Reducing America’s Correctional Populations:
A Strategic Plan

James Austin, Ph.D.
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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)
## 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>
</tbody>
</table>
## Changes in Length of Stay

**Sentence Lengths, Time Served, and Length of Parole Supervision for Released Prisoners, 1993 – 2003**

<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>
</tbody>
</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>
</tbody>
</table>
## LOS and Recidivism

<table>
<thead>
<tr>
<th>Time Served</th>
<th>3-Year Rearrest Rates</th>
</tr>
</thead>
<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>
</tbody>
</table>
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
An Assessment of the Development and Outcome of Determinate Sentencing

William D. Bales    Gerry G. Gaes
Thomas G. Blomberg    Kerensa N. Pate

College of Criminology and Criminal Justice
Florida State University
The number of offenders in U.S. prisons increased from 319,598 in 1980 to 1.6 million in 2008, a growth of 404%.

Approximately 725,000 inmates are being released from state and federal prisons annually.

The most recent multi-state analysis of released inmates indicates that within three years of post-release:

- 67.5% will be rearrested for a new offense
- 46.9% will be reconvicted for a new crime and
- 51.8% will return to prison for a new crime resulting from a technical violation
An Assessment of the Development and Outcomes of Determinate Sentencing

- The unprecedented growth in the number of offenders incarcerated in the U.S. over the past three decades has been attributed to the following factors:

  1) Governmental dissatisfaction with parole.

  2) Correctional officials significantly influenced the level of punishment or leniency an offender received by awarding liberal gain-time to manage the prison population.

  3) Public perception that crime was becoming more of a serious social problem.

  4) Increasing criticism focused upon indeterminate sentencing and its emphasis on rehabilitation which was considered a failure.
As a result, more determinate and believed to be “get tough” strategies emerged as the potential solution for dealing with offenders.

- Emphasis was directed away from offender rehabilitation programming toward more determinate sentences.
- The use of incarceration increased substantially and sentences of imprisonment became longer.
- Three-strike laws were passed to keep persistent offenders in prison for life, and mandatory minimum laws proliferated.
- “Truth in Sentencing” policies were adopted to ensure long prison terms for violent offenders.
An Assessment of the Development and Outcomes of Determinate Sentencing

- Over the past three decades, there has been an ideological change from the goal of rehabilitation for imprisoned offenders to one of longer and determinate incapacitation.

- Legislators and other criminal justice policymakers were no longer willing to support the parole system and were unwilling to rely upon the judgment of an administrative body of correctional experts to determine when a prisoner is ready to return to society.

- The national trends in sentencing and release policies are reflected in Florida’s transition from indeterminate to determinate sentencing.

- Ultimately, the goal of these policies was to reduce the amount of crime that sentenced offenders commit following their release from prison.
An Assessment of the Development and Outcomes of Determinate Sentencing

This paper is focused upon the following interrelated purposes:

1) To describe how Florida shifted its method of criminal sentencing over the past three decades from an indeterminate policy with an emphasis on offender rehabilitation to a determinate system that emphasized punishment.

2) To explain the reasons why Florida was able to move to a true determinate punishment policy.

3) Provide an assessment of the trends in sentencing and punishment practices over the past three decades to ascertain whether determinate sentencing is more punitive than indeterminate policies.

4) Assesses how Florida’s shift from indeterminate policies to a determinate punishment model in 1995 has impacted the likelihood of post-prison recidivism.

5) Explain the policy implications for these findings.
An Assessment of the Development and Outcomes of Determinate Sentencing

I. Florida's shift from indeterminate to determinate sentencing:

1) Prior to 1983 - Indeterminate sentencing with parole and gain-time

2) 1983 to 1987 - Sentencing guidelines, significant gain-time, **without** early release

3) 1987 to 1994 - Sentencing guidelines, significant gain-time, **with** early release

4) 1994 to 1995 – New sentencing guidelines, without early release, reduced gain-time

5) 1995 (October) - Determinate sentencing: minimum 85% of sentence served for all felons sentenced to prison
An Assessment of the Development and Outcomes of Determinate Sentencing

II. What was the impetus for Florida to implement a true determinate sentencing policy with the minimum 85% of sentence served law in 1995?

1) A series of highly publicized tourist killings that rocked the state’s biggest industry and “tarnished the state’s fun-and-sun image”.

2) Widely publicized crimes committed by early prison releasees.

3) The formation of Stop Turning Out Prisoners (S.T.O.P) in 1993. A grassroots organization that pushed for a state constitutional amendment that would require prisoners to serve nearly their entire sentence.

The law passed on a unanimous vote from both political parties and this law remains in place today.
III. Is the determinate 85% law passed in 1995 more punitive than the previous indeterminate policies?

1) Prison Population - The growth in Florida’s prison population is consistent with national trends over the past three decades. The number of prisoners in Florida increased from 26,471 in 1984 to 98,192 in 2008 and was 102,019 in April 2010.

2) Felony Convictions - With some annual fluctuations, the number of felony convictions has increased steadily from 67,018 in FY1983-84 when parole was eliminated to 186,161 in FY2007-08. The rate per 1,000 residents was lower during the 85% period than during some of the prior indeterminate periods.

3) Prison Incarceration Rate - The percent of convicted felons sentenced to prison has ranged from a low of 15.7% in FY1995-96 to a high of 30.3% in FY1988-89. The percent of felons receiving a prison sentence during the minimum 85% of sentence served period from FY1996-97 to FY1997-2008 was lower than during two of the three periods in which Florida’ punishment system was arguably indeterminate.
III. Is the determinate 85% law passed in 1995 more punitive than the previous indeterminate policies (continued) ?

4) Prison Admissions – As expected, have increased over the past three decades, however, was higher during some years prior to the 85% law than the 40,274 level in the most recent year of the 85% policy period.

5) Average Sentence Lengths – Lower during the determinate 85% period compared to the indeterminate parole period.

6) Percentage of Prison Sentences Served – As expected is highest during the 85% period with releases in November 2009 serving 86.7% of their sentences.

7) Length of Time Served in Prison - The 85% policy has not resulted in significant changes in punitiveness when measured by actual time served in prison.
An Assessment of the Development and Outcomes of Determinate Sentencing

IV. Has Florida’s shift from indeterminate policies to a determinate punishment model in 1995 impacted the likelihood of post-prison recidivism?

- Assess how Florida’s shift from indeterminate policies to a determinate punishment model in 1995 has impacted the likelihood of post-prison recidivism.

- Determine whether Florida’s determinate minimum 85% sentence served law is more effective at reducing recidivism than the state’s prior policies which involved different levels of sentence reductions through gain-time and early release credits.
Data Sources:

- Data Sources – (1) Florida Department of Correction’s (FDC) Offender Based Information System (OBIS); (2) Florida Department of Law Enforcement (FDLE), Computerized Criminal History (CCH) files. Specifically, the Florida Statistical Analysis Center (FSAC).

- FDC’s Prisoner Recidivism File - The recidivism dataset used for this study included 209,288 male inmates released from Florida prisons between January 1, 1995 and December 31, 2005.

- FDLE’s Arrest Data – 431,294 arrest records were merged with the prison release recidivism records using seven identifiers - a 98% match rate.
An Assessment of the Development and Outcomes of Determinate Sentencing

Factors Examined:

- **Dependent Variables** - Time to reconviction for a new crime and time to re-imprisonment, each measured in days.
- **Independent Variable** - Sentenced under the 85% law (65% of the cases).

Control Variables:

- **Demographics** – gender, age at release, race, Hispanic.
- **Current Release Offense** - murder/manslaughter (3%), sex offense (5%), robbery (9%), other violent (13%), burglary (17%), property (13%), drugs (29%), weapons (4%), and other offenses (7%).
Factors Examined (continued):

Prior Criminal Record –

- Number of prior felony arrests within each specific offense category
- Number of prior supervision violations.
- Length of criminal career (measured by number of months from the first arrest to prison admission and release commitment (mean = 9.15 years).
- Number of prior recidivism events (measured by number of times inmates were previously released from Florida’s prisons and subsequently convicted of a new offense resulting in a state prison commitment (mean = .96).
- Age at first arrest (mean = 33.14 years).
An Assessment of the Development and Outcomes of Determinate Sentencing

Factors Examined (continued):

Institutional Measures:
- Time served in prison, disciplinary history, and custody level at release.

Post-Prison Release Measures:
- Supervision following release (37%) and population density of the county of release.
An Assessment of the Development and Outcomes of Determinate Sentencing

Analytic Strategy – Propensity Score Matching (PSM)

- Approximates an experimental design to obtain equivalency between the experimental group (85% cases) and the control group (pre-85% cases).
- Balanced the 85% and pre-85% groups using the average treatment of the treated weights derived from the propensity score.
- To increase our confidence that the 85% and non-85% groups were optimally matched, the sample of 164,485 male offenders was divided into 10 time served groups of one year each.
- Separate analyses using Cox regression procedures were conducted within each time served “bandwidth” of one year to estimate the 85% effect on the time to reconviction for a new crime and time to re-imprisonment.
An Assessment of the Development and Outcomes of Determinate Sentencing

Percent Reduction in Reconviction under 85 Percent Time Served

<table>
<thead>
<tr>
<th>Prison Time Served</th>
<th>Percent Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Cases</td>
<td>13%</td>
</tr>
<tr>
<td>1 YR</td>
<td>9%</td>
</tr>
<tr>
<td>2 YR</td>
<td>8%</td>
</tr>
<tr>
<td>3 YR</td>
<td>15%</td>
</tr>
<tr>
<td>4 YR</td>
<td>17%</td>
</tr>
<tr>
<td>5 YR</td>
<td>18%</td>
</tr>
<tr>
<td>6 YR</td>
<td>18%</td>
</tr>
<tr>
<td>7 YR</td>
<td>35%</td>
</tr>
<tr>
<td>8 YR</td>
<td>32%</td>
</tr>
<tr>
<td>9 YR</td>
<td>43%</td>
</tr>
<tr>
<td>10 YR</td>
<td>52%</td>
</tr>
</tbody>
</table>
An Assessment of the Development and Outcomes of Determinate Sentencing

Percent Reduction in Reimprisonment under 85 Percent Time Served

- All Cases: 20%
- 1 YR: 18%
- 2 YR: 18%
- 3 YR: 21%
- 4 YR: 23%
- 5 YR: 28%
- 6 YR: 28%
- 7 YR: 44%
- 8 YR: 44%
- 9 YR: 49%
- 10 YR: 60%
An Assessment of the Development and Outcomes of Determinate Sentencing

Analytic Results

- The only entry in the graphs that is not statistically significant is the two-years time served band for reconviction.
- The analysis across all time served bands shows a 12.5% reduction in reconviction and a 20% reduction in re-imprisonment for offenders sentenced under the 85% sentencing law.
- However, looking at the individual bands, there is a larger impact of the 85% variable the greater the time served.
- The one year effect is about a 9% reduction in the hazard of reconviction and an 18% reduction in the hazard of re-imprisonment.
- The 10-year band shows a 52% reduction in the hazard of reconviction and a 60% reduction in the hazard of re-imprisonment.
Summary and Conclusion

- Florida intended to implement a determinate punishment system in 1983 when parole was eliminated. However, this goal was not realized for another 12 years because of prison bed capacity constraints which forced policy makers to legislate generous gain-time and early prison release credits to stay within lawful prison population levels.

- Only through a grassroots initiative resulting from a public outcry over inmates serving minimal portions of their court imposed sentences did the state pass the minimum 85% sentenced served law in 1995.

- The 85% determinate sentencing policy is not as punitive as anticipated.

- Inmates released from prison that served the same amount of time and were equivalent on a host of characteristics that have been shown to influence recidivism, were significantly less likely to recidivate if they had been sentenced under the 85% law than had they been sentenced under prior versions of Florida’s indeterminate sentencing laws.
An Assessment of the Development and Outcomes of Determinate Sentencing

Policy Implications:

1. States contemplating the enactment of determinate sentencing and punishment strategies to crime control will not necessarily become more punitive.

2. What is leading to the increases in the prison population is the number of offenders convicted of felony crimes rather than the determinate sentencing policies.

3. States considering transforming their sentencing and punishment policies to a determinate approach will not necessarily experience increased prison populations and the inevitable increase in correctional expenditures.

4. A determinate sentencing policy could result in a decrease in the recidivism rates of inmates upon prison release even though the punitiveness and cost of incarceration remains essentially the same.
Limitations:

- The research presented here is limited to the experience of one state, namely Florida.

- Therefore, additional research is needed in other states that have altered their sentencing and punishment policies from indeterminate towards more determinate sentencing to determine if other state experiences and outcomes are consistent with those in Florida.

- In any issue addressed through empirical research, replication is essential before determining whether the initial findings are validated and generalizable.
Right-Sizing Corrections in New York

Bert Useem
Purdue University
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).
New York State Drop in Property Crime

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

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).

Source: Sourcebook of Criminal Justice Statistics, Online (http://www.albany.edu/sourcebook/)
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.

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 inter related 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)

Source. Data provided by NYSDOCS.

Number and percentage of drug offenders in prison has declined significantly.
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”.
Danger and Opportunity: Making Public Safety Job One in Pennsylvania’s Indeterminate Sentencing System

Mark H. Bergstrom
Pennsylvania Commission on Sentencing and the Pennsylvania State University

Joseph Sabino Mistick
Duquesne University, School of law and Pennsylvania Commission on Sentencing
Danger and Opportunity: Making Public Safety Job One in Pennsylvania’s Indeterminate Sentencing System

Background:

- Pennsylvania’s Sentencing Commission created in 1978.
- Purpose of sentencing guidelines to eliminate unwarranted disparity in sentencing.
- Prison crowding/capacity not a concern.
- Initial version of sentencing guidelines rejected by legislature as being too lenient.
Pennsylvania’s Sentencing System:

- Pennsylvania has an indeterminate sentencing system whereby courts impose a minimum and maximum term.
- Minimum term generally establishes the earliest date at which an offender is eligible for parole consideration.
- Maximum term defines the longest period of confinement and/or parole supervision.
Pennsylvania’s Prison System:

- Pennsylvania’s prison population increased annually between 2000 and 2007 by an average of 3.2%.

- Between 2007 and 2008, the change was 9.1%, the highest in the nation and well above the national average of 0.8%.

- Correction’s population increased from 33,553 inmates in 1997 to 51,334 in 2009 – a 53% increase.
In Pennsylvania, a perfect storm of events has created a crisis in the corrections system:

- Record correctional growth and prison overcrowding
  - Recently transferred 2,000 inmates to prisons in Michigan and Virginia.
- High profile murders of police officers by parolees.
- Severe budget constraints due to economic recession.
“The Chinese use two brush strokes to write the word ‘crisis’ one brush stroke stands for danger; the other for opportunity. In a crisis, be aware of the danger – but recognize the opportunity.”

(attributed to John F. Kennedy)

- Pennsylvania’s recently adopted legislation to provide an opportunity for the creation of a more sustainable course with a greater focus on public safety.
Pennsylvania’s new sentencing and corrections reform legislation:

- Assign to a single commission in an indeterminate sentencing system the responsibility for developing both sentencing and parole guidelines.

- Promotes coordinated sentencing and parole policies that may provide 1) bounded discretion, 2) limited retribution, 3) risk-based sentencing and release decisions.
Pennsylvania’s new sentencing and corrections reform legislation:

Sentencing:

- Shift from modified deserts model to modified predictive model.
- Retribution will continue to inform boundaries of sentencing guidelines
  - Seriousness of current crimes
  - Seriousness of prior record
- Actuarial risk assessment (static) to be developed and incorporated into sentencing guidelines.
Pennsylvania’s new sentencing and corrections reform legislation:

Parole:

- Development of a dynamic risk assessment tool to be used in parole release decision-making.
- Reduced emphasis on static factors known at sentencing.
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.
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

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

Incarceration

Transfer Two TYC Units
1,200 beds $15.8M

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

DUI Treatment Facility
No Current Capacity
500 beds $22.2M

State Jail Therapeutic Treatment
No Current Capacity
1,200 slots $5.8M

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
Texas Legislature Increased Funding for Probation Impacting a Decline in Revocations

**Percent Reduction in Felony Technical Revocations, Compared to FY2005**

<table>
<thead>
<tr>
<th>Continent</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>FY2006 - 2007 &amp;</td>
<td>9,437</td>
<td>8,347</td>
<td>-1,090</td>
</tr>
<tr>
<td>FY2008 - 2009</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diversion Funded</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FY2008 - 2009</td>
<td>1,383</td>
<td>1,449</td>
<td>66</td>
</tr>
<tr>
<td>Diversion Funded</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did Not Receive</td>
<td>2,684</td>
<td>2,992</td>
<td>308</td>
</tr>
<tr>
<td>New Funding</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Texas Justice Reinvestment: Be More Like Texas?

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
The Not-So-Golden State of Sentencing and Corrections: California’s Lessons for the Nation

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
The Not-So-Golden State of Sentencing and Corrections: California’s Lessons for the Nation

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 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
The Not-So-Golden State of Sentencing and Corrections: California’s Lessons for the Nation

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.
The Not-So-Golden State of Sentencing and Corrections: California’s Lessons for the Nation

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
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.