



# DOLLARS & SENTENCES

July 2003

Legislators' Views  
on Prisons, Punishment,  
and the Budget Crisis

Robin Campbell, Writer

*A roundtable discussion sponsored by  
the Vera Institute of Justice State Sentencing & Corrections Program and  
the National Conference of State Legislatures*

# Roundtable Participants

## and their roles in state legislatures

### Ray Allen

Representative, Texas (R)  
Chair, House Corrections Committee

### Jari Askins

Representative, Oklahoma (D)  
Chair, House Judiciary Committee;  
Appropriations Committee;  
Budget Subcommittee on Public Safety

### Donald Cravins

Senator, Louisiana (D)  
Chair, Senate Judiciary Committee

### Denton Darrington

Senator, Idaho (R)  
Chair, Senate Judiciary Committee

### Michael Lawlor

Representative, Connecticut (D)  
Co-chair, Joint Judiciary Committee

### Bill McConico

Representative, Michigan (D)  
Vice chair, House Judiciary Committee;  
Appropriations Subcommittee for Corrections

### Dwite Pedersen

Senator, Nebraska (R)  
Senate Judiciary Committee

### Floyd Prozanski

Representative, Oregon (D)  
House Judiciary Committee

### Don Redfern

Senator, Iowa (R)  
Chair, Senate Judiciary Committee

## Moderators

Daniel F. Wilhelm,  
*Vera Institute of Justice*

Donna Lyons,  
*National Conference of State Legislatures*

As states struggle against the mounting pressures of the worst budget crisis in a generation, the key question facing many state legislators around the country is not whether to cut corrections spending but how much to cut.

It wasn't always so. Throughout the 1980s and 1990s, legislatures and governors presided over the installation of a host of get-tough laws and the vast expansion of state corrections systems. But as the economic tide of the nation turned, so too did the fortunes of state criminal justice systems. After collectively doubling corrections spending in the 1990s, states stared down the barrel of an aggregate fiscal year 2004 budget gap of \$78 billion. When the constraints imposed by balanced-budget requirements are considered, the imperative to cut comes as little surprise.

What is perhaps surprising is that states are responding in very different ways. From the elimination of mandatory minimum sentences to the revitalization of alternatives to incarceration, states are experimenting with policies that would have been hard to predict several years ago. Moreover, the changes are not limited to any one geographic area or political party.

To delve behind the shorthand of daily headlines and the labyrinth of statutory language, the National Conference of State Legislatures and the State Sentencing and Corrections Program at the Vera Institute of Justice convened a roundtable discussion of legislators who are on the front lines of these issues. The goal was to learn what the states represented are doing in the face of the budget crisis and to share profitable approaches with peers at the meeting and, later, with policymakers around the country. As you will see from the following discussion, there are no easy answers, but there is considerable innovation occurring in statehouses across the nation. We hope that the conversation sheds light on how some states are addressing these challenges and adds relevant information to a national debate.

Both NCSL and SSC work with state officials in a nonpartisan way, providing research and assistance on criminal justice issues. In addition, SSC uses a network of peer consultants to help state officials advance sentencing and corrections reforms that promote public safety, efficiency, and fairness. To learn more about SSC or the roundtable discussion, contact (212) 376-3073 or [dwillhelm@vera.org](mailto:dwillhelm@vera.org).

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# 1

## Introduction

On the final day of February 2003, nine state legislators from around the country sat down around a table at the Denver offices of the National Conference of State Legislatures with a common agenda. These men and women—representatives and senators; Republicans and Democrats; Midwesterners, Easterners, Southerners, and Westerners—had been carefully selected by NCSL and the Vera Institute of Justice not only for their manifest diversity but also for what they shared. As legislative leaders responsible for criminal justice, all had an abiding interest in the future of corrections within the severe budgetary storms that were raging across their home states and the nation.

By any measure, the conditions that prompted the meeting were critical. For the second year in a row, a faltering economy and declining stock markets were shrinking state revenues. At the same time, new homeland security costs, increases in health spending, and unfunded federal mandates such as the No Child Left Behind Act were increasing expenditures. And the problems seemed to be getting worse by the day. Only a month earlier, in January, an NCSL survey showed that even though an aggregate \$49.1 billion shortfall had been addressed at the outset of the fiscal year, two-thirds of the 50 states would need to find an additional \$26 billion in savings by June.<sup>1</sup> Worse, for fiscal year 2004, beginning in July in most states, forecasters envisioned an even larger budgetary shortfall of at least \$68.5 billion (by April, that figure would be boosted to \$78.4 billion).<sup>2</sup> With the third straight year of budget shortfalls looming and most of the easy cuts already enacted, services once considered untouchable were falling prey to legislators desperate for additional savings.

Criminal justice spending—and in particular the costs associated with corrections—presented one of the most difficult dilemmas in almost every state. The last decade of the twentieth century and the first years of the new millennium had been a period of significant growth for most state prison systems. From 1990 to 1999, aggregate state spending on corrections rose from \$17.2 billion to almost \$35 billion.<sup>3</sup> During roughly the same period, from 1990 to mid-year 2002, state prison populations almost doubled from nearly 685,000 to more than 1.2 million.<sup>4</sup> This unprecedented period of growth had been fueled by “tough on crime” policies, including abolition of parole, lengthier sentences for violent crimes, and mandatory minimum sentences for many drug offenses. These policies had been enacted in response to public concerns about crime and largely paid for by the longest uninterrupted expansion of the U.S. economy in post-War history. But by 2000 many of the conditions that made the growth possible had begun to change: crime rates had been in decline for several years; fears about public safety had diminished, and the clouds of economic recession had begun to form over statehouses.

The legislators gathered in Denver—four judiciary chairs, one corrections chair, and four others with substantial experience on judiciary, appropriations, or criminal jus-

With the third straight year of budget shortfalls looming and most of the easy cuts already enacted, services once considered untouchable were falling prey to legislators desperate for additional savings.

[1] National Conference of State Legislatures. *State Budget Gaps Growing at Alarming Rate According to New NCSL National Fiscal Report*, NCSL News (February 4, 2003).

[2] Ibid. and National Conference of State Legislatures. *Three Years Later, State Budget Gaps Linger*, NCSL News (April 24, 2003).

[3] Sidra Lea Gifford, *Justice Expenditure and Employment Extracts, 1999* (Bureau of Justice Statistics, U.S. Department of Justice, January 8, 2002).

[4] Paige M. Harrison and Jennifer Karberg, *Prison and Jail Inmates at Midyear 2002* (Bureau of Justice Statistics, U.S. Department of Justice, April 2003, NCJ 198877).

“Good time will not be on the table as long as I’m chairman of the Judiciary and Rules Committee.”



IDAHO SENATOR DENTON DARRINGTON

tice committees—knew that the budgets of corrections agencies were facing severe cuts. Stop-gap measures such as reducing staff through furloughs and hiring freezes, closing or delaying construction of prisons, or eliminating educational, vocational, and substance abuse programs had already yielded some savings. But with the system stretched to its limit—at the end of 2001, most state prisons were operating anywhere from 1 percent to 16 percent above capacity—the next wave of reductions would be especially painful.<sup>5</sup>

“Your first reaction is just sheer blind panic as you realize the magnitude of what you’ve got to do,” said Texas Representative Ray Allen, who was facing a state deficit perhaps as large as \$14 billion and a mandate to find \$172 million in corrections savings by June as well as an additional \$525 million (12 percent of the corrections budget) for the coming biennium. Although none of the other participants confronted a deficit the size of Texas’, they all were grappling with similar problems. For their mutual benefit—as well as for the benefit of other legislators facing the same challenges—the nine were asked to share their experience and their expectations in a roundtable discussion about the ongoing financial maelstrom, their own state’s response, and the likely impact on the future of corrections.

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### A Catalyst for Change

The roundtable members were selected in part because their diverse perspectives promised a wide-ranging discussion. It soon became evident, however, that as a result of the crisis, many were either in unfamiliar circumstances or reconsidering longstanding positions. Some, like Nebraska Senator Dwite Pedersen, whose advocacy of work-release options in lieu of prison used to leave him at odds with what he called the “punitive good old boy club,” reported suddenly finding a warmer reception for their ideas. “The budget shortfall brought great credibility to what I’ve been trying to do since I’ve been in the legislature,” he said. Idaho Senator Denton Darrington, who described himself as one of those “good old boys” was on the other end of the spectrum. While determined to stand by his record—“Good time will not be on the table as long as I’m chairman of the Judiciary and Rules Committee”—Darrington acknowledged that he was likely to make some concessions in the area of substance abuse treatment for offenders, even at the risk of being labeled “soft on crime.” “I can stand it because I haven’t had that label much,” he noted.

These comments suggested an across-the-board trend toward rehabilitative policies, but the details of the conversation revealed a far more complex situation. For while many of the proposals that arose emphasized the provision of services to reduce offender recidivism, they often shared another characteristic that had its own distinct appeal: over

[5] Ibid.

time these programs can cost less money. As an illustration of this confluence, consider Connecticut's decision in 2001 to lift mandatory minimum sentences for drug-related offenses. According to Representative Michael Lawlor, crime maps drawn up during the debate showed that state laws requiring mandatory minimums for drug offenses committed within 1,500 feet of schools, day care centers, or public housing projects effectively blanketed the entire metropolitan areas of the largest cities. In New Haven, only the Yale University Golf Course, a marsh and landfill, and a city park surrounding a sewage treatment facility were exempt. "When people saw that, we began to understand how we weren't really targeting serious offenders, we were basically targeting everybody in an urban area," Lawlor recalled. The laws were ultimately reformed because many people wanted to correct this unintended consequence and be fairer toward urban offenders. Lawlor noted, however, that some victims' rights advocates also supported the change because they recognized that keeping small-time urban drug offenders in jail longer diverted money that might be spent incarcerating violent criminals.

Most of the roundtable participants agreed that the budget crisis—aided by the waning politicization of corrections policies—had created a unique climate in which rehabilitative and fiscal agendas appeared to be coalescing within the same proposals. The result was a window of opportunity that Rep. Allen called the "silver lining" in the budget cloud. "In Texas we've had 100 years of a very deeply held mindset that is punitive in nature," he explained. "Nothing short of a 10 to 15 billion dollar crisis would even get people to discuss any alternatives, because we've always done it this way and we've done it bigger, and tougher, and meaner than anybody else in the country." Senator Donald Cravins of Louisiana, who began arguing for change well before the budget crisis hit, also saw a "bright side" to the crisis. "It will cause us to do better with what we've got."

Doing better with incarceration policy, according to the legislators, came in two basic forms. The first included relatively minor adjustments to practices or procedures. These were designed to eke out whatever savings or cost avoidances had been missed by earlier reductions in corrections budgets. The second included more ambitious attempts to change fundamental structures—and, in some cases, tenets—of sentencing and incarceration policy to build what some saw as new efficiencies, as well as what others considered new rationality, into state criminal justice systems.

## MODEST SUGGESTIONS

Within the first group, there was plenty of discussion of initiatives that, if enacted, would amount to little more than tinkering around the edges of the problem. These proposals are worth noting because they illustrate how far states are willing to look to find savings. A conspicuous example came from Texas, where extreme necessity was proving the mother of invention. This large border state was eyeing ways to shift costs associated with re-arrested Mexican nationals to the federal government, contending that such detentions are necessary only because federal agents fail to patrol the borders effectively. "If they're going to be incarcerated and held, they ought to be held in a federal prison, not a state one," said Rep. Allen.

Many of these minor suggestions represent attempts to correct unintended consequences of existing legislation or policies. Connecticut statutes that prohibit former felons from doing many kinds of work caught the attention of Rep. Lawlor. "You can't

"[The budget crisis] will cause us to do better with what we've got."



LOUISIANA SENATOR DONALD CRAVINS

A single minor infraction could decrease the likelihood of early release. “We need to implement an intermediate sanction.”



OKLAHOMA REPRESENTATIVE JARI ASKINS

work in a nursing home, you can't drive a school bus, you can't work in any kind of school system, you can't have any kind of public safety-related job. And the list gets longer all the time," he said. By making it harder to find employment, Lawlor said, these restrictions increase the risk of recidivism—which adds to corrections costs. “I'm not saying we should encourage convicted felons to be working in hospitals. I'm just saying that maybe that rule needs a little bit more flexibility.” Representative Jari Askins of Oklahoma described a similar dysfunction in her state's prisons. A Department of Corrections official had recently complained to her that a single infraction as minor as smoking a cigarette could demote inmates from the least-restrictive of four levels of confinement to the most-restrictive level and decrease the likelihood of an earlier release. “We need to implement an intermediate sanction there,” she said.

## SUBSTANTIVE CHANGES

The second group—farther-reaching substantive changes—generated the most provocative discussion among the legislators. This is partially because even though the participants often focused on the details of policy, the conversation was really about how states are beginning to redefine their structural and philosophical approaches to corrections policy. The risks and rewards of this enterprise—implicating issues of economics, politics, fairness, and public safety—appeared never to be far from their minds.

The proposals that emerged from this conversation could themselves be divided into subgroups. The first were ideas that were important strictly because they would affect lots of people and save substantial amounts of money. Others were noteworthy for how far they departed from the dominant priorities of the past 20 years. Both categories, however, were distinguished by their ambition and interest in fundamental structural change.

Texas provided an example of an initiative that was significant according to the first subcategory. Noting that privatizing prison operations was “one of the few things we can do that actually saves money,” Rep. Allen announced that his state was contemplating “a considerable—perhaps even shocking—amount of privatization.” Should this come to pass, it would represent a dramatic expansion of an existing policy. During the first six months of 2002, the number of Texas inmates in private facilities actually dropped from 16,331, to 10,764, leaving the proportion of the state's inmate population in private prisons at 6.8 percent, only slightly ahead of the national rate for state and federal inmates, 6.1 percent.<sup>6</sup>

Two other proposals, from Texas and Louisiana, dealing with the emerging issue of geriatric and compassionate release, illustrate the latter subgroup. Because several states already operate release programs for elderly or ill inmates, Texas' proposal to parole offenders in a coma does not represent a conspicuously new direction of thought. (Because the state had only two such inmates at the time of the roundtable, it didn't promise great savings either.) But a similar initiative from Louisiana to make parole available to approximately 250 inmates who have completed 40 to 50 years of a life sentence for heroin possession is significant. For even though it, too, promises a modest overall financial impact, the Louisiana proposal marks a dramatic change from the past decade's insistence on “truth in sentencing,” where offenders whose crimes are seen as serious are understood to serve a certain amount of the sentence imposed—often 85 percent—without possibility of early release.

[6] Ibid.

## Corrections Spending, All Levels of Government, 1980–1999

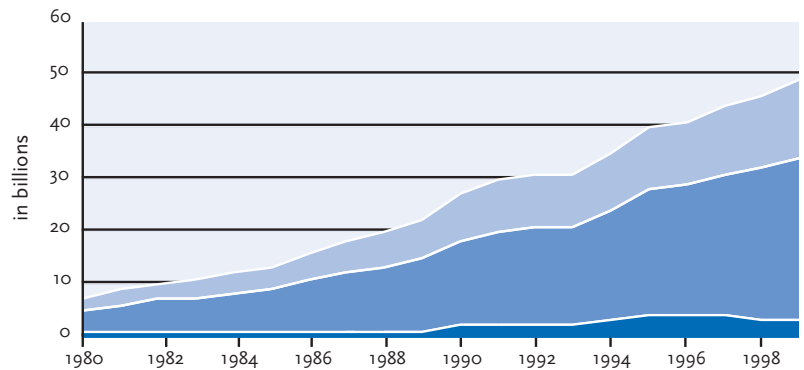
Most of the ideas that legislators thought could best help states weather the budgetary storm were high scorers in both categories: they promised to affect many people, and they substantially departed from the popular trends of the previous two decades, when mandatory minimum sentences, three-strikes legislation, and truth-in-sentencing laws yielded a 281 percent increase in the nation's incarcerated populations and a 601 percent increase in expenditures for state and local corrections.<sup>7</sup>

**REDUCING PRISON TIME.** One structural change the participants debated was the effort by some states to reduce offenders' lengths of stay in prison by adjusting sentencing mechanisms. Michigan, for example, was among the many states that enacted mandatory minimum sentencing laws during the latter half of the twentieth century, beginning with its 1978 legislation requiring life in prison with-

out parole for offenders found guilty of delivering more than 650 grams of heroin or cocaine. These laws satisfied public clamor for harsher consequences, but they also increased prison populations—and attendant costs. Representative Bill McConico pointed out that on the day after the roundtable, the state would relax these mandatory minimum laws substantially when three bills he introduced went into effect. The new statutes replaced many of the state's harshest minimum sentences with sentencing guidelines and substituted a standard five-year probation for obligatory lifetime probation for the lowest-level drug offenders. The *Detroit News* estimated that these changes could save the state \$41 million in 2003 alone.<sup>8</sup> Louisiana offered a dramatic example of mandatory minimum sentencing reform too. According to Sen. Cravins, the state began dismantling mandatory minimum sentences before the budget crisis even hit, when he helped to pass legislation that granted judges greater sentencing discretion for about 30 nonviolent, mostly drug, offenses.

Oregon, on the other hand, was unlikely to address minimum sentence requirements, according to Representative Floyd Prozanski. Since 1994, when voters approved a stiff mandatory minimum sentencing initiative known as Measure 11, prison populations had grown from about 8,500 to 12,000 inmates. While Prozanski thought legislators would be reluctant to contradict the electorate's will, he said he believed they might try to reduce population pressure by focusing on non-Measure 11 offenses. "Because of the budget situation, I predict that we will make an attempt to give good time at least for those individuals," he said.

Senator Don Redfern said Iowa was likely to address its financial problems by wrestling with truth-in-sentencing laws, which were enacted to allay fears that good time, early release, and parole were excusing offenders from serving much of their stated sentences. At the time of the roundtable, these laws required offenders to fulfill at least 85 percent of their sentences before becoming eligible for parole. However, a legislative panel that had been specially appointed to investigate cost-cutting options for the coming budget had recommended reducing that percentage, making offenders eligible for parole or work release after serving as little as 50 percent of their sentences.<sup>9</sup> The spirit of the recommendation, if not quite the scale, appealed to Sen. Redfern because it could yield savings without requiring dramatic changes. "Even shortening a term two, three, or four months is going to have a pretty significant impact over at least a couple of year



■ Federal  
■ State  
■ Local

Source: Bureau of Justice Statistics, "Justice Expenditure and Employment Extracts, 1999"

[7] See *Justice Expenditure and Employment Extracts, 1999* and Sidra Lea Gifford, *Justice Expenditures and Employment in the United States* (Bureau of Justice Statistics, U.S. Department of Justice, 1999 1–4, February 2002).

[8] Sinclair, Norman, "Dad of 4, 1,249 other drug prisoners see freedom," *The Detroit News* 1/30/03.

[9] Obradovich, Kathie, "Budget-cutting panel advises earlier parole," *Quad City Times* 12/10/02.

“Every 19-year-old first-time offender who sleeps in a prison bed in a prison that’s full denies me an opportunity to put an armed robber in a bed.”



TEXAS REPRESENTATIVE RAY ALLEN

period,” he noted. There was very little enthusiasm for early release—often used as a stop-gap measure to free inmates before their sentences are up, frequently without ongoing supervision. Roundtable participants expressed fears of a political backlash should any such former inmate commit a headline-making offense. In contrast, increases in the rate of parole, a procedure that benefits from established, deliberative processes and the promise of supervision after release, garnered cautious support. “I don’t think you’ll see any mass paroling,” said Sen. Cravins, “but I think you will see an escalation of the number of people who will be leaving the system through parole.” Indeed, this trend had already begun. Rep. Askins reported that from a low of 8 percent not long ago, the rate of parole granted to eligible offenders in Oklahoma is now closer to 25 percent. In Texas, said Rep. Allen, the rate hovered around 16 percent until “we finally pumped it way up to 25 percent this year.” In Michigan, Rep. McConico noted, “our parole board really just refused to let anyone go in the ‘90s.” Now, he says, the rate is close to 40 percent. These increases did not result from statutory changes alone. Political pressure was also a factor. A term-limited governor operating under fewer political constraints facilitated the increase in Oklahoma. In Iowa, parole counselors were explicitly told to “be more aggressive in seeking out and considering people that might be good options for parole,” said Sen. Redfern.

**COMMUNITY-BASED RESPONSES.** Along with their willingness to reduce prison time for certain offenders, the nine legislators expressed—to varying degrees—a complementary interest in developing a continuum of community-based alternatives to prison. Community corrections initiatives that both supervise offenders and require programming in key areas such as education, job training, and alcohol and chemical dependency reflect a growing awareness that one sanction may not fit all offenders, and that money can be saved—and, as some participants noted, perhaps lives improved—by tailoring consequences to fit individual circumstances.

“When most people talk about inmates, they see the word ‘inmates’ as being a homogenous mass of interchangeable parts,” said Rep. Allen. “But there are really many, many sub-populations with many, many different needs.” He contended that corrections systems can make meaningful distinctions among such groups as drug addicts, the mentally ill, and young people from dysfunctional families. Allen said he hoped Texas would begin applying this logic to a cohort of 5,400 inmates, many of whom were serving as many as 10 years for offenses involving less than one ounce of cocaine. For 3,700, it is their first offense. “We think they’re worth a try in drug court and local sanctions. And if that doesn’t work, I’ll build a prison bed and put them in it,” he said. The Texan justified replacing prison time with up to 180 days in a treatment program followed by close supervision in aftercare saying, “It is no longer fiscally possible, no matter how conservative you are, to incarcerate people and spend \$150,000 each on them when a fraction of that money would probably get them free of their habit and in productive society.” Moreover, he added, “Every 19-year-old first-time offender who sleeps in a prison bed in a prison that’s full denies me an opportunity to put an armed robber in a bed.”

Many of the participants were likewise betting that carefully applying intermediate sanctions to probationers and parolees could reduce the number of technical violators who swell prison rolls. A broader, more nuanced array of responses to choose from whenever an offender breaks the conditions of release—such as curfews, additional check-ins, drug tests, or even the right to send someone to jail for a few days as Oregon’s



Community Correction Act allows—would reduce the likelihood that the offender will be remanded to prison for minor infractions.

Advocates of these initiatives often characterized them as shifting resources from incarceration to community-based or non-custodial sanctions. As several participants observed, developing such efforts may forestall someone going to prison, such as when a first-time offender is sentenced to drug rehabilitation or a probationer who fails a drug test is remanded to county jail for three days. Sen. Cravins, however, pushed the concept even further, pointing out that a disproportionate amount of crime in Louisiana occurs in a handful of communities. “There are some blocks in New Orleans that cost us \$10 million [a year],” he said, referring to the criminal justice costs incurred for offenders who live in these specific areas. Cravins suggested that a truly comprehensive system to reduce criminal justice spending ought to consider investing an equivalent amount in those communities to preempt crime before it happens. “How do we redirect those dollars to try to turn the tide?” he asked.

## A QUESTION OF FUNDING

While the idea of creating a coherent graduated system of sanctions that could save money over time had wide appeal, the level of enthusiasm for these measures was tempered by several specific reservations. The most salient of these was whether or not such programs were viable in the current fiscal climate. Just a week before coming to Denver, Rep. McConico had been in a corrections subcommittee meeting discussing new programs when word came that Michigan’s governor had just announced across-the-board cuts in education spending. Suddenly, no one had the stomach to pursue new corrections initiatives and the meeting adjourned. “On one hand all these creative ideas are coming at the right time,” McConico lamented. “But when you have no money, you have to take from somewhere to do it.”

Even existing programs are at risk in the current budget conditions. Sen. Redfern noted, for example, that although Iowa has a strong history in community corrections, most of this programming had already been cut back. “We figure that eight years from now we’d be saving money if we had all these programs, but we just don’t have the money [to fund them] today,” he said. And, as Sen. Cravins noted, the credibility and effectiveness of programs that are not completely eliminated may be critically compromised if their funding is severely curtailed. “What judge is going to put someone in probation if the caseloads have gone to 150 to 1?” he asked. “What parole officer will not revoke parole if an inmate is on a caseload of 130 to 1?”

A handful of proposals involved schemes to allow programs to pay for themselves. Rep. Allen said that Texas’ Prison Industry Enhancement program, which puts inmates to work at prevailing wages, could generate tens of millions of dollars in prison labor. Sen. Pedersen suggested that Nebraska may be able to pay for new programming with money from fees on probation and parole services. In most cases, however, money for existing or new programs must be found in already-tight state resources. Given this grim reality, Rep. Allen observed that the primary challenge for most states is not so much to build new programs but rather “to protect the pieces from the current emergency until we can come back and start putting them together into an orderly whole that we think will have an impact that is greater than we’re receiving from just the sum of the parts.”

“On one hand all these creative ideas are coming at the right time . . . But when you have no money, you have to take from somewhere to do it.”



MICHIGAN REPRESENTATIVE  
BILL MCCONICO

“I’m as frustrated as anybody about the ineffectiveness of drug treatment programs. But isn’t it fair to ask, what’s the effectiveness of all this incarceration?”



CONNECTICUT REPRESENTATIVE  
MICHAEL LAWLOR

## GUARANTEEING RESULTS

The other principal reservation raised during the roundtable concerned the effectiveness of these programs. Legislators and citizens want to be sure that initiatives they fund will realize their goals—whether those are reducing drug dependence, say, or preparing inmates for work—without jeopardizing public safety. The question of what programs achieve this balance elicited considerable discussion.

“The thing that changes these people is work,” said Sen. Pedersen, who argued that inmates who work are more likely to return to productive life after prison. According to Rep. Allen, work can also be used to improve inmate conduct. “Twenty-five jobs can change the character of a whole institution,” he said, referring to a facility in Lockhart, Texas, which he said reported only one major disciplinary case since 1991. “If you have to abide by the rules to be eligible to apply to get hired, 1,000 inmates will change their behavior,” he said.

Programs designed to rehabilitate offenders with drug problems inspired the most hope and the most skepticism. Yet despite their ambivalence, many of the legislators felt they had no choice but to pursue this option. “I’m as frustrated as anybody about the ineffectiveness of drug treatment programs,” said Rep. Lawlor. “But isn’t it fair to ask, what’s the effectiveness of all this incarceration? If the goal was to reduce the number of people using or selling drugs, I’m not sure that the incarceration option has been a success either.” Rep. Allen defended drug programs on a purely fiscal level. “If you deploy that drug treatment in prison as an added cost, then there may not be a justification for it. But if you deploy that drug treatment on the front end as a treatment program which stops the recidivism of some—even if it’s only 20 percent—but serves as a short-term diversion from long-term incarceration, then you have gained something.”

Sen. Darrington expressed support for most of these efforts, but he was also an outspoken advocate of effectiveness of a different kind. “With all the treatment that we do,” he reminded the others, “with all the diversion we do on the front end, and all the help that we give them on the tail end to get out and get jobs, there has to be a sanction at the end of the day if they violate.”

# 3

## Is the budget crisis the only thing driving these changes?

Rep. McConico recalled that when he introduced his bills to reduce mandatory minimum sentences in Michigan, both the governor and the chair of the senate judiciary committee told reporters they had “no interest in McConico’s get-out-of-jail-free bills.” Then, after the first conference to estimate the state budget, he was “called into the gov-

ernor's office to see how we can make these bills happen." The first time Rep. Allen approached corrections administrators for new policy ideas, they were reluctant to talk for fear of losing their jobs. "Then when the director of the corrections system put his cuts on the table, all their jobs were cut anyway," he said. "And so folks started talking about a new vision."

These anecdotes illustrate how the budget crisis has spurred states to rethink their corrections policies. But legislators' willingness to respond to the crisis has been buttressed by a concurrent development in the political climate. Rep. Askins noticed the change in the last elections: for the first time since she was elected to the Oklahoma Legislature in 1994, she said, her polls showed that education and health care were more important issues than crime. A similar shift occurred in Iowa, leading Sen. Redfern to venture that crime was no longer the electoral "wedge issue" it was in the 1980s and 1990s, when Republicans and Democrats tried to outmaneuver each other on public safety. In the current atmosphere, said Idaho's Sen. Darrington, criminal justice issues were "more partisan from a personal philosophical point of view than Democrat versus Republican."

Several factors contribute to this change. First is a growing awareness among the general public that increases in corrections spending come at the cost of other government spending and services. "Every community, not just the inner cities, is realizing that everything is being cut and they're seeing corrections increasing or staying constant," noted Rep. McConico. Elected officials are taking note. "Whether or not you think everybody in jail deserves to be there, it's another issue when you're weighing that against the stuff that makes you popular, like roads and schools," observed Rep. Lawlor.

While many elected officials are readjusting their positions in response to the new prevailing wind, the roundtable participants noted that many others came into office with it. Michigan, according to Rep. McConico, experienced a "massive turnover" in legislators during the last election. "A lot of the people who were impediments to some of the initiatives that people have been offering for the last 8 to 10 years are no longer there," he said.

Term limits have played a part in this process, of course. In many cases, they helped replace a generation of lawmakers who came of age in the get-tough 1980s and 1990s. But Rep. Prozanski observed a similar effect after the repeal of term limits in Oregon in 2002. Under term limits, he said, individual legislators often took extreme positions and had little incentive to cooperate with others. Now that the limits have been overturned, many Oregon legislators are rediscovering the value of compromise. "We're in a rebirth of long-term relationships," he said. "Partisanship is still there to some point, but I believe it's going to continue to get better."

The maturing of victims' rights advocacy groups is also an important development. There are now several crime victims' rights organizations in Prozanski's state, split between those seeking more severe punishments and those who are willing to weigh reform initiatives. As noted earlier, Rep. Lawlor was able to ally himself with victims' rights activists in reducing Connecticut's minimum sentences for low-level nonviolent offenders. They "actually supported these changes because they wanted more emphasis on violent crimes against innocent victims," he said.

The spread of illegal drug use has also been a factor in the new political environment. In the 1980s, the public perceived the worst illegal drug problems to be limited to urban areas where crack cocaine was endemic. In contrast, today the growing demand for methamphetamine is, in Sen. Redfern's words, "more in the rural areas than

Crime is no longer the "wedge issue" it was in the 1980s and 1990s.



IOWA SENATOR DON REDFERN

“We’re in a rebirth of long-term relationships. Partisanship is still there, but I believe it’s going to continue to get better.”



OREGON REPRESENTATIVE  
FLOYD PROZANSKI

the urban areas.” The extent of this problem was illustrated by Sen. Darrington’s admission, “In any rural community in my part of the country everybody will know somebody who has had their life destroyed by drugs.” As Idaho’s case illustrates, illegal drugs have clearly become a local issue all across the nation, compelling many legislators to reconsider their fixed positions on how to respond. “We would not have had this discussion 10 years ago because I don’t think there was enough interest,” said Sen. Cravins. “The drug epidemic now crosses all lines, which forces us to sit down and talk.”

Yet as severe as the drug problem is, Rep. Askins reminded the group that money remains the most fundamental factor in the current reassessment of corrections policy. Oklahomans are angry about drugs, she said, and most of the people she has spoken with about the problem were calling for more of the same—tougher sentences. It is the cash shortage, many noted, that makes such a course impossible and that is forcing the conversation. Faced with an enormous budget deficit, policymakers have little choice but to work together. “We have a Republican governor and a Democratic legislature, and we are definitely on the same page when it comes to figuring out a way to bring these costs under control without affecting public safety,” noted Rep. Lawlor. Rep. Allen said much the same thing when he admitted, “I’m a hardcore conservative back home and I sound like the liberals that I came in to displace.”

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### Looking to the future

Just as the roundtable participants’ views of the current crisis are shaped by their attitudes toward corrections and the situation within their respective states, so too are their visions of the future. Some, like Sen. Darrington of Idaho, expect to “continue along the road” with no substantial changes in corrections policy. “My view is that we will continue to work toward diversion on the front end for your low-level criminal. We’ll continue to become more professional with hearing officers and our Commission of Pardons and Parole. We’ll continue to try to do more work programs. And I would suggest that what we ought to be doing with treatment is being really quite selective.” Others, especially Rep. Allen, anticipated dramatic changes. Texas is “moving pretty rapidly toward a different model,” said Allen, predicting a substantially remodeled system in the next decade. “We’re still going to have a tough system. It probably will be the toughest of all the 50 states. But we hope that it will at least be tough, plus smart, and perhaps considerably more efficient than it is today.”

The roundtable participants recognized that they face a double challenge as they make policy and face elections. If they are to develop smarter sentencing, corrections, and prison policies, they must provide the leadership needed to persuade important constituencies that they know what they are doing.

Much discussion focused on the need to build public support for such changes, particularly after decades of conditioning voters to think about crime policies as either “soft” or “tough.” “A lot of us created the mania that exists today because we’re the ones who go before the cameras in an election, with a jail door swinging in the background, saying, ‘I’ll be tough on crime,’” observed Sen. Cravins. “Well, now we have the job of going back to our constituents and saying, ‘Yeah, we’re going to be tough on crime. But by the same token, let’s try to use resources wisely.’” Sen. Redfern concurred: “We’re going to have to convince them that the kinds of things we’re doing are not going to jeopardize public safety, but make cost-effective sense—plus prepare someone, because most of our prisoners eventually get out.”

To build this support, many participants observed, several related issues need to be addressed. Policymakers must overcome public anger about drug abuse that too often precludes rational responses to the problem. They must correct false or exaggerated impressions, such as the idea in Idaho that judges are too soft when, according to Sen. Darrington, they’re really quite forceful. Ignorance about the true fiscal costs of corrections policies will also have to be confronted. And advocates of change must parry what Sen. Redfern described as the “degree of cynicism” that looks at reform initiatives and says, “You’re only doing that because you’re running out of money.”

Some of this is already happening, of course. “I make it a big part of my job to go out there and educate the public,” said Nebraska’s Sen. Pedersen—an assertion any of the others might have made as well. But, as Rep. Askins reminded the others, it’s easier to talk about the fine points of corrections policy outside a campaign season. “I’d much rather have the conversation in a coffee shop than try to deal with it in a bullet point in a campaign ad,” she said, “because I can at least have the discussion in the coffee shop.”

Legislators interested in negotiating changes will also have to educate their colleagues and corrections administrators. Rep. Allen described his own change of mind on these issues, saying, “As I learned about the reality of the system, I realized that calling for a tougher system was going to be less productive than I had thought.” Rep. McConico was able to win public support for his proposals by developing influential support elsewhere. “I went to the people who in the public’s mind had the credibility from the starting point,” he explained. To combat any impression that his was a partisan initiative, he included Republican colleagues with a background in law enforcement, such as former state troopers and prosecutors. He also courted professional groups like the prosecutors’ association whose members’ inside knowledge and credentials allowed them to see beyond the reductionist dichotomy of tough and soft. “Once the prosecutors and the judges were on board with it, that lent instant credibility. People said, ‘Okay, prosecutors are not going to try to put [dangerous] people back on the streets,’” McConico said.

Educating constituents in order to change policies need not be the only kind of outreach, however. Several participants felt that as leaders they also were called on to remind the public that it, too, has a role in alleviating the prison situation. As Sen. Darrington said, “I don’t think we’re doing a very good job as policymakers of standing up in our respective bodies and going into our communities to say, ‘Look, there’s a way to avoid the bad food in prison. There’s a way to avoid the hard bed. There’s a way to avoid the parole board. Don’t do the crime.’” Sen. Cravins agreed: “We don’t use the bully pulpit at our disposal to tell people about those fundamental things that they have to do as a community. I think at some point in this discussion and debate, whether it’s in our respective statehouses or our respective districts, that’s going to have to be one of the key roles we play.”

“I make it a big part of my job to go out there and educate the public.”



NEBRASKA SENATOR DWITE PEDERSEN

# Updates

The states represented at the roundtable continue to confront the budget crisis and related criminal justice issues. Following are highlights of actions taken between the date of the roundtable and the publication of this report.

## CONNECTICUT

- ▶ Approved plans to transfer up to 1,000 inmates to Virginia under an existing contract
- ▶ Cut its budget through layoffs, early retirement, and a \$6.2 million reduction in alternative programs
- ▶ Authorized opening a new 600-bed correctional facility which had been delayed to avoid \$3.5 million in costs
- ▶ Legislation pending to authorize diversionary programs for technical probation and parole violators, with savings to be invested in community

## IDAHO

- ▶ Imposed a 2 percent surcharge on liquor sales in order to provide a permanent source of funding for drug courts
- ▶ Rejected efforts to repeal the state's mandatory minimum sentences for drug offenders and legislation to make more offenders eligible for "good time" release

## IOWA

- ▶ Lowered from 85 percent to 70 percent the amount of their maximum sentences that inmates must serve under truth-in-sentencing laws before they are eligible for parole
- ▶ Aligned penalties for crack and powder cocaine

## LOUISIANA

- ▶ Closed the Swanson Correctional Center for Youth—Madison-Parish Unit
- ▶ Rejected a plan to create diversionary programming for technical probation and parole violators and reinvest the savings in the community

## MICHIGAN

- ▶ Approved expansion of the drug court program to create more sites and to include some technical parole violators
- ▶ Continued release of prisoners under rollback of most of the state's mandatory minimum requirements for drug offenses

## NEBRASKA

- ▶ Established a Community Corrections Council to develop and implement enhanced community corrections, felony sentencing guidelines, and improved data collection and analysis
- ▶ Authorized October 2004 closure of one of nine state prisons

## OKLAHOMA

- ▶ State Board of Corrections erased a multimillion-dollar budget deficit with \$9 million emergency funding, six days of employee furloughs, and \$3.9 million in internal cuts, including a hiring freeze
- ▶ Rejected a bill to make marijuana possession a misdemeanor rather than a felony

## OREGON

- ▶ Began releasing jail inmates early after voters rejected a temporary income tax hike that would have provided additional funds
- ▶ Legislature passed a \$1 billion corrections budget, restoring funding to house low-level felony offenders and open a new 400-bed minimum security facility

## TEXAS

- ▶ Legislature approved a budget calling for more than \$230 million in corrections cuts
- ▶ Passed a bill mandating probation and treatment for certain first-time drug possession offenders
- ▶ Legislature defeated a bill for a new agency to oversee the bidding process for running prisons with authority to contract with private companies

## Activity in Other States

A number of other jurisdictions have also made changes to their sentencing and incarceration policies to avoid costs and produce better outcomes. As of July 1, these include:

### ALABAMA

- ▶ Enacted three bills authorizing voluntary sentencing guidelines, expanding community corrections, and raising the felony theft threshold
- ▶ \$3 million in new state general funds expected to go to community corrections

### ARIZONA

- ▶ Reduced sentences for some drug offenses and channeled the savings to transitional drug treatment services

### COLORADO

- ▶ Created community supervision options for some non-violent technical parole violators and allowed judges to send some low-level drug offenders to probation, county jail, or community corrections instead of prison

### DELAWARE

- ▶ Legislature approved a bill increasing penalties for some violent offenses, reducing mandatory minimum sentences for many drug trafficking and manufacturing crimes, and allowing many drug offenders to be incarcerated at lower levels of supervision
- ▶ Legislature shortened probations in an effort to reduce the percentage of technical parole violators returning to prison

### INDIANA

- ▶ Created—but did not fund—a “forensic diversion” program allowing judges to suspend sentences of nonviolent offenders and divert them to treatment when substance abuse or mental illness was a contributing factor in the crime

### KANSAS

- ▶ Authorized diverting first- and second-time nonviolent drug possessors from prison to mandatory treatment
- ▶ \$6.6 million in state general funds earmarked for building treatment capacity

### MISSOURI

- ▶ Reduced the maximum prison sentence for the lowest category of felonies
- ▶ Granted nonviolent felons the opportunity to seek release after 120 days in prison and serve the balance of their sentence on probation, parole, or in another court-approved program
- ▶ Gave judges discretion to order treatment in lieu of certain prescribed penalties

### WASHINGTON

- ▶ Accelerated implementation of a new sentencing guideline grid for drug offenses that reduces sentences and encourages treatment
- ▶ Ended post-release supervision for some nonviolent offenders
- ▶ Directed corrections savings to a Criminal Justice Treatment Account to fund treatment

## In Addition

- ▶ Several states, including Arizona, Indiana, New Mexico, and Wisconsin, authorized or established sentencing commissions or study groups to examine their sentencing and incarceration policies
- ▶ Arkansas, Kentucky, Montana, North Dakota, Oklahoma, and Washington all released prisoners before their expected release date in late 2002 or in 2003



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