

## ***SPECIAL REPORT***

### **PROTECTING THE FUTURE: MODERATING WEST VIRGINIA'S BUDGET CRISIS**

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#### Executive Summary

In the last 10 years, the number of people locked in West Virginia's prisons more than doubled. Between 1994 and 2004, the state's prison population rose from 2,392 to 5,032, an increase of 110%.

At the same time, both the state's population and its crime rate stayed about the same.

The growth of people in prison significantly exceeds national trends. *In 2001, West Virginia had the highest incarceration growth rate in the entire United States (9.3% a year).*

Many of the state's sentences are far longer than the national average. For some offenses, people spend far longer in prison than the national average.

The impact on the state's finances is staggering. Since 1990, West Virginia has spent well over \$100 million just to build new prisons. The amount spent each year on the Division of Corrections has almost *tripled* in the last ten years.

While funds for corrections have risen dramatically, social service programs and

education have been shortchanged. The state has increased spending on prisons *five times* faster than it has on higher education.

The cost to West Virginia's future is dramatic. By 2012, the state's prison population is projected to increase to 6,774, 35% more than the figure in 2004.

The state must ensure public safety. But it cannot afford to mortgage its economic and educational future to an ever-expanding prison system.

There is a solution to this crisis which will:

- Enable the state to honor its responsibility to make sure that its citizens are secure and protected from harm.
- Ensure that the proportion of the state budget dedicated to corrections does not expand beyond its current level and is eventually reduced.
- Enhance state funding to those educational programs which will help the state build a diversified economic future based on a competitive educated workforce.

This report recommends that West Virginia:

- Fully fund the Day Reporting Center initiative approved by the legislature for non-violent offenders, an approach that has already proven successful in four Northern Panhandle counties. This will eventually save the state between \$42 and \$63 million a year. These savings should go to fund educational programs that secure the state's future.
- Continue to evaluate the state's policies regarding sentencing and parole, and implement systems that will ensure both public safety and financial stability for the state.
- Direct the Parole Board to manage the parole system so that the average time served in West Virginia is no higher than the average for the United States.
- Cap the number of people in the state's prison system at the current level and direct the Division of Corrections to manage for zero increases.
- Direct the Division of Corrections to create a 10-year plan for reducing the number of people in prison to the 1994 level by expanding those community corrections programs that have a proven track record of ensuring public safety.

## INTRODUCTION

In his address on "The State of the Campus" in 2002, West Virginia University President David C. Hardesty described the general crisis in the funding of higher education by state governments, and declared that "what's more alarming" was the post-1995 shift in state

spending priorities from higher education to prisons.

In recent years Grassroots Leadership, a national organization concerned with effect of prison and criminal justice policies on public services, and the Washington-based Justice Policy Institute (JPI) have issued a series of reports documenting this shift. In its California report, JPI explains that “prisons and universities generally occupy the portion of the state’s budget that is neither mandated by federal requirements nor driven by population – like Medicare or K-12 education. Because they dominate a state’s discretionary funds, prisons and universities must ‘fight it out’ for the non-mandated portion of the state’s budget.”<sup>[i]</sup>

A JPI study issued this past August bears out President Hardesty’s comment as it applies to West Virginia. Between 1985 and 2002 the growth in corrections spending, adjusted for inflation, was 149.7% whereas the growth in higher education spending was a tenth of that.<sup>[ii]</sup>

Other indicators of the way in which prison and criminal justice spending is a contributing cause of West Virginia’s budget crisis include:

- From 1992 to 2002, state appropriations for higher education went up 23% in inflation-adjusted dollars, while state appropriations for the Division of Corrections went up almost 140%. By contrast, DOC appropriations between 1981 through 1992 remained basically stable.
- From 1992 to 2002, the number of those incarcerated in West Virginia’s state prisons doubled while the state’s population as a whole remained static and West Virginia continued to enjoy one of the nation’s lowest crime rates.
- In 2002, the State of West Virginia’s Division of Corrections appropriation came to \$19,376.97 per inmate. The State of West Virginia’s higher education appropriation came to \$6,435.18 per full-time-equivalent students in state schools.

## STEMMING THE RISE IN PRISON POPULATION

During the past decade, the prison population has soared. The number of those imprisoned by the West Virginia Division of Corrections (DOC) has climbed from 2,392 in 1994 to 5,032 in 2004. As a result, West Virginia joins states like Texas at the top of the list of highest increases in rate of incarceration among the states. In 2001, West Virginia actually led the nation in its incarceration growth rate – up 9.3% from the year before.

This increase in incarceration had very little impact on the number of crimes per 100,000 population. For years this measure has hovered around 2,500 per 100,000 population.<sup>[iii]</sup> By 2012, the number of those incarcerated by the DOC is forecast to increase to 6,774.

This should give state officials pause. DOC prison construction since 1990 has already cost \$119,856,318.40. Another new prison to house the increase could well cost \$100 million<sup>[iv]</sup>

A number of states have sought to deal with rising prison costs by resorting to prisons run by private corporations. However, grave doubts have been cast on the ability of for-profit private prisons to save money.<sup>[v]</sup> Because of a series of human rights abuses at private prisons,<sup>[vi]</sup> and because of the logic of private prison corporations cutting costs in order to make a profit, the General Convention of the Episcopal Church, the United Methodist Conference and the Presbyterian Church (U.S.A.) have passed resolutions opposing prison privatization. The 48 Catholic bishops of the Southern States have issued a pastoral statement condemning prison privatization. West Virginia would be well-advised to stay away from private prisons, jails and detention centers in any form.

Because of the rapid expansion of incarceration in West Virginia, the DOC no longer has the capacity to house all of the state's prisoners in its own facilities. In August 2004, 1046 persons convicted of felonies remained in regional jails awaiting spaces to open up in DOC's overcrowded prisons. The DOC pays the Regional Jail and Correctional Facility Authority to house these prisoners while they await transfer. In 2003, in the case of the Northern Correctional Facility at the Northern Regional Jail, this resulted in a daily cost for the 255 DOC prisoners of \$63.35 per person. In the DOC's own facilities, daily costs for housing inmates in 2003 ranged from \$31.87 at the Huntington Work Release Center to \$51.74 at the Anthony Correctional Center, which is dedicated to intensive programming for prisoners under the age of 21.

The State of West Virginia needs to take immediate action to prevent further costly expansion of its prison system. This could be done most effectively and quickly by imposing a cap on the number of people who can be incarcerated at 5,032, the maximum number reached in 2004. Once a cap is in place, the legislature should direct the Division of Corrections to manage the system for zero growth.

But maintaining the number of people in prison at the current level will not resolve the state's budget crisis. Given that crime has not increased since 1994, the year growth in prison population took off, there is no reason why the prison population should be larger than it was in that year. Therefore, this report recommends that the legislature instruct the Division of Corrections to create a 10-year plan for reducing the number of people in prison to the 1994 level, by expanding those community corrections programs that have a proven track record of ensuring public safety.

If the prison population can be reduced to the level reached in 1994, the cost savings to the state will be enormous. This approach is not just desirable, but practical. West Virginia has developed and tested successful alternatives to imprisonment for a portion of those convicted of felonies. But before we consider these promising alternatives, let us turn to two areas in which reform, rather than innovation, would significantly affect the rise in prison population. They are the state practices regarding parole and regarding sentencing.

## RETHINKING PAROLE

At the end of 2000, at the direction of the Supreme Court of Appeals of West Virginia, the Division of Corrections, the Regional Jail Authority, and the Kanawha County Public Defender began to develop a long term plan for dealing with the backlog of convicted prisoners for which there was no room in the state prisons. In 2002, they completed their report, the Long-Term Plan for Reducing the Number of State Prisoners Held in County and Regional Jails. The plan suggested that policies concerning parole violation and recommitment to prison be re-assessed. It also pointed out that paroles were granted much less often in West Virginia than in comparable states. In fact, the report found that a drop in the rate of granting parole since 1990 “is one of the most important influences on West Virginia’s growing inmate population.”<sup>[vii]</sup> The parole rate in 1990 was 65.9 % of prisoners appearing before the Board; by 2004 the rate had lowered to 32.5 %.

A June 2004 report to the Supreme Court of Appeals of West Virginia on the implementation of the Long-Term Plan points to the state’s low parole rate as the major cause of the climbing prison population of the state: “Until the Parole Board returns to a more realistic rate of granting parole, however, the problems of jail and prison overcrowding, and the resulting backlog of state prisoners in regional jails, will in all likelihood continue without substantial relief.”<sup>[viii]</sup> The report further states:

If the Parole Board in 2004 granted parole at the rate of the 1990 Parole Board, nearly the entire backlog of prisoners would be eliminated in one year alone. If the 1990 rate would be maintained for two years, rather than having a backlog of prisoners, West Virginia would be in precisely the opposite circumstance, with hundreds of empty beds -- enough empty beds that the DOC could close an entire prison.<sup>[ix]</sup>

The 2004 report strongly urges that the Parole Board be open to a rate of parole more in line with that of other states, that requirements for parole be reasonable (e.g. abolishing conditions for parole that require the completion of courses that are currently not being offered in the potential parolee’s facility), and that it not penalize parolees for relatively minor infractions. The report ties such a reformation of parole policy to preparing those departing prison for a productive future in West Virginia:

With an average rate of granting parole, West Virginia has all the prison space that it will need for years. The money saved by not building new cells could then go into the types of programs that truly make a difference -- to education, counseling, job creation, and increased parole supervision. With the money spent on rehabilitation rather than on prison construction, West Virginia's already low crime rate could drop even further.<sup>[x]</sup>

Certainly, the state of West Virginia should seriously consider a change in parole policies. Ideally, the changes would not only be in adjusting the rate of granting parole upward, but also in integrating the process for parolees reentering society with the many capabilities of the Day Report Centers described below.

To its credit, the Division of Corrections is developing a network of partnerships with

agencies and community groups to assist in the reintegration of those released from prison into society. The array of programs and services connected with the Report Centers could be of immense help in this. Recidivism among parolees is markedly affected by the existence of such community networks and availability of such services.[xi]

This report recommends that the state appoint and fund a special legislative commission to evaluate the state's policies regarding parole and to develop a system which will ensure both public safety and financial stability for the state.

## RETHINKING SENTENCING

The George Washington University Institute on Crime, Justice and Corrections, in a 2003 report, stated that "West Virginia is one of the few remaining states that has continued dramatic prison population growth and has done nothing to help curb this growth." [xii] A number of suggestions for sentencing reform are included in the the same 2002 Long-Term Plan for Reducing the Number of State Prisoners Held in County and Regional Jails described above. This plan has specific recommendations regarding lowering state sentencing policies so that the sentences approach the length imposed in other states.[xiii]

Elements of West Virginia's government have examined the state's sentencing policies,[xiv] but some real action should be taken on the basis of such studies. The suggestions of the 2002 report to the West Virginia Supreme Court should be seriously evaluated. The legislature should create a special commission to review the state's sentencing policies and should recommend a system which will ensure both public safety and financial stability for the state.

## PRACTICAL APPROACHES FOR NON-VIOLENT OFFENDERS

Champions of fiscal economy have a strong argument for consideration of alternative responses to non-violent crime. A substantial proportion of those incarcerated by the DOC have been convicted of non-violent crimes. Employing those alternatives to traditional incarceration which have already proved effective in the state can save millions of dollars for the state, while providing opportunities for rehabilitation.

Proponents of alternatives to incarceration for non-violent crimes have already proven that their initiatives save the state money. At the end of the 1990s, state officers connected to the First Circuit Court (Brooke, Ohio, and Hancock Counties) sought new means of dealing with offenders other than imprisonment. They report that in these institutional alternatives for adults and also juveniles convicted of non-violent crimes "[t]he most violent offenders continue to be sent to the institution, but more non-violent offenders in the First Circuit are being treated in several very structured and carefully

supervised community-based programs.”[xv]

The success of these efforts have been such that the West Virginia legislature passed the *2001 Community Corrections Act*, which enables the creation of programs avoiding incarceration of offenders such as community service, home incarceration, boards to determine reparation and day reporting centers. Costs for local community efforts are to be covered by a fund established by the Legislature.

Currently, the Lee Day Report Center, operating in Wheeling and Weirton in the Northern Panhandle - now serving Brooke, Hancock, Marshall and Ohio counties - provides an array of services to carefully-supervised participants. These participants remain in the community. They must report on a regular basis as a condition of release or supervision in order to account for their movements, or to participate in programs, services, or activities offered at the Center.

In sharp contrast with the expenses of incarceration in a DOC facility, treatment at the Lee Day Report Center costs \$14.00 per day. Between 2001 and 2004, 196 felony offenders were sentenced to the Center, at a substantial saving to the state. The projected expansion of Day Report Centers elsewhere in the state would result in major savings. Three centers would save \$18-27 million per year; seven centers would save \$42-63 million per year.[xvi]

There are compelling cost-saving arguments for West Virginia to expand and fully fund the Day Report Center initiative. In addition, the Centers’ rehabilitation programs will help participants to become productive members of society and in some cases alleviate circumstances that result in crime. The Day Report Center initiative will help break the cycle of living in deprived, dysfunctional environments, then being convicted of crimes, then returning from prison in such a condition as to add to one’s home environment’s dysfunction and with an excellent chance of returning to prison. As has been mentioned, such Centers can also be of immense help in the reentry of released prisoners, including parolees, into society. Given the tremendous financial and social benefits to the state, this report recommends that the West Virginia legislature not only grant any increased budget requests by the governor for Day Report Centers, but should fully fund this initiative.

## **CONCLUSION**

At a time of financial stringency, and during an era in which the economic future of the state is tied to educational advancement, West Virginia appropriates \$6,435 per full-time-equivalent higher education student, but \$19,377 for each person incarcerated by the Division of Corrections. While state appropriations for higher education in inflation-adjusted dollars have increased up 33% since 1994, state funds allocated to the DOC have increased 169%, five times as much.

During the past decade, the state population has remained relatively constant (except that it’s aging), the crime rate has remained pretty much the same[xvii], but the number of those incarcerated by the DOC has more than doubled. West Virginia would do well to

explore ways to slow down this steep rise in incarcerations and in prison costs. Implementing a cap on the number of people incarcerated should be a priority, along with re-examining sentencing and parole policies in the state that can lead to an end of the soaring number of incarcerations. A thorough re-examination of the recent parole policy of the state is in order. Embracing the approach already taken by the Northern Panhandle's Lee Day Report Center would lead to significant cost savings for the state, along with helping some of those convicted of non-violent crimes become constructive members of society.

Journalist Joel Dyer, in a recent study of the American prison system, concludes, "Much of the funding for corrections is now coming at the expense of social programs that have been shown to deter people from criminal behavior in the first place... The more prisoners whose incarceration we pay for through this diversion of funds, the more future prisoners we create." [xviii] Insofar as this starving of educational and social programs to feed the prison system obtains in West Virginia, reforming the state's recent policies regarding sentencing and parole and funding the Day Report Centers will be valuable both in lessening funds devoted to imprisonment and in helping develop contributing citizens. Were the Report Center initiative be fully funded AND early childhood programs be fully funded, a major step forward would have been made in creating conditions for West Virginia citizens to learn to use their talents for the common good.

In a sense, the Day Report Center approach can be seen as part of the education of West Virginians – in this case West Virginians convicted of crimes– which needs to take place if the state is to have a vibrant future. Directing money to prisons diverts money from higher education and from programs aimed at helping citizens mired in poverty. Slowing investment on corrections will lead to increasing investment in the development of a productive 21st century West Virginian population.

### **Endnotes**

[i] Dan Macallair, Khaled Taqi-Eddin and Vincent Schiraldi, *Class Dismissed: Higher Education vs. Corrections During the Wilson Years* (Washington, D.C.: Justice Policy Institute, 1998) <http://www.justicepolicy.org/article.php?id=38> See also *Education v. Incarceration: A Mississippi Case Study* (Charlotte, N.C.: Grassroots Leadership, 2001).

[ii] Eric Lotke, Deborah Stromberg, and Vincent Schiraldi, *Swing States: Crime, Prisons and the Future of the Nation* (Washington, D.C.: Justice Policy Institute, August 2004) <http://www.justicepolicy.org/article.php?list=type&type=101>

[iii] See Index Crime Rate Statistics at <http://bjsdata.ojp.usdoj.gov/dataonline/Search/Crime/State/RunCrimeStatebyState.cfm>

[iv] Scott Finn, "Mountain State's prisons fastest growing in South," *Charleston Gazette* 12/6/04 C-1.

[v] See summary of private prison studies in Stephen Raher, *Private Prisons and Public*

Money (Colorado Criminal Justice Reform Coalition, 2002), pp.3-6.  
<http://www.ccjrc.org/pdf/CostDataReport2002.pdf>

[vi] See summaries of abuses by major private prison corporations at website  
<http://www.notwithourmoney.org>

[vii] George Castelle, Heather Connolly, Chad M. Cardinal, Long-Term Plan for Reducing the Number of State prisoners held in county and Regional Jails (Sept. 20, 2002), pp. 8-9. See also discussion pp. 34-35

[viii] George Castelle, Petitioner's Statement Outlining Extent To Which Long-Term Plan Has Been Implemented (June 2004), p.3.

[ix] Ibid., pp.18-20.

[x] Ibid., pp.21-22.

[xi] Joan Petersilla, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford Un. Press, 2003), pp. 198-204.

[xii] The George Washington University Institute on Crime, Justice and Corrections. *Correctional Population Forecast 2002-2012*. (W.V. Division of Criminal Justice Services Criminal Justice Statistical Analysis Center, Jan. 2003), p.26.  
<http://www.wvdcjs.com/publications/CorrectionsForecast2002-2012.pdf>

[xiii] Op. cit., pp. 7-8, 30-33. The 2002 report also sees a problem in paying for the increasing and aging population of those sentenced to life-without-mercy, and calls for a "Life without Mercy Review Board" to assess whether certain older prisoners should not be released. Ibid. p. 33-34.

[xiv] See, for instance, W.V. Division of Criminal Justice Services Center Criminal Justice Statistical Analysis Center, *The West Virginia Sentencing Study: A Study of the State's Criminal Sentencing Practices* (Jan. 2004).

[xv] James. R. Lee, Robert R. Smith, and Victor S. Lombardo, "Alternatives to Incarceration," *Catholic Spirit*, Oct. 27, 2000, p.17.

[xvi] Data sheet from Jim Lee, Chief Probation Officer, First Judicial Circuit

[xvii] See Bureau of Justice statistical summary at  
<http://bjsdata.ojp.usdoj.gov/dataonline/Search/Crime/State/RunCrimeStatebyState.cfm>

[xviii] Joel Dyer, *The Perpetual Prisoner Machine: How America Profits from Crime* (Boulder, CO: Westview Press, 2000), p.6.