

Statement of
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Lessons from the States: Responsible Prison Reform

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Good afternoon, Mr. Chairman, members of the Subcommittee. It is an honor to appear before you to testify about lessons learned from responsible prison reform in the states and ways in which the federal system can follow suit. I am the director of the Justice Policy Center at the Urban Institute. The Urban Institute is a nonprofit research organization focused on social and economic policy. The Justice Policy Center at Urban is made up of over three dozen researchers studying a wide array of crime and justice issues. Our portfolio of research includes evaluations of promising programs, reviews of the literature of “what works” in reducing recidivism, and expertise in cost-benefit analysis. We have a long history of working with federal corrections data and currently serve as the assessment partner on the Justice Reinvestment Initiative, a federally funded program that reduces costs associated with state prison systems while enhancing public safety. This expertise has made us well situated to study the successes of state prison reform, translate those lessons to the federal context, and share our knowledge of evidence-based programs and policies to inform best practice at the federal level, while also projecting the impact of policy changes on prison population reductions and cost savings. I will begin my remarks by highlighting the experiences of the states and then transition to a discussion of the federal system, its challenges, and the opportunities for reform. In doing so, I will discuss the importance of both front- and back-end changes to yield meaningful and lasting reforms.

Lessons from the States

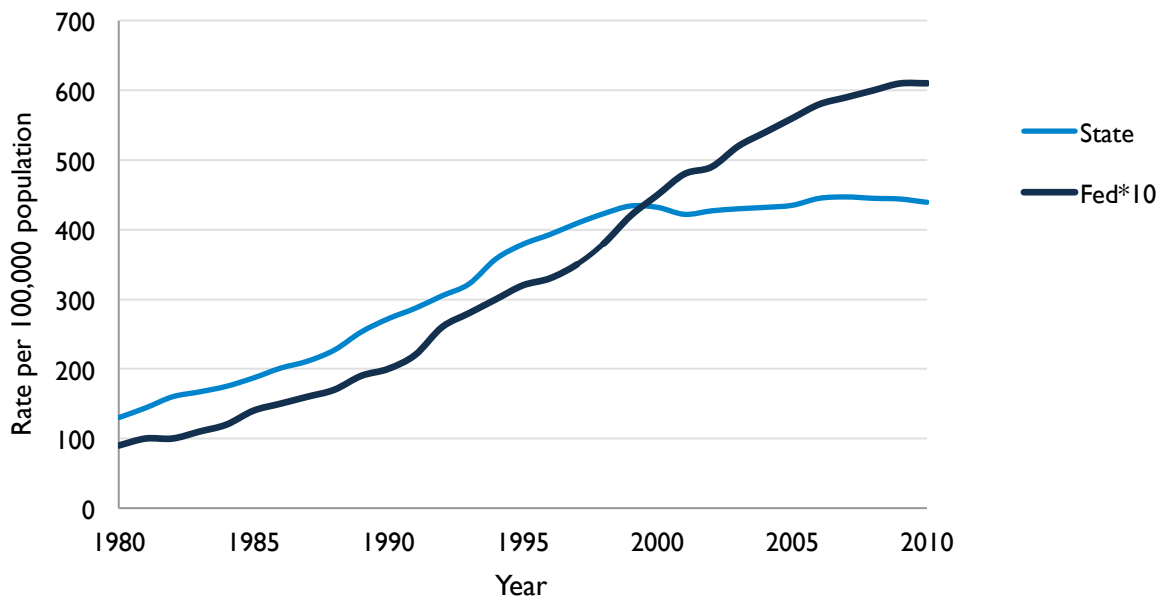
Without a doubt, in recent year the states have demonstrated tremendous leadership on correctional reform. As detailed in our recent Justice Reinvestment Initiative (JRI) State Assessment Report,¹ which highlights the experiences of 17 states, this leadership is characterized by (1) a bipartisan commitment to reform; (2) the use of data on current sentencing and corrections practices to inform policy; (3) a focus on responsible reform designed to reserve prison for those who pose the greatest risk to public safety; and (4) the expanded use of evidence-based practices (EBPs). Among these comprehensive reform efforts, many JRI states have slowed prison growth, reduced overcrowding, and saved taxpayers money without sacrificing public safety and other states are projected to do so. The crime rate in almost all of states that have reduced their prison populations has continued to decline.²

The experiences of the states can be instructive; as illustrated in Figure 1, the state incarceration rate has remained largely constant for the past decade while the federal incarceration rate has grown by over a third. Given the wealth of information and lessons documented on the state experience in our JRI assessment report, I respectfully request that the report be submitted in its entirety into the record.

¹ La Vigne et al. (2014).

² Pew Charitable Trusts (2014).

Figure 1: Trends in State and Federal Incarceration Rates



Source: Bureau of Justice Statistics, Office of Justice Programs, US Department of Justice.

While state prison systems differ significantly from the federal system, many drivers of prison population growth remain the same. These include prison commitments and lengths of stay over time. For example, some of the growth in state systems was driven by increases in truth-in-sentencing requirements, often requiring an 85 percent threshold for violent offenders and some lower threshold for nonviolent offenders. The Violent Offender Incarceration and Truth-in-Sentencing Incentive (VOI/TIS) Grant Program, authorized by the Violent Crime Control and Law Enforcement Act of 1994, further incentivized states to adopt an 85% truth in sentencing threshold with funding to build or expand prisons and jails.³ Faced with high prison populations and shrinking budgets, however, many states recently revised their time served requirements to allow for earlier release. These states have recognized that certainty, as a crucial attribute in the sentencing process (especially for victims and victims' advocates),⁴ is not compromised by lowering time served thresholds as long as the change is well publicized. Given that with very few exceptions federal inmates must serve over 87 percent of their sentence, these policy changes are quite instructive.

Another means by which states reversed lengthy prison sentences is by expanding sentence reduction or early release programs for offenders who comply with prison regulations and programming requirements. At least 31 states offer inmates the opportunity to earn sentence-reduction credits through participation in education, vocational training, substance abuse

³ Sabol et al. (2002); Ditton and Wilson (1999).

⁴ Stith and Koh (1993).

treatment and rehabilitation, and work programs; education and work programs are the most common.⁵ These programs vary by programmatic requirements, extent of the credit, and eligibility. Many states factor inmates' compliance with prison rules and regulations into earned time credit calculations.⁶ State JRI legislation commonly expanded earned credits, offering sentence reductions to inmates who maintain good behavior or participate in prison programs. In North Carolina, JRI legislation established a new sentencing option—advanced supervised release—that created a reduced sentence for certain offenders who completed risk-reduction programming.⁷ In Delaware, JRI legislation reduced lengths of stay by allowing offenders to reduce their time served by up to 60 days a year on the basis of successful completion of recidivism-reduction programs.⁸ Louisiana also revised its good time and earned credit statutes: The amount prisoners could earn in sentence diminution for good time was increased. To promote transparency, the rate of earning good time was set at one and a half days of good time earned for every day served.⁹

Studies show that sentence reductions or early release resulting from earned and/or good time credits can be a cost-effective method for reducing prison populations at minimal risk to public safety. A review of these programs and public safety measures found no significant differences between the recidivism rates of inmates released early and those who served longer without sentence reductions, credits or earlier release.¹⁰ These programs have also been found to produce significant cost savings.¹¹ States' experiences can guide efforts to expand and strengthen BOP's earned time, good time, and other early release programs.

Importantly, most of these state reform efforts involve both front- and back-end reforms, as shown in Figure 2. Eleven of the seventeen JRI states profiled in our assessment report included sentencing changes and departure mechanisms in their reform packages. These changes were designed to reorient penalties and reclassify or redefine offenses, revise mandatory minimums (including carving out exemptions for lower level offenders), and expand nonincarceration options. In South Carolina, JRI legislation removed mandatory minimums for first and second drug offenses such as manufacture and distribution where the drug quantity was below a certain weight.¹² In Kentucky, JRI legislation modified the state's Controlled Substances Act by using presumptive probation for first- and second-time drug possession offenses and establishing a quantity-based scale of penalties for drug sales offenses.¹³ Arkansas increased the felony theft

⁵ Lawrence (2009). Some states also offer additional opportunities for earning earned time credits, such as participation in "special programs," disaster relief or conservation efforts, or by conducting extraordinary meritorious service in prison.

⁶ Lawrence (2009).

⁷ North Carolina HB 642, 2011.

⁸ James and Agha (2013).

⁹ Louisiana Sentencing Commission (2012).

¹⁰ Guzman, Krisberg, and Tsukida (2008).

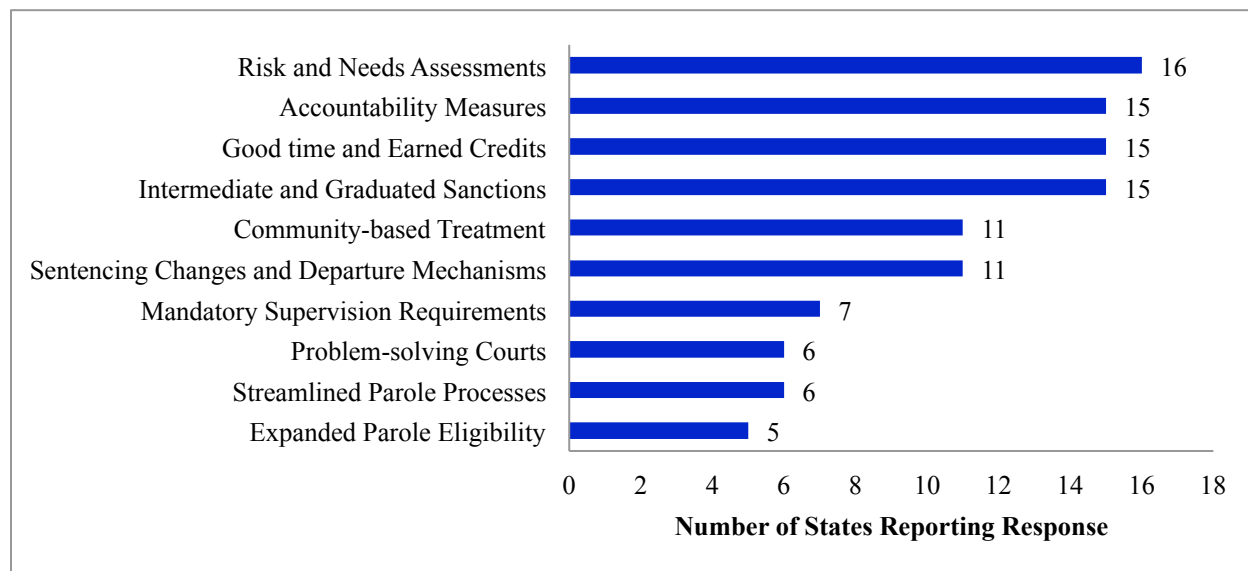
¹¹ Drake, Barnoski, and Aos (2009).

¹² South Carolina SB 1154, 2010.

¹³ Pew Center on the States (2011a).

threshold from \$500 to \$1,000 to reduce the number of felony convictions for low-level offenders.¹⁴ Other sentencing changes encouraged substance abuse treatment rather than incarceration for certain offenders. In Ohio, JRI legislation expanded the pool of individuals eligible for diversion.¹⁵

Figure 2: State Responses to Population and Cost Drivers



Source: La Vigne, et al (2014).

As shown in Figure 2, our assessment of JRI states also illustrated how most of these states also embraced evidence-based practices (EBPs) in their reform efforts. These include the use of risk and needs assessments to guide decisions regarding sentencing, release, and program eligibility; the adoption or expansion of problem solving courts; and the investment in programs proven to reduce recidivism. Risk and needs assessments are evidence-based actuarial instruments that determine an individual’s risk of reoffense and the types of services and programs that will best reduce the likelihood of reoffending. Through risk-based sentencing, judges can review assessment results when weighing different sentencing options. In Kentucky, JRI legislation required the Department of Corrections to develop an online data system with objective information, including an offender’s risk assessment rating, for use in plea negotiations and sentencing.¹⁶ Georgia invested \$175,000 to develop a risk assessment tool to assist judges with sentencing by identifying lower risk, nonviolent offenders who could be safely kept out of prison.¹⁷

¹⁴ Pew Center on the States (2011b).

¹⁵ Ohio HB 86, 2011.

¹⁶ Kentucky HB 463, 2011.

¹⁷ Pew Center on the States (2012a).

Another example of evidence-based practices among states engaged in correctional reform was designed to address growing incarceration rates for low-level offenders. In response, JRI legislation frequently expanded or improved problem-solving courts, a proven approach to providing treatment for offenders with specific needs. Georgia's legislation requires the establishment of statewide policies to guide the operation and certification of problem-solving courts for offenders with substance abuse and mental health disorders,¹⁸ including mandating a drug court certification and peer review process to ensure adherence to EBPs.¹⁹ In West Virginia, JRI legislation mandated expansion of drug courts from 31 to all 55 counties.²⁰

Similarly, several states increased funding and expanded the use of evidence-based programs and practices. For example, Georgia, Hawaii, Kentucky, and South Dakota increased funding for substance abuse treatment programs.²¹ New Hampshire is training its probation and parole officers and corrections counselors in Effective Practices in Community Supervision.²² Pennsylvania emphasized the importance of community supports by requiring a reentry plan for every prisoner.²³

States were also deliberate about using EBPs to improve the effectiveness of community-based supervision and services. Some states mandated that service providers must use EBPs to receive state funds. States also required their own departments to use EBPs to supervise offenders and increased EBP training opportunities. In addition to mandating the use of EBPs, Arkansas raised supervision fees to support community-based programs that use EBPs and to train staff in EBP.²⁴ Similarly, Pennsylvania rebid all contracts for community corrections centers to allow contractors to be compensated at higher rates if they lower the recidivism rates of parolees in their centers.²⁵

The Federal Context

Much can be learned from the experiences of the states. Many states came to table because they realized that sustaining the current rate of incarceration was at great expense to other fiscal priorities. They strove to yield a greater return - both in terms of public safety and public finances - on their investment of correctional expenditures. And they aspired to reserve expensive prison beds for those who posed the greatest risk to public safety. Many states were also experiencing high levels of prison overcrowding that posed hazards to the safety of inmates and staff. In many respects, the experiences of the federal prison system are no different.

¹⁸ Pew Center on the States (2012a).

¹⁹ Georgia HB 1176, 2012.

²⁰ West Virginia SB 371, 2013.

²¹ Clement, Barbee, and Coombs (2011); Pew Center on the States (2012a); Pew Charitable Trusts (2013).

²² New Hampshire Department of Corrections (2013)

²³ Pennsylvania SB 100, 2012.

²⁴ Arkansas SB 750, 2011.

²⁵ Commonwealth of Pennsylvania Department of General Services, Bureau of Procurement (2013).

Over the past several decades, the federal prison population has increased by a factor of eight since 1980; its current population exceeds 216,000,²⁶ with projections of continued growth for the foreseeable future. This continuous growth has substantial costs. With each passing year, the federal government has had to allocate more resources to the federal prison system at the expense of other critical public safety priorities. Since Fiscal Year (FY) 2000, the rate of growth in the BOP budget is almost twice the rate of growth of the rest of the US Department of Justice (DOJ).²⁷ Despite increased funding, BOP-operated facilities remain dangerously overcrowded and understaffed,²⁸ while long waitlists persist for recidivism reduction programs.²⁹

A wide array of actors, including members of this Committee, other Members of Congress, the Attorney General, other administration officials, bipartisan policy advocates, and researchers, have concluded that this growth and its associated costs are unsustainable. The basis for this conclusion varies. Factors include

- **Fiscal impact.** Resources spent on the BOP eclipse other budget priorities.
- **Overcrowding risks.** Overcrowded facilities can jeopardize the safety of inmates and staff and limit opportunities for effective programming that can reduce recidivism.
- **Fairness and equity concerns.** High levels of incarceration may have disproportionate effects on certain subpopulations and communities.
- **Inefficient resource allocation.** Current research and recent evidence-based policy changes implemented in states raise questions about the cost-effectiveness of existing federal sentencing and corrections policies.

The high costs of maintaining a growing prisoner population have contributed to the increases in the BOP budget relative to the rest of the DOJ: in FY 2000, BOP took up less than 20 percent of the DOJ budget, but we project that without changes, by FY 2020, it will consume more than 30 percent. In these fiscally lean times, funding the expanding BOP population crowds out other public safety priorities, including funding for federal investigators and federal prosecutors and support for state and local governments.³⁰

In early 2014, BOP facilities were operating at 32 percent above their rated capacity, with 51 percent crowding at high-security facilities and 41 percent at medium-security facilities in FY 2012. The capacity of BOP facilities in FY 2013 was 129,726, but BOP-operated facilities

²⁶ BOP (2014b).

²⁷ US DOJ, *Summary of Budget Authority by Appropriation*. Budget summaries for fiscal years 2000–13. See, for example, <http://www.justice.gov/archive/jmd/2k-summary/2kbudget.pdf> (2000); and <http://www.justice.gov/jmd/2013summary/pdf/budget-authority-appropriation.pdf> (2013).

²⁸ US DOJ (2014); GAO (2012).

²⁹ GAO (2012)

³⁰ *Hearing on Federal Sentencing Options after Booker: Current State of Federal Sentencing* (2012) (statement of Matthew Axelrod, Associate Deputy Attorney General).

housed 176,849 inmates in FY 2013.³¹ Since FY 2000, the inmate-to-staff ratio has increased by approximately 20 percent.

Recent efforts to reduce the federal population, including the passage of the Fair Sentencing Act and the shift from mandatory to advisory sentencing guidelines, have slowed the rate of growth in the federal prison population. But barring any meaningful changes in policy and practice, this untenable status quo will be the norm for the coming decade: more recent BOP projections that take into account the recent slowing of prison population growth still anticipate that by FY 2019, the system will be 41 percent overcrowded, housing over 55,000 more people than its system capacity.³²

Beyond the fiscal problems associated with maintaining such a large federal prison population, overcrowding threatens the safety of inmates and prison staff and undermines the ability to provide effective programming.³³

- Overcrowding is most concentrated in high-security facilities, where 87 percent of inmates have a history of violence. Overcrowding is currently above 50 percent in high-security facilities.³⁴
- The BOP has found that high inmate-to-corrections officer ratios are correlated with increases in the incidence of serious assault.³⁵ In February 2013, a BOP officer was killed for the first time in five years, while working alone in a unit housing 130 inmates.³⁶
- Provision of programming and treatment designed to reduce recidivism is restricted due to lack of space, inadequate staff, and long waiting lists for educational, treatment, vocational, and other reentry programming.³⁷
- Health and safety hazards increase from over-used equipment, such as toilets, showers, and food service equipment.³⁸

Given the detrimental effect of this continued growth on prison conditions, inmate and staff safety, and the ability to provide recidivism-reducing programming and treatment, it is critical that options be explored that avert future expansion of this already bloated system.

³¹ US DOJ (2014). This represents the prison populations and capacity as of February 27, 2014. The population ebbs and flows throughout the year as prisoners are released and new offenders are admitted.

³² US DOJ (2014).

³³ GAO (2012).

³⁴ US DOJ (2014).

³⁵ BOP (2005).

³⁶ Kalinowski and Halpin (2013).

³⁷ GAO (2012).

³⁸ GAO (2012).

Drivers of Federal Population Growth

The number and composition of offenders committed to federal prison result from the investigations pursued by law enforcement, cases accepted and charged by prosecutors, the dispositions of those cases, the proportion of convicted offenders that receive a term of imprisonment, and the imposed sentence.

The BOP does not play a role in these decisions: the combination of the volume of admissions and sentence length drives the inmate population. The length of stay is largely determined by the sentence imposed (informed by the relevant statutory penalties and federal sentencing guidelines)³⁹ and any subsequent sentence reductions that would reduce time served in prison. Currently few options for reduced time exist, and most federal offenders sentenced to prison serve at least 87.5 percent of their terms of imprisonment.⁴⁰

The length of sentences—particularly for drug offenders, many of whom are subject to mandatory minimum sentences—is an important determinant of the size of the prison population and driver of population growth. Our 2012 study of the growth in the BOP population from 1998 to 2010 confirmed that time served in prison for drug offenses was the largest determinant of population growth.⁴¹

While state lessons provide insights and guidance, it is important to recognize key differences between the state experiences and problems facing the federal system:

- Over half of state prisoners have committed violent crimes,⁴² while roughly the same share of federal prisoners are drug offenders, and many others are immigration offenders.⁴³
- Supervision violations are the most common driver of state correctional population growth, yet did not emerge as a driver in our federal analyses.⁴⁴

These differences, and others, have crucial implications in applying the JRI model to the federal level, suggesting that policies focused on diverting and/or reducing sentences for drug and immigration offenders are most likely to yield the greatest returns. Changes in sentencing laws (particularly mandatory minimums) and practices (including prosecutorial charging and declination practices), prison release policies, or both could directly decrease the time served and thereby moderate federal prison population growth.

³⁹ Recent legislative and policy changes to this domain may have the combined effect of reducing sentence length: for example, the shift from mandatory to advisory sentencing guidelines and enactment of the Fair Sentencing Act could moderate sentence lengths.

⁴⁰ There are limited opportunities for some offenders to have their sentences reduced below 87.5 percent, based on prison participation in residential drug treatment programming and, in some cases, compassionate release.

⁴¹ Mallik-Kane, Parthasarathy, and Adams (2012).

⁴² Carson and Golinelli (2013).

⁴³ BOP (2014).

⁴⁴ La Vigne and Samuels (2012).

Given that the federal prison population is driven by the volume of admissions and sentence length, any attempt to address prison overcrowding and population growth that relies exclusively on back-end policy options to shorten length of stay, while meaningful, would not be sufficient. *We find that a combination of both front- and back-end policies will be necessary to reduce population growth in both the short and long term.* A bipartisan coalition of lawmakers has taken up this issue, proposing various legislative proposals that could go a long way in stemming the tide of federal prison population growth. We have analyzed the projected impact of these legislative proposals along with other possible policy changes in a 2013 report, *Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System*.⁴⁵ The report chronicles the rampant increase in the size and cost of the federal prison system and reviews 20 policy options designed to reduce the prison population while maintaining a focus on public safety. Many of those options reflect legislative proposals introduced or sponsored by you and your colleagues. Our overarching conclusion is that it will require changes to both sentencing and release policies to reduce the federal prison population to levels that are within their rated design capacity. Doing so can save billions of dollars that could be dedicated to other important justice priorities, including programming and treatment to help federal prisoners lead law abiding lives. Rather than repeating them all here, I respectfully request to submit that report as part of the official record.

A Focus on Prevention

In reviewing the array of policy options to reduce the size and expense of the federal prison system responsibly, it is important to acknowledge the critical role that prevention plays in both public safety and correctional reform. A large and growing body of evidence indicates that programs to prepare inmates for employment, address substance addiction, and maintain and enhance family relationships are critical to reducing the likelihood of recidivism following their release. Much of this evidence is embodied in the What Works in Reentry Clearinghouse,⁴⁶ developed by the Urban Institute in partnership with the Council of State Governments' Justice Center as part of the Second Chance Act's National Reentry Resource Center.⁴⁷ For example, the Clearinghouse found positive effects for many substance abuse treatment programs, including the BOP's Residential Drug Abuse Program,⁴⁸ Connecticut's substance abuse treatment tier programs,⁴⁹ and Minnesota's chemical dependency treatment program.⁵⁰ Several prison industries programs were found to be effective, including the federal prison system's UNICOR program,⁵¹ as were work release programs in Florida⁵² and Washington⁵³ and a number of educational and vocational programs, particularly postsecondary and adult basic education.

⁴⁵ Samuels, La Vigne, and Taxy (2013).

⁴⁶ <http://whatworks.csgjusticecenter.org>.

⁴⁷ <http://csgjusticecenter.org/nrrc>.

⁴⁸ Pelissier et al. (2002).

⁴⁹ Daley et al. (2004).

⁵⁰ Duwe (2010).

⁵¹ Saylor and Gaes (1992).

Importantly, studies of in-prison visitation found that inmates who receive visits from family members while incarcerated have reduced rates of recidivism compared to those who do not, even when statistically controlling for other differences between these groups.⁵⁴ This finding is consistent with the Urban Institute's reentry studies, which have found that families are an important positive influence in the reentry process, with higher levels of family support linked to higher employment rates and reduced recidivism following release⁵⁵ and that in-prison contact with family members is predictive of the strength of family relationships following release.⁵⁶

It is important to note that many of the prison programs found to be effective in reducing reoffending and substance abuse are also cost-effective. Welsh's review of cost-benefit analyses of reentry programs⁵⁷ found that 12 of 14 evaluations of reentry programs resulted in positive benefit-cost ratios, and a comprehensive review conducted by Aos yielded similar findings.⁵⁸ In an Urban Institute evaluation of the Maryland Reentry Partnership Initiative,⁵⁹ we found that the effort returned three dollars in benefits for every dollar in new costs. Another Urban study⁶⁰ found that jail reentry programming is cost-beneficial if the programming results in at least a 2 percent reduction in recidivism.

These findings make a strong case for the federal prison system to expand programming to serve all the prisoners who can benefit from it, especially given that federal treatment and prison industries programs feature prominently among the most effective reentry programs that have been rigorously evaluated. Doing so, however, requires a reduction in the prison population to relieve overcrowding and the shifting of resources saved from population reduction toward program and treatment delivery. States across the country have done exactly that, offering examples and lessons learned that the federal system could benefit from following.

Conclusions

The BOP population has increased drastically since 1980. If current trends persist, spending on prisons will continue to squeeze taxpayers for billions of dollars annually and eclipse other spending priorities, such as federal investigators and prosecutors. Continued overcrowding means that even fewer inmates will have access to reentry programming designed to reduce recidivism and that prison facilities will become even more dangerous for prisoners and correctional officers alike. The current status quo is untenable and it is anticipated to get even worse.

⁵² Berk (2007).

⁵³ Drake (2007).

⁵⁴ Bales and Mears (2008); Derkzen, Gobeil, and Gileno (2009).

⁵⁵ La Vigne, Visher, and Castro (2004); La Vigne, Shollenberger, and Debus (2009).

⁵⁶ Naser and La Vigne (2006).

⁵⁷ Welsh (2004).

⁵⁸ Aos (2006).

⁵⁹ Roman et al. (2007).

⁶⁰ Roman and Chalfin (2006).

The federal government can learn important lessons from states and localities that have adopted justice reinvestment to improve public safety in a cost-effective manner. First, bipartisan collaboration and data-driven policy development has helped states overcome political and philosophical differences that can hinder meaningful justice system reform. Second, as documented in Urban's Justice Reinvestment Initiative State Assessment Report, EBPs intended to address population and cost drivers have thus far yielded promising results.⁶¹ States are implementing strategies that focus scarce prison resources on the most serious offenders and provide effective alternatives for lower-level, non-violent offenders.

BOP has limited discretion and authority in reducing its burgeoning population, and even if its authorities increase, most of the savings from back-end options under the purview of the BOP are limited. Most options for significantly reducing the population would require statutory changes or changes in policies by investigators, prosecutors, judges, and probation officers; it is heartening that so many Members of Congress are advancing cross-cutting and innovative proposals to address this problem.

Our previous research has shown that lengthy drug sentences have been the biggest driver of growth in the federal prison population, and our report confirms that the most direct and effectual methods of decreasing the prison population target drug offenders specifically. Indeed, the only policy change that would on its own eliminate overcrowding altogether is reducing certain drug mandatory minimums. Other promising front-end changes include changing truth-in-sentencing requirements, reducing the number of offenders entering the federal prison system for drug offenses, and providing judges more discretion in departing below mandatory minimums.

At the same time, back-end changes targeting inmates already in BOP facilities could immediately reduce overcrowding and save money. Options such as granting the statutory changes of the Fair Sentencing Act retroactively to nonviolent inmates deemed at little risk to public safety, changing the formula by which good time credits are calculated for inmates already in BOP custody, bringing RDAP to scale, and providing some type of expanded programming credit for other recidivism reduction programs would help reduce overcrowding while not harming public safety. BOP is already reviewing and expanding its existing authorities, which will generate further savings.

Aggressive action is needed to stem the tide of prison population growth: I hope that my testimony and the accompanying Urban Institute reports illuminate the drivers of federal prison population growth and potential solutions that go beyond stemming the tide of growth toward actually reducing the prison population over the coming decade. One of our key findings is that in order to alleviate dangerous conditions immediately and continue to slow growth, a combination of front- and back-end policies will be necessary. Many states have done so and are already reaping the benefits of cost savings while also improving public safety.

⁶¹ La Vigne et al (2014).

Thank you for the opportunity to testify today. I would be pleased to answer any questions you may have.

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