

FDRAG will begin publishing a
Death Penalty Information Supplemental Newsletter

In this first edition, FDRAG has included an article from the

VERA Institute of Justice
 Center on Sentencing and Corrections
 By Christine S. Scott-Hayward

***“The Fiscal Crisis In Corrections
 Rethinking Policies and Practices”
 July 2009 (updated)***

The report was funded by the Public Safety Performance
 Project of the Pew Center on the States.

Additional copies of the report are available from the
 Vera Institute of Justice, 233 Broadway, 12th Floor,
 New York, NY 10279 (212) 334-1300.

An electronic version is available at www.vera.org

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**After Almost 30 Years, Florida Supreme Court Overturns
 Death Sentence in Case "Rife with Misconduct"**

On January 14, and almost 30 years after the crime, the **Florida Supreme Court** criticized the state for "lawless conduct" and vacated the death sentence of **Paul Beasley Johnson** because "the record here is so rife with evidence of previously undisclosed prosecutorial misconduct that we have no choice but to grant relief." Because of popular sentiment and the notoriety of the crime, **Governor Charlie Crist** signed a death warrant for Johnson in 2009 even though Johnson's legal issues were still pending on appeal. The Florida Court said that the governor's action put them in a difficult position. Johnson was found guilty of the murder of a Polk County sheriff's deputy and two others in January of 1981. The state induced Johnson to make incriminating statements to a jailhouse informant, then used the testimony at his trial, even though they knew it was inadmissible. Former assistant state attorney Hardy Pickard, who was the original prosecutor in Johnson's case, was aware that the informant was acting on behalf of the sheriff's investigator despite the claim that the informant acted on his own. Even though the informant's testimony was initially suppressed, Pickard used false testimony and misleading argument to allow the informant to testify. Commenting on the state's behavior, the Florida Court wrote, "**It must be emphasized that in our American legal system there is no room for such misconduct, no matter how disturbing a crime may be or how unsympathetic a defendant is. Lawlessness by a defendant never justifies lawless conduct at trial.**"

(C. Jenkins, "Court vacates death rulings," St. Petersburg Times, January 14, 2010).

**"To take a life when a life has been lost is revenge,
 not justice." - Desmond Tutu**

**Supreme Court Underscores the Need for "Dignity and
 Respect" in Capital Cases -- Reverses Judgment**

On January 19, the **U.S. Supreme Court** granted certiorari and reversed the U.S. Court of Appeals for the Eleventh Circuit in *Wellons v. Hall*, ordering the lower court to re-examine the appeal of **Marcus Wellons**, who received the death penalty for a 1989 rape and murder in **Georgia**. The Court's per curiam opinion described "unusual events going on behind the scenes" at Wellons' trial, including contacts outside the courtroom between the jury and the judge, and the fact that some jury members gave the trial judge and bailiff provocative gifts. The Supreme Court rejected the 11th Circuit's opinion that Wellons's claims of misconduct were merely speculation. The Court's opinion stated, "**From beginning to end, judicial proceedings conducted for the purpose of deciding whether a defendant shall be put to death must be conducted with dignity and respect.** The disturbing facts of this case raise serious questions concerning the conduct of the trial, and this petition raises a serious question about whether the Court of Appeals carefully reviewed those facts before addressing petitioner's constitutional claims." (emphasis added).

Two dissenting opinions were filed (Chief Justice Roberts, Justices Alito, Scalia, and Thomas), stating that more deference should have been given to the state court which found no prejudice from the gifts, and to the Court of Appeals, which examined the issue.

(R. Barnes, "Supreme Court mandates 'dignity and respect' in death sentencing," Washington Post, January 20, 2010; *Wellons v. Hall*, 558 U. S. ___, No. 09-5731 (Jan. 19, 2010) (vacating the judgment and remanding to 11th Cir. for further consideration in light of *Cone v. Bell*)).

PARADE MAGAZINE: The Cost of Capital Punishment

A recent article in **Parade** magazine looked at the cost of the death penalty, especially in light of the budgetary crises confronting most states in today's economy. **New Mexico** and **New Jersey** recently abolished the death penalty, and costs played a significant role in their decisions. **New Mexico State Rep. Gail Chasey** (D., Albuquerque) noted, "We can put that money toward enhancing law enforcement, public works, you name it." In New Jersey a commission found that using the alternative sentence of life without parole would save the state \$1.3 million per inmate in incarceration costs alone because a death row facility requires more personnel to operate. Finally, a recent study in **North Carolina** found that the state could save at least \$11 million a year by repealing the death penalty.

In 2009, 52 prisoners (out of the total 3,279 on death row across the country) were executed. "People tend to think, 'Oh, you get the death penalty, then there's an execution,'" said **Richard Dieter**, executive director of the **Death Penalty Information Center** in Washington, D.C. "But more often than not, the death penalty turns out to be a very expensive form of life imprisonment."

NEW VOICES: Conservative Leaders Call for End to Death Penalty

Roy Brown, state senator and 2008 Republican nominee for governor of **Montana**, said that opposition to capital punishment aligns well with his conservative ideology. He is reaching out to social and fiscal conservatives, hoping to create a bipartisan movement against capital punishment. Brown noted, "I believe that life is precious from the womb to a natural death." He continued, "Criminals should be prosecuted. I want it to be life without parole. In the long run, that's much cheaper." **Richard Viguerie**, a fundraiser and activist considered by some to be the father of the modern conservative movement, recently wrote an article for *Sojourners* magazine noting that flaws in the criminal justice system show the risk that an innocent person has been put to death. He said, "[D]eath row inmates have been exonerated by DNA evidence, raising the prospect that prosecutors and juries made mistakes in cases without scientific evidence and in cases that predate the science."

(B. Barrouquere, "Anti-death penalty movement wooing conservatives," The Washington Post (AP), January 18, 2010.)

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Supreme Court Upholds Death Sentence Despite Unexplored Evidence of Mental Retardation

On January 20, the **U.S. Supreme Court** affirmed the death sentence for **Holly Wood** for the 1993 shooting of his former girlfriend in **Alabama**, despite the fact that the attorney working on the penalty phase of the case failed to investigate or tell the jury about Wood's borderline mental retardation. A federal District Court had overturned his death sentence because of the inadequate performance of the inexperienced lawyer, although other lawyers working on the case had seen a report on Wood's mental status and did not use it. There was ample other evidence indicating Wood had an IQ of less than 70 and had been classified as mentally retarded that was not pursued by any of the attorneys. The Supreme Court opinion, written by **Justice Sonia Sotomayor**, agreed with the U.S. Court of Appeals for the Eleventh Circuit that Wood failed to show that the lawyers were constitutionally ineffective. The Court stated, "[T]he state court's conclusion that Wood's counsel made a strategic decision not to pursue or present evidence of his mental deficiencies was not an unreasonable determination of the facts." **Justice John Paul Stevens**, in a dissenting opinion joined by **Justice Anthony Kennedy**, noted, "There is a world of difference between a decision not to introduce evidence at the guilt phase of a trial and a failure to investigate mitigating evidence that might be admissible at the penalty phase... the only reasonable factual conclusion I can draw from this record is that counsel's decision to do so was the result of inattention and neglect."

(*Wood v. Allen*, 558 U. S. ___, No. 08-9156 (Jan. 20, 2010); "Supreme Court upholds death penalty for mentally impaired Ala. man with inexperienced lawyer," AP, January 20, 2010).

NEW VOICES: Head of Rutherford Institute Cautions Against Expansion of Death Penalty

John Whitehead, president of the conservative **Rutherford Institute**, recently voiced concerns in the *Huffington Post* about expanding the death penalty in **Virginia**. He noted, "As capital punishment studies have shown, whether or not you are sentenced to death often has little to do with the crime committed and everything to do with your race, where you live, and who prosecutes your case." Whitehead cited several reasons for not expanding the death penalty, including the risk of executing the innocent, the opening to prosecutorial overreach, the lack of a deterrent effect from the death penalty and its high costs. He cited **Death Penalty Information Center** data that showed the murder rate in states without the death penalty was nearly 40% lower than in states with the death penalty. The expansion bill was defeated in a Virginia Senate committee.

"I have yet to see a death case among the dozen coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial... People who are well represented at trial do not get the death penalty."

- Ruth Bader Ginsburg, U.S. Supreme Court Justice

Debating the Cost of Capital Punishment

As cash-strapped states consider the high cost of sentencing prisoners to death, capital punishment has fallen on hard times.

In New Mexico, which voted to abolish the death penalty last year, State Rep. Gail Chasey (D., Albuquerque) specifically noted the tax dollars that would be saved. "We can put that money toward enhancing law enforcement, public works, you name it," she said. In 2009, 10 other states considered ending capital punishment.

In New Jersey, which halted executions in 2007, a commission found that switching a single condemned inmate's sentence to life without parole would save the state \$1.3 million in incarceration costs alone, because death-row inmates receive special housing and security. Repealing the death penalty in North Carolina, where 169 prisoners are on death row, could save that state \$11 million a year in incarceration costs and legal fees associated with the extensive appeals process, according to a study published in *American Law and Economics Review* in December. Meanwhile, the number of death sentences carried out each year is dwindling. In 2009, just 52 prisoners—a fraction of the 3279 on death row—were executed. "People tend to think, 'Oh, you get the death penalty, then there's an execution,'" says Richard Dieter, executive director of the Death Penalty Information Center in Washington, D.C. "But more often than not, the death penalty turns out to be a very expensive form of life imprisonment."

Even steadfast supporters acknowledge the high price. "As it presently exists, the death penalty does cost more than life imprisonment," says Kent Scheidegger of the Criminal Justice Legal Foundation in Sacramento, Calif. "But is that an argument for its repeal or an argument to make it less costly?" Scheidegger notes that the death penalty may actually save money in capital cases where the defendant takes a plea deal to save his or her life. But ultimately, he says, the economic argument misses the point. "People value justice for its own sake, aside from issues of deterrence and economics," he says. "Would you have Timothy McVeigh grinning at you from his jail cell his entire life the way Charles Manson has?"

(J. Bargmann, "Debating the Cost of Capital Punishment," *Parade Magazine*, January 29, 2010 (on-line version; print version Jan. 31, 2010)).

The following was gleaned from various sources, but mostly from the Death Penalty Information Center. FADP and DPIC differ in their count of the number or people on this list. For an explanation, read below.

FLORIDIANS FOR ALTERNATIVES TO THE DEATH PENALTY (FADP.org)

Dear Florida Media Friends,

24 vs. 22 Death Row Exonerations:

WHY FADP AND DPIC DIFFER

Since Juan Melendez was released from death row on January 3, 2002, Floridians for Alternatives to the Death Penalty (FADP) has spent considerable time explaining to reporters why FADP counts 24 exonerated prisoners, and the Death Penalty Information Center (DPIC) in Washington, DC counts only 22. The reason is because FADP and DPIC use different standards to decide which persons should be included in the list. DPIC does not include Sunny Jacobs and Joe Spaziano, because they were not ***technically*** exonerated.

DPIC posts the following statement prior to listing a number of cases of "probable innocence" on their web page.

Quote: "Other defendants, though not exonerated completely, were released from death row with substantial evidence of their innocence. Generally, the defendant's conviction was overturned and then he or she reluctantly entered a guilty plea to a lesser charge because of the threat of possibly receiving another death sentence. In most of these cases, no responsible person would find them guilty. Nevertheless, unlike those enumerated above, they are technically guilty of some degree of murder. This list is not necessarily inclusive of all such cases." End Quote

There are those who would dispute that language, particularly the phrase "they are technically guilty of some degree of murder."

Consider then the OTHER EXPERTS who DO count Sunny Jacobs and Joe Spaziano.

The St. Petersburg Times included both Jacobs and Spaziano in their 1999 review of Florida's exonerated death row inmates, which you can now read on the FADP site;

and Professor Michael L. Radelet, preeminent expert on Florida's death row, also counts Jacobs and Spaziano. In his most recent version of his document "Recent Developments in the Death Penalty in Florida," which you can AND SHOULD read, he writes in his section on innocence;

Quote: "Note that in addition to the 21 cases included by the Death Penalty Information Center, I also include the Florida cases of Sunny Jacobs and Joe Spaziano. And, if Governor Bush is sincerely interested in testing his belief that everyone executed in Florida was unquestionably guilty, I urge him to look into the case of Jesse Tafero, whose evidence of innocence is even stronger than that of Medina and Demps." End Quote

Jesse Tafero was Sunny Jacobs' co-defendant.

Enough said. Florida has **24** releases of prisoners wrongfully convicted.

SENT BY:

Abraham J. Bonowitz when he was Director of
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1. David Keaton Florida Conviction 1971 Charges dropped 1973

On the basis of mistaken identification and coerced confessions, Keaton was sentenced to death for murdering an off duty deputy sheriff during a robbery. Charges were dropped and he was released after the actual killer was identified and convicted.

2. Wilbert Lee Florida Conviction 1963 Released 1975 AND

3. Freddie Pitts Florida Conviction 1963 Released 1975

Although no physical evidence linked them to the deaths of two white men, Lee and Pitts' guilty pleas, the testimony of an alleged eyewitness, and

incompetent defense counsel led to their convictions. The men were sentenced to death but maintained their innocence. After their convictions, another man confessed to the crime, the eyewitness recanted her accusations, and the state Attorney General admitted that the state had unlawfully suppressed evidence. The men were granted a new trial but were again convicted and sentenced to death. They were released in 1975 when they received a full pardon from Governor Askew, who stated he was "sufficiently convinced that they were innocent."

4. Delbert Tibbs Florida Conviction 1974 Conviction overturned 1977

Tibbs was sentenced to death for the rape of a sixteen-year-old white girl and the murder of her companion. Tibbs, a black theological student, was convicted by an all-white jury on the testimony of the female victim whose testimony was uncorroborated and inconsistent with her first description of her assailant. The conviction was overturned by the Florida Supreme Court because the verdict was not supported by the weight of the evidence, and the state decided not to retry the case. Tibbs' former prosecutor said that the original investigation had been tainted from the beginning and that if there was a retrial, he would appear as a witness for Tibbs.

5. Anibal Jarramillo Florida Conviction 1981 - Released 1982

Jarramillo was sentenced to death for two counts of first degree murder, despite the jury's unanimous recommendation of life imprisonment. On appeal, his conviction was reversed when the Florida Supreme Court ruled the evidence used against him was not legally sufficient to support the conviction. Evidence suggests that the murderer may have been the victims' roommate.

6. Anthony Brown Florida Conviction 1983 - Acquitted 1986

Brown was convicted of first degree murder and sentenced to death despite a jury recommendation of life imprisonment. At trial, the only evidence against Brown was a co-defendant who was sentenced to life for his part in the crime. At retrial, the co-defendant admitted that his testimony at the first trial had been perjured, and Brown was acquitted.

7. Joseph Green Brown Florida Conviction 1974 - Charges dropped 1987

Charges were dropped after the 11th Circuit Court of Appeals ruled that the prosecution had knowingly allowed false testimony to be introduced at trial. Brown was convicted of first-degree murder and sentenced to death on the testimony of Ronald Floyd, a co-conspirator who claimed he heard Brown confess to the murder. Floyd later retracted and admitted his testimony was lie. Brown came within 13 hours of execution when a new trial was ordered. Brown was released a year later when the state decided not to retry the case.

8. Anthony Ray Peek Florida Conviction 1978 - Acquitted 1987

Peek was convicted of murder and sentenced to death, despite witnesses who supported his alibi. His conviction was overturned when expert testimony concerning hair identification evidence was shown to be false. He was acquitted at his third retrial.

9. Juan Ramos Florida Conviction 1983 - Acquitted 1987

Despite a jury recommendation of life in prison, Juan Ramos was sentenced to death for rape and murder. No physical evidence linked Ramos to the victim or the scene of the crime. The Florida Supreme Court granted Ramos a new trial because of the prosecution's improper use of evidence. At retrial, Ramos was acquitted.

10. Willie Brown Florida Conviction 1983 - Released 1988

11. Larry Troy Florida Conviction 1983 - Released 1988

Brown and Troy were sentenced to death after being accused of fatally stabbing a fellow prisoner. The main witness against them was Frank Wise, who's original statements exonerated the men. Pending retrial, the charges against the men were dropped when Wise admitted that he had perjured himself.

12. William Jent* Florida Conviction 1980 - Released 1988 AND

13. Earnest Miller* Florida Conviction 1980 - Released 1988

These half-brothers were convicted and sentenced to death largely based on testimony of three alleged eyewitnesses. However, a re-examination of the autopsy report demonstrated that the crime never took place the way the eyewitness's described it. When the actual time of the murder was established, it was discovered that the men had airtight alibis. In 1987 a federal district court ordered a new trial because of suppression of exculpatory evidence, and Jent and Miller were released immediately after agreeing to plead guilty to second degree murder. They repudiated their plea upon leaving the courtroom and were later awarded compensation by the Pasco County Sheriff's Department.

14. Robert Cox Florida Conviction 1988 - Released 1989

Cox was convicted and sentenced to death, despite evidence that Cox did not know the victim and no one testified that they had been seen together. In 1989, Cox was released by a unanimous decision of the Florida Supreme Court that the evidence was insufficient to support his conviction.

15. James Richardson Florida Conviction 1968 - Released 1989

Richardson was convicted and sentenced to death for the poisoning of one of his children. The prosecution argued that Richardson committed the crime to obtain insurance money, despite the fact that no such policy existed. The primary witnesses against Richardson were two jail-house snitches whom Richardson was said to have confessed to. Post-conviction investigation found that the neighbor who was caring for Richardson's children had a prior homicide conviction, and the defense provided affidavits from people to whom he had confessed. Richardson's conviction was overturned after further investigation by then-Dade County State Attorney General Janet Reno, which resulted in a new hearing.

16. Bradley P. Scott Florida Conviction 1988 - Released 1991

Scott was convicted of murder and sentenced to death. His arrest came ten years after the crime, when the evidence corroborating his alibi had been lost. Scott was convicted on the testimony of witnesses whose identifications had been plagued with inconsistencies. On appeal, he was released by the Florida Supreme Court, which found that the evidence used to convict Scott was not sufficient to support a finding of guilt.

17. Sonia Jacobs Florida Conviction 1976 - Released 1992

Jacobs and her companion, Jesse Tafero, were sentenced to death for the murder of two policemen at a highway rest stop in 1976. A third co-defendant received a life sentence after pleading guilty and testifying against Jacobs and Tafero. The jury recommended a life sentence for Jacobs, but the judge overruled the jury and imposed death. A childhood friend and filmmaker, Micki Dickoff, then became interested in her case. Jacobs's conviction was overturned on a federal writ of habeas corpus in 1992. Following the discovery that the chief prosecution witness had given contradictory statements, the prosecutor accepted a plea in which Jacobs did not admit guilt, and she was immediately released. Jesse Tafero, whose conviction was based on much of the same highly questionable evidence, had been executed in 1990 before the evidence of innocence had been uncovered.

18. Andrew Golden Florida Conviction 1991 - Released 1994

Golden, a high school teacher in Florida, was convicted of murdering his wife. His conviction was overturned by the Florida Supreme Court in 1993. The court held that the state had failed to prove that the victim's death was anything but an accident. Golden was released into the waiting arms of his sons on January 6, 1994.

19. Robert Hayes Florida Conviction 1991 - Released 1997

Hayes was convicted of the rape and murder of a co-worker based partly on faulty DNA evidence. The Florida Supreme Court threw out Hayes's conviction and the DNA evidence in 1995. The victim had been found clutching hairs probably from her assailant. The hairs were from a white man, whereas Hayes is black. Hayes was acquitted at a retrial in July, 1997.

20. Joseph Spaziano Florida Conviction 1976 - Not Released

Spaziano was tried for the murder of a young woman which had occurred two years earlier. No physical evidence linked him to the crime. He was convicted primarily on the testimony of a drug-addicted teenager who, after hypnosis and "refreshed-memory" interrogation, thought he recalled Spaziano describing the murder. This witness has recently said that his testimony was totally unreliable and not true. Hypnotically induced testimony is no longer admissible in Florida. Death warrants have been repeatedly signed for Spaziano, even though the jury in his case had recommended a life sentence. In January, 1996, Florida Circuit Court Judge O.H. Eaton granted Spaziano a new trial, and this decision was upheld by the Florida Supreme Court on April 17, 1997. In November, 1998, Spaziano pleaded no contest to second degree murder and was sentenced to time served. He remains incarcerated on another charge.

21. Joseph Nahume Green Florida Convicted 1993 - Acquitted 2000

Joseph Nahume Green was acquitted on March 16, 2000 of the murder of Judith Miscally. Circuit Judge Robert P. Cates entered a not guilty verdict for Green, citing the lack of any witnesses or evidence tying Green to the murder. Green, who has always maintained his innocence, was convicted largely upon the testimony of the state's only eye witness, Lonnie Thompson. In 1996, Green's conviction was overturned by the Florida Supreme Court, which held that Thompson's testimony was often

inconsistent and contradictory, and that he not been fit to testify during Green's trial. (St. Petersburg Times, 3/17/00)

22. Frank Lee Smith Florida Convicted 1985 - Cleared 2000

Frank Lee Smith, who had been convicted of a 1985 rape and murder of an 8-year-old girl, and who died of cancer in January 2000 while still on death row, was cleared of these charges by DNA testing, according to an aide to Florida Gov. Jeb Bush. After the trial, the chief eyewitness recanted her testimony. Nevertheless, Smith was scheduled for execution in 1990, but received a stay. Prosecutor Carolyn McCann was told by the FBI lab which conducted the DNA tests that: "He has been excluded. He didn't do it." another man, who is currently in a psychiatric facility, is now the main suspect. (Washington Post, 12/15/00 (AP))

23. Joaquin Martinez Florida Convicted 1997 - Acquitted 2001

Former death row inmate Joaquin Martinez was acquitted of all charges at his retrial for a 1995 murder in Florida. Martinez's earlier conviction was overturned by the Florida Supreme Court because of improper statements by a police detective at trial. The prosecution did not seek the death penalty in Martinez's second trial after key prosecution witnesses changed their stories and recanted their testimony. An audio tape of alleged incriminating statements by Martinez, which was used at the first trial, was ruled inadmissible at retrial because it was inaudible. The new jury, however, heard evidence that the transcript of the inaudible tape had been prepared by the victim's father, who was the manager of the sheriff's office evidence room at the time of the murder and who had offered a \$10,000 reward in the case. Both the Pope and the King of Spain had tried to intervene on behalf of Martinez, who is a Spanish national. Spanish Prime Minister Jose Aznar welcomed the verdict, saying: "I'm very happy that this Spaniard was declared not guilty. I've always been against the death penalty and I always will be." (Tampa Bay Tribune (AP) 6/6/01)

24. Juan Roberto Melendez Florida Conviction 1984 Released 2002

Juan Roberto Melendez spent nearly 18 years on Florida's death row before being exonerated of the crime for which he was sentenced to death. Melendez, who was born in Brooklyn, New York and raised in Puerto Rico, was sentenced to die in 1984 for the murder of Delbert Baker. In December 2001, Florida Circuit Court Judge Barbara Fleischer overturned Melendez's capital murder conviction after determining that prosecutors in his original trial withheld critical evidence, thereby undermining confidence in the original verdict. The judge noted that no physical evidence linked Melendez to the crime. The state had used the testimony of two witnesses whose credibility was later challenged with new evidence. (Associated Press, 12/5/01) Following the reversal of the conviction, prosecutors announced the state's decision to abandon charges against Melendez. (Associated Press, 1/3/02)

25. Rudolph Holton Florida Conviction 1987 Released 2003

Florida death row inmate Rudolph Holton was released on January 24, 2003, making him the 103rd person exonerated and freed from death row nationwide since 1973. Holton's conviction for murder was overturned in 2001 and prosecutors announced today that the state was dropping all charges against Holton, who had spent 16 years on death row. Crucial evidence had been withheld from the defense that pointed to another perpetrator.

26. John Robert Ballard Conviction 2003 - Acquitted 2006

The Florida Supreme Court unanimously overturned the conviction of Death Row inmate John Robert Ballard and ordered his acquittal in the 1999 murders of two of his acquaintances. The court concluded that the evidence against Ballard was so weak that the trial judge should have dismissed the case immediately. At Ballard's trial, only 9 of the 12 jurors recommended a death sentence. The judge decided to sentence Ballard to death, commenting, "You have not only forfeited your right to live among us, but under the laws of the state of Florida, you have forfeited your right to live at all." After serving three years on death row for a crime he did not commit, Ballard was freed and became the 26th person to be exonerated and released from Florida's death row since 1972.

27. Herman Lindsey Conviction 2006 - Acquitted 2009

July 9, 2009, the Florida Supreme Court ruled unanimously that Herman Lindsey be acquitted and released from Death Row. The court said that the state had failed to produce any evidence in this case placing Lindsey at the scene of the crime at the time of the murder, and that the evidence presented was "equally consistent with a reasonable hypothesis of innocence." Lindsey became the 135th person to be exonerated from U.S. Death Rows since the Death Penalty was reinstated.

“The Fiscal Crisis In Corrections; Rethinking Policies and Practices” - July 2009 (updated)

Executive Summary

States across the United States are facing the worst fiscal crisis in years. Declining revenues are forcing cuts across virtually all government functions, including corrections, which for many years had been considered off limits. The budgets of at least 26 state departments of corrections have been cut for FY2010, and even those whose budgets have not been cut are reducing expenditures in certain areas. This report, drawing on a survey of enacted FY2010 state budgets and recent legislation, looks at how officials are responding to these reductions and how others are mobilizing to find efficiencies and savings.

Most of the activity is occurring in three areas:

OPERATING EFFICIENCIES: Though many state corrections departments squeezed out efficiencies during the last recession, they are trying to eke out even more savings now. States are reducing healthcare services or joining in purchasing agreements to lower the cost of inmate pharmaceuticals. Many states have reduced corrections staff, instituted hiring freezes, reduced salaries or benefits, and/or eliminated pay increases. Others are consolidating facilities or halting planned expansions. Still others are eliminating or downsizing some programs.

RECIDIVISM REDUCTION STRATEGIES: High rates of failure among people on probation and parole are a significant driver of prison populations and costs in most states. To cut down on new offenses and the incarceration of rule violators, several states are strengthening their community corrections systems. Many states began these efforts in the past few years as part of the national emphasis on helping people successfully return to the community following their release from prison. States are now bolstering both their reentry programs and community supervision programs and working to improve outcomes for people on supervision.

RELEASE POLICIES: The biggest budget savings come from policy changes that impact how many people come into prison and how long they stay. Staffing typically accounts for 75 to 80 percent of corrections budgets, so substantial cost reductions can be achieved only when the prison population shrinks enough to shutter a facility—whether a single cellblock or an entire prison. In FY2010, states looking for large cuts have turned to release policies and found that they can identify some groups of people who can be safely released after serving shorter terms behind bars.

Given that current state budget deficits are expected to continue and possibly increase over the coming years, states will need to continue to find ways to control corrections costs. Each year, the decisions will become more difficult. Management strategies may extend operating efficiencies, but the resulting cost savings are likely to fall short of what states will need to make ends meet. When deeper cuts are required, states will have to shift expenditures from costly prisons to far more economical investments in community corrections and confront controversial questions about which people really need to go to prison and how long they should stay. State governments are beginning to rise to the challenge of cutting corrections costs while maintaining or even boosting public safety. This paper highlights some of the innovative and creative ways they are doing so.

From The Center Director

The story of the rise in incarceration rates in the United States and the associated increase in corrections expenditures is not new. In most states, prisons are full or overcrowded and corrections absorbs significant resources—more than \$50 billion in 2008. What is new is the states’ recent focus on cutting corrections costs and improving criminal justice outcomes.

This report, from Vera’s Center on Sentencing and Corrections, examines how states are responding to the current fiscal crisis and attempting to make changes in their criminal justice systems that will not only reduce costs but also enhance public safety and reduce recidivism.

This report could not be more timely. Political leaders on both sides of the aisle are looking for cost-effective ways to increase public safety. Fortunately, for the past number of years, researchers and practitioners around the country have developed and tested new and innovative criminal justice policies that work to reduce recidivism. And these policies are gaining support at all levels of the government—from state governments to the Department of Justice, where Attorney General Eric Holder has repeatedly supported using modern, evidence-based methods for developing policy.

As policymakers navigate their budget shortfalls this year and next, we hope this report provides them with useful evidence-based options for cutting costs and increasing public safety.

*Peggy McGarry
Director, Center on Sentencing and Corrections*

* INTRODUCTION

* As their 2009 legislative sessions ended, many states were still working to balance their budgets. Deficits that affected a handful of states in FY2008 had become widespread: Forty-three states were facing an aggregate budget gap in FY2009 of more than \$100 billion, undermining funding for essential services such as education, health care, and corrections. More shortfalls were projected for FY2010, and at least 31 states had forecast budget gaps for FY2011.¹ These gaps would be even greater without the availability of federal stimulus funds.

* Second only to Medicaid, corrections has become the fastest growing general fund expenditure in the United States.² Two million three hundred thousand people in the U.S. are now in prison or jail—more than one in 100 adults.³ On any given day 7.3 million adults are under federal, state, or local correctional control (including those on probation, parole, and other forms of supervision)—one in 31 adults.⁴ In FY2008, the most recent year data are available, states spent an estimated \$47 billion of general funds on corrections, an increase of 303 percent since 1988. They spent an additional \$4 billion in special funds and bonds and \$900 million in federal funds, bringing total corrections expenditures to nearly \$52 billion. With one in every 15 state general fund dollars now spent on corrections, officials have little choice but to look there for savings. In doing so, however, they must be careful to find cuts that will not compromise public safety.

* This report, based on a survey of enacted FY2010 state budgets and other recent sentencing and corrections legislation, found that at least 26 states have reversed the trend of recent decades and cut funding for corrections.⁵ The report examines the form of these cuts: reductions in operational costs, strategies for reducing recidivism, and reforms in release policies. It also highlights a number of innovations that states are pursuing for long-term cost reductions.

shortfalls that occurred earlier this decade, most states followed this path by consolidating facilities or reducing beds, reducing personnel costs, or eliminating programs.⁷ They are taking similar actions for FY2010. Almost every state that responded to our survey (32 of 37), including those whose corrections budgets were not reduced, has adopted such cost-cutting measures.

The specific strategies for finding such savings vary, however. Healthcare costs associated with corrections have been a common target. Maine, for example, renegotiated the contract with its healthcare provider and also changed the way it dispensed medications to inmates. More controversially, a few states have reduced the food services provided to inmates: Georgia, for example, reduced the number of meals provided to inmates, (while still providing the same number of calories). Some states, including Kansas and New York, have postponed planned expenditures and put holds on technology upgrades. However, the most common cost-cutting measures for FY2010 fall into three broad categories: reducing personnel costs, downsizing programs, and closing facilities.

PERSONNEL SAVINGS

At least 31 states have reduced staff, instituted hiring freezes, reduced salaries or benefits, and/or eliminated pay increases. Alabama eliminated merit and cost-of-living pay raises and froze hiring of all corrections personnel except correctional officers. New York extended an existing hiring freeze and eliminated nonessential administrative positions. Idaho's Department of Corrections recently announced plans to cut 38 jobs and require all workers to take unpaid furloughs over the course of the fiscal year. Nevada and New Mexico are among several states that passed increases in medical insurance costs on to their employees.

DOWNSIZING PROGRAMS

In recent years, many states strengthened their community supervision services by expanding treatment and other programs. Unfortunately, budget deficits have forced many states to make some cuts to these programs. At least 20 states have eliminated or reduced programs or discontinued or renegotiated contracts for programming. Most of these states have been able to cut costs without eliminating any programs entirely. For example, Louisiana consolidated some programs while New Mexico halted proposed expansion of reentry and other prison programs. Other states have made more significant cuts.

Delaware reduced funding for some substance use and community treatment programs while Colorado reduced some parole services. Kansas, one of the national leaders in community corrections, saw some of the worst cuts. Treatment programs in the community were severely impacted with 80 percent of substance abuse treatment slots and over half of sex offender treatment slots eliminated. Some in-prison academic and vocational education programs were also eliminated. The state is attempting to restore funding for some of these programs by shifting some financing from the general fund to federally funded Byrne Grants. The fear is that the gains in recent years will be reversed when the programs are eliminated. However, at least one state used the need to cut programs as justification for eliminating ineffective practices. New York recently ended its Prison Farm operations in recognition of the fact that its usefulness as a vocational tool has diminished. It also eliminated a drug treatment program—Road to Recovery—that was underutilized and had a low completion rate.

CLOSING PRISONS

Despite opposition from corrections unions, local businesses, some lawmakers, and others, several states elected to close facilities. Hit especially hard by the economic crisis and facing a \$1.7 billion budget deficit in FY2010, Michigan governor Jennifer Granholm announced that she would close three prisons and five prison camps (laying off up to 500 employees) to save \$118 million annually. This is in addition to two prisons and one prison camp that have already been closed this year.⁸ Similarly, New York plans to close three minimum security correctional camps and parts of seven more facilities. These closures are expected to save more than \$50 million over the next two fiscal years.

Other states have halted expansion or delayed the openings of new facilities. Alaska, for example, will save more than \$700,000 in FY2010 by freezing prison system expansion. Colorado delayed opening one prison and delayed the staffing and expansion of another. All told, at least 22 states have shut facilities, reduced beds, halted expansions, or delayed the opening of new facilities. It bears noting, however, that not all states are in a position to take such actions. Only those that have engaged in policy reforms that lowered their prison populations can take this step. Some of these successful policy changes are discussed below.

REDUCING COSTS ASSOCIATED WITH RECIDIVISM

A growing body of research suggests that improving community supervision and helping formerly incarcerated people reintegrate into society can save money and, in many cases, also increase public safety. Over the past decade, more and more states have begun to focus on these strategies. Actions taken during recent legislative sessions show an increased willingness to invest scarce resources in evidence-based programs and initiatives in these areas.

IMPROVING COMMUNITY SUPERVISION

Given that more than five million people in the United States are on probation, parole, or post-prison supervision and that many of them will return to prison for failing to comply with their conditions of supervision, states are looking for ways to reduce both the cost of supervision and the number of technical violations that return people into custody—violations of conditions of release, such as not attending meetings with parole officers or failing drug tests. The costs of technical violations are huge: more than one-third of prison admissions are the result of a parole violation.⁹

An increasing number of states are relying on “evidence-based” policies and practices, which have been shown by research to reduce recidivism among individuals on community supervision. These include using graduated responses to violations, eliminating or minimizing supervision requirements for lower-risk people, using positive reinforcements, and adopting incentive funding.

GRADUATED RESPONSES.

Graduated responses represent a range of actions, each more emphatic than the former, that provide supervision officials with alternatives to revocation. Since 2007, nine states have established formal graduated response grids, providing a set of options for responding swiftly and certainly to both compliant and non-compliant behavior. New York and Wyoming are currently considering response grids like this. Two other states, Missouri and Arkansas, are developing technical violator centers, an additional graduated response involving short-term intensive residential programming to serve as a last resort before returning a violator to prison.

REDUCING SUPERVISION REQUIREMENTS

To reduce supervision costs and focus

scarce resources on those who are most at risk of violating or committing a new offense, some states are shortening periods of supervision; others are reducing, or eliminating, supervision requirements for certain populations altogether. Virginia now requires judges to remove from supervision people who have been supervised for at least two years and have satisfied all conditions except the payment of restitution, fines, or costs. Washington eliminated supervised probation of people convicted of misdemeanors and some low-level felonies. Texas has reduced the maximum probation terms for people convicted of certain property or drug offenses from 10 to five years, allowing officials to focus supervision resources on the early years after release, when research shows people are most likely to commit new crimes. The Washington Department of Corrections is also preparing to end supervision of low-risk people (except those convicted of a sex offense), and Wisconsin's department of corrections may discharge people from community supervision if they have completed 50 percent of the probation period.

POSITIVE REWARDS.

Some states are increasing the use of positive rewards. At least two states have established or expanded earned compliance credits for people on community supervision. Arizona passed legislation last year that allows some people on probation to reduce their supervision term by up to 20 days for every 30 days they comply with the terms of their release and are current in payments of victim restitution. Nevada passed a similar provision in 2007, increasing the credits earned by parolees who are current with supervision fees and restitution payments. These provisions provide incentives for people to complete the terms of their probation and parole supervision, saving states money in both the short and long term.

INCENTIVE FUNDING.

Finally, some states are adopting incentive funding to improve the performance of county systems. Both Kansas and Arizona recently adopted legislation that provides counties with incentives to adopt evidence-based practices and programming to reduce the rate of probation or community corrections revocations in their jurisdictions. In the first year of implementation in Kansas, community corrections revocations dropped statewide by 21.9 percent.¹⁰

This year, the Illinois General Assembly passed the Crime Reduction Act, which directs state funds toward locally based sanctions and treatment alternatives if the local jurisdiction successfully reduces the number of people entering local or state incarceration facilities.¹¹ Similar performance incentive funding is under review in California.

REENTRY AND REDUCING RETURNS TO PRISON

People returning from prison face a variety of challenges. These include reconnecting with family and peers, finding housing and employment, and more generally, avoiding criminal activity. There is growing, nationwide interest and support for comprehensive reentry planning and services—with the understanding that these must begin when an individual enters prison. There is also a recognition that these services, by reducing the likelihood that a person will return to prison, can help save states money.

Colorado was in the vanguard of this trend in 2007, when it adopted the Crime Prevention and Recidivism Reduction Package, authorizing the use of evidence-based, cost-effective reforms aimed at reducing recidivism. Despite limited funds, Governor Bill Ritter extended this effort into FY2009-10 with an additional \$9.5 million appropriation to fund a series of reforms that are expected to save the state more than \$380 million over the next five years.¹²

Other states are also considering developing or expanding reentry programs. Connecticut, for example, recently established reentry furloughs that not only accelerate prison releases, but also provide aftercare services to people transitioning from prison to community supervision. The aftercare provision is supported by evidence-based research that clearly demonstrates that a period of community supervision and targeted interventions after release lower the risk of recidivism.

To reduce the second highest recidivism rate in the country, Louisiana's governor, Bobby Jindal, recently established a program to prepare people in prison for release and reentry into society. Inmates will be evaluated when they enter prison for their educational, health, and mental health needs, and participants will undergo three to six months of prerelease programming. The program will be piloted in two parishes and then expanded to 10 regional offices.

Maryland and Michigan are expanding their existing reentry initiatives. Proposed

funding for the Michigan Prisoner Re-entry Initiative more than doubled between FY2009 and FY2010, in large part due to the role it has played in reducing that state's prison population.¹³ (Details on these initiatives as well as other state activity in this area are highlighted in Reentry/Transition Planning Efforts,

ACCELERATING PRISON RELEASES

Many states are facing the increased fiscal consequences from years of harsher policies—such as truth-in-sentencing requirements, “three strikes” laws, and mandatory minimum sentences—that have resulted in long sentences. While there is wide consensus that tougher penalties are necessary and appropriate for those convicted of serious violent or sex offenses, many policymakers are questioning the need for long prison terms for people convicted of less serious crimes such as nonviolent drug offenses. Some of these provisions were reversed during the fiscal crisis earlier this decade, but many remain, resulting in severe prison overcrowding in some states.¹⁴ States are also presented with a growing number of elderly and chronically ill prisoners whose ongoing care requires significant resources. To address these issues, officials have added or modified the laws and policies that determine the amount of time people spend in prison. These changes have the potential to lower prison populations, allowing states to close facilities and reduce corrections expenses in the longer term.

GOOD TIME/EARNED TIME

Many states are considering or have increased the amount of good time (days off for good behavior) or earned time (days off for doing something productive) available to inmates.¹⁶

- > Colorado recently increased earned time for eligible inmates from 10 to 12 days per month. It also provided for early parole release of up to 60 days for certain inmates.
- > The Illinois Department of Corrections is weighing instituting an early release program for people convicted of low-level and nonviolent drug offenses.
- > Ohio is considering a seven day earned credit policy that would cut seven days from the sentence for every month that a person is engaged in prison treatment or programs, yielding projected annual savings of \$11,407,009.

- > Oregon recently enacted legislation increasing the amount of earned time people may accumulate from 20 percent of their sentence to 30 percent of their sentence.

AVAILABILITY OF PAROLE

Other states have focused on increasing the availability of parole:

- > Governor Jennifer Granholm of Michigan expanded the parole board from 10 to 15 members so that it can expedite the review and possible parole of 12,000 inmates who have served their minimum sentences.
- > Idaho’s department of corrections will provide resources to the state’s Pardons and Parole Commission to reduce the number of inmates incarcerated past their parole eligibility dates.
- > To reduce severe overcrowding, California prison officials have granted early releases (of up to 60 days) to some people serving prison time for parole violations or who are in prison awaiting a hearing on a parole violation. All people released were screened and approved by the parole board.
- > Mississippi is enhancing coordination between the department of corrections and the parole board and recently provided the parole board with a list of 2,900 nonviolent inmates for consideration\of parole.

MEDICAL OR GERIATRIC PAROLE

Providing health care to the growing number of elderly and chronically ill people in prison presents states with a significant financial burden. A number of states have proposed new, or modified existing, medical or geriatric release provisions to avoid sole responsibility for these costs. By releasing this population and placing them in the community, states can share the medical costs with the federal government under Medicare and Medicaid rules. In 2008, at least seven states established medical or geriatric parole, or expanded already existing provisions.¹⁷ Several other states have followed their lead this year

- > New York expanded the eligibility requirements of the current medical parole policy for a projected cost savings of \$2 million annually.
- > Washington projects \$1.5 million in savings from its new geriatric and medical parole release policy, which allows early release for adult inmates who

are chronically or terminally ill and 55 years or older.

- > Wisconsin’s Earned Release Review Commission (formerly the Parole Commission) was given the authority to release inmates with extraordinary health conditions to extended supervision as long as public safety is maintained

RISK-REDUCTION SENTENCES

Risk-reduction sentences are a sentencing option recently adopted in two states, Pennsylvania (2008) and Wisconsin (2009), that give inmates an incentive to participate in pre-release programs designed to reduce recidivism. At sentencing, people convicted of some low-level offenses may be eligible to receive two minimum sentences: the regular minimum and a shorter, risk-reduction incentive minimum. If the inmate completes programming required by the department of corrections based on a risk/needs assessment and also demonstrates satisfactory institutional behavior, he or she will be released after serving the risk reduction minimum. The fiscal benefits to this policy are twofold. Not only does it reduce the length of stay for participants, but by encouraging participation in programs designed to meet their criminogenic needs, it reduces the likelihood that they will return to prison after release.

SYSTEMATIC REFORM: SENTENCING COMMISSIONS AND TASK FORCES

To ensure that policy reforms are systematic and sustainable, many states have established sentencing commissions or other task forces to plan their sentencing and corrections strategies or to address particular areas of concern

Sentencing commissions typically are designed to be neutral permanent bodies that analyze data and research to inform sentencing and corrections policies. In the past, most sentencing commissions were established and charged with developing some form of sentencing guidelines. Recent trends, however, indicate that many states are now creating or expanding commissions to address broader criminal justice policy agendas. Colorado, Nevada, New York, and Vermont all created sentencing commissions in 2007, none of which were primarily charged with implementing sentencing guidelines.¹⁵ The trend continues this year with the passage in

Illinois of legislation to establish a Sentencing Policy Advisory Council. This council will collect and analyze data from local criminal justice agencies and provide policymakers with the information they need to make sound planning decisions. Connecticut will be considering a similar sentencing commission, recommended by its bi-partisan Sentencing Task Force, during its special budget session.

Other states are establishing task forces to deal with specific issues. For example, in 2009, Colorado’s legislature passed a bill mandating the study of sentencing in Colorado by the Commission on Criminal and Juvenile Justice (CCCJJ). The CCCJJ was set up in 2007 to enhance public safety, ensure justice, and protect the rights of victims through the cost-effective use of public resources. The 2009 legislation directs the CCCJJ to focus specifically on sentencing reform.

Virginia, which has had a sentencing commission for many years, recently established the Alternatives for Nonviolent Offenders Task Force. This body is charged with developing recommendations to expand the use of alternative methods of punishment for nonviolent, lower-risk individuals who have been sentenced by a court to a term of incarceration. The state’s goal is for these recommendations to inform legislation that would reduce the growth in the number of nonviolent, lower-risk individuals entering state correctional facilities, thus saving the state money.

REENTRY/TRANSITION PLANNING EFFORTS

California: Despite an overall reduction in expenditures, California’s proposed budget includes \$47.2 million to pay for the activation of the Northern California Reentry Facility. This is a former women’s prison that has been converted to a 500-bed secure reentry facility that will house male inmates for up to 12 months prior to parole. The facility will provide programs and services to people returning to three Northern California counties. These programs and services will include intensive substance abuse treatment, vocational training and job placement, academic education, housing placement, anger management classes, family counseling, and other targeted services to ease the transition to the

community. In addition, the California Department of Corrections and Rehabilitation is engaging in ongoing communication with local stakeholders to ensure continuity of service after people leave the facility.

Colorado: The FY2010 Crime Prevention and Recidivism Reduction Package establishes and provides \$160,000 in funding for community corrections discharge planning. This includes discharge planning services for people with mental health and substance abuse needs who are transitioning into community corrections. The package also provides more than \$1.2 million to continue a pre-release program initiated in FY2009. This program provides discharge planning to inmates within four months of release through individualized education modules and detailed transition planning.

Connecticut: Governor Jodi Rell's proposed FY2010 budget would reinstate and expand the commissioner of correction's authority to place inmates on reentry furloughs. The reentry furlough will release people from prison up to 45 days early and provide accountability, support, and aftercare services to released individuals for a period of community supervision and is estimated to save more than \$5 million each year.

Louisiana: In March 2009, Governor Bobby Jindal announced the establishment of a program designed to prepare state prison inmates for release and reentry into society. The program will be piloted in two parishes at a cost of \$1.1 million in FY2010 and will eventually expand to 10 regional offices. Inmates will be evaluated medically, mentally, and educationally when they enter prison and will undergo three to six months of pre-release training on topics such as communication skills, money management training, housing resources, and succeeding on parole.

Maryland: The FY2010 budget for the Division of Probation and Parole contains funds to expand the state's Violence Prevention Initiative (launched in FY2009). This initiative aims to reduce reoffending among the state's most violent supervisees and uses techniques such as stricter supervision, follow-up counseling, and GPS monitoring.

Michigan: Although the proposed FY2010 budget for the state's department of corrections was cut by almost 3 percent from FY2009, funding for the Michigan Prisoner Re-entry Initiative was expanded by \$23.4 million to \$56.6 million. This initiative aims to reduce the state's costly recidivism rate by better preparing inmates for release.

Missouri: The FY2010 budget provides \$3 million to expand the community reentry grants program, which makes funds available to local agencies and nonprofit organizations to support reentry. The budget also provides \$900,000 for ongoing funding of the St. Louis reentry program, a pilot being converted to a permanent program.

Montana: Montana's FY2010 budget provides almost \$1 million to add 33 beds to the Great Falls Pre-Release Center, a facility that serves mentally ill and aging/disabled inmates as they transition from secure custody to community placements.

Texas: Legislation in 2009 (HB 1711) requires the Texas Department of Criminal Justice to establish a comprehensive reentry plan for people leaving correctional facilities. The goal is to reduce recidivism and ensure the successful reentry and reintegration of inmates into the community. This will be accomplished with needs assessments, new programs, including a network of transition programs, and information sharing across agencies and with private providers. The act also establishes a multi-agency Reentry Taskforce, which will identify gaps in services and coordinate with providers.

REDUCING PRISON ADMISSIONS BY STRENGTHENING COMMUNITY CORRECTIONS

Given the high rates at which people on probation, parole, and post-prison supervision are incarcerated for failing to comply with the conditions of their release or for committing new offenses, community corrections is an area ripe for policy change. Reducing these failure rates could decrease the overall corrections populations, which is key to saving states money. Some of the

most promising strategies for reducing failure rates are collected in the Pew Public Safety Performance Project's *Policy Framework to Strengthen Community Corrections*.

In 2008, the Public Safety Performance Project of the Pew Center on the States brought together leading policymakers, practitioners, and researchers to create a policy framework for strengthening community corrections.¹⁸ The framework includes five innovative policy options that have already been implemented in several states:

- > Evidence-based practices
- > Earned compliance credits
- > Administrative sanctions
- > Performance incentive funding
- > Performance measurement

Although each of these policies has the potential to reduce recidivism and control corrections costs on its own, they promise an even greater impact when implemented together. The initial expenditure associated with some of the elements is typically limited and far outweighed by the potential long-term cost savings they can generate.

Several states have already begun to adopt the framework. Illinois's Crime Reduction Act, for example, establishes three of the five policy options as part of package of criminal justice reforms undertaken this year. The legislation, which was passed unanimously by both houses of the General Assembly and is awaiting the governor's signature, calls for implementing evidence-based practices such as:

- > using a risk and needs assessment tool to assign individuals to supervision levels and programs,
- > developing individualized case plans to guide case management decisions,
- > implementing a system of graduated responses to guide responses to violations, and
- > providing professional development services to support staff in deploying these practices.

The legislation also establishes Adult Redeploy Illinois, a program that directs state funds toward local efforts at rehabilitation. This system of incentive funding will be used to support locally based sanctions and treatment alternatives that reduce the number of people entering local or state incarceration facilities.

A LOOK TOWARD THE FUTURE: SUSTAINABLE POLICY CHANGES THAT CUT COSTS

A series of sentencing policies enacted over the past three decades—including mandatory minimums, habitual offender laws, enhanced sentences for drug offenders, and truth in sentencing—have helped generate the high incarceration rates that many states face today.¹⁹ Even though most states have stopped enacting such policies, and some have begun to repeal earlier legislation, their corrections systems must still contend with the costs these policies incurred. Fortunately, new and innovative policies implemented over the past 10 years suggest that states can both save money by slowing the growth of their prison populations and, in the process, also increase public safety—a combination formerly considered inconceivable.

Despite facing severe budget cuts, many states continue to invest in these new policies. Yet such investments cannot be taken for granted. Over the past decade, Kansas made huge improvements in its community supervision practices, becoming a national leader for achieving significant reductions in the number of people returned to prison from probation and parole. However, it recently made program cuts that jeopardize this progress. It is critical that other states consider the repercussions of cutting programs that have a positive impact on system and individual outcomes. Fortunately, sentencing commissions—independent, government-sanctioned bodies that inform sentencing and corrections policymaking—have also been established recently in many states. These bodies may help ensure that policy reforms are thoughtful and sustainable.

The next several years will be difficult ones for the states as they continue to confront severe budget shortfalls. This analysis of current trends, drawing on FY2010 budgets and recent legislation, suggests that many states are not simply looking for operational efficiencies.

Rather, they are taking advantage of the opportunity this crisis presents to invest in innovative, evidence-based options that have proven to cut corrections costs while maintaining or even improving public safety.

Endnotes

- 1 National Conference of State Legislatures, State Budget Update: April 2009.
- 2 All cost figures from the National Association of State Budget Officers, State Expenditure Reports.
- 3 Pew Center on the States, *One in 100: Behind Bars in America 2008*, (Washington, DC: Public Safety Performance Project, The Pew Charitable Trusts, February 2008).
- 4 Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: Public Safety Performance Project, The Pew Charitable Trusts, March 09
- 5 This report is based on FY2010 enacted budgets, other legislation, newspaper reports, and a survey of state departments of corrections budget officials. At press time, three states had not enacted budgets for FY2010. Of the remaining 47 states, 37 responded to our survey.
- 6 Officials in Kansas, Nebraska, and South Dakota made these cuts knowing that a portion of the decrease in general fund appropriations would be made up by federal stimulus funds. For detail, see Table 1. It is possible that other states also considered stimulus funds in their budget process but that information was not available to us.
- 7 Jon Wool and Don Stemen, *Changing Fortunes or Changing Attitudes? Sentencing and Corrections Reforms in 2003* (New York: Vera Institute of Justice, March 2004).
- 8 Michigan's fiscal year does not begin until October 1, so its FY2010 has not yet been enacted.
- 9 Heather C. West and William J. Sabol, *Prisoners in 2007* (Washington, DC: U.S. Department of Justice, 2008).
- 10 Kansas Department of Corrections, Community Corrections Services Divisions, *Kansas Community Corrections Statewide Risk Initiative Annual Report*, January 2009.
- 11 At press time, the act was awaiting Governor Pat Quinn's signature.
- 12 Memorandum from Governor's Office of State Planning and Budgeting, November 1, 2008, available . See link at Pew report online.
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- 14 Daniel F. Wilhelm and Nicholas R. Turner, *Is the Budget Crisis Changing the Way We Look at Sentencing and Incarceration* (New York: Vera Institute of Justice, June 2002).
- 15 South Carolina is an exception to this rule and in 2008 established a Sentencing Reform Commission to review, study, and recommend legislation for sentencing guidelines, the parole system, and alternative sentencing procedures for nonviolent offenders.
- 16 For a recent review of earned time policies for state prisoners, see Alison Lawrence, *Cutting Corrections Costs: Earned Time Policies for State Prisoners* (Washington DC: Ntn'l Conference of State Legislators, July 09.
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Inmate set free, with an apology

By PAULA MCMAHON Sun Sentinel
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FORT LAUDERDALE - Anthony Caravella got two things this week that he waited for since he was 15 -- total freedom and an apology from a Broward Circuit judge for the nearly 26 years he wrongfully spent in prison.

Caravella, 41, of Miramar was locked up for more than half his life for a 1983 rape and murder before DNA testing exonerated him. Broward Circuit Judge Thomas M. Lynch IV tossed Caravella's life sentence and convictions for murder and rape Thursday, at the request of prosecutors and the defense.

"The past couple of years a lot of people have worked very hard for you ... on the other hand, there are some people who may owe you an apology," the judge, who is new to the case, told Caravella.

"Let me take the opportunity to apologize to you for the criminal justice system of the state of Florida," Lynch said. "Good luck in the future, sir." People in the courtroom burst into applause.

Caravella is the 252nd person in the nation, the 12th in Florida, and the fourth in Broward County to be exonerated by post-conviction DNA testing, according to the Innocence Project of Florida, a group that tracks such cases.

"I waited for so many years for this moment," Caravella told the Sun Sentinel. "I lost everything but now I got my life back."

Caravella was released Sept. 10 after DNA testing appeared to eliminate him as the source of evidence found on the victim. While prosecutors ran more tests to verify the results, he had to wear a GPS monitor tethered around his ankle.

When the tracking device was cut off Thursday, Caravella said he felt "10 pounds lighter."

Now that the felony convictions are gone, he said, he's looking for a job and "getting my life in order."

The latest tests, finalized Wednesday, confirmed Caravella's DNA was not found on crime scene evidence.