



The Case for Rational Reform

BY BRUCE STOUT

There is arguably no greater responsibility for government than ensuring the safety and security of its citizens. Nothing made this clearer than the events of September 11, 2001. Yet as important as efforts to safeguard us from acts of terrorism are, an equally daunting challenge is the responsibility to protect us from ourselves. Each year, hundreds of thousands of acts of violence are committed by Americans against Americans. As we struggle to transform government services to ensure homeland security we also need to examine the rationality and efficacy of the system of government services that is designed to protect us from each other – our criminal justice system.

After an extended period of relative homeostasis, the American criminal justice system, and New Jersey's system along with it, have undergone spectacular change over the last quarter century. The level of change, both in public policy and spending, approaches that of FDR's "New Deal" or LBJ's "Great Society," yet much of this change has occurred incrementally, without much public debate or, in some cases, without even much public awareness. The individual policy decisions that have been made, however, have had a significant cumulative impact. In New Jersey, these changes have fueled explosive and unparalleled growth in the state budget.

In this time of increased concern for public safety and diminishing fiscal

resources, it is appropriate to review the changes that have been made to our criminal justice policies and programs and to question why the changes were made, whether they contribute to safeguarding us from harm, and whether, ultimately, they are prudent investments of precious tax dollars.

The regular diet of crime stories

norm. We were worried. We were afraid. It was a period of what sociologists refer to as "moral panic."

In fact, other than a one-year increase in 1997, crime rates in New Jersey have been declining steadily since the early 1990s and are nearly at record low levels. Even major cities, such as New York, have enjoyed unprecedented reductions in crime

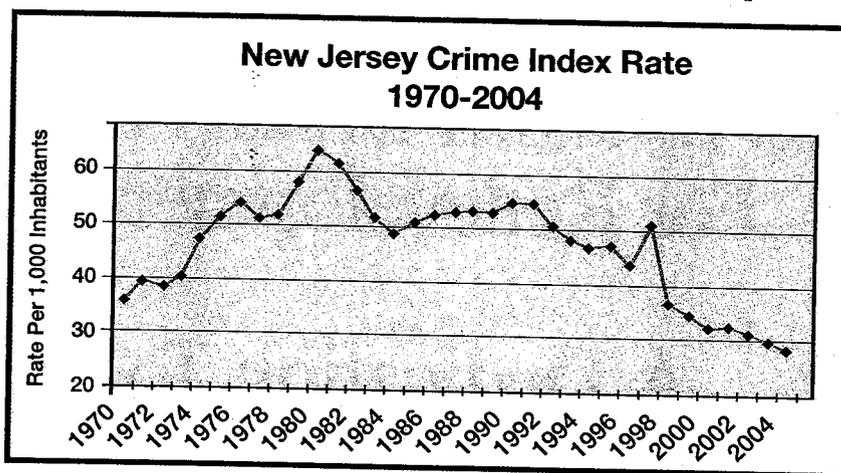
generally and violent crime specifically. Our society is, overall, more peaceful than it has been in a very long time.

How did we get here? How could so many "experts" be so wrong? What macro-social changes have occurred in our society that may have influenced the levels of crime? How has our

system of justice changed over time and what role does this system play in influencing crime levels?

Until the mid-1970s, our nation practiced a uniquely American system of sentencing and corrections that was universal to all of the state and the federal systems. The goal of sentencing and corrections was changing offender behavior – rehabilitation. This is not to say that prisons weren't places for punishment or incapacitation. But there was a near consensus that corrections could "correct," that individual behavior could be made to conform to society's norms and laws.

Sentencing and corrections policies were, therefore, individually based. Sentencing was indeterminate, meaning that legislatures would typically articulate only the maximum



that we are fed by the media would certainly lead a reasonable person to conclude that crime is rampant and at all-time high levels. As recently as the early 1990s, crime often was cited as the top concern of citizens in public opinion surveys. "It's the economy, stupid" had been replaced by "It's crime, stupid." At that time, Princeton University Professor John DiIulio observed the ever-increasing levels of violence and the rising percentage of our population in the crime-prone years of 15 to 25, and predicted an oncoming wave of what he termed "super predators." This prediction received significant media attention and was featured in national publications. Other experts sounded similar themes: Predictions of explosive growth in crimes of violence were the

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possible sentence that a judge could impose for a particular crime. Judges, however, had unfettered discretion to decide whether individual offenders should be placed on probation or incarcerated, and, if incarcerated, for how long. These decisions were to be based on the unique characteristics of the individual offender and his or her social situation.

Correction officials had broad powers over granting furloughs and time off for good behavior. Parole boards made release decisions based on their assessment and corrections officials' assessments of when offenders were ready for release – when they were “rehabilitated.” Virtually all of these decisions – sentencing, correctional, and parole – were immune from appellate review.

The social changes that transformed American society in the 1960s and early 1970s were significant. The social movements of that time changed the public's perception of government and led to some fundamental changes in governmental institutions. States began to fundamentally change the sentencing and corrections schemes that were in place at the time and adopt new dramatically altered systems. As a result, there is no longer a standard, uniform, American approach to sentencing and corrections in our justice systems.

Given their significance, it is instructive to quickly review the social trends that preceded the dramatic changes in American sentencing and corrections policies that began in the mid 1970s. Obviously the protests over the Vietnam War led to a greater questioning of government policies. Watergate exacerbated the public's distrust of government. The civil rights movement began to come into its own. There was large scale urban rioting at a level not seen before or since.

Increasing public attention was paid to the problem of poverty. Lyndon

Johnson announced his “Great Society Plan” that led to major new federal social programs, many of which have survived to this day. A fledgling TV news reporter out of the ABC affiliate in New York City, Geraldo Rivera, went undercover in Willowbrook, a New York state psychiatric hospital, and put the deplorable treatment of mental health patients on televisions across the country. This led, in part, ultimately, to a broad sweeping policy of deinstitutionalizing the mentally ill, which had a dramatic effect on the criminal justice system.



NEW JERSEY DEPARTMENT OF CORRECTIONS
NINETEENTH-CENTURY SYMBOL: Built in 1896, East Jersey State Prison, formerly known as Rahway, is the state's second-oldest prison, after the New Jersey State Prison in Trenton.

There was also a growing disenchantment with the idea that offenders could be rehabilitated. In the academic world, in 1974, New York criminologist Robert Martinson conducted a meta-analysis of evaluative studies of offender treatment programs and concluded, after reviewing all the evidence, that “nothing works.”

Published in *The Public Interest*, Martinson's article had tremendous impact and was often used as justification for the abolition of in-prison treatment programs and indeterminate sentencing laws.¹ Martinson later said that his work was mischaracterized and that he had found evidence that some interventions worked for some types of offenders under some circumstances. The impact of his work, however, so tormented him that he later took his own life.

THE REVOLUTION IN SENTENCING

These social forces and changes contributed to the abandonment of indeterminate sentencing and individualized justice as hallmarks of the American system of justice. What is fascinating is that calls for change came from both the right and the left, from Republicans and Democrats, from liberals and conservatives.

The political left observed significant disparity in how offenders were handled: Two people with the same criminal records convicted of the same crime could receive dramatically different sentences; one could receive a short probation sentence, the other a long prison term.

These individually based decisions led to significant disparities in how minorities were treated by the justice system. Prisons became what they remain to this day – places where predominantly young, minority men are incarcerated. Minorities began referring to the “Just Us” system. Today, eight out of every ten inmates in New Jersey state prisons are either black or Hispanic,² even though these minorities make up just 30 percent of the population.

Conversely, the political right rejected the rehabilitative ideal that was the basis for individualized decision-making and called for increasing the range of offenses that would result in incarceration and increasing the length of imprisonment for those who were incarcerated. Proponents invoked such slogans as “Do the crime, do the time.”

Both of these forces led some states to adopt determinate systems of sentencing. Determinate sentencing systems attempt to establish penalties that are commensurate with the harm caused by the criminal act.

Prison sentences, often established by sentencing commissions established to remove the decisions from the political process, are deter-

mined by a grid that places the severity of the crime on one axis and some measure of the offender's prior record on the other. No offender characteristic other than prior criminality can legitimately influence disposition. Judicial discretion is strictly limited. These schemes are designed to ensure that similarly situated offenders are treated equally and that factors such as race do not influence decision-making. Equity and uniformity are primary system goals.

Minnesota was one of the first states to adopt such a system. A unique aspect of that state's system was that the line on the grid distinguishing who went to prison and who received community supervision was movable based on how crowded the state's prisons were. This led to another type of disparity – the odds of being imprisoned were now influenced by when the criminal act was committed.

Some states also abolished all forms of correctional good time credits and some abolished parole boards, opting instead for release decisions that were not based at all on offender characteristics (such as participation in drug treatment, for example).

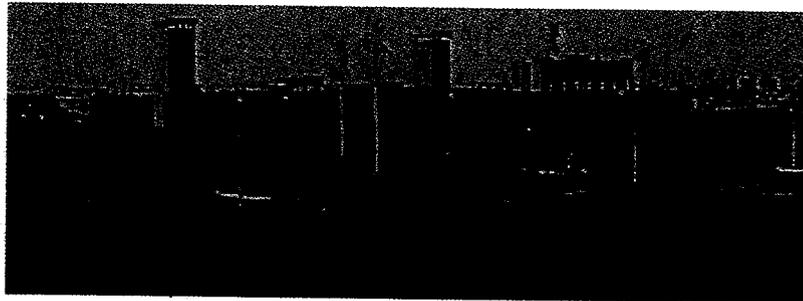
A middle-of-the-road approach, and an approach taken by New Jersey in 1979 when the state's criminal code was last completely rewritten, is that of presumptive sentencing. In these schemes, legislatures or sentencing commissions establish ranges of permissible sentences for specific crimes (for example, a third-degree burglary offense should receive anywhere from three to five years).

Determinations of placement within ranges can be informed by unique characteristics of the offender, the offense, or the offender's social situation. In New Jersey, the Code of Criminal Justice articulates aggravat-

ing and mitigating factors that judges can legitimately consider in determining sentences.

Some states allow judges to deviate from the presumptive range in extraordinary situations, typically requiring them to articulate their reasons on the record. Washington State's guidelines, for example, include a provision that allows judges to deviate from the presumptive ranges in situations where imposing a sentence from the range would involve a "manifest injustice."

Such provisions, however, can



NEW JERSEY DEPARTMENT OF CORRECTIONS
MINIMUM SENTENCING, MAXIMUM COST; The Northern State Correctional Facility in Newark, (above) and Riverfront in Camden were built in the early 1980s as the prison census began to soar.

interfere with the goal of structuring decision-making. In the first year that Washington State's guidelines were in effect, judges invoked the manifest injustice provision in a large percentage of the sentences imposed.

As in many states that have adopted presumptive sentencing, corrections officials in New Jersey retain the ability to award good-time credits, and New Jersey has retained a parole board. The parole board's decisions are somewhat structured by a parole act that stipulates initial parole eligibility terms. Second and subsequent denials of parole require that the denial be supported by new information developed subsequent to the prior denial, a requirement that essentially codifies a presumption of parole.

These three types of sentencing and corrections systems – determinate, presumptive and indeterminate – provide an overly simplified way of characterizing what are now fifty

unique systems. If systems are described by the degree to which they limit discretion and structure decision-making, there are fifty unique points on a continuum framed by determinate sentencing at one end and indeterminate sentencing at the other end, with New Jersey somewhere in the middle of that continuum.

MANDATORY MINIMUMS, 'THREE STRIKES,' AND 'TRUTH IN SENTENCING'

Like almost all other states, New Jersey over the years has also embraced, in a piecemeal way, another new sentencing and corrections trend – the mandatory sentence or mandatory term of parole ineligibility. New Jersey started with the Graves Act, enacted in 1982 under the Byrne administration. The Graves Act mandates a period of parole ineligibility up to one half of the sentence imposed for the

commission of certain specified serious felonies carried out with a firearm.

Even states with the most indeterminate sentencing and corrections systems have incorporated mandatory sentences. They are the typical legislative response to a high-profile crime – enactment of a tougher, mandatory sentence for a particular type of crime that has just received public notoriety.

New Jersey, like many other states, has enacted so many mandatory sentencing provisions – twenty-nine have been enacted since the Graves Act – that any semblance of a linear relationship between the severity of an offense and the sentence imposed has been lost through piecemeal legislative changes that have resulted in a patchwork of individual sentencing provisions that may make sense in isolation, but do not relate to each other in any coherent way.

The cumulative impact of these mandatory sentencing provisions is

illustrated by the growth in the percentage of inmates in the state's prison population serving a mandatory sentence. In January 1982, only 11 percent of state prison inmates were serving a mandatory sentence. By January 2005, that percentage had increased to 65 percent.³

In the late 1970s, crime increased markedly and, depending on the measure, peaked in either 1980 or 1981. In 1980 Ronald Reagan became president. Reagan's Justice Department, particularly during Ed Meese's tenure as attorney general, encouraged and supported punitive approaches to sentencing and corrections.

Such support, however, has not been limited to Republican presidents. Recent national trends in modifying sentencing structures have included what are termed "three strikes laws," which mandate terms of incarceration, typically for life, for three convictions of specified felonies, and "truth-in-sentencing laws" that typically require offenders to serve at least 85 percent of their sentences before becoming eligible for parole.

The Democratic Clinton administration began a very large program of fiscal support for prison construction for states that adopted these laws. New Jersey has adopted both, although at least with respect to "three strikes," lawmakers in New Jersey learned from the mistakes of other states that adopted these laws earlier. The list of offenses included in California's "three strikes" bill, for example, is so exhaustive and includes so many comparatively minor offenses that the state has had to fund a large-scale prison construction program to accommodate offenders sentenced under the law's provisions.

New Jersey adopted a "three strikes" law that includes only serious, violent offenses. This did not happen without some political demagoguery, however. When Senator Louis Kosco, R-Bergen, introduced and won passage of a "three strikes" bill that was almost as broadly defined as California's legislation, he publicly dared GOP Govern-

nor Whitman, who had expressed reservations about the bill's scope, to veto the bill. She did, and ultimately Whitman's more narrowly defined legislation prevailed. As a result, only a limited number of very serious, repeat felons have been sentenced under New Jersey's "three strikes" law.

This approach makes sense – crime is overwhelmingly a young man's game. The risk of recidivism for inmates who serve lengthy prison



NEW JERSEY DEPARTMENT OF CORRECTIONS
NEWEST PRISON: Built in 1997 for \$237 million, South Woods State Prison in Bridgeton is the state's largest prison, housing 3,360 inmates.

sentences and are released in their mid- to late-life years is very low. Yet the costs of incarcerating them for life, particularly when the medical costs for elderly inmates are factored in, can easily exceed \$1 million per inmate. Such costs cannot be justified as prudent from a crime reduction perspective, but only from a retributive or "just desserts" perspective.

New Jersey's "truth in sentencing" law, known as the "No Early Release Act," was not as narrowly circumscribed as the state's "three strikes" law. This statute, in fact, has been one of the factors that led to the dramatic growth in the percentage of state prison inmates serving mandatory minimum sentences. With the presumptive parole eligibility of inmates not serving mandatory minimum sentences previously set at one-third of their sentence, the No Early Release Act mandate that inmates

serve 85 percent of the sentence imposed represents a significant increase in cost for longer prison terms.

New Jersey has received tens of millions of federal dollars for prisons as a result of adopting "three strikes" and "truth in sentencing" laws, although the federal program of distributing funds to states who adopted the measures has been eliminated.

THE FLOOD OF DRUG OFFENDERS

In the 1980s, the problem of drug abuse was placed on the nation's front burner, and Nancy Reagan began her infamous "Just say no" campaign. Despite the superficiality of that campaign, the problem was real.

By the mid 1980s, New Jersey and the nation were gripped by an epidemic of crack cocaine. Levels of crack use began to increase markedly and expand into areas beyond the inner city. With crack came significant levels of violence. This was not violence committed by addicts high on the drug – there is actually little scientific evidence of a causal relationship between drug use and violent behavior – but what is termed "market-related violence." Market-related violence refers to acts of violence committed by distributors to protect market share. A particularly heinous form of market-related violence – the drive by shooting – emerged as a senseless and frightening form of violence during this period.

Many states reacted to the problem of substance abuse by enacting tough sentencing provisions for drug crimes. The trend was to criminalize substance abuse and treat the problem principally as a criminal justice problem, rather than as a public health problem.

New Jersey's move in this direction came in 1987 with the adoption of the state's Comprehensive Drug Reform Act (CDRA). While not as tough as New York's earlier Rockefeller drug laws, the CDRA included

some tough provisions, including some mandatory sentencing requirements.

The impact of the CDRA has been significant. In 1987, the year that the CDRA was enacted, 11 percent of the state prison population was incarcerated for a drug offense. Today, 35 percent of the inmates in state prisons are locked up for a drug crime, and that percentage is growing. The Department of Corrections has calculated that 62 percent of the growth in the state prison population since the enactment of CDRA in 1987 is directly attributable to provisions that have resulted in more drug offenders being incarcerated for longer periods of time.⁴

One of the mandatory terms of incarceration in the CDRA is for drug distribution within 1,000 feet of a school. This provision has been interpreted to mean within 1,000 feet of a moving school bus and has been expanded to include distribution within 500 feet of a public park, public housing complex, library or museum.

The New Jersey Commission to Review Criminal Sentences, created in 2004 to study the fairness and proportionality of New Jersey's sentencing statutes and to make recommendations to the Legislature and governor for improvement, recently issued an exhaustive analysis of this provision. The commission concluded that there is "no evidence that drug dealers are aware of school zones, much less that they deliberately undertake their criminal activity to evade exposure to the school zone law."⁵

The Sentencing Commission also concluded that the law had an "urban effect." In New Jersey's major cities, the commission found, the density of drug-free zones is such that they overlap and encompass large swaths of cities. As a result of this fact and New Jersey's demographic characteristics, the commission found that "minorities, who currently comprise a greater proportion of urban populations than rural and suburban populations, are therefore far more likely to be charged with a drug zone offense and subjected

to harsher punishment upon conviction." In fact, the commission found that 96 percent of state prison inmates incarcerated for a drug-free zone offense were either black or Hispanic.⁶

In 1995, an analysis of the criminal backgrounds of New Jersey's burgeoning inmate population found more than 8,000 inmates incarcerated for a drug law violation with no prior convictions for violent offenses. More than 2,000 of those inmates had no prior convictions at all.⁷ Department of Health and Department of Corrections studies indicated that the overwhelming majority of these offenders, and all inmates, had serious drug and/or alcohol addictions. Many were addicts who had become low-level dealers to support their own habits and were serving three-year terms for school zone distribution offenses.

New Jersey, like many other states, has enacted so many mandatory sentencing provisions – twenty-nine have been enacted since the Graves Act – that any semblance of a linear relationship between the severity of an offense and the sentence imposed has been lost.

Did the framers of the Comprehensive Drug Reform Act really intend to preclude the possibility of these addicts receiving treatment? Did they believe, despite solid evaluative evidence to the contrary, that treatment doesn't work? It turns out they had considered treatment. There is a provision in the CDRA (2C:35-14) that allows a judge to sentence certain specified prison-bound offenders to a special five-year term of probation with a minimum six months of residential treatment up front in lieu of incarceration.

So why wasn't that provision invoked on behalf of any of the 8,000 non-violent drug offenders in the prison system in 1995? The economic impact statement prepared for the CDRA estimated that about one-third

of eligible offenders would be sentenced to treatment in lieu of incarceration. In fact, you could count on your fingers the number of offenders who have been sentenced to probation and residential drug treatment under that provision. Why? It seems that the framers of CDRA envisioned the creation of a cottage industry of drug treatment providers that would evolve to meet the demands of the new law. What they failed to consider was how these providers would get paid.

There was no appropriation to support drug treatment, and offenders generally were not able to afford treatment on their own and lacked insurance to cover those costs. To a sentencing judge, the fact that treatment is a statutorily authorized alternative means nothing if there is no bed available in a drug treatment facility for the offender standing in front of you awaiting sentencing. The availability of drug treatment beds remains a problem. A Department of Health Substance Abuse Task Force created in 2001 estimated that more than 71,000 addicts in New Jersey could not access treatment.⁸

As a result, a New Jersey Drug Court pilot project that specifically focused on prison bound offenders was started in the late 1990s. Funds were moved out of the Department of Corrections and used to fund beds in licensed community-based drug treatment programs. No other state has taken this tack – most focus on less risky populations of probationers. What began as a three-county pilot has now expanded statewide. Early data on outcomes is very, very promising.

The New Jersey Drug Court model, while more effective than imprisonment, is still an expensive model. It demands significant "bench time" from Superior Court judges, mandates residential treatment even in cases where addictions experts agree that outpatient treatment would be clinically appropriate, and requires five years of ongoing probation supervision, even for addicts who have become clean and sober and remained

gainfully employed for years.

A bill was recently pre-filed in the state Senate (S-2926) for the upcoming 212th Legislature that would address some of these issues. It is clear, however, that in order to protect public safety, reduce costs, and save lives, policymakers need to find other creative ways of building credible systems of accountable treatment that can decrease our current reliance on imprisonment for nonviolent addicts.

The Comprehensive Drug Reform Act was New Jersey's version of the national trend of enacting tough drug laws. Another major change was New Jersey's presumptive sentencing scheme, designed to structure sentencing decision making and limit discretion, enacted with New Jersey's Criminal Code in 1979. These two changes, coupled with the codification of mandatory sentences for a wide variety of offenses that began with the enactment of the Graves Act in 1982, all mirrored national trends. These three types of changes also contributed to a wholesale change in social policy that happened without much public notice and without much public debate.

Since the mid 1970s we as a nation, and we as New Jerseyans, have quadrupled the number of people in prisons. As a nation, we now have more than two million people behind bars. We have, by far, the highest rate of incarceration of any Western country, and now, since the breakup of the Soviet Union and the abolition of apartheid in South Africa, we have the highest rate of incarceration in the world.

This change has come at great expense. Until the adoption of the new Criminal Code in 1979, New Jersey's

prison population had never reached 7,000 inmates. The prison budget in 1979, the year the new Criminal Code was adopted, was \$77.77 million. By the end of 2004, there were more than 26,000 inmates in state prisons. In fiscal year 2006, the annual budget of the Department of Corrections was

likely that New Jerseyans would support even the billion-dollar corrections budget if there was evidence that those tax dollars were a smart investment that were making our streets and homes safer.

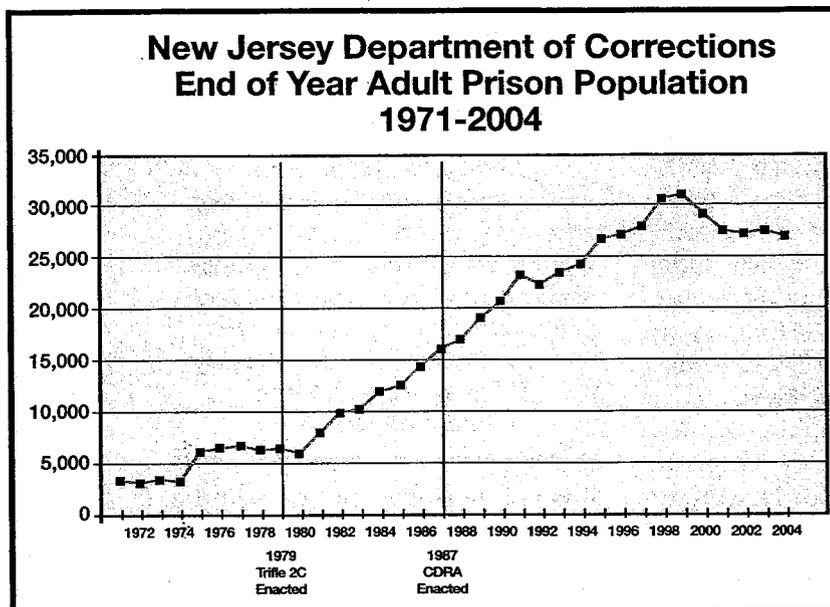
Are they a smart investment? Has the \$902 million increase in the Department of Corrections budget made us safer? What effect did the dramatic expansion in prison populations have on the drop in crime?

The best empirical evidence available is that the enormous increase in imprisonment and the resultant massive increases in correctional budgets have had, at best, only a marginal impact on reducing crime. In 1978, the National Academy of Sciences assembled a panel of experts to determine the deter-

rence and incapacitative effects of imprisonment. That panel concluded "there is general agreement among the authors reviewed that the incapacitative effect of current CJS (criminal justice system) policies is not very large. The crimes averted do not account for a very significant portion of the crimes committed."⁹

In 2000, William Spelman, a mathematician at the University of Texas at Austin, in a volume edited by Alfred Blumstein, a Carnegie Mellon criminologist who had chaired the 1978 National Academy of Sciences panel, revisited the question of what portion of crime reductions could be attributed to increases in imprisonment. In the 22 years since the National Academy panel had done its work, incarceration rates had increased substantially, crime rates had decreased further, and the sophistication of econometric tools for doing such an analysis had improved dramatically.

Spelman concluded from his analysis that violent crime would have decreased without the massive



\$1.033 billion. In fact, the growth of Corrections spending has outpaced all other segments of New Jersey's budget. As an example, the Department of Corrections budget grew by a factor of 13 from FY79 to FY06, while the state budget as a whole grew by a factor of 6 (from \$4.4 billion to \$27.4 billion), less than half the rate of growth in the Corrections budget. This has been the experience of the federal system and most other states, as well.

DO HIGH INCARCERATION RATES PREVENT CRIME?

You might think that this level of change in social policy would be publicly debated. In fact, however, many Americans aren't even aware of these changes. The impact wasn't the result of a single action, like the adoption of the welfare reform act; the impact occurred as a cumulative effect of many small changes made over time. If we did have a public debate about the cost-benefit of such expansion in the use of imprisonment, it seems

increases in imprisonment, but that "the crime drop would have been 27 percent smaller than it actually was, had the prison buildup never taken place."¹⁰ Spelman thus finds what nearly every other econometrician who has studied the issue has concluded: that the empirical evidence strongly indicates that imprisonment is an "incredibly inefficient means of reducing crime."¹¹

That is not to say that the sentencing policies that led to the large increases in the state prison population wouldn't be supported from a philosophical perspective that views punishment as symbolically or morally justifiable. But while it is always appropriate to question the cost-efficiency of government policies, it is especially relevant in difficult fiscal times.

Our focus on increasing the number of crimes that are subject to imprisonment and the lengths of sentences for those crimes is simply not, from a utilitarian perspective, the best way to spend our crime control dollars. Deterrence research has confirmed what many of us know intuitively: Even small increases in the probability of getting caught for a transgression can have a significant deterrent effect, while extremely large increases in the severity of punishment for those who are caught will have only minimal impact.

Think about a type of illegal activity that is pervasive – speeding. Increasing a fine for speeding tenfold is not likely to deter someone who regularly drives a road where there has never been a speed trap or a police cruiser. But put a speed trap or a cruiser there just once, and people will

More than 8,000 inmates are incarcerated for a drug law violation with no prior convictions for violent offenses, including 2,000 who had no prior convictions at all. The framers of the Comprehensive Drug Reform Act envisioned that many of these minor offenders to probation and treatment in lieu of incarceration, but they neglected to provide any funding to pay for drug rehabilitation centers.

drive more slowly on that road for weeks on end. Effective police strategies that increase the odds that criminals will be caught can be quite effective. Shifting even a portion of the \$1 billion Corrections budget to support improvements in policing could significantly enhance the "bang" we receive for our criminal justice "buck."

Revisiting criminal sentences in a way that maximizes the utility of our correctional resources and restores fairness and proportionality is a politi-

cally challenging undertaking. Any elected official who doesn't propose sending more people to prison for longer periods of time runs the risk of being called "soft on crime." Restoring rationality to our sentencing system is perhaps the single most important thing that could be done to both reduce costs and improve public safety.

The creation of the Commission to Review Criminal Sentences is a very positive step in the right direction. In the same vein that only a conservative like Nixon could reopen ties to communist China, the commission was the brainchild of Assemblyman Peter Barnes, D-Middlesex, a retired career FBI agent, and Assemblywoman Mary Previte, D-Camden, the recently retired superintendent of Camden County's youth lockup. The commission's empirically based analysis of New Jersey's drug-free zone laws and its recommendations for improving those laws are an optimistic sign that New Jersey may be ready to adopt reasonable sentencing reform proposals.

The large increases in the number of people imprisoned has led logically to another significant issue for the justice system – how to reduce the recidivism rate of those inmates when they are released. Nearly all inmates are eventually released. Statistics from New Jersey and nationally indicate that about two thirds of all inmates are rearrested within three years of release from prison. Recidivism rates for juveniles are usually even higher. Given that we spend upwards of \$40,000 per year per offender to "correct" them, these levels of rearrest are troubling.

This has led many states to focus on prisoner reentry as a way to reduce recidivism and thereby improve public safety and reduce costs. New Jersey has participated in a National Governors Association reentry policy academy that has attempted to improve parolee outcomes by getting all of the state agencies involved in parole services – including the Department of Corrections, the Parole Board, the Division of Addiction Services, and the Department of Labor – to collaborate

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on programs that improve the odds that parolees will remain drug-free, crime-free, and gainfully employed.

An irony of New Jersey's Criminal Code is that the prisoners who pose the greatest risk of committing new crimes are never paroled. Unlike offenders the Parole Board deems unlikely to commit new offenses if released, these offenders "max out," or serve their complete sentence. They walk out of the prison door without any form of community supervision – no curfews, no random drug testing, no supervision at all. This flaw in our criminal sentencing laws should be rectified immediately by the adoption of a term of community supervision for all inmates released from prison.

DEINSTITUTIONALIZATION DILEMMA

Deinstitutionalization of the mental health system continues to be part of the problem. While deinstitutionalization may have been predicated on the development of community-based programs and services for people with mental illnesses, we have done a much better job of moving people out of institutions than we have of creating a continuum of community-based resources.

When people with serious mental illnesses act out, often the criminal justice system is the only system there to serve them. This is especially true if they are poor. While persons can get classified as inappropriate for publicly funded mental health systems, the criminal justice system can't say no. This is true for the cop on the beat at 2 a.m. on a Saturday night confronted

with someone undergoing a psychotic episode and brandishing a knife. But it is also true for Corrections, which must deal with the people sentenced to its custody.

The problem of the incarceration of people with acute mental illnesses is serious and pervasive. Nancy Wolff, a Rutgers University researcher who has studied the problem, found that 17

If the most effective way to deter crime is to increase the odds that criminals will be caught, then shifting some of the \$1 billion Department of Corrections budget to support improvements in policing could significantly enhance the 'bang' we receive for our criminal justice 'buck.'"

percent of New Jersey's state prison inmates needed or were receiving mental health treatment while imprisoned.¹² And yet the trend has been toward less treatment, not more.

New Jersey's adult correctional system, like those in many other states, was challenged by a class action lawsuit, *C.F. v. Terhune*. The suit alleged that the system dealt with inmates with mental health problems by locking them up in administrative segregation, rather than by providing appropriate treatment. In the late 1990s, New Jersey signed a settlement agreement that required the state to build an in-prison mental health treatment system of specialized units that will cost \$19 million in its first year.

Yet we must ask whether creating parallel mental health systems in our correctional facilities is the best policy.

Clearly, in dealing with mental health and other problems such as substance abuse, the justice system has much to learn from the medical system, in which prevention and early intervention are seen as the most important ways to improve health. Instead, we have invested most heavily in prisons, which are the emergency rooms of our justice system, without any significant investment in prevention or early intervention.

Can you imagine the impact on heart disease if the medical system relied on emergency cardiac surgery for trauma cases without any attempts to get people to change their eating or exercise habits, or without screening for risk factors such as hypertension? That's what our justice system does.

We need to reconsider the relationship between the justice system and the public health and mental health systems. We need to support cogent policies that allow addicts and those with mental illness to get treatment before their behavior devolves to the point where they are a danger to others. An ounce of prevention really is worth a pound of cure.

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2. New Jersey Department of Corrections, "Offender Characteristics Report on January 11, 2005," Trenton, New Jersey, May, 2005, p. 31. The author wishes to thank Peter Roselli, Carmella Elmer, Don Von Nostrand and Dr. Douglas Gerardi of the New Jersey Department of Corrections for providing these and other data included in this article.

3. New Jersey Department of Corrections, "Adult Inmate Population - Mandatory Minimums".

4. New Jersey Department of Corrections, "Adult Inmates by Offense Types."

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