		3.4	0.9			■		
NH								
NJ		-1.5	6.4					
NM ¹⁹		4.5	4.3				■	
NY	No change	0.4	-1.1	■		■		
NC	\$44.6	-4.8	6.8				■	
ND ²⁰		-2.3	6.4				■	
OH ²¹	\$18.9	2.3	3.7	■	■	■	■	■
OK ²²	\$8.5	1.2	-4.8	■			■	■
OR	\$36.86	8.3	-10.2				■	■
PA		10.0	2.5					
RI	\$1.8	3.6	2.9	■				
SC	\$53.7	-3.6	-6.1	■		■	■	■
SD								
TN		5.0	-1.9			■	■	
TX		0.8	-5.3					
UT	\$9	-4.0	-0.2	■	■	■	■	
VT ²³	\$2.2	3.6	-52.1 ²⁴	■		■	■	
VA	\$25.5			■		■	■	
WA		6.7	-3.7					
WV ²⁵		16.6	1.3					
WI ²⁶	\$1.7 ²⁷	2.4	0.7		■	■	■	
WY								

Source: Telephone interviews with state budget offices and state departments of correction; media reports; state legislative archives.

While these strategies may save money in the short term, it is difficult to predict their effects on long-term costs and the ability of corrections systems to maintain public safety. Unlike these immediate responses, a more imposing challenge confronting legislators, governors, and other public officials responsible for criminal justice policy is to create systems that automatically incorporate consideration of cost and impact into the policymaking process.

Reexamining sentencing schemes. In a number of states, lawmakers have reacted to concern about the spiraling cost of incarcerating offenders by re-examining sentencing schemes. In some cases, this has resulted in the repeal of mandatory minimum sentences now perceived as too harsh and financially burdensome. In others, it has led to the reclassification of certain offenses so that they no longer automatically result in prison sentences.

Between 2001 and 2003, a significant number of states took legislative action to change sentencing laws, often repealing or reducing mandatory sentences. In general, this legislation targeted low-level drug possession and property offenses, often coupled with increased penalties for violent offenses. The net effect was a significant drop in prison populations. For example, in recent legislative sessions, Colorado, Connecticut, Delaware, Illinois, Indiana, Maine, Michigan, North Dakota, Texas, and Washington repealed mandatory minimum sentences relating to some nonviolent offenses. Iowa, Mississippi, and Wisconsin have pared back truth in sentencing requirements, and in 2003, another eight states eased truth in sentencing or otherwise made it possible to earn earlier releases. Iowa granted judges greater discretion in sentencing felony offenders. Alabama and New Mexico eased habitual offender laws.

As part of these reforms, a number of states (e.g., Alabama, Idaho, Indiana, Kansas, Louisiana, Missouri, Oregon, Texas, and Washington) enacted legislation to enhance treatment options for nonviolent drug offenders or otherwise shift penalties from incarceration to community corrections. As one potential cost-saving program for prison-bound offenders, six states established or enhanced the resources available to support drug courts, an alternative court that combines judicial supervision and community-based treatment. In 2003, seven states expanded transition programs to make it easier for offenders to be successful in reentering the community. Because one-third of new prison admissions are estimated to be parole violations, in 2003 five states invested dollars in non-prison alternatives to reduce recidivism. Arizona and Nebraska developed mechanisms to facilitate emergency releases of nonviolent offenders. In addition, 11 states enacted legislation to shift correction costs to localities or to the offenders themselves. In many of these states, rising prison populations and the costs of incarceration were responsible, in part, for passage of legislation.

Establishing sentencing commissions. Since 1979, some 30 states and the federal government have created sentencing commissions or implemented sentencing guidelines of varying durability. For example, in recent sessions, Arizona, Indiana, Nebraska, New Mexico and Wisconsin all have established sentencing or study commissions to look at sentencing practices. Historically, guidelines have served a range of functions, from correcting disparity in sentencing to ensuring greater consistency and truthfulness. These guidelines are often referred to as structured sentencing.

Since 1979, 30 states and the federal government have created sentencing commissions or implemented sentencing guidelines.

How Has North Carolina's Sentencing Commission Changed the State's Sentencing Guidelines?

Among states that have pursued structured sentencing, North Carolina is frequently cited as a strong example. When the state passed structured sentencing in 1994, it sought to combine truth in sentencing policy with other policies designed to efficiently use correctional resources. Under the previous system, the prison population was controlled through a set of early release mechanisms, such as parole and good time; discretion lay predominantly with the parole board and corrections officials. Critics argued that this arrangement undermined the integrity of punishment and eroded public confidence in courts and corrections. By the early 1990s, convicted felons were serving only 18% of their sentences, and those convicted of misdemeanors were serving only 12%. Part of the problem was that more than 20,000 offenders were entering the prison system each year and there were not enough beds to accommodate them.

The Sentencing and Policy Advisory Commission, created by the legislature in 1990, was convened to examine the system's structure and to recommend improvements. After three years of study, North Carolina established a system that required offenders to serve 100% of sentenced time, abolished parole, reserved prison beds for the most dangerous, and invested in non-prison sanctions for others. Because so many nonviolent offenders who had previously been going to prison were now being diverted, the state not only managed to enact tough-on-crime reforms, but it also saw admissions decrease dramatically. In 1994, the first year under the new policy, admissions fell 7%. Between 1993 and 1997, admissions decreased more than half (52%). From 1994 to 2000, North Carolina's crime rate fell 12.5%. In 1980, North Carolina had the highest incarceration rate in the country. Now it ranks 31st in the nation, and has the second lowest incarceration rate in the South.

Between 1993 and 1997, prison admissions in North Carolina fell by 52%; from 1994 to 2000, the state's crime rate fell 12.5%.

How Effective Has Computer Simulation of Corrections Populations Been in North Carolina?

One of the most important elements of the North Carolina example is that the legislature required the state to develop a computerized corrections population simulation model to project the resources needed to implement recommendations and policy changes. The commission responded by building a database containing information on offenders' criminal histories, sentences, time they were expected to serve, and other important characteristics. Information from the database could then be fed into the simulation model to project future prison populations. North Carolina is not alone in using simulation models to help predict prison population growth; similar models are in place in Pennsylvania, Texas, Florida, Kansas, and Virginia.

In formulating its recommendations, the North Carolina commission was able to navigate contentious debates by relying on the simulation model to assess the costs of various possible sentencing proposals. In fact, with the help of the model, the commission produced two plans for the legislature to choose from: one with more severe sentences, and another with slightly less severe sentences that would forestall the need to build new prisons for a few more years. The legislature selected the latter.

The simulation model has been very accurate. For example, the commission's projections showed that the prison population for June 2001 would be 32,154. The actual average population for June 2001 was 31,971: a difference of less than 1%. The projection model is essential to more effective planning for future resources. Since structured sentencing went into effect, the commission's projections have shown that North Carolina will need 7,000 new prison beds by 2010. In 2002, when the state faced a \$1.5 billion budget shortfall, the legislature asked the commission to formulate alternatives to the current sentencing guidelines that could alleviate the need to construct thousands of new beds in the next eight years. The commission responded with six alternative plans, including one that would shorten sentences for nonviolent habitual felons who commit property and lesser drug offenses, and another that would reduce the weight accorded to prior criminal history at sentencing.

How Has Kansas Used Their Sentencing Commission to Reform Their Corrections System?

Like North Carolina, Kansas also formed a sentencing commission in the early 1990s to reform a similarly troubled system. Since then, the state's prison population has grown at a rate of 38%, far slower than the national average of 54%. While Kansas has had to expand the number of prison beds at several facilities, it has not had to build any new prisons. One reason for this may be a statute in the commission's enabling legislation that provides for an early warning system to alert the legislature when the state's prison population will exceed capacity. If projections show that this is likely to occur, the commission is directed to "identify and analyze the impact of specific options to reduce prison population." In addition to making legislators aware of impending population crises, the system also makes the difficult political task of advancing reform slightly easier. Thus, elected officials are not put in the position of having to request options to curb prison population growth, or having to formulate those options themselves.

What Other Strategies Can Help Address the Rising Cost of Corrections?

1. Impact statements: The experience of Virginia. Another method to include fiscal considerations in legislative discussions of sentencing and corrections policy is the requirement that fiscal notes or impact statements be attached to every bill that would change sentencing law. These impact statements would examine the economic effects of any proposed legislation. Many states require fiscal notes to be completed before a legislature votes on a bill. For example, in Virginia, the sentencing commission must prepare an impact statement that examines operating costs and appropriations necessary for any bill that would result in an increase in the length of prison sentences. This includes all bills that:

- ❖ add new crimes punishable by imprisonment;
- ❖ expand the period of incarceration for existing offenses;
- ❖ impose minimum or mandatory terms of incarceration; or

Fiscal impact statements examine the economic effects of legislation that would increase the prison population.

- ❖ modify the law governing the release of offenders in any way that increases prison time.

Each bill has its fiscal impact statement printed on the face of the legislation. A bill that is supported by a majority of the committee considering it is referred to the proper finance subcommittee. The subcommittee then determines if there is funding to support the bill. If not, the bill dies without reaching the floor for consideration. Most important to this process is that a bill's sponsor must identify the source of revenue to fund the bill before it can be reported out of the subcommittee.

This requirement has not been made at the expense of protecting public safety in Virginia. It is part of a comprehensive approach to sentencing policy development that focuses on reserving expensive prison space for violent and repeat offenders. In the eight years since the fiscal note has been in place, Virginia's crime rate has declined 26%, compared with a 24% drop across the country. At the same time, the state's incarceration rate has grown just 6%, well below the national rate of 22%.

- 2. Risk assessment at sentencing: The experience of Virginia.** Another tool put in place by the Virginia legislature to ensure efficient use of scarce prison space was the development of a risk assessment tool. The purpose of this tool is so that judges can identify low-risk drug and property offenders who might be suitable for non-prison sanctions. The legislature set as a target that 25% of this group should be diverted from prison.

Taking up this charge, the sentencing commission analyzed characteristics like criminal history, substance abuse, education, employment history, family background, and recidivism patterns in a sample of 1,500 fraud, larceny, and drug felons. The factors they found relevant to an offender's risk of reconviction included the following:

- ❖ Age;
- ❖ Prior record;
- ❖ Prior juvenile incarceration;
- ❖ History of incarceration within the past 12 months; and
- ❖ Whether the offender had acted alone.

Because these factors were found to be statistically significant in predicting recidivism, judges were given a worksheet with this list to be used at the time of sentencing. A higher total score indicated an increased likelihood that an offender would be at greater risk to commit a new crime within three years. On the other hand, commission research showed that an offender who scored nine points or fewer would have only a one in eight chance of being reconvicted. Therefore, judges could recommend alternative sanctions for offenders who scored nine or below, with the exception of those with a violent felony conviction. In keeping with the state's voluntary guidelines, the decision to sentence an offender to prison or to alternative sanctions was left to the judge's discretion, regardless of the worksheet score.

Since implementing fiscal impact statements, Virginia's crime rate has declined 26%, and its incarceration rate has grown just 6%.

In a pilot program, diverting low-risk offenders saved Virginia \$1.5 million in 2000: savings that would have been \$3.7 to \$4.5 million if implemented statewide.

From 1997-2001, Virginia pilot-tested the risk assessment tool in six of its 31 judicial circuits. Of the more than 13,000 offenders processed in these courts, the tool deemed roughly one quarter (24%) appropriate for alternative sanctions. Of these, judges sentenced half to traditional incarceration and half to alternative sanctions.

The use of the risk assessment tool in Virginia is a novel approach. No other state currently uses a similar instrument. In 2000, the National Center for State Courts evaluated the pilot program and concluded that by diverting 263 low-risk offenders from prison and 192 from jail, the state saved \$8.7 million. When total diversion costs of \$7.2 million were considered, the instrument still yielded a net benefit of \$1.5 million. The evaluators estimated that if the instrument had been in use statewide, the net benefit would have been between \$3.7 and \$4.5 million.

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

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

As this chapter shows, several states have seized on the importance of creating governmental organizations and arming them with appropriate instruments to take up this systemic change. In North Carolina, the state's sentencing commission sought to create a system that would use scarce prison space for the most violent and frequent offenders, and to invest in non-prison sanctions for others. The state's reform efforts also included use of a computer simulation model that was able to accurately predict growth in prison population, and to project the resources needed to implement proposed policy changes. In Kansas, a similar plan was put in place to alert legislators of growing prison populations and the need to address strain on corrections budgets before problems could arise. Similarly, Virginia uses fiscal notes or impact statements that require any bill that would increase the prison population to include a cost estimate before it is reported out of committee and takes up valuable time in floor debates. Lastly, risk assessment at the time of sentencing in Virginia helps conserve corrections dollars by using prison space for the offenders most likely to commit more crimes, and by identifying low-risk drug and property offenders who might be suitable for non-prison sanctions.

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

This chapter is based on the following two publications:

Vera Institute of Justice (2003). *Corrections policy and budget actions in the states: 2003*. New York: Author.

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