Right-Sizing Corrections in New York

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Right-Sizing Corrections in New York

The purposes of this paper include the following:

1) Document the state of New York's well known simultaneous drop in its crime rates and prison population over the past decade.

2) Describe the decreasing level of violence within the state's prison system.

3) Explain how the New York State Department of Correctional Services (NYSDOCS) has contributed to this decline in violence within prisons.

4) Describe the changes in drug laws that have contributed to the drop in crime and the number of drug offenders incarcerated.
New York State Drop in Violent Crime

Violent Crime Rate, per 100,000 residents, U.S. and New York 1965 - 2007


2. However, New York’s violent crime rate at 1,164 per 100,000 residents in 1991 was much higher than the U.S. rate of 758.

3. By 2008, New York’s violent crime rate was lower than the U.S. rate (398 versus 454).
1. Property crime in New York and the U.S. followed a similar pattern from 1965 to 1991 with both about doubling.

2. New York's property crime decreased much more rapidly than in the U.S. after 1991 (2.6 times versus 1.6 times).
New York State Decreasing Prison Population


1. New York’s prison population increased from 20,000 in 1977 to 73,000 in 1999, similar to the national growth rate.

2. Since 1999, the prison population has steadily declined to 60,000 inmates, a 16% decrease while the population nationally increased by 15%.

Inmate Assaults on Staff and Inmates in New York: 1981 - 2007

1. Rates of violence by inmates against staff have trended downward since 1983 from 26 per 1,000 inmates to 9 in 2007.

2. Rates of violence against other inmates not as linear over time, however, an overall pattern of decline.

(http://www.docs.state.ny.us/PressRel/06CommissionerRpt/06PrisonSafetyRpt.pdf)
What explains the drop in crime and imprisonment in New York and the decrease in inmate violence?

Multiple causes are at play and "disentangling the web of causation would require more information than we have available".

Through interviews with correctional administrators and Institutional staff as well as empirical data, Useem identified four interrelated factors associated with the NYSDOCS that have contributed to these positive outcomes.

1. “Agility” - which “reflects an underlying theme in the operation of the NYSDOCS: a willingness to embark on a course of change, not for its own sake, but when doing so serves the interest of good corrections”. This has resulted in better placement of inmates in appropriate levels of security, assigning over 80 percent of inmates to pay-positions in a variety of programs, and maintaining staff to inmate ratios considerably above the national average, and lower than national average recidivism rates.
What explains the drop in crime and imprisonment in New York and the decrease in inmate violence?

2. “Right Sizing Leadership” - by the NYSDOCS and the state politicians in the form of “Merit Time” which inmates can earn for good behavior and program participation and results in early prison release and shock incarceration in the form of a military boot camp for non-violent offenders and shorter sentences that has found to be effective in reducing recidivism.
What explains the drop in crime and imprisonment in New York and the decrease in inmate violence?

3. “Professionalism” - as evidenced by acquiring accreditation by the American Correctional Association as well as leaders at all levels frequently visiting facilities to “manage by walking around”.

4. “Success by Success” - the agency having a level of credibility with the Legislature and Governor to allow it to experiment with offender reentry programs and other innovative interventions.
Reduction in severe penalties for drug offenders resulting from the "Rockefeller drug laws" passed in 1973:

1994 – Governor Pataki reformed sentencing of most serious drug offenses, doubled the threshold possession weight for the most serious offenses, and allowed for drug offenders serving time petition for re-sentencing and possible prison release.

Number and Percentage of Drug Offenders under Custody, 1970 – 2008 (End of Year)

Number and percentage of drug offenders in prison has declined significantly.

Source. Data provided by NYSDOCS.
Useem concludes his paper by noting that the good fortune in New York with decreasing levels of incarceration and crime rates is an “impressive achievement” that is “very unlikely to be a product of mere good fortune” and is “likely to be the result of the agency’s strategy, structure, and leadership, as well as the broader polity’s support for the agency’s initiatives”.
Texas Justice Reinvestment:
Be more like Texas?

Tony Fabelo
Council of State Governments
Justice Center
In 2007, Texas officials faced a major dilemma: spend a half billion dollars to build and operate new prisons to accommodate the surging number of people expected to be incarcerated or explore options to control that predicted growth.

The council of State Governments Justice Center, in partnership with Pew Charitable Trusts Center on the States, worked with Texas to develop a plan to avert this crisis.
Texas Justice Reinvestment: Be More Like Texas?

- The analysis conducted by the Justice Center and used by Texas leaders showed that neither the growth of the state’s resident population nor changes in the state’s crime rate explained the recent and projected increases in the state’s prison population.

- The analysis revealed that the key factors driving the prison growth were 1) increased probation revocations to prison, 2) lack of in-prison and community based treatment and diversion programs, and 3) low parole grant rates.
In 2007, Texas adopted the justice reinvestment initiative that led to a major push to control the prison population growth and reinvest the projected prison construction and operational cost savings into the treatment and community supervision systems.

The approved budget for the 2008-2009 biennium reflects an increase of $241 million in funding for additional diversion and treatment capacity.

The expansion of these programs translated into a net savings of $443.9 million by reducing funding for new prison beds.
### Expanding Capacity of Treatment & Diversion Programs

**Provision: Probation**

- **Probation Residential Treatment**
  - Present Capacity: 2,045
  - 800 beds $32.2M

- **Probation Intermediate Sanction Facilities**
  - Present Capacity: 439
  - 700 beds $17.0M

- **Substance Abuse Felony Punishments** (Mainly in lieu of revocation)
  - Present Capacity: 3,250
  - 1,500 beds $63.1M

- **Probation Outpatient Treatment**
  - Present Capacity: 3,563
  - 3,000 slots $10.0M

**Release to Parole**

- **Halfway Houses**
  - Present Capacity: 1,199
  - 300 beds $5.6M

- **Parole Intermediate Sanction Facilities**
  - Present Capacity: 1,802
  - 700 beds $11.7M

**Provision: Incarceration**

- **Transfer Two TYC Units**
  - 1,200 beds $15.8M

- **In-Prison Therapeutic Treatment**
  - Present Capacity: 537 beds/slots
  - 1,000 slots $21.7M

- **DWI Treatment Facility**
  - No Current Capacity
  - 500 beds $22.2M

- **State Jail Therapeutic Treatment**
  - No Current Capacity
  - 1,200 slots $5.8M
Texas Legislature Increased Funding for Probation Impacting a Decline in Revocations

Additional Funding Provided by the 79th Legislature
- Provided an additional $53.5 million to reduce caseloads and provide additional residential treatment beds.

80th Legislature
- Provided significant new funding opportunities.

CSCD Operated
- $32.3 million increase for 1,000 new intensive supervision beds.
- $10.0 million increase for an additional 500 intensive supervision beds.

TDCJ Operated
- $63.1 million increase for 1,500 new intensive supervision beds.
- $28.8 million increase for 1,400 new intermediate supervision beds.
- $10.0 million increase for Mental Health treatment for Medical or Mental Impairments (TCOOMMI)

Percent Reduction in Felony Technical Revocations, Compared to FY2005

<table>
<thead>
<tr>
<th>Category</th>
<th>FY2005</th>
<th>FY2008</th>
<th>Numeric Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statewide</td>
<td>13,504</td>
<td>12,788</td>
<td>-716</td>
</tr>
<tr>
<td>FY2008 - 2009 Diversion Funded</td>
<td>1,383</td>
<td>1,449</td>
<td>66</td>
</tr>
<tr>
<td>Did Not Receive New Funding</td>
<td>2,684</td>
<td>2,992</td>
<td>308</td>
</tr>
</tbody>
</table>
Other Policies Adopted:

- Reduced probation terms for drug and property felons from a maximum of 10 years to a maximum of 5 years.

- Provided state grant funding for counties that establish progressive sanction models for probation violations to reduce rates of revocations.

- Expanded drug courts to place low-risk offenders in treatment to reduce recidivism.
Texas: Impact of Policy Decisions

2007 Baseline Projection
Actual Population
$443 million in savings from 2008-2009

$241 million to expand in-prison and community-based treatment and diversion programs

PAROLE REVOCATIONS TO PRISON:
DOWN 25% FROM 2006

PROBATION REVOCATIONS TO PRISON:
DOWN 4% FROM 2006
THE NOT-SO-GOLDEN STATE OF SENTENCING AND CORRECTIONS:
CALIFORNIA’S LESSONS FOR THE NATION

Robert Weisberg
The Stanford Criminal Justice Center (SCJS) at Stanford Law School

SCJ C Executive Sessions on Sentencing and Corrections - 2006-08

A Series of Policy Roundtables, convening legislators, judges, parole and probation leaders, nonprofit reentry experts, sheriffs and local police leaders, and academics
In what ways is California the “Leader” (sic)?

- Certainly not in terms of the incarceration rate – about average: About 170,000 in state prison – although more than 5 times per capita than 20 years ago.

- Certainly not in terms of the percentage of state budget spent on prisons or cost per prisoner.

- It’s the “leader” in having the most overcrowded—(and the only certifiably unconstitutionally overcrowded) prison system – at least 140% of rated capacity.

- It’s the leader in “recidivism”.

- But what does “recidivism” mean?
If “recidivism” means the percentage of parolees returned to prison within a short period of time, and the frequency of returns, California is surely the leader.

- Each year 120,000 reenter from parole revocation
- California’s determinate sentencing law (DSL) created mandatory parole for most prisoners. Three Strikes gets the publicity, but the overall DSL scheme is the problem
- Most parole revocations return revoked offenders to state prison – the revolving door or “life on the installment” plan or “catch and release … and catch again”
- Some “technical violations” send parolees back to prison; some are only nominally “technical” because if parolee commits new crime, the prosecutor will take the short cut of revocation
Barriers to meaningful sentencing and corrections reforms in California

Its bizarre constitutional system—

- 2/3 majority required in legislature for most spending laws
- weak legislature because of popular initiative/referendum process
- weak political parties mean constructive compromises unlikely
The Not-So-Golden State of Sentencing and Corrections: California’s Lessons for the Nation

Other California features that hinder meaningful sentencing and corrections reforms

- Poor data-collection and sharing systems – even in the home state of Silicon Valley!!!
- Absence of pre-and post-release reentry programs
- Extreme version of economic externalities of “regulatory mismatches”
  - Cities do most arrests but counties bear cost of prosecution
  - Counties prosecute but state bears cost of imprisonment
  - Probation is by county; parole by state
  - Reverse externalities --state forces its prisoners back into county jails
The Not-So-Golden State of Sentencing and Corrections: California’s Lessons for the Nation

On the ground consequences: the first 72 hours (the D-Day of an offender’s life):

- The Modal prisoner is released at a downtown Los Angeles bus station at the end of a Friday
- Little immediate access to reentry services
- May not even carry reliable prescriptions for medication
- Local authorities may have no information on parolee
- Chance of failure is highest in first few days – of all those rearrested, one third are within 30 days of release
The Not-So-Golden State of Sentencing and Corrections: California’s Lessons for the Nation

The problem of local custody

- Focus on prison problems (especially in federal court) leads to neglect of city and county problems in managing local custody
- Yet there is more local level, inter-agency and even inter-county sharing of data, information and programming
- Such initiatives do not “trickle up” to the State – and there is great distrust of the State government
The (too) logical solution

- Create Sentencing Commission modeled on successful experiments in many states
  - A (relatively) nonpolitical agency to put some cost-benefit rationality into criminal justice and sentencing policy
  - An entity to collect and analyze sentencing data and serve as an information clearing house to all three branches of government
  - An entity to develop a risk-needs assessment tool adapted to every stage, from bail, sentencing, and to probation or parole revocations
Why has the Commission idea failed politically?

- Legislators denounced it as an unelected agency that would illicitly, even unconstitutionally, exercise legislative power
- DSL gives most of the leverage to prosecutors, who argue that any commission involves the legislature ceding power to an unelected body
- Suspicion of “data gathering” as an elitist (Trojan horse) plot to generate statistics in a campaign to reduce sentences and release prisoners
General lessons from the not-so-Golden State

- Perhaps only small changes can eventually accomplish large things
- Make system “smarter” with better information-collection and sharing
- Find some nonpartisan mechanism to bring cost-benefit rationality into system
- If a state does not have an official sentencing commission, it may lapse into a de facto delegation of authority to a de facto commission
- The (Un)official de facto California Sentencing Commission” the United States District Court for the Northern District of California
Brandeis's Laboratories of Sentencing and Corrections: Making Better Use of Knowledge From the States

Kevin R. Reitz
University of Minnesota
Brandeis’s Laboratories of Sentencing and Corrections: Making Better Use of Knowledge From the States

Justice Brandeis (1932) famously suggested that the states could be seen as laboratories for innovation in law and policy:

- State criminal justice systems have great opportunities to learn from the successes and failures of other states
- Lessons learned in one state should be practicably transferrable to others
- While we should have mountains of knowledge from state sentencing systems, we do little to create that knowledge base or make use of it when it exists
- The articles assembled in this special issue help fill in the state-specific literature on sentencing and corrections
Brandeis’s Laboratories of Sentencing and Corrections: Making Better Use of Knowledge From the States

Five topics are inspired by the reading of the contents of this journal:

1) Toward a more comparative research and policy literature
2) Increasing policy focus on “back-end” sentencing authorities
3) Incorporating the use of offender risk assessments in the sentencing process
4) Learning to love second or third best solutions
5) Greater focus on problems of racial and ethnic disparities in punishment
1) Toward a more comparative research and policy literature:

- The single-jurisdiction “case study” should no longer be the default model for policy analysis in sentencing and corrections.
- We ought to move toward an expectation that comparative studies of three to five American jurisdictions will become the norm for policy-relevant scholarship.
- The authors in this publication hope that the state-specific information they report can be digested by officials in other states and might be adapted to fit their needs.
- Single state studies should continue but there is a pressing need for meaningful comparative studies across a few states.
2) Increasing policy focus on “back-end” sentencing authorities:

- It is striking how little attention the authors pay to so-called “front-end” sentencing authorities (e.g., legislatures, commissions, courts) and how much focus is given to “back-end” sentencing decision points (e.g., parole, good time allowances, sentence revocations).

- This examination is badly needed in that we are sorely lacking in our understanding of how mechanisms of prison release and “reincarceration” discretion actually operate from place to place.

- Many state governments do not track these issues well and researchers have not been studying them.

- If the 1980s and 1990s were the era of front-end sentencing reforms, the 2010s may be a period of ambitious back-end improvements.
3) Incorporating the use of offender risk assessments in the sentencing process:

- A sea change in rehabilitation theory has been brought about by the demand for evidence based practices
- A comparable standard of proof should be applied to another goal of corrections – incapacitation
- Incapacitation succeeds some of the time, just as rehabilitation does – the important policy questions have to do with increasing success rates and avoiding confinement of those who are not dangerous
- The use of offender risk assessments as applied in Missouri and Virginia and under study in Pennsylvania and other states is, and will remain, a growing trend
4) Learning to love second or third best solutions:

- Even if reforms A, B, and C would – in some absolute sense of truth and beauty – be a great stride forward for a particular jurisdiction, there is little use being fixated upon them if the legislature cannot be moved to enact them, or no governor will sign them into law.

- Although not always glamorous, much of the job description of a criminal justice policy maker is to look for second and third best solutions.

- Example – the American Law Institute (ALI) has for nearly 50 years taken the firm position that state legislatures should not adopt mandatory minimum penalties – a position that has had little or no real-world effect.

- The ALI new Model Penal Code now contains numerous suggestions for ameliorating mandatory minimums such as allowing some judicial departure powers, exemptions for juveniles sentenced as adults, etc.)
5) Greater focus on problems of racial and ethnic disparities in punishment:

- The problem of racial and ethnic disparities in criminal punishment is often the “elephant in the room” when policy makers talk about sentencing and corrections and is a subject that has not been emphasized in this issue.

- Those who would defend the status quo can fall subject to charges of racism.

- Advocates of change must confront the realities that crime and victimization rates are substantially higher in poor, minority communities.

- We must all work to overcome our fear, guilt or (at the other extreme) grandstanding so that real policy improvements may be considered.

- A small handful of states have taken the courageous step of producing “demographic impact statements” or “racial impact statements” when new laws affecting sentencing or corrections are proposed.
Conclusion:

- The articles in this volume help illuminate the present and future policy horizons in sentencing and corrections, which become all the more visible when a number of state systems are examined side-by-side.

- This collection of articles also helps define what it would mean to be appropriately ambitious as a law maker, policy maker, or researcher – and to insist upon the development of new tools and better raw materials for the advancement of the nation’s sentencing and corrections systems in the coming decades.
Reducing America’s Correctional Populations:
A Strategic Plan

James Austin, Ph.D.

JFA Institute
Guiding Philosophy of Proportionality of Punishment

- Current sentencing practices greatly exceed the amount of crime committed against us
- $215 billion in CJS costs versus $19 billion in victim losses
- Greatly exacerbates social and racial inequities
- Treatment will have a more narrow and limited role
- Shorter and less punishments are as (or more) effective than longer and more severe punishments
- The primary reforms are those that are now or have been successfully used in the US
- A key reform is shorter forms of imprisonment and supervision
- A second major strategy is altering police practices (NYC)

![Graph showing crime and incarceration rates from 1931 to 2008.](image)

- Crime Rate
- Incarceration Rate


Crime Rate: 0, 1000, 2000, 3000, 4000, 5000, 6000

Incarceration Rate: 0, 100, 200, 300, 400, 500, 600
## Costs

<table>
<thead>
<tr>
<th>Type of Crime</th>
<th>Median Victim Loss</th>
<th>Total Time (in mos)</th>
<th>Incarceration Costs*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robbery</td>
<td>$100</td>
<td>60</td>
<td>$115,000</td>
</tr>
<tr>
<td>Burglary</td>
<td>$280</td>
<td>35</td>
<td>$64,100</td>
</tr>
<tr>
<td>Larceny Theft</td>
<td>$100</td>
<td>24</td>
<td>$42,200</td>
</tr>
<tr>
<td>Auto Theft</td>
<td>$2,500</td>
<td>22</td>
<td>$42,200</td>
</tr>
<tr>
<td>Drug Possession</td>
<td>$0</td>
<td>24</td>
<td>$46,000</td>
</tr>
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</table>
### Changes in Length of Stay


<table>
<thead>
<tr>
<th>Length of Supervision</th>
<th>1993</th>
<th>2005</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentence Length</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median</td>
<td>48 months</td>
<td>36 months</td>
<td>- 12 months</td>
</tr>
<tr>
<td>Mean</td>
<td>66 months</td>
<td>59 months</td>
<td>-7 months</td>
</tr>
<tr>
<td>Average Time Served</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median</td>
<td>12 months</td>
<td>16 months</td>
<td>+4 months</td>
</tr>
<tr>
<td>Mean</td>
<td>21 months</td>
<td>29 months</td>
<td>+8 months</td>
</tr>
<tr>
<td>Average Parole Supervision</td>
<td>19 months</td>
<td>26 months</td>
<td>+9 months</td>
</tr>
<tr>
<td>Average Total Time Under Supervision</td>
<td>40 months</td>
<td>55 months</td>
<td>+15 months</td>
</tr>
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</table>
## Sentence Length and Time Served in Prison by Race

<table>
<thead>
<tr>
<th>Offense Group</th>
<th>White</th>
<th>Black</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sentence</td>
<td>Time Served</td>
</tr>
<tr>
<td>All Offenses</td>
<td>63 mos</td>
<td>27 mos</td>
</tr>
<tr>
<td>Violent</td>
<td>85 mos</td>
<td>45 mos</td>
</tr>
<tr>
<td>Property</td>
<td>56 mos</td>
<td>22 mos</td>
</tr>
<tr>
<td>Drug</td>
<td>61 mos</td>
<td>19 mos</td>
</tr>
<tr>
<td>Public Order</td>
<td>44 mos</td>
<td>18 mos</td>
</tr>
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## LOS and Recidivism

<table>
<thead>
<tr>
<th>Time Served</th>
<th>3-Year Rearrest Rates</th>
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<tbody>
<tr>
<td>6 Months or Less</td>
<td>66.0%</td>
</tr>
<tr>
<td>7-12 months</td>
<td>64.8%</td>
</tr>
<tr>
<td>13-18 months</td>
<td>64.2%</td>
</tr>
<tr>
<td>19-24 months</td>
<td>65.4%</td>
</tr>
<tr>
<td>25-30 months</td>
<td>68.3%</td>
</tr>
<tr>
<td>31-36 months</td>
<td>62.6%</td>
</tr>
<tr>
<td>37-60 months</td>
<td>63.2%</td>
</tr>
<tr>
<td>61 months or more</td>
<td>54.0%</td>
</tr>
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Key Recommendations – All Used Before or Now

1. Reduce length of stay for sentenced prisoners;
2. Divert technical parole violators from prison and reduce their length of stay;
3. Divert technical probation violators from prison and reduce their length of stay;
4. Divert persons convicted of victimless crimes from prison;
5. Reduce length of stay for persons placed on probation;
6. Reduce length of stay for persons placed on parole;
7. Reduce probation revocation rates;
8. Reduce parole revocation rates; and,
9. Greater use of fines, restitution, and community service in lieu of probation.
Past and Projected Declines in Correctional Populations 1988-2016