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Committee on Criminal Justice

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## **SIMPLE PURCHASE OR POSSESSION OF COCAINE AND CANNABIS: OTHER STATES' SENTENCING ALTERNATIVES TO INCARCERATION**

### **Statement of the Issue**

#### **Issue Brief Objective**

Florida, along with other states, has experienced high levels of recidivism and probation failures for drug addicted offenders who may also commit low-level property offenses to maintain their habits. The penalties in Florida for simple possession of cocaine and purchase of cannabis include imprisonment and for the last several years possession of cocaine ranked among the top three offenses for new prison commitments. Penalty structures and sentencing laws as well as the availability of treatment and diversion alternatives for this population vary widely from state to state. In these economically challenging times, states are investigating viable and reasonable alternatives to imprisonment for certain low-level drug offenders and others. This discussion is particularly important in Florida since new prison commitments for possession of cocaine have risen 70 percent in the last eight years.<sup>1</sup> This Issue Brief will present information on how other states have handled this population and other high-volume populations to control the flow of offenders through the entire criminal justice system. This Issue Brief will also describe what alternatives to incarceration those states have adopted.

### **Discussion**

#### **Corrections Costs and Economic Pressure**

According to the Florida Department of Corrections (the department), it costs an average of \$55.09 per day to house an inmate in Florida.<sup>2</sup> This amounts to an average of \$20,108 per inmate per year. The prison population at the end of May 2009 was slightly more than 101,000 inmates.<sup>3</sup> The department's average cost for supervising an offender in the community is \$5.72 per day. At the end of May 2009 the department was supervising approximately 121,000 offenders in the community.

The department's total budget is more than \$2 billion, or 8.5 percent of the entire general revenue budget of the State of Florida.<sup>4</sup> It is the third largest prison system in the country, behind California and Texas.<sup>5</sup>

Based upon fiscal year 2009-2010 data, prison construction costs \$55,202 per bed. The typical size of a prison is approximately 1,500 beds; therefore, the current total estimated cost of building a new prison is \$82.8 million.

Approximately one-third of all prison admissions are for drug offenses. Given the high level of recidivism and addiction relapse with this population many offenders cycle in and out of probation and prison – further escalating prison growth.

The need to overcome a revenue shortfall while maintaining public safety led the 2009 Legislature to enact some measures that should result in fewer nonviolent offenders going to prison.<sup>6</sup> Those measures included diversion

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<sup>1</sup> Data collected by the Office of Economic and Demographic Research, January 2009.

<sup>2</sup> See <http://www.dc.state.fl.us/pub/statsbrief/cost.html>, site last visited August 19, 2009.

<sup>3</sup> See <http://www.dc.state.fl.us/pub/statsbrief/faq.html>, site last visited August 19, 2009.

<sup>4</sup> See <http://www.dc.state.fl.us/pub/statsbrief/cost.html>, site last visited August 19, 2009.

<sup>5</sup> Department of Corrections Media Advisory, August 14, 2009.

<sup>6</sup> See Ch. 2009-66 and Ch. 2009-64, Laws of Florida.

programs aimed at offenders who score low on the sentencing scoresheet. Further, although the department's budget for substance abuse programs for both inmates and probationers was reduced by \$6 million for the 2009-2010 fiscal year, the department has prioritized its limited rehabilitation programming at two prisons (Baker and Demilly). These two institutions have been dedicated as "re-entry facilities" and will hold inmates with 3-5 years of their sentence left to serve. Educational, vocational, and substance abuse programs will be provided for those inmates in an effort to reduce recidivism.<sup>7</sup>

It will be some time before we can determine if the newly-enacted sentencing alternatives and the efforts the department is making in the area of inmate re-entry have a positive societal and fiscal effect. The 2010 Legislature will likely be facing another economic challenge when it convenes potentially making it necessary to further trim the civil and criminal justice budget. Florida is not the only state facing challenging times in this regard; therefore, the focus of this Issue Brief is to look at alternatives to incarceration, efforts to reduce recidivism, and evidence-based programming other states are implementing.

### **Florida's Sentencing and Gain-time Structure**

A complete discussion of other states' alternatives to incarceration will be better understood after a brief review of Florida's sentencing structure as a guide. The Criminal Punishment Code became effective on October 1, 1998.<sup>8</sup> It is based on a formula which ranks offenses at ten levels (10 being the most serious) and assigns them a sentence point value.<sup>9</sup> The total sentence points scored on the Sentencing Scoresheet determines the lowest sentence a judge can impose (the "lowest permissible sentence").<sup>10</sup>

A judge is only limited at the top end of the sentencing range by the degree of felony and statutory limitations on maximum incarceration.<sup>11</sup> For instance, a third degree felony can result in a five year prison sentence at the top end of the range, a second degree felony fifteen years, and so on, but the lowest permissible sentence is determined by the Criminal Punishment Code scoresheet, not generally left to the judge's discretion.

In 1995 gain-time was significantly restricted and inmates were required to serve a minimum of 85 percent of their court-imposed sentence. This new gain-time restriction coupled with the new sentencing structure is generally referred to as "Truth in Sentencing."

The Florida Department of Corrections does not award "gain time" or "earned time" in such a way that it actually reduces the time an inmate must serve in prison below the statutorily mandated 85 percent. This is true even when an inmate completes a GED program, substance abuse program, or earns a vocational certificate.

Finally, Florida's corrections system no longer releases inmates on parole supervision, as parole was abolished in 1983, although the Parole Commission still has jurisdiction over a small number of parolees who were originally sentenced when parole existed and who are on parole supervision at this time.

### **Sentencing on Possession of Cocaine or Purchase of Cannabis**

Chapter 893, F.S., contains the criminal drug laws and Chapter 921, F.S., contains the sentencing and penalty provisions for those drug laws. The following chart shows the penalty structure in Florida for simple purchase or possession of cocaine or cannabis:

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<sup>7</sup> It is estimated that 32.8% of all released Florida inmates return to prison, either for a violation of community supervision or for a new law violation, within three years of release. However, inmates who have a General Education Diploma (GED) at release recidivate at a rate 7.9% less than inmates overall. Those who have a vocational certificate upon leaving prison recidivate 14% less than inmates overall, and if the inmate completes a substance abuse program, he or she recidivates at a rate 56% less than an inmate identified as having a substance abuse problem who did not receive treatment. See <http://www.dc.state.fl.us/secretary/press/2009/Demilly-OpeningDay.html>, and <http://www.dc.state.fl.us/pub/statsbrief/faq.html>, site last visited August 24, 2009.

<sup>8</sup> s. 921.002, F.S.

<sup>9</sup> s. 921.0022, F.S.

<sup>10</sup> s. 921.0024, F.S.

<sup>11</sup> s. 775.082, F.S.

<b>Offense</b>	<b>Classification</b>	<b>Exposure to Prison</b>
Purchase of Cannabis	3rd Degree Felony (Level 1)	Punishable up to 5 years in prison
Possession of Cannabis (under 20 grams)	Misdemeanor	No state prison
Possession of Cocaine	3rd Degree Felony (Level 1)	Punishable up to 5 years in prison

As shown above, in Florida, a conviction for the simple possession of cocaine or the simple purchase of cannabis is punishable by up to 5 years in state prison. Possession of less than 20 grams of cannabis is not punishable with a state prison sanction.

New commitments to Florida prisons for possession of cocaine have risen 70.2 percent between fiscal year 2000-01 and 2007-08.<sup>12</sup> Possession of cocaine has ranked among the top three offenses for new prison commitments since 2000.<sup>13</sup> In 2007-08, as seen in the chart below, possession of cocaine resulted in 3,036 offenders going to prison. Those offenders going to prison for possession of cocaine were sentenced to an average of 22 months.

By contrast, the purchase or possession of cannabis represents less than 1 percent of annual prison admissions. Clearly, this population is already being sanctioned or treated outside of the state prison system. For that reason, this briefing document will not address any further possible alternative sentencing strategies for offenders convicted of possession or purchase of cannabis.

<b>TOP 15 OFFENSES FOR NEW COMMITMENTS: FY 2007-08</b>			
<b>Rank</b>	<b>Primary Offense</b>	<b>FY 2007-08 New commitments</b>	<b>FY 2007-08 % of new commitments</b>
1	COCAINE-SALE/MANUF/DELIV.	3,339	8.9%
2	<b>COCAINE - POSSESSION</b>	<b>3,036</b>	<b>8.1%</b>
3	BURG/DWELL/OCCUP.CONVEY	2,328	6.2%
4	BURG.UNOCC.STURCT/CV OR ATT.	1,929	5.1%
5	DRIVE W/LIC.S/R/C/D-FELONY	1,515	4.0%
6	GRAND THEFT,300 L/5,000	1,329	3.5%
7	TRAFFIC IN STOLEN PROPERTY	1,254	3.3%
8	ROBBERY W/FIREARM OR D/WEAPON	1,039	2.8%
9	FELON W/GUN/CONC.WPN/AMMO.	979	2.6%
10	ROBBERY N/FIREARM OR D/WEAPON	972	2.6%
11	GRAND THEFT MOTOR VEHICLE	772	2.1%
12	AGG BATTERY/W/DEADLY WEAPON	673	1.8%
13	TRAFF COCAINE 28-U/200GR	652	1.7%
14	AGG ASSLT-W/WPN NO INTENT TO K	594	1.6%
15	FELONY BATTERY	566	1.5%

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 22, 2009.

According to data collected by the Office of Economic and Demographic Research of those 3,036 offenders who were sentenced to prison on a possession of cocaine offense 54.6 percent (1,657) were on community supervision

<sup>12</sup> Data collected by the Office of Economic and Demographic Research, January 2009.

<sup>13</sup> Data provided by the Office of Economic and Demographic Research, August 2009.

at the time of the new cocaine offense.<sup>14</sup> This further underscores the high level of probation failure and recidivism with this offender population.

The table below shows that a sizable portion of this drug offender population simultaneously commits property offenses. At least 251 of the 3,036 committed nonviolent property crimes as well as the primary offense of possession of cocaine. Specifically, the additional offenses were burglary or trespass (76), petit theft (53) and grand theft (122). Where the property crime was the primary offense, 357 of the 3,036 also committed a more serious burglary offense, and 111 committed the offense of dealing in stolen property in addition to the possession of cocaine.

Additional Property Offenses Committed by Offenders Convicted of Possession of Cocaine FY 2007-08					
Primary Offense		Number sentenced	Number sentenced to prison	Percent sentenced to prison	Average sentence length(in months)
Cocaine possession	with or without additional offenses	22,884	3,036	13.3%	21.9
<b>Primary Offense</b>	<b>At least one additional offense was for</b>				
Cocaine possession	Any burglary offense *	416	76	18.3%	26.1
Cocaine possession	Petit theft/3rd conviction	135	53	39.4%	18.4
Cocaine possession	Grand theft, 300 L/5,000	441	122	27.8%	21.8
Any felony burglary offense	Cocaine possession	627	357	57.0%	48.8
Traffic in stolen property	Cocaine possession	225	111	49.4%	38.6
Prepared by Florida Legislature, Office of Economic and Demographic Research, August 20, 2009					
Source : Criminal Code database, run date August 1, 2009. Data were adjusted for non-compliance in the completion of scoresheets. Per Department of Corrections Report entitled, "Sentencing Scoresheet Compliance Report July 1, 2007 - June 30, 2008," compliance is about 69.4%.					
* includes misdemeanor trespassing					

At the risk of generalizing to some extent, anecdotal evidence indicates that it is not altogether uncommon for addicts who have no legitimate way of paying for their drugs to engage in small-time thefts and the burglaries that facilitate those thefts. Stolen property may then be traded or sold on the street for drugs. This criminal behavior is reflected in the table above. It is also a grim courtroom reality that, even facing imprisonment if they fail, it seems that few offenders make it off the drugs without treatment and few make it on community supervision. The names and faces of the offenders become familiar as do the faces of their family members who accompany them to court each time they violate a technical condition or have been arrested for yet another possession charge. The courtroom reality is verified by the statistical evidence.<sup>15</sup> The high influx of cocaine addicts into Florida's prison system is not unique to Florida. Other states have likewise struggled with this highly recidivistic population. This

<sup>14</sup> Purchase of cannabis is a felony that is ranked one-level below possession of cocaine on the Sentencing Scoresheet. Only two people went to prison in 2007-2008 for that offense; therefore, it is not represented in the data.

<sup>15</sup> Professional Staff felony courtroom experience, rural county, Florida, mid-to-late 1990's.

briefing document will present what leaders in other states across the country are doing with these offenders and the effect of low-level drug and related property crimes on prison populations and state budgets.

### **Texas, Kentucky, Arizona, and Pennsylvania – A Brief Comparative Analysis of Penalty Structures and Incarceration Policies**

As mentioned earlier in this briefing document, the simple possession of cocaine in Florida is punishable by up to 5 years in prison regardless of the gram weight of the cocaine and the prior criminal history of the offender. After a high level review of other state statutes the following comparative observations are noted. It appears that Arizona, Kentucky, and Pennsylvania have penalty structures which limit imprisonment to only those offenders with subsequent convictions. For example, in Pennsylvania it is a misdemeanor level offense for a person who has never been previously convicted. In Arizona, the judge has the discretion to change the classification of the felony (from a felony to a misdemeanor) if it's the offender's first conviction. Texas, on the other hand, approaches its penalty structure slightly differently. Texas limits imprisonment to "jail felonies" for those offenders who possess or purchase less than 1 gram of cocaine.<sup>16</sup>

While this comparison is interesting, it is difficult to conclude too much since these states have different felony levels, sentencing laws, and gain-time provisions which make comparisons to Florida laws difficult. Regardless, these examples of other state statutes may give rise to additional policy discussions in Florida, as have taken place in those states.

### **Texas, Kentucky, Arizona, and Pennsylvania – A Sample of New Thinking about Correctional Policy and Sentencing Alternatives**

Primarily due to economic pressures, many states have begun to reexamine their sentencing laws and create alternatives to imprisonment. Statistics indicate that incarceration rates for drug offenders and property crime offenders account for a large percentage of the prison population across the country. For instance, a profile of the prison inmate population in Kentucky in January 2005 showed that 25 percent of the inmates were sentenced to prison for a drug offense and 21 percent for a property crime.<sup>17</sup> In Pennsylvania, in both 2006 and 2007 drug offenses accounted for the highest percentage of state prison admissions – 31.5 percent and 32.2 percent, respectively – while theft crimes increased 133.1 percent between 2006 and 2007.<sup>18</sup> Drug offenses in Texas accounted for 35.15 percent of new prison admissions, followed by property crimes at 27.76 percent during 2008. Drug possession sentences accounted for 19,568 of the 74,283 total new prison admissions, the largest group of new offenders sentenced in Texas that year.<sup>19</sup>

Because drug offenders and property crime offenders represent such a large part of prison populations and we have previously noted a connection between drug possession and property crimes in Florida, the following sampling of states summarizes the policy discussions and changes taking place to divert both drug and property crime offenders. This briefing document will also discuss policies considered in other states which divert offenders simply because there is limited bed-space in the system or the price-tag to build and operate prisons is so costly. Consequently, this analysis presents alternatives to incarceration much broader than those specifically aimed only at cocaine and cannabis-abusing offenders. Nonetheless, the information should provide both food for thought and a reminder that the criminal justice system is, after all, a system.

In 2006, Texas leaders took notice of the 300 percent jump in its prison population from 1985-2005. They examined the amount of money it was spending to build new prisons and their forecast to spend another \$523 million on prison cells in 2007. Texas projected that by 2012 the state would need approximately 17,000 more

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<sup>16</sup> Section 481.112(b), Texas Code.

<sup>17</sup> Kentucky Department of Corrections, Inmate Profile January 2005. Note that the types of drug offenses are not further delineated and include possession, trafficking, cannabis offenses, offenses involving anhydrous ammonia and others. Similarly, there is no further categorization of "property crimes" in this Inmate Profile.

<sup>18</sup> Pennsylvania Department of Corrections Annual Statistical Report, 2007. Offenses are not further categorized.

<sup>19</sup> Texas Department of Criminal Justice Fiscal Year 2008 Statistical Report.

beds – eight more prisons - at a cost of almost \$1 billion. These estimates did not take into account the \$40 million Texas was spending to operate each prison.<sup>20</sup>

Texas State Representative Jerry Madden, “a self-described conservative Republican” was taking over as the Chair of the House Committee on Corrections at the time of the dismal forecast. Representative Madden sought the help of both conservative and liberal think-tanks to identify alternatives to the prison-building forecast. He found that they agreed on a lot of approaches.<sup>21</sup> Evidence-based research convinced Texas lawmakers that policy choices made along the way effect the inmate population more than general population growth or the crime rate.

Some of the facts Texas lawmakers considered in determining the most effective approaches to use included:

- Between 1997 and 2006 the number of probation revocations increased 18 percent while there was a 3 percent decline in the total number of people on community supervision.<sup>22</sup>
- As of December 2006, the Texas Department of Criminal Justice reported that there was a 2,000 person waiting list for community-based substance abuse and mental health services, due to past funding reductions.
- It was found that had the parole risk level and crime severity guidelines been followed by the Parole Board, an additional 2,252 inmates might have been released in 2005.<sup>23</sup>

In response to the prison-building forecast and the evidence-based research it gathered from the consulting services of the Council of State Governments’ Justice Center<sup>24</sup>, the Texas Legislature acted quickly in 2007 to make the following policy changes to the Texas corrections system:

- Expanded prison substance abuse treatment, diversion programs for probationers, and re-entry transition for parolees including;
  - 800 new beds in a residential program for probationers with substance abuse needs,
  - 3,000 slots for outpatient treatment for probationers,
  - 1,400 new beds in intermediate sanction facilities to divert technical probation and parole violators from prison,
  - 300 new beds in half-way houses for parolees to facilitate transition to the community,
  - 1,500 new beds for an in-prison intensive substance abuse treatment program,
- Expanded drug courts and other specialty courts,
- Ordered the parole board to return to an earlier percentage (31 percent) of eligible inmates being granted parole,
- Required the Department of Criminal Justice to create a comprehensive re-entry plan for inmates leaving correctional facilities utilizing such tools as;
  - Needs assessments,
  - Transition programs, and
  - Multi-agency Reentry Task Force to identify gaps in services and provide coordination among providers.

Additionally, the Legislature established an Oversight Committee to monitor the implementation of the new measures and to evaluate their impact on the state prison population. Policymakers also authorized bond funding for construction of 3 new prisons, but construction can only proceed if the new policies and programs are not implemented effectively and the Legislative Budget Board deems the prison construction necessary.<sup>25</sup>

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<sup>20</sup> One in 100: Behind Bars in America 2008, The Pew Center on the States, Public Safety Performance Project, [www.pewcenteronthestates.org](http://www.pewcenteronthestates.org); Changing Direction: A Bipartisan Team Paves a New Path for Sentencing and Corrections in Texas, Public Safety Performance Project, Expert Q & A, January 2008, [www.pewpublicsafety.org](http://www.pewpublicsafety.org).

<sup>21</sup> States Seek Less Costly Substitutes for Prison, The Washington Post, July 13, 2009.

<sup>22</sup> Justice Reinvestment State Brief: Texas, Justice Center, Council of State Governments, [www.justicecenter.csg.org](http://www.justicecenter.csg.org).

<sup>23</sup> Ibid.

<sup>24</sup> The Council of State Governments’ Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government.

<sup>25</sup> Justice Reinvestment State Brief: Texas, Justice Center, Council of State Governments, [www.justicecenter.csg.org](http://www.justicecenter.csg.org), see also The Fiscal Crisis in Corrections: Rethinking Policies and Practices, Vera Institute of Justice, 2009, [www.vera.org](http://www.vera.org).

The policy changes implemented in Texas seem to have reduced prison admissions.<sup>26</sup> From January 2007 to December 2008, the prison population only increased by 529 inmates, a tenth of what was expected.<sup>27</sup> By early 2008, projections by the Legislative Budget Board showed that through 2013 prison admissions will be at a flat line.<sup>28</sup> When Texas officials testified before a House Appropriations Subcommittee in Washington, D.C. in April 2009, they reported a 25 percent decrease in parole revocations since implementing the system-wide changes.<sup>29</sup>

During the same time period, Kentucky leaders found themselves presiding over a prison population that led the country in growth rate. As a result, Kentucky began implementing changes that were sometimes dramatic and politically risky. Faced with a prison population that had increased 81 percent - more than double the national growth rate of 39 percent - between 1995 and 2007 - and a more than \$1 billion budget deficit, Kentucky leaders granted early release. Approximately 1,800 prisoners were released including some convicted of violent crimes.<sup>30</sup> This action alone, taken in 2008, was expected to save a projected \$30 million over two years. In addition, the Legislature created two new full-time Parole Board slots, better applied electronic monitoring for certain parolees, and expanded inmate eligibility for the “home incarceration” program.<sup>31</sup>

Despite only holding abbreviated thirty-day Legislative Sessions in odd-numbered years, the 2009 Kentucky Legislature created a secure felony drug court diversion program with intense substance abuse recovery programs and aftercare referrals<sup>32</sup> and enhanced “earned time” credits for inmates who complete education and substance abuse treatment programs while serving their time.<sup>33</sup>

Stating that “better preparing inmates to re-enter their communities has critical public safety, fiscal and social impacts” the Kentucky governor appointed a task force this year to look into ways to reduce recidivism.<sup>34</sup> The state has a “patchwork” of re-entry programs but no unified plan.<sup>35</sup>

The Kentucky Legislature passed a Joint Resolution during the 2008 Session directing that an interim joint subcommittee study and recommend changes to the Kentucky Penal Code, if needed.<sup>36</sup> Since then the subcommittee has been directed to have a draft of its findings to the Legislative Research Commission by December 1, 2009. The minutes of the June 11, 2009 meeting of the joint subcommittee indicate a plan exists to have a bill draft prepared for consideration during the 2010 Legislative Session.<sup>37</sup>

Meanwhile the Governor of Kentucky appointed a task force led by the Secretary of the Justice and Public Safety Cabinet with the goal of developing ways to better control the cost of the system while ensuring public safety and appropriate punishment of offenders. The goal and the sheer volume of the subject matter led to a wide discussion of ideas. Among those ideas were these recommendations, presented to the Governor in December 2008, specifically related to drug offenses:

- Allow expungement of records for low-level drug offenses where the offender completes an authorized treatment program. The purpose of the recommendation was to “provide an incentive for offenders to remove themselves from drug usage.”

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<sup>26</sup> Changing Direction: A Bipartisan Team Paves a New Path for Sentencing and Corrections in Texas, Public Safety Performance Project, Expert Q & A, January 2008, [www.pewpublicsafety.org](http://www.pewpublicsafety.org).

<sup>27</sup> Assessing the Impact of the 2007 Justice Reinvestment Initiative, Council of State Governments, Justice Center, April 2009. [www.justicecenter.csg.org](http://www.justicecenter.csg.org).

<sup>28</sup> One in 100: Behind Bars in America 2008, The Pew Center on the States, Public Safety Performance Project, [www.pewcenteronthestates.org](http://www.pewcenteronthestates.org).

<sup>29</sup> New York Times editorial, Shrinking the Prison Population, May 11, 2009.

<sup>30</sup> State of the States 2009, The Pew Center on the States, [www.stateline.org](http://www.stateline.org).

<sup>31</sup> Ibid; see also Press Release, Commonwealth of Kentucky, Justice and Public Safety Cabinet, April 23, 2008; The State of Sentencing 2008, The Sentencing Project, February 2009, [www.sentencingproject.org](http://www.sentencingproject.org).

<sup>32</sup> Enrolled SB 4, Kentucky Regular Session 2009.

<sup>33</sup> Kentucky Governor says jail overcrowding is a serious economic concern, USA Today, June 8, 2009.

<sup>34</sup> Reentry Policy Council, Spotlight Announcement August 19, 2009 <http://reentrypolicy.org>.

<sup>35</sup> Lowering the Prison Return Rate, Lexington Herald-Leader, May 17, 2009, [www.kentucky.com](http://www.kentucky.com).

<sup>36</sup> SJR 80 states in part: “WHEREAS, the General Assembly believes that the (resulting) prison and jail overcrowding and uneven penalty scheme presently contained in the code is in need of updating and change;”. The Code is over 35 years old.

<sup>37</sup> Kentucky General Assembly, 2009 Interim Legislative Record, Vol. 20, No. 6, June 2009.



- Direct money seized as a result of a drug offense to court-ordered drug programs.
- Reclassify possession of small amounts of controlled substances for personal use as misdemeanors for first and second offenses within five years. Require drug treatment. For a third (felony) offense, require in-patient treatment as a condition of probation, if granted. This recommendation requires an infrastructure of treatment options to be in place.
- Reclassify possession of less than a gram of cocaine to a misdemeanor.<sup>38</sup>

Arizona is a “Truth in Sentencing” state which, like Florida, requires that both violent and non-violent offenders complete 85 percent of their sentence before becoming eligible for release. Between 1995 and 2005 Arizona’s prison population grew by 52 percent and according to the FBI 2005 Index Crime Rate Report Arizona ranked first in the nation. Prison expenses were consuming approximately 9 percent of general revenue. Probation revocations for condition violations accounted for 31 percent of all prison admissions and 42 percent of prisoners released from Arizona prisons in the 1990’s were reincarcerated within 3 years. Projections indicated that if this trend continued Arizona would need to build 20,000 new prison beds by 2017. Arizona leaders sought scientific data as a basis for making changes and as a result of their research they found:

- Arizona was spending an estimated \$100 million per year to send more than 4,000 people to prison for violating conditions of their probation.
- Of those admitted to prison for failing on probation supervision, 79 percent were identified as property or drug offenders, and drug or alcohol use was a factor in 45 percent of their revocations.
- Approximately half of those whose probation was revoked, chose to be revoked to avoid paying restitution, attending treatment and remaining in the community.<sup>39</sup>

In 2008, in response to what it had learned, the Arizona Legislature passed a law that allowed a court to reduce a probationer’s term of probation by up to 20 out of 30 days upon the recommendation of the probation officer. The probationer must be current on all restitution, fines and cost payments, have no new arrests, and be program compliant.<sup>40</sup> This reform has drawn the praise of at least one chief probation officer in the Phoenix area, Barbara Broderick, who said that the earned time credits for probationers offered her a “carrot and stick” approach that previously had lacked the carrot. “What I didn’t have,” she told Stateline.org, “is the option to say, ‘Work with me. Lead a law-abiding life. Do the things the court has ordered.’”<sup>41</sup> It is expected that Arizona will save \$9.1 million and 440 beds each year by making this single revision. An additional benefit is that probation officers can concentrate resources on the probationers who pose more of a threat to public safety.<sup>42</sup>

Pennsylvania, like Texas, employed the technical assistance and consulting services of the Council of State Governments’ Justice Council. The policy options given to Pennsylvania focused on increased use of diversion programs, created a gain-time credit for successfully completing educational and vocational programs and reduced parole violations by expanding intermediate sanction facilities. These policy changes along with other prison reforms over the last several years is an attempt to avoid an 11,000 prison bed shortfall by 2011 (with a reported \$2 billion general revenue shortfall in 2009).

Former District Attorney, Senator Stewart Greenleaf of Pennsylvania was the chair of the Senate Judiciary Committee when, in the summer of 2007, lawmakers convened a rare joint hearing of Senate and House Judiciary Committees to discuss the issue. Senator Greenleaf described the situation: “In 1980 we had a few thousand people in our penitentiaries. Today we have nearly 48,000 inmates, a 450 percent increase. Over that same time, Pennsylvania’s population increased only 3.5 percent.... Between now and 2012 we’re going to have to build penitentiaries at \$200 million each, with another \$50 million to operate them. And if we don’t do anything else, we’ll have to build a penitentiary every year at those costs for the foreseeable future.”<sup>43</sup>

<sup>38</sup> Criminal Justice Reform, Report Presented to the Governor of Kentucky, December 1, 2008. <http://www.justice.ky.gov>.

<sup>39</sup> Reducing Crime & Generating Savings: Options for Arizona Policymakers, February 2008, Justice Center, The Council of State Governments, [www.justicecenter.csg.org](http://www.justicecenter.csg.org).

<sup>40</sup> Arizona SB 1476 (2008), Section 13-924, Arizona Revised Statutes.

<sup>41</sup> State of the States 2009, The Pew Center on the States, [www.stateline.org](http://www.stateline.org).

<sup>42</sup> Reducing Crime & Generating Savings: Options for Arizona Policymakers, February 2008, Justice Center, The Council of State Governments, [www.justicecenter.csg.org](http://www.justicecenter.csg.org).

<sup>43</sup> Crime Costs and the State of Corrections: March 2009, National Conference of State Legislatures, [www.ncsl.org](http://www.ncsl.org).



Pennsylvania had already passed one promising but underutilized program in 2004 called State Intermediate Punishment (SIP). The purpose of SIP was to target non-violent addicted offenders for treatment. Participation in the program required the agreement of the prosecutor, defendant and court. The court then referred the defendant to the Department of Corrections for a comprehensive assessment prior to sentencing. A SIP inmate went through a 4-phase program: at least 4 months' therapeutic community (TC) treatment program in the prison, at least 2 months' community-based TC treatment program, a minimum of 6 months' in a community corrections center or an approved transitional residence, and department-supervised reintegration into the community for the balance of the 24 month program.<sup>44</sup>

SIP participants were followed in a scientific study comparing them to a similar control group, for a five-year period of time. The effects of prison TC treatment varied depending upon the outcome examined. The first twelve months after release from prison is a critical time and shows a high failure rate for drug relapse. However, it was found that TC treatment reduced recidivism by nearly 10 percent, compared to similar inmates not receiving such treatment. Treatment in a therapeutic community significantly lowered recidivism among SIP participants, but not necessarily drug relapse. Offenders who had jobs upon completing their sentences showed the lowest rate of both relapse and recidivism.<sup>45</sup>

As of September 2008 there had been 242 SIP graduates, there were 858 offenders in the program, the program had an 11 percent failure rate (offenders dismissed from the program), and SIP was saving Pennsylvania \$6,101 per offender.<sup>46</sup>

Although SIP was quite successful, the department was only getting about 23 percent of the referrals it expected based upon offender eligibility data.<sup>47</sup> The department learned that it had to educate the judiciary and other principals in the criminal justice system about the program's existence and success – in other words, for SIP to really succeed, the department needed the “buy-in” of the prosecutors, defense attorneys, and judges.

## **Conclusion**

While no two states are quite the same in their sentencing and penalty structures, drug laws, parole processes, gain-time laws, program availability, political climate, or prison population growth the policy debates seem to be the same. This overview of strategies for managing the growing prison population in other states is by no means exhaustive but does shed some light on the strategies Florida may want to consider. This briefing document provides a representative sample of a broad spectrum of ideas that address the criminal justice system's subsystems of sentencing and corrections. By considering other states' ideas including diversion programs, substance abuse treatment components, recidivism reduction through availability of programming and re-entry planning, options for better managing parole and probation caseloads and violations as well as the potential value in the debate and discussion of these ideas, we prepare ourselves for our own policy debates.

In the last fifteen years Florida has refocused its efforts on public safety, avoided the early release of inmates and has kept pace with the demand for new prison beds. However, with the economic challenges of today the prison growth rate is becoming more and more fiscally burdensome. In 2008 and 2009, the Florida Legislature passed laws designed to slow the rate of admissions for low-level offenders such as offenders driving on suspended driver's licenses. If Florida wants to continue to reduce prison admissions by reducing recidivism and diverting non-violent offenders from prison, then more systemic policy changes are needed. Learning from other states will be vital to finding the optimal strategy for Florida.

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<sup>44</sup> SIP 2009 Performance Report, Pennsylvania Department of Corrections, January 2009.

<sup>45</sup> Research in Review, Pennsylvania Department of Corrections, July 2, 2009.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.