

South Dakota's 2013 Criminal Justice Initiative

Legislation to Improve Public Safety, Hold Offenders More Accountable, and Reduce Corrections Spending

Overview

Facing continued growth of its prison system, South Dakota enacted comprehensive reforms to the state's sentencing and corrections system. A bipartisan, interbranch group of state officials, the Criminal Justice Initiative Work Group—which received intensive technical assistance from The Pew Charitable Trusts and its partners—developed the reforms. The comprehensive legislation, Senate Bill 70, refocuses prison space on violent and career criminals, improves the parole and probation system and victim services, and reduces recidivism with particular emphasis on substance-abusing offenders.

Highlights

Problem: In 1977, South Dakota had 546 prison inmates; in 2013, it has more than 3,600, and the prison population was projected to grow 25 percent through 2022. This would have necessitated two new prisons and increased operating expenses at a total cost of \$224 million. Between 2001 and 2011, South Dakota's imprisonment rate was rising faster than the national average, and its crime rate was falling much more slowly.¹ During the same period, spending on corrections outpaced increases in all other major areas except Medicaid.²

Findings: The work group's comprehensive review of South Dakota's criminal justice data, programs, practices, and policies found that nonviolent offenders made up 81 percent of prison admissions and 61 percent of the inmate population. In addition, parole violators occupied 1 in 4 prison beds, and more than 4 in 10 inmates were returning to prison within three years of release.³

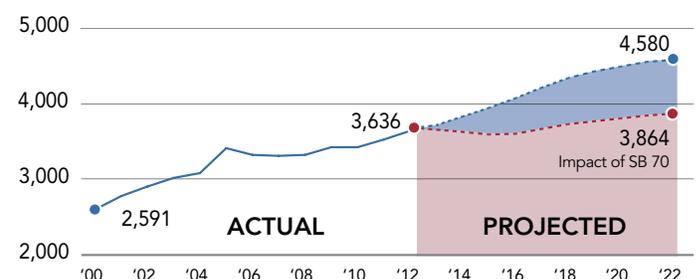
Reforms: The work group developed policy recommendations to strengthen supervision and interventions, focus prison space on violent and career criminals, and ensure the quality and sustainability of reforms. Legislation advancing

the recommendations—SB 70, the Public Safety Improvement Act—passed with overwhelming bipartisan support and was signed into law by Governor Dennis Daugaard on Feb. 6, 2013.

Impact: SB 70 is projected to reduce anticipated prison growth in South Dakota by 716 beds, avert the construction of two prisons, and save state taxpayers \$207 million in construction and operating costs through 2022.⁴ Legislation also redirects \$8 million from the current budget to programs and policies proven to reduce recidivism and improve offender accountability. An ongoing investment in these programs of \$4.9 million annually is expected.

Projected Prison Growth Averted, Millions Saved

Figure 1: South Dakota Prison Population and Projections, 2000-2022



Source: South Dakota Department of Corrections (historical data); The Pew Charitable Trusts (projections)

Background

Between 1977 and 2011, the imprisonment rate in South Dakota grew from 76 inmates per 100,000 residents to 426. The rate is the highest among the state's neighbors—Iowa, Minnesota, Montana, Nebraska, North Dakota, and Wyoming—and more than twice those of North Dakota and Minnesota.⁵

A substantial cost accompanied this growth. In fiscal 2011, the state's corrections budget was more than \$100 million, up from \$26 million in fiscal 1991.⁶

Yet, this increase in prison population and spending had not provided South Dakota taxpayers with commensurate public safety returns. From 2001 to 2011, 16 states reduced both their imprisonment rates and crime rates. South Dakota was not one of them. Nationally, the imprisonment rate rose just 2 percent during that period while crime declined 21 percent. In South Dakota, however, the imprisonment rate rose 15 percent and crime dropped just 11 percent.⁷

“

We have been putting a lot of people in prison ... but we have now recognized that we haven't changed behaviors of those prisoners. Most of them get out of prison eventually and a very high proportion goes back, because the main change that took place in prison is that they became better criminals.”

— Sen. Craig Tieszen, floor testimony, Jan. 24, 2013

In addition, a 2011 study reported that the state's recidivism rate was approximately 45 percent; more than 4 in 10 exiting inmates were returning to prison within three years.⁸

Under current policies, South Dakota's prison population was projected to grow 25 percent over 10 years, reaching 4,580 inmates in 2022. The female inmate population would have reached capacity by 2015, and the male population would have exceeded 95 percent capacity by 2019. State officials estimated the increases would require the construction and operation of two new prisons at a cost to taxpayers of \$224 million.

The South Dakota Criminal Justice Initiative

Seeking to improve public safety and contain prison costs, Governor Dennis Daugaard, Chief Justice David Gilbertson, Senate Majority Leader Russell Olson, and House Majority Leader David Lust established the Criminal Justice Initiative Work Group in 2012. The 18-member, bipartisan work group included representatives from the executive, legislative, and judicial branches, as well as law enforcement, substance abuse and mental health treatment providers, prosecutors, and defense attorneys. (See page 10 for a list of members.)

In the summer of 2012, the work group began a five-month process to analyze South Dakota's sentencing and corrections data; discuss criminal justice programs, policies, and practices; examine options proven to reduce recidivism; and issue research-based, fiscally sound policy recommendations to improve public safety, hold offenders more accountable, and reduce spending.

The data-driven effort was supplemented by extensive outreach. Starting in early 2012, staff conducted more than 36 meetings reaching more than 400 stakeholders statewide. Additionally, three advisory groups were convened to inform the work group's process:

- The Council of Advisors reviewed and provided feedback on the key findings and recommendations. (See page 10 for a list of members.)
- The work group's Native American Subcommittee analyzed data and provided specific recommendations and feedback regarding Native Americans and the criminal justice system in the state.
- A victim, survivor, and advocate round table was held to provide policy ideas and key priorities from the victim perspective.

These outreach efforts brought many perspectives to major data and system findings and helped develop and inform specific policy recommendations.

The Pew Charitable Trusts and its partner, the Crime and Justice Institute at Community Resources for Justice, provided technical assistance to the work group in analyzing current sentencing and corrections policies and generating data-driven policy options.

Key Findings

After a comprehensive review of state data, the work group identified several critical trends and a handful of policies that were primarily responsible for the makeup and growth of South Dakota's prison population.

High proportion of inmates serving time for nonviolent crimes

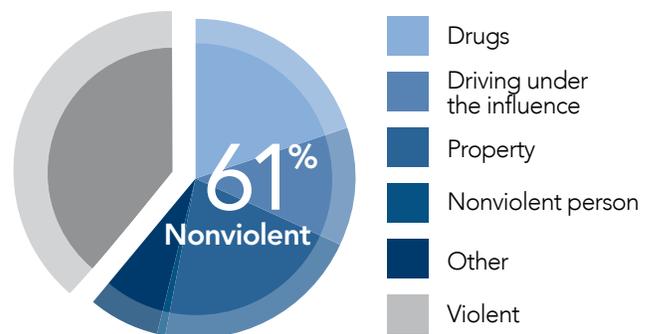
State data showed that nonviolent offenders, particularly those convicted of drug- and alcohol-related crimes, made up a large and increasing share of prison sentences. In 2012, 81 percent of newly admitted prisoners were nonviolent offenders and 53 percent were drug and alcohol offenders, up from 78 and 41 percent, respectively, in 2000.

The result was a high proportion of offenders in prison for nonviolent crimes:

- 61 percent of offenders are in prison for nonviolent offenses.
- 31 percent—28 percent of men and 55 percent of women—are in prison for drug- or alcohol-related crimes.
- Of those in prison for drug offenses, more than two-thirds (68 percent) were convicted of possession, as opposed to distribution or manufacturing.

Nonviolent Offenders Are More Than 60 Percent of Prisoners

Figure 2: South Dakota Prison Population by Offense Type, 2012



Source: South Dakota Department of Corrections; analysis by The Pew Charitable Trusts

- More South Dakota inmates were serving time for drug possession than any other offense. Nonviolent crimes accounted for six of the top 10 offenses (Figure 3).

Increasing number of inmates are parole violators

The work group found that many inmates were in prison because they had violated terms of their probation or parole supervision. In 2012, about 38 percent of the 2,782 offenders admitted to prison were sentenced for a new conviction; the remaining 62 percent was sentenced for a violation

of parole (768) or probation (257), or as a short-term admission, detainee, or relapser (699).

The work group found that the number of offenders coming into prison due to parole violations increased significantly between 2000 and 2012. In 2000, 270 offenders entered prison this way; overall, parole violators made up 18 percent of the population. By 2012 those figures had risen to 768 and 25 percent, respectively. Parole violators released from prison in 2012 had spent, on average, 1.4 years in prison for their violations.

Nonviolent Crimes Top Inmate Offense List

Figure 3: Top 10 South Dakota Inmate Offenses, 2012

1	Drug possession	12%
2	Grand theft	9%
3	Aggravated assault	7%
4	Driving under the influence, 3rd offense	7%
5	Sexual contact with a child	6%
6	Burglary, 3rd degree	5%
7	Driving under the influence, 4th offense	3%
8	Forgery	3%
9	Robbery, 1st degree	3%
10	Rape, 1st degree	3%

Notes: Bolded offenses are nonviolent. Percentages indicate share of standing prison population, July 1, 2012.

Source: South Dakota Department of Corrections; analysis by The Pew Charitable Trusts

The work group took a close look at readmitted parolees and parole violators because of their substantial contribution to prison growth. About two-thirds of parolees who reentered prison did so as a parole violator; the other third were convicted of new crimes. Of all offenders on parole, 42 percent had their parole revoked and were sent back to prison within three years. The average time offenders were on parole before revocation was 10 months.⁹

Work Group Report

The work group set out to craft a policy package that would help South Dakota realize more offender accountability and public safety at less taxpayer expense. It issued a report in November 2012 with policy recommendations to strengthen supervision and intervention, focus prison space on violent and career criminals, and ensure the quality and sustainability of reforms.¹⁰

The report was translated into legislation and introduced as SB 70, the Public Safety Improvement Act, by a bipartisan coalition of 70 co-sponsors from both chambers. The reforms are projected to contain prison growth and free up resources for reinvestment into evidence-based programs that reduce recidivism and decrease the need for prison expenditures.



Gov. Dennis Daugaard signs the Public Safety Improvement Act into law Feb. 6, 2013. Photo by Chad Coppess, South Dakota Department of Tourism

The Public Safety Improvement Act

The South Dakota Legislature overwhelmingly passed SB 70 by votes of 31-2 in the Senate and 63-7 in the House. Gov. Daugaard signed it into law Feb. 6, 2013.

The act is expected to avert the need for 716 prison beds, saving \$207 million in construction and operating expenses over the next 10 years. This includes avoiding the construction of two new prisons—a facility for women in 2015 and a facility for men in 2020.

“

Our state faces a clear choice. Down one path, we can continue to build prisons and allow corrections to consume an ever-increasing proportion of taxpayers' dollars. The alternative is to follow the path blazed by almost two dozen states across the country. A path that makes us safer and one that will save our state millions of dollars.”

— Gov. Dennis Daugaard, State of the State address, Jan. 8, 2013

State Makes Comprehensive Investments in Effective Public Safety Strategies

Table 1: Reinvestment in the 2013 South Dakota Public Safety Improvement Act

Time	Reinvestment	
\$8 million Year 1	\$177,000 for training and implementation of evidenced-based practices	
	\$438,000 for pilots, which are based on the Hawaii Opportunity Probation with Enforcement, or HOPE, approach	
	\$250,000 for pilot supervision programs involving the parole system and Native American tribes	
	\$250,000 for the Department of Corrections to establish a housing pilot to improve outcomes for offenders released to parole	
	\$800,000 for a statewide automated victim information and notification, or SAVIN, system	
	\$300,000 for a financial accountability system for offenders	
	\$1 million to offset potential jail costs related to probation violations	
	\$4.9 million per year Years 2-10	\$725,000 into drug and DUI courts to expand these options to areas across the state with the greatest need
		\$3.2 million in expanded substance abuse, mental health, and cognitive-based treatment services for probation and parole populations
		\$825,000 for probation and parole staff and evidenced-based practices training
\$100,000 for SAVIN system		
Total over 10 years: \$207 million saved and \$53 million reinvested		

Source: Office of the Governor of South Dakota

The Legislature reinvested \$8 million from the fiscal 2013 and 2014 budgets into programs and policies designed to reduce recidivism and hold offenders more accountable, and is expected to continue funding these initiatives at \$4.9 million annually.

More specifically, the law is structured around three primary goals:

1 Strengthen offender supervision and accountability

The law expands the tools and options available to judges, court service officers, the parole board, and parole agents to change offender behavior and reduce recidivism. Specifically, the act:

- Requires the state Supreme Court to establish formal structures for drug and DUI courts, including creating eligibility criteria and performance measures.
- Requires judges to identify military veterans and their potential treatment needs.
- Creates two pilot probation programs based on the Hawaii Opportunity Probation with Enforcement, or HOPE, model to deter crime through frequent drug testing combined with swift and certain sanctions.¹¹
- Authorizes earned discharge from supervision of offenders who follow the conditions of probation and parole, providing an incentive for compliance and allowing probation and parole officers to focus on higher-risk offenders.
- Requires the use of evidence-based practices, including graduated sanctions, to improve probation and parole and reduce recidivism, as well as regular training for judges, parole board members, and probation and parole officers.
- Requires the court system and the departments of Corrections and Social Services to focus treatment and intervention programs for probation and parole populations on recidivism reduction and to report on outcomes.
- Authorizes the Department of Corrections, with the assistance of the Department of Tribal Relations, to create parole supervision pilot programs tailored to tribal communities.
- Provides funding for the Department of Corrections to establish a pilot transitional housing program for offenders released to parole.
- Requires the Office of the Attorney General to create a statewide automated victim information and notification, or SAVIN, system.
- Requires the South Dakota Unified Judicial System to administer a financial accountability system to improve the collection of court-ordered financial obligations by offenders who are no longer on probation or parole or have otherwise met all other conditions of their sentence.

“We have come to a fork in the road where we have to decide whether we will continue to be ‘tough on crime’ in the same manner as we have in the past with ever-increasing rates of incarceration or be fiscal conservatives. As other states have found, we cannot be both.”

— Chief Justice David Gilbertson,
State of the Judiciary address, Jan. 9, 2013

2 Focus prison space on violent and career criminals

The law reflects a consensus that serious offenders deserve long prison sentences but that many nonviolent offenders can serve shorter periods of incarceration or be effectively supervised in the community without jeopardizing public safety. This tiered approach is cost-effective and helps ensure that prison beds are focused on more serious offenders. Specifically, the act:

- Creates a tiered controlled-substance statute to differentiate between drug users and dealers; increases the available penalty for the most serious drug manufacturers, distributors, and dispensers to a Class 3 felony (15-year maximum); and reduces the punishment for drug possession to a Class 5 felony (five-year maximum). Previously, dealers and users were both subject to a Class 4 felony punishment, punishable by up to 10 years in prison.

- Creates more targeted punishments for certain property crimes, including increasing penalties for the most serious grand theft and reducing and subdividing sentences for grand theft of less than \$5,000 in value and for a third-degree burglary, burglary of an unoccupied, uninhabitable structure:

- Aggravated grand theft (of more than \$500,000 in value) increases from a Class 3 to a Class 2 felony (25-year maximum).

- Theft of \$2,500 to \$5,000 decreases to a Class 5 felony.

- Theft of \$1,000 to \$2,500 decreases to a Class 6 felony (two-year maximum).

- Third-degree burglary becomes a Class 5 felony.

- Creates an additional penalty of five years (for those convicted six to nine times) or 10 years (for those convicted 10 or more times) of additional supervision for DUI offenses. Allows prosecutors more options for punishing fourth-time offenders by increasing the amount of time they can serve in local jails.
- Creates presumptive probation for nonviolent Class 5 and 6 felonies, establishing probation supervision as the appropriate punishment unless a court finds and states on the record that aggravating circumstances pose a significant risk to the public.

3 Ensure the quality and sustainability of reforms

To help policymakers and corrections officials assess and manage the overall performance of the system, the new law creates policies to ensure that the reforms achieve the impact anticipated. Specifically, the act:

“ South Dakotans expect a criminal justice system that protects the public and puts violent and career criminals in prison. But the state spends a disproportionate share of our limited funds imprisoning nonviolent offenders for minor property crimes or crimes committed as a result of alcohol or drug addictions.”

— **Mark Meierhenry**, former attorney general, and **Judith Meierhenry**, former Supreme Court justice, letter to the editor, *Argus Leader*, Dec. 6, 2012

- Creates an oversight council, which will sunset after five years, charged with monitoring and evaluating implementation of the reforms.
- Requires the Department of Corrections, Unified Judicial System, and Department of Social Services to develop performance and outcome measures and provide semiannual reports to the council.
- Requires the Bureau of Finance and Management or the Legislative Research Council to calculate a 10-year fiscal impact statement for any bill, amendment, or ballot initiative that may affect state prison or county jail populations.
- Creates a reinvestment funding structure for counties that jail additional offenders locally.
- Streamlines criminal justice proceedings by limiting preliminary hearings to felony cases.

The Justice Reinvestment Initiative is supported by The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance. Intensive technical assistance to the states is provided by Pew, the Council of State Governments Justice Center, the Vera Institute of Justice, and other partners.

Full text of legislation online at

<http://legis.state.sd.us/sessions/2013/Bill.aspx?File=SB70ENR.htm>.

Working group full report online at

http://www.pewstates.org/uploadedFiles/PCS_Assets/2013/CJI_report_Nov_2012.pdf.

BROAD SUPPORT

Among the South Dakota groups that endorsed the legislation were:

Police Chiefs' Association

Sheriffs' Association

Association of County Commissioners

State's Attorneys Association

State Bar of South Dakota

Network Against Family Violence and Sexual Assault

Council of Substance Abuse Directors

Council of Mental Health Centers

“ Senate Bill 70 ... is an example of the type of legislation many of us thought we would be doing routinely. It's the kind of thing that enticed many of us to run for the Legislature, and that is transformational, profound change in the way something is done.”

— House Majority Leader David Lust,
floor testimony, Jan. 31, 2013

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Endnotes

¹ Crime data are from the FBI's Uniform Crime Reports (<http://ucrdatatool.gov>). Incarceration data come from the U.S. Justice Department, Bureau of Justice Statistics' Prisoner Series (<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=40>).

² Department of Justice, Bureau of Justice Statistics, Prisoner Series. National Association of State Budget Officers, or NASBO, State Expenditure Reports, 1992 and 2012.

³ Unless otherwise cited, the analyses in this report were conducted for the Criminal Justice Initiative Working Group by Pew using data provided by the South Dakota Department of Corrections.

⁴ The averted cost savings include the avoidance of a \$36 million women's facility being built in 2015 and a \$90 million men's facility being built in 2020.

⁵ Department of Justice, Bureau of Justice Statistics, Prisoner Series.

⁶ NASBO State Expenditure Reports, 1992 and 2012. Adjusted to 2011 dollars, the 1991 figure is \$43 million.

⁷ Crime data are from the FBI's Uniform Crime Reports. Incarceration data come from the Bureau of Justice Statistics' Prisoner Series. The 16 states are CA, CT, DE, HI, MA, MD, MI, MS, MT, NJ, NV, NY, OK, SC, TX, and WI.

⁸ Pew Center on the States, "State of Recidivism: The Revolving Door of America's Prisons," Washington: The Pew Charitable Trusts (April 2011).

⁹ The percentage returned to prison rises to 52 percent and the average length of time before return declines to eight months when admission as a detainee or relapser (offenders who return to prison for very short stays) is included.

¹⁰ 2012 South Dakota Criminal Justice Initiative Work Group Final Report. http://www.pewstates.org/uploadedFiles/PCS_Assets/2013/CJI_report_Nov_2012.pdf.

¹¹ More information about HOPE can be found at <http://www.pewstates.org/research/featured-collections/hawaiiis-hope-program-85899376461> and at <http://www.hopeprobation.org>.



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Leading on Public Safety

4 Governors Share Lessons Learned from Sentencing and Corrections Reform

After nearly four decades of explosive growth in prison populations and spending, more and more states are taking important steps to rein in the size and cost of their corrections systems.

When it comes to public safety, leadership matters. In the past seven years, more than a dozen governors have spearheaded research-based sentencing and corrections reforms that slow the growth of prison costs while reducing reoffense rates and keeping communities safer.

Known as “justice reinvestment,” this approach is rooted in research about what works in corrections reform and is tailored to each state’s unique challenges. The Pew Charitable Trusts recently spoke with four governors—Mike Beebe of Arkansas, Nathan Deal of Georgia, Neil Abercrombie of Hawaii, and Dennis Daugaard of South Dakota—about why they believe justice reinvestment is right for their states and about the challenges they overcame to achieve consensus and enact policies that provide a better public safety return on state corrections dollars.

GOVERNORS				
	Gov. Mike Beebe Arkansas	Gov. Nathan Deal Georgia	Gov. Neil Abercrombie Hawaii	Gov. Dennis Daugaard South Dakota

In this brief

- 2** What motivated you to tackle this difficult issue?
- 3** How did you achieve consensus across political parties and diverse stakeholders?
- 4** What were the major obstacles, and how did you get past them?
- 6** What part of your state’s reforms will have the biggest impact and why?
- 8** Do you see a shift in public attitudes toward crime and punishment in your state?
- 10** What advice do you have for other governors about taking on justice reinvestment?

Q What motivated you to tackle this difficult issue?

A GOV. DEAL: Several things. First, I come from a legal background, having been a prosecutor and juvenile court judge. So I was well-aware the problem was bigger than many people thought it was. Our Department of Corrections budget had gone from \$492 million in 1990 to over a billion a year, and at the end of 2007, 1 in 70 adults in Georgia was behind bars, compared to a national

average of 1 in 100. Despite the massive amount of money we were spending, our recidivism rates remained unchanged, so the problem clearly wasn't being fixed. It wasn't good fiscal policy, and it wasn't good public policy.

A GOV. ABERCROMBIE: When I was putting together my New Day in Hawaii plan, which was

Arkansas



At the end of 2010, Arkansas' prisons were at capacity, reflecting a doubling of the incarcerated population over the previous 20 years.

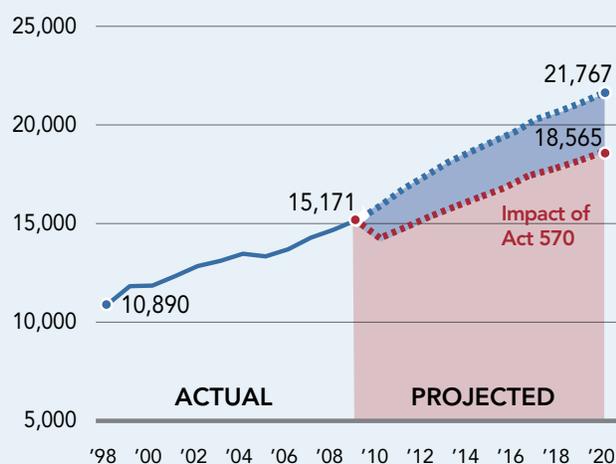
Annual corrections spending had topped \$353 million, consuming 8 percent of the general fund. Despite this hefty price tag and the growing number of inmates behind bars, Arkansas was not seeing a commensurate public safety return. Recidivism rates were stuck at more than 40 percent, and violent crime had not dropped as significantly as it had in other states.

Reluctant to raise taxes or cut other public services to pay for rising prison costs, the state formed a working group that spent a year studying criminal justice and sentencing data and developing a road map for change. The bipartisan group concluded that Arkansas was underutilizing probation, increasing sentences for nonviolent offenses, and delaying the transfer of inmates to parole. Acting on the group's recommendations, two legislators introduced an omnibus bill, the Public Safety Improvement Act (Act 570), that fortified community supervision, concentrated prison

space on violent and career criminals, and required data collection and performance measurement. The act is projected to save \$875 million in avoided prison construction and operating costs through 2020. It will also improve public safety by reinvesting a portion of the savings in community-based supervision, services, and strategies to reduce reoffending.

Act 570 projected to avert prison growth, save millions

Figure 1: Arkansas prison population and projections, 1998-2020



Source: JFA Institute (projections)

my platform as I ran for governor, this was actually a key element. The most vivid problem we confronted was that we had about one-third of our offenders incarcerated on the mainland. Not only was this hugely expensive, but a high percentage of these people were of Native Hawaiian ancestry, and I felt strongly that it was crucial to have them in Hawaii and in programs geared toward their reintegration into the community. When I saw what justice reinvestment could do, it blended perfectly with my goals for reorganizing and redirecting the prison and judicial systems.

Q How did you achieve consensus across political parties and diverse stakeholders?

A **GOV. DAUGAARD:** The process we used was absolutely essential to our success. We started by engaging a lot of stakeholder groups to ask questions, propose solutions, and discuss why we were incarcerating at a higher rate than neighboring states but not getting better public safety. Then we formed a work group, and we made sure everyone studied our system's data along with research about how other jurisdictions were handling nonviolent offenses. Forcing everyone to learn the facts helped people modify positions that might have been based strictly on personal experience.

A **GOV. DEAL:** The secret was creating the Special Council on Criminal Justice Reform. By allowing this group to bring together people from all different political leanings and all different points of view, we let them discuss recommendations before the actual introduction of legislation. So instead of waiting until a legislative session, when time gets very constrained, our council met over an entire year. And when recommendations were put forward, it took much of the pressure off the committee process and gave members of the General Assembly confidence that these ideas had been thoroughly discussed and vetted.

A **GOV. BEEBE:** The growth in the prison population in Arkansas, which had a direct correlation to our spending concerns, was certainly a motivating factor. But the data also suggest that if you ever want to rehabilitate someone, the best way to do it is after their first run-in with the law, before they've been exposed to incarceration. So we saw a lot of good reasons for investing more in community sanctions.

A **GOV. BEEBE:** We don't do public policy in a vacuum. With any proposal, we engage people on the front lines who have to execute the policy, and in this instance those folks were a vast and varied constituency, from police officers to mayors to prosecuting attorneys to sheriffs, judges, and public defenders. We also took our time. We did it over about a year and a half; we listened to everybody's concerns, and fortunately each constituency group approached it from the standpoint of being constructive.

“ The secret was creating the Special Council on Criminal Justice Reform. By allowing this group to bring together people from all different political leanings and all different points of view, we let them discuss recommendations before the actual introduction of legislation.”

— Gov. Nathan Deal, Georgia

Q What were the major obstacles and how did you get past them?

A GOV. ABERCROMBIE: The principal obstacle was whether the Legislature would agree that this investment would actually enhance community safety and would have positive consequences, not just in dollar terms but also in human terms. So we had to build trust. We did that by constantly emphasizing that this was a

data-driven process and that what we were proposing was built on a record established elsewhere. We also tried to avoid the ideological and partisan battles that can get you sidetracked.

A GOV. DAUGAARD: We're a heavily Republican state, and I'm sure there were some

Georgia



In fiscal 2010, Georgia spent more than \$1.1 billion on a prison system holding nearly 56,000 inmates, a population that had doubled over the previous 20 years. With 1 in 70 adults behind bars, Georgia had the fourth-highest incarceration rate in the country. Throughout the past decade, its three-year recidivism rate had remained unchanged at nearly 30 percent.

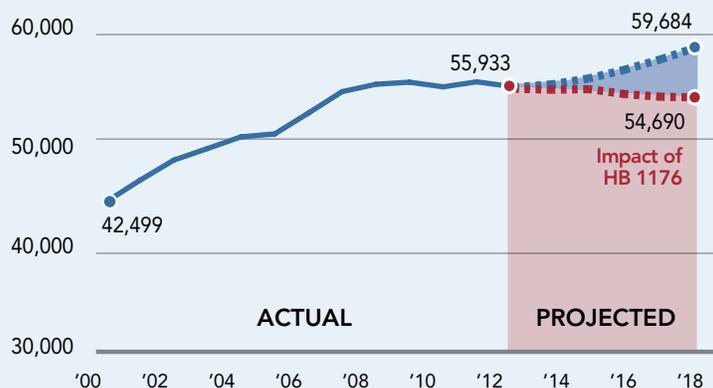
Seeking to protect public safety while controlling prison costs, the Georgia General Assembly created a bipartisan, interbranch panel to analyze the state's criminal justice and sentencing data. The panel found that drug and property offenders represented almost 60 percent of prison admissions, that

judges had few sentencing options other than prison, and that probation and parole agencies lacked the resources to effectively supervise offenders in the community.

In May 2012, Gov. Nathan Deal signed House Bill 1176, which passed unanimously in the Georgia General Assembly. The law focuses prison space on serious offenders, expands cost-effective sentencing options, and requires government agencies to report performance outcomes. Through the reforms, Georgia expects to cut recidivism and avoid spending \$264 million on new prison capacity over the next several years. Companion budget measures have reinvested \$17 million of that savings into programs to reduce reoffending.

HB 1176 projected to avert prison growth, save millions

Figure 2: Georgia prison population and projections, 2000-2018



Source: Georgia Department of Corrections (historical data); Applied Research Services Inc. (projections)

who worried that the Republicans would be afraid to look soft on crime. So from the beginning, we had to be careful to point out that this approach was a way to be smart—not soft—on crime. We also had to emphasize the fiscal side of it. And we stressed that we're still holding people accountable, that they're not being mollycoddled. They're just being held accountable in a more effective and responsible way.

A **GOV. BEEBE:** The last obstacles were primarily the prosecuting attorneys. They were the ones we had to ultimately convince at the eleventh hour that the legislation would improve public safety. And we did that. And you always take the politics into consideration. I was aided by the fact that I had credibility to begin with, and that helps you on any controversial issue. I built that up over the years. There were folks who said, "I don't know if I agree with you, but I trust you, and so I'm going to go along with you." So credibility allows you to accomplish this without being labeled "soft on crime." And when you get law enforcement engaged, it further enhances your ability to combat the label.

A **GOV. DEAL:** We always knew the allegation of being soft on crime was something too easily thrown out there as part of the discussion. The best way to overcome those objections was to look at the facts. And we felt the facts were very strong and allowed us to tell the public that what we had been doing was not achieving the results we wanted and that we thought there was a better way. We also knew we needed to have prosecutors who were willing to step up and say, "Let's deal with nonviolent offenders differently." That gave great credibility to the argument we were making.

“ We're a heavily Republican state, and I'm sure there were some who worried that the Republicans would be afraid to look soft on crime. So from the beginning, we had to be careful to point out that this approach was a way to be smart—not soft—on crime. We also had to emphasize the fiscal side of it. And we stressed that we're still holding people accountable, that they're not being mollycoddled. They're just being held accountable in a more effective and responsible way.”

— Gov. Dennis Daugaard, South Dakota

Q What part of your state's reforms will have the biggest impact and why?

A GOV. ABERCROMBIE: It's hard to break it down because this is a whole package. We are increasing community-based treatment programs, hiring staff to do risk assessment, supporting better reentry, providing more victim assistance

through restitution, and so forth. These offenders are coming back to our communities, and we believe that by committing people and resources through our justice reinvestment initiative, we will see positive dividends.

Hawaii



Hawaii experienced significant growth in its inmate population and corrections spending during the decade ending in fiscal 2010. Lacking space in its own prisons and jails, Hawaii was sending about one-third of its offenders to facilities in other states, at a cost of \$60 million a year.

Eager to reduce spending and reliance on mainland prisons, state leaders formed a bipartisan, interbranch working group and asked experts to identify inefficiencies and other problems in Hawaii's criminal justice system. The research uncovered unnecessary delays in Hawaii's pretrial process and found that programs designed to reduce recidivism were not targeting people most likely to reoffend. Armed with the data, the working group

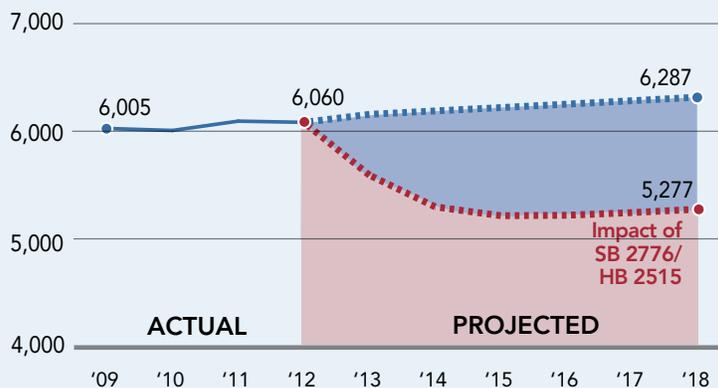
developed a policy framework to improve public safety, reduce recidivism, and hold offenders accountable. Legislators used the framework to develop two measures—House Bill 2515 and Senate Bill 2776, and both passed with bipartisan support.

The comprehensive reforms improve pretrial risk assessment, focus parole and probation resources on high-risk offenders, strengthen victim services, and provide appropriate sanctions for repeat felony drug offenders. The changes will allow Hawaii to bring back inmates housed in mainland prisons and save the state an estimated \$130 million over five years. Already \$3.4 million in anticipated savings has been reinvested in expanded community-based treatment programs and other strategies to reduce recidivism and increase public safety.

Legislation projected to avert prison growth, save millions

Figure 3: Hawaii prison population and projections, 2009-2018

Source: Hawaii Department of Public Safety (historical data); Council of State Governments Justice Center (projections)



A GOV. BEEBE: Sometimes the fear of punishment is worse than punishment itself. I think for the right offenders holding the possibility of incarceration over their heads without actually exposing them to prison may have a bigger impact on turning their lives around and may reduce the chance they'll commit other crimes. Also, we can always send them to prison later if our initial approach fails.

A GOV. DEAL: It's too early to say what the full impact will be, but we think one of the most important parts of it is the data collection and evidence-based practices, essentially making sure we're spending money where results are predictable and the best results will be achieved. We think this will make a big impact, along with ensuring we have an assessment of the effects of the reforms in order to sustain the effort and see if there are things we can build on.

A GOV. DAUGAARD: One thing we learned from our fact gathering was that a huge percentage of our newly incarcerated prisoners were not violent, but were nonviolent property crime or drug and alcohol offenders. Basically, these weren't people we were afraid of; these were people we were mad at. So we asked, "Is there a way other than incarceration to hold them accountable?" And that led us to presumptive probation or making sure judges look for an alternative sanction for certain nonviolent offenders. That is clearly the major reform that will have the biggest impact on population and costs.

“ Sometimes the fear of punishment is worse than punishment itself. I think for the right offenders holding the possibility of incarceration over their heads without actually exposing them to prison may have a bigger impact on turning their lives around and may reduce the chance they'll commit other crimes. Also, we can always send them to prison later if our initial approach fails.”

— Gov. Mike Beebe, Arkansas

Q Do you see a shift in public attitudes toward crime and punishment in your state and across the country?

A GOV. DEAL: I think there are some absolutes the public has not changed on, and those are they expect government to keep them safe and they expect law enforcement and the judicial system to protect them from violent offenders. What has

changed is a greater awareness that the attitude of “lock ‘em up and throw away the key” does not achieve that goal of keeping them safe and may in fact have produced a contrary result.

South Dakota



In 1977, South Dakota’s prisons held just a few hundred inmates. By mid-2012, the incarcerated population had ballooned by 500 percent—outpacing the national growth rate—to more than 3,600 inmates. Without reforms, projections indicated the prison population would grow by another 25 percent over the next decade, requiring the state to build two new correctional facilities costing taxpayers \$224 million in construction and operating expenses.

Searching for options, state leaders created a bipartisan working group to examine the state’s sentencing and corrections data and to propose reforms. The analysis revealed that 8 out of 10 prison admissions in 2012 were for nonviolent convictions and that offenders

in prison for drug possession outnumbered every other type of offense. It also found that parole violators had grown steadily as a share of the incarcerated population. In response, the South Dakota Legislature approved a set of reforms that focused prison space on violent and career criminals and emphasized probation as appropriate sanctions for some nonviolent offenders.

The Public Safety Improvement Act also established an oversight council and performance measures to ensure the quality and sustainability of reforms, and authorized reinvesting some funds saved by averting prison growth into proven recidivism-reduction strategies. The legislation, Senate Bill 70, was endorsed by the state associations of police chiefs, state’s attorneys, and sheriffs.

Projected prison growth levels off, saves millions following reforms

Figure 4: South Dakota prison population and projections, 2000-2022

Source: South Dakota Department of Corrections (historical data); The Pew Charitable Trusts (projections)



A **GOV. ABERCROMBIE:** Yes. People have seen that some of these “get tough” policies don’t necessarily end up being tough at all. They end up being a burden on the taxpayer and not accomplishing anything. So I think some of that has sunk into the public consciousness. Also, the public has become aware to a degree that much of what constitutes criminal activity is associated with drugs. And they wonder, “Are high-security incarceration facilities the best approach for addressing offenders with drug addiction?”

A **GOV. DAUGAARD:** When I was in the Legislature, we always had proposals to create a minimum mandatory sentence for this or that crime. I haven’t seen one of those in years, so there may be a shift away from that. I think that, especially in this state, people like to see themselves as tough on crime. But I think people are starting to see there are consequences to that, and that it is emotionally satisfying but not always intellectually sensible to lock someone up and throw away the key.

A **GOV. BEEBE:** It’s hard to say whether I see any national shifts. But the way we sold this was by confronting people with the fiscal reality of it. We recognize that there are really bad guys out there we need to keep locked up. But unless we raise taxes to build more prisons, we better figure out an alternative mechanism for nonviolent folks.

“ People have seen that some of these “get tough” policies don’t necessarily end up being tough at all. They end up being a burden on the taxpayer and not accomplishing anything. So I think some of that has sunk into the public consciousness. Also, the public has become aware to a degree that much of what constitutes criminal activity is associated with drugs. And they wonder, “Are high-security incarceration facilities the best approach for addressing offenders with drug addiction?”

— Gov. Neil Abercrombie, Hawaii

Q What advice do you have for other governors about taking on justice reinvestment?

A GOV. BEEBE: For this to be successful in other states, you need to have leadership with credibility. You've got to involve all the players; you've got to be able to sell the issue of the fiscal effects of continued prison growth, and you need to distinguish between those who should be in prison and those who can be handled with other sanctions. If the argument is made correctly, the voters will understand and support it.

A GOV. DAUGAARD: I would encourage them strongly to follow the process we followed. It's a governor's prerogative to unveil an initiative that the executive branch has developed in isolation, and that approach may be satisfying in the sense that it is that governor's initiative, it's the governor's legacy, and if it goes successfully through the legislative

process, it is the governor's victory. That's fine and good. But in the end, if you want a better product, you engage more stakeholders in the process; you educate them and yourself as well, and in the end, you will probably get better legislation than you might have offered by yourself.

A GOV. DEAL: Do it, and do it as soon as possible, because if you don't tackle the problem as quickly as you can, then it will continue to get bigger and bigger. And more people will be ensnared in the trap of incarceration that we know, in and of itself, does not necessarily change their course of conduct in the future. My advice would be to build a consensus on the direction you want to go, get the disparate points of view together, and move forward. Our experience shows it will prove to be the right thing to do.

A GOV. ABERCROMBIE: You have to be committed to it. There's an iron rule in politics: When you're explaining, you're losing. Make sure your data is correct, that's first. Don't go off on some generality that you can't back up. Stick with the facts. Have a positive narrative. Involve everybody. Focus on the overall goal, not just whether this is good for the prosecutors or a certain legislator. Then trust yourself that you're on the right track.

“

Do it, and do it as soon as possible, because if you don't tackle the problem as quickly as you can, then it will continue to get bigger and bigger. And more people will be ensnared in the trap of incarceration that we know, in and of itself, does not necessarily change their course of conduct in the future.”

— Gov. Nathan Deal, Georgia

Justice Reinvestment Initiative

Justice reinvestment is a data-driven approach to improve public safety, hold offenders accountable, and control corrections costs. The Justice Reinvestment Initiative is supported by The Pew Charitable Trusts and the U.S. Department of Justice, Bureau of Justice Assistance. Intensive technical assistance is provided to selected states each year by Pew, the Council of State Governments Justice Center, the Vera Institute of Justice, the Crime and Justice Institute, and other partners.

The Pew Charitable Trusts is driven by the power of knowledge to solve today's most challenging problems. Pew applies a rigorous, analytical approach to improve public policy, inform the public, and stimulate civic life.

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Public Opinion on Sentencing and Corrections Policy in America

2012 polling, consistent with 2010 research, indicates that voters are concerned first and foremost with keeping communities and people safe. Without question, voters want a strong public safety system where criminals are held accountable and there are consequences for illegal activities. They also believe that these goals can be reached while reducing the size and cost of the prison system.

A national public opinion survey conducted in January 2012, along with similar surveys in Georgia, Missouri, and Oregon, found those attitudes persist and revealed opinions on specific policy solutions.

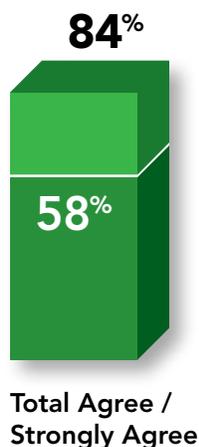
KEY TAKEAWAYS

1. American voters believe too many people are in prison and the nation spends too much on imprisonment.
2. Voters overwhelmingly support a variety of policy changes that shift non-violent offenders from prison to more effective, less expensive alternatives.
3. Support for sentencing and corrections reforms (including reduced prison terms) is strong across political parties, regions, age, gender, and racial/ethnic groups.

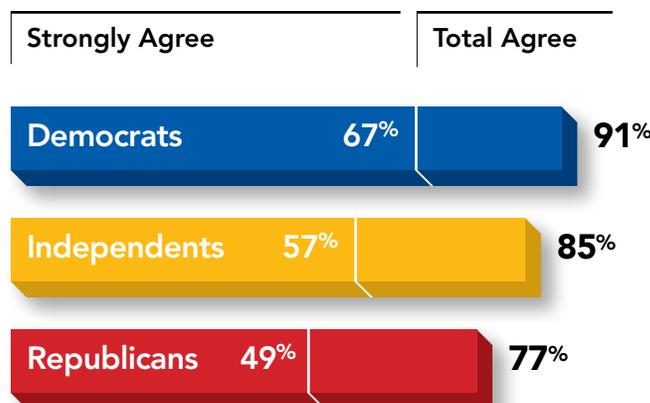
THE BOTTOM LINE...

“Some of the money that we are spending on locking up low-risk, non-violent inmates should be shifted to strengthening community corrections programs like probation and parole.”

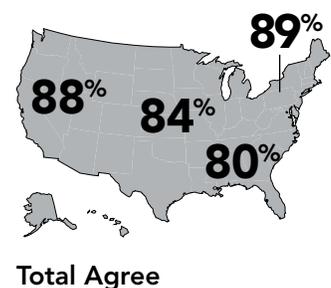
Overall



By Party Identification



By Region

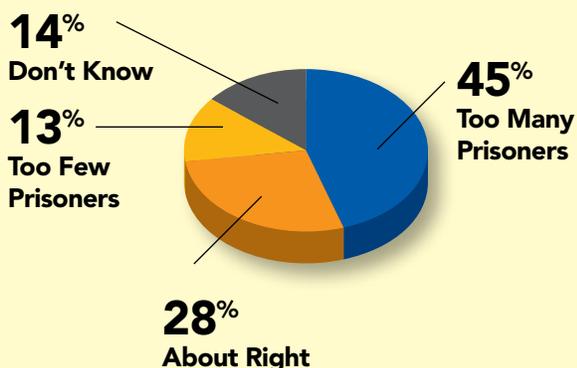


UNDERLYING ATTITUDES

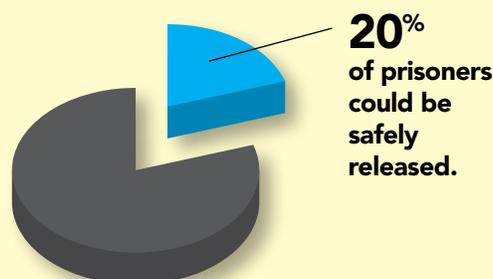
Research from 2010 showed that crime is a low concern among voters. It also showed that voters want offenders held accountable for their actions, and that they make a big distinction between violent and nonviolent offenders. The current survey found that voters also feel safe in their communities, rating their sense of safety at an average of 8 on a 10-point scale.

A plurality believes there are too many people in prison.

"Do you think there are too many people in prison in the United States, not enough people in prison, or is the number of people in prison about right?"



On average, voters think about a fifth of prisoners could be released without posing a threat to public safety.



A strong majority, even among victims, believes prison is not always the best response to non-violent crime.

"Which comes closer to your point of view?"

Statement A

"One out of every 100 American adults is in prison. That's too many, and it costs too much. There are more effective, less expensive alternatives to prison for non-violent offenders and expanding those alternatives is the best way to reduce the crime rate."



Strongly Support / Total Support

% Total Favor



Violent Crime Victim Households



Non-Violent Crime Victim Households

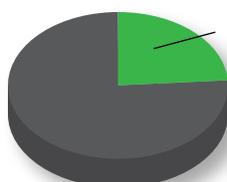
Statement B

"People who commit crimes belong behind bars, end of story. It may cost a lot of money to run prisons, but it would cost society more in the long run if more criminals were on the street."

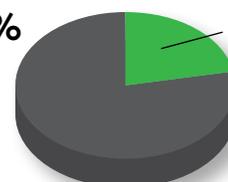


Strongly Support / Total Support

% Total Favor

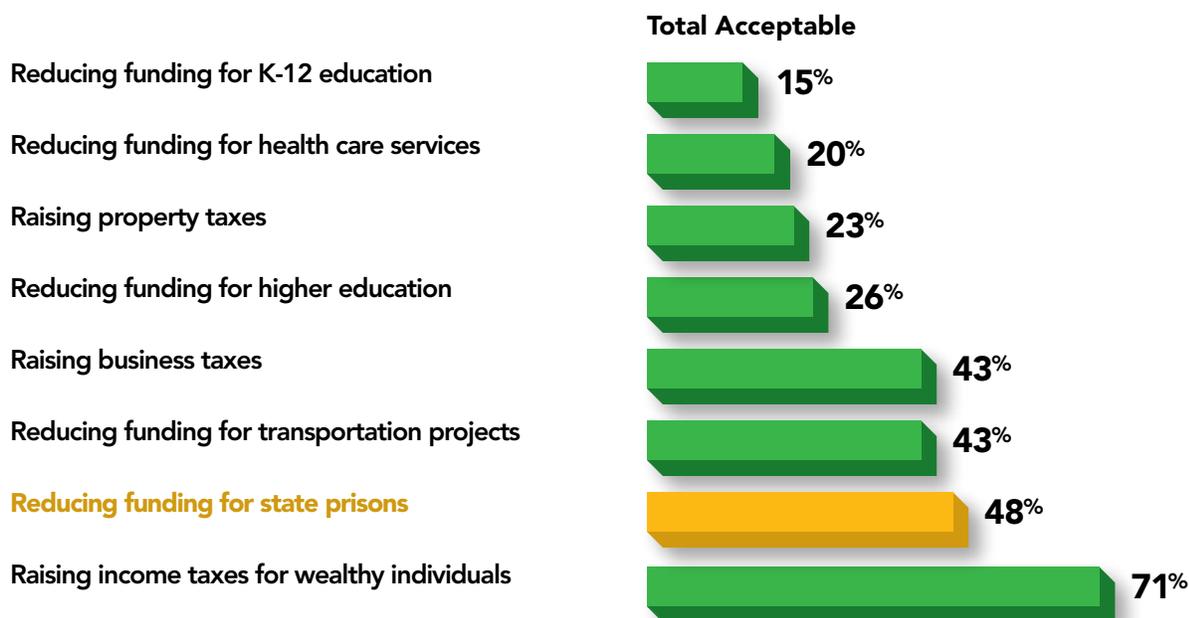


Violent Crime Victim Households



Non-Violent Crime Victim Households

Voters are more willing to raise taxes on the wealthy or reduce funding for state prisons than they are to consider other types of funding reductions.

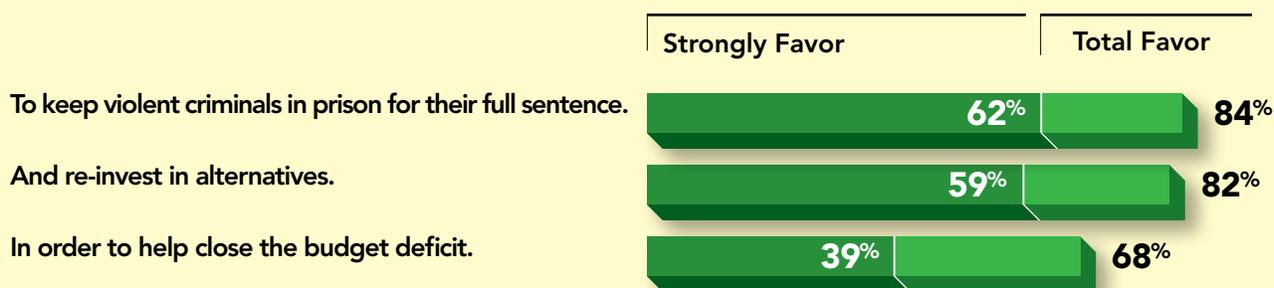


POLICY SOLUTIONS

State policy makers seeking to reduce prison costs while maintaining public safety often look to reduced sentences for non-violent offenders as a policy remedy. The poll tested public support for a variety of such reforms. In the abstract, a plurality of voters believes that current sentences are "about right." But there is widespread support for shorter sentences and alternatives to incarceration for non-violent crimes, especially when prison savings are reinvested in less costly supervision options.

1. DIVERT MORE NON-VIOLENT OFFENDERS FROM PRISON

Send fewer low-risk, non-violent offenders to prison:



Raise the Felony Theft Threshold

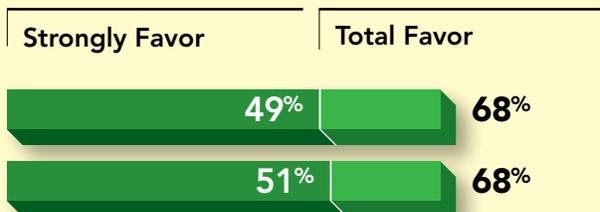
"Many states have a law that stealing property valued over \$500 is a felony crime, and thus the offenders face at least one year in prison. Some states have raised this felony threshold from \$500 to \$1,000 [or] \$1,500. Do you favor or oppose a proposal to raise the threshold to \$1,000 [or] \$1,500 in your state?"



Voters continue to support an increase in the threshold even in the face of a strong argument against it.

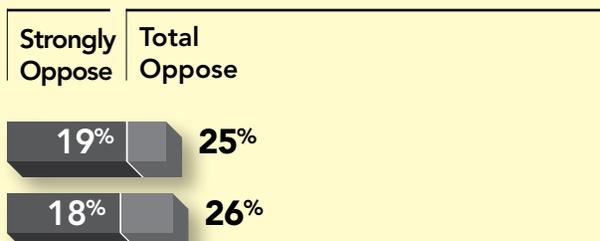
Supporters...

...say these laws were passed decades ago. Now electronics cost more than \$500. If someone steals one, they shouldn't be locked up at a cost to taxpayers of thousands per year. The threshold should be raised to at least \$1,000 [or] \$1,500.



Opponents...

...say that it is the wrong time to go soft on crime in this bad economy. People who steal make our communities less safe, and they should be locked up.

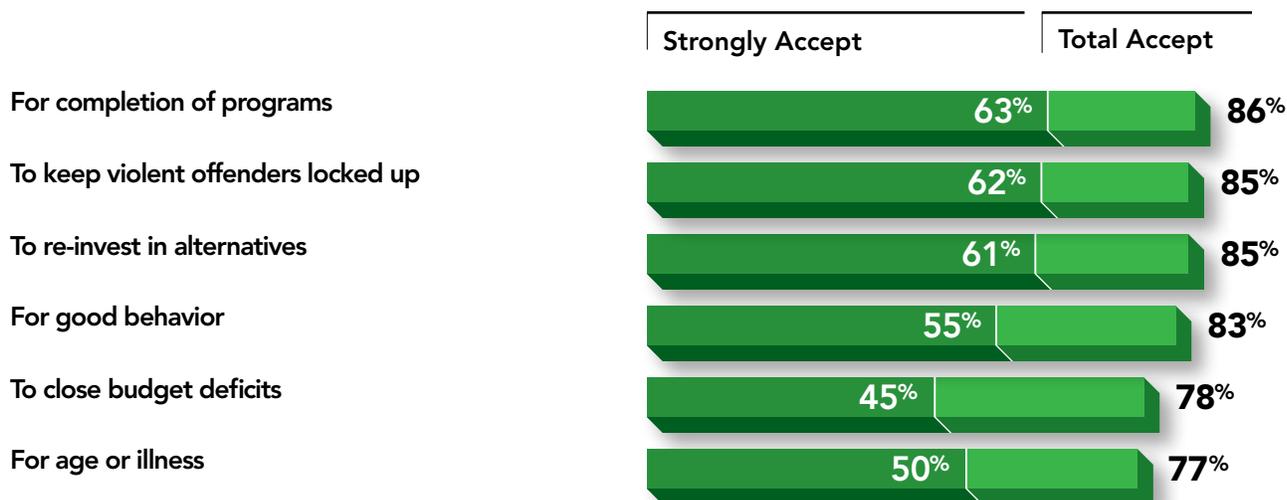


Total Support	PARTY AFFILIATION			GEOGRAPHIC REGION				HOUSEHOLD TYPE		
	Democrats	Independents	Republicans	East	South	Midwest	West	Violent Crime Victim	Non-Violent Crime Victim	Law Enforcement Member
\$1,000	72%	71%	60%	70%	64%	69%	71%	68%	69%	51%
\$1,500	71%	72%	60%	69%	66%	65%	72%	68%	66%	60%

2. REDUCE PRISON TIME FOR NON-VIOLENT OFFENDERS

All the approaches examined to reduce prison time served are broadly acceptable to voters.

Voters strongly support reducing prison time for low-risk, non-violent offenders for a variety of reasons:



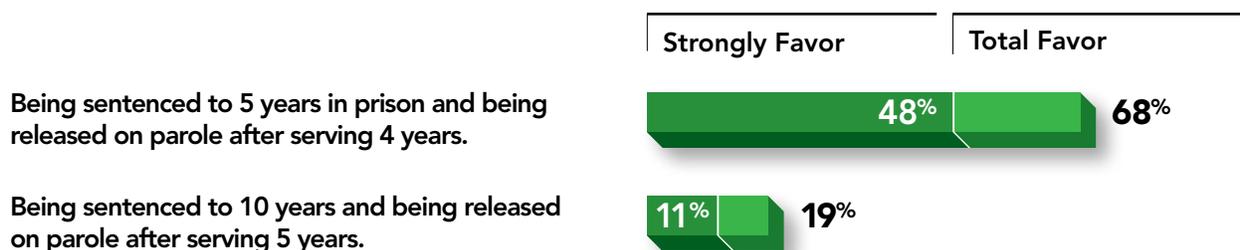
A large majority of voters favor shortening prison terms for non-violent offenders by a full year.

“Allow non-violent crime inmates to be released up to 6 [or] 12 months early if they have behaved well and are considered a low risk for committing another crime.”



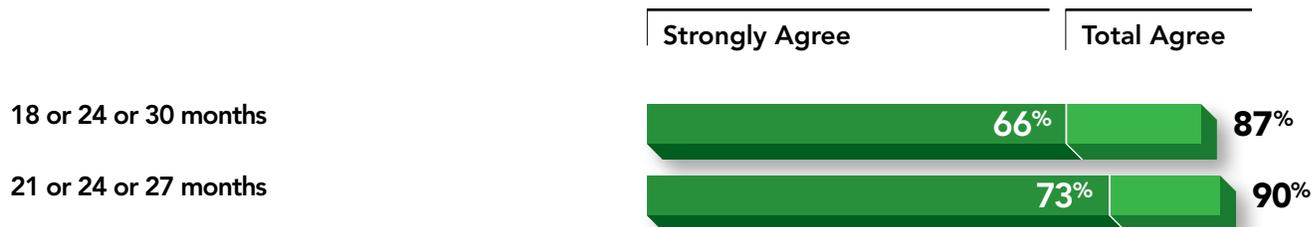
The percentage of a sentence served seems more important than its length.

“Which of the following do you prefer as punishment for someone convicted of a non-violent crime?”



Nearly all voters prioritize preventing recidivism over time served, even when prison time varies up to a year.

“It does not matter whether a non-violent offender is in prison for 18 or 24 or 30 months [or] 21 or 24 or 27 months. What really matters is that the system does a better job of making sure that when an offender does get out, he is less likely to commit another crime.”



Total Agree	PARTY AFFILIATION			GEOGRAPHIC REGION				HOUSEHOLD TYPE		
	Democrats	Independents	Republicans	East	South	Midwest	West	Violent Crime Victim	Non-Violent Crime Victim	Law Enforcement Member
18/24/30 months	90%	85%	85%	86%	86%	86%	89%	83%	89%	87%
21/24/27 months	94%	93%	84%	91%	89%	94%	88%	86%	91%	91%

3. MANDATE SUPERVISION FOR ALL OFFENDERS RELEASED FROM PRISON

Voters strongly prefer that inmates be subject to a period of mandatory supervision, rather than be held until their sentences expire and released without any supervision, regardless of offense type.

Violent Offenders

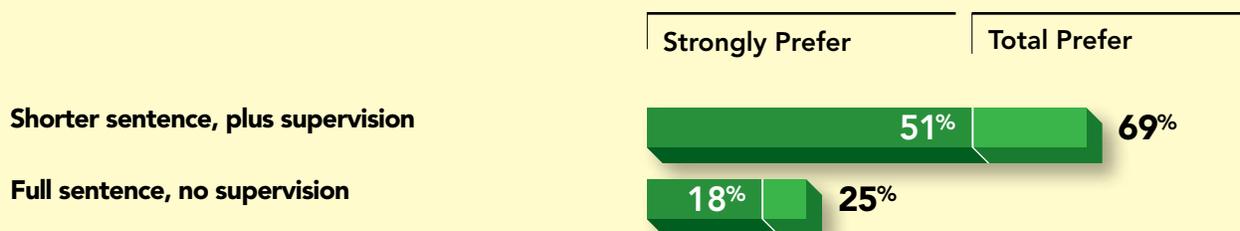
When given a choice between violent offenders serving a full 5-year prison sentence or 4 years of a 5-year sentence plus 1 year of mandatory supervision, voters prefer the mandatory supervision option.



	PARTY AFFILIATION			GEOGRAPHIC REGION				HOUSEHOLD TYPE		
	Democrats	Independents	Republicans	East	South	Midwest	West	Violent Crime Victim	Non-Violent Crime Victim	Law Enforcement Member
Total Prefer										
With Supervision	72%	66%	62%	65%	59%	72%	76%	68%	69%	62%
No Supervision	24%	25%	30%	27%	33%	21%	20%	24%	23%	34%

Non-Violent Offenders

When given a choice between non-violent offenders serving a full 3-year prison sentence or 2 years of a 3-year sentence plus 1 year of mandatory supervision, voters prefer the mandatory supervision option.



	PARTY AFFILIATION			GEOGRAPHIC REGION				HOUSEHOLD TYPE		
	Democrats	Independents	Republicans	East	South	Midwest	West	Violent Crime Victim	Non-Violent Crime Victim	Law Enforcement Member
Total Prefer										
With Supervision	72%	67%	67%	70%	65%	70%	73%	74%	74%	67%
No Supervision	23%	25%	26%	23%	27%	24%	23%	21%	21%	28%

4. IMPROVE PROBATION AND PAROLE SUPERVISION

	Strongly Agree	Total Agree	Democrats	Independents	Republicans
"An effective probation and parole system would use new technologies to monitor where offenders are and what they are doing, require them to pass drug tests, and require they either keep a job or perform community service."	74%	92%	95%	91%	89%
"There are five million offenders who are out of prison and under community supervision. If we are serious about public safety, we need a better system to supervise and track these people."	70%	89%	90%	88%	88%
"We have too many low-risk, non-violent offenders in prison. We need alternatives to incarceration that cost less and save our expensive prison space for violent and career criminals."	69%	88%	94%	89%	81%
"Prisons are a government program, and just like any other government program they need to be put to the cost-benefit test to make sure taxpayers are getting the best bang for their buck."	66%	87%	88%	87%	87%
"Ninety-five percent of people in prison will be released. If we are serious about public safety, we must increase access to treatment and job training programs so they can become productive citizens once they are back in the community."	66%	87%	90%	89%	82%
"Our spending on corrections has grown from \$10 billion to \$50 billion over the last twenty years but we are not getting a clear and convincing return on that investment in terms of public safety."	57%	77%	81%	74%	76%
"Parole and probation are just a slap on the wrist and not a substitute for prison."	29%	50%	43%	49%	59%

METHODOLOGY

On behalf of the Pew Center on the States, Public Opinion Strategies and the Mellman Group conducted phone interviews with 1,200 likely voters nationwide on January 10-15, 2012. The survey has a margin of error of $\pm 2.8\%$. The margin of error is higher for subgroups.

The full survey is available at www.pewcenteronthestates.org/publicsafety.

Poll Respondent Demographics

- 39 percent identified as conservative
- 30 percent identified as liberal

- 32 percent identified as a Republican or leaning Republican
- 24 percent identified as Independent
- 37 percent identified as Democrat or leaning Democratic

- 17 percent identified as a violent crime victim household
- 43 percent identified as a non-violent crime victim household
- 12 percent identified as a law enforcement household



Public Opinion Strategies is a leading national political, public policy, and public affairs research firm. Public Opinion Strategies is widely recognized as the nation's leading Republican polling firm, listing 19 U.S. Senators, 6 Governors, and over 70 Members of Congress as clients. Public Opinion Strategies also works for some of America's largest corporations and associations in the public affairs realm.



The Mellman Group has provided sophisticated opinion research and strategic advice to political leaders, public interest organizations, Fortune 500 companies, and government agencies for over thirty years. Current clients include the majority leader of the U.S. Senate and the Democratic whip in the U.S. House.