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Judging for Public Safety

4 state chief justices share lessons of sentencing and corrections reform

Overview

The American judiciary traditionally has played only a supporting role in shaping criminal justice policy, believing that such work was appropriately left to the legislative and executive branches. Increasingly, however, judges are stepping outside their chambers to help craft reforms that they believe will not only improve the administration of justice, but also protect public safety, reduce recidivism, and save taxpayer dollars.

Some justices are driven by what they see as a need to change laws and policies that have led to steep costs and high incarceration rates but have done little to reduce recidivism. Others say the judiciary's unique perspective on offenders and crime is essential for achieving comprehensive reform.

Pew's public safety performance project recently spoke with four sitting and former state supreme court chief justices—Carol Hunstein of Georgia, John Minton Jr. of Kentucky, Paul De Muniz of Oregon, and William Ray Price Jr. of Missouri—about their role in justice reinvestment initiatives. Their advice to colleagues on the bench? Get involved. Your voice will make a difference.

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State Chief Justices

Carol Hunstein
Georgia

John Minton Jr.
Kentucky

Paul De Muniz
Oregon

William Ray Price Jr.
Missouri

Q: What motivated you and the judiciary to get involved in sentencing and corrections reform in your state?

Hunstein: Having been a trial judge, it was clear to me that just being tough on crime was not the solution to recidivism. Georgia also had skyrocketing incarceration costs and faced the prospect of building more prisons. I felt it was important for judges to have a voice in the reform process because, although they tend to know what works and what doesn't, they are often constrained by legislation. One example is mandatory minimums. I viewed the 2012 reforms as the start of a reexamination of those sentences in Georgia, because in some circumstances, they lead to injustice.

Price: Since 1982, the number of nonviolent offenders in Missouri prisons has grown from roughly 3,000 people to 14,000, and the Department of Corrections budget rose from $55 million to $665 million. But despite all that spending, 58.5 percent of nonviolent offenders are reincarcerated within five years of release. It was clear that our attempt to incarcerate our way out of crime was just not working. So when you see all these lives being ruined and you see that recidivism rates are still high, you know you have to do something.

De Muniz: I saw Oregon's sentencing and corrections reform effort as an opportunity for judges to work closely with legislators in a setting that was not directly related to court funding. In addition, much of Oregon's sentencing policy was established through the initiative process, and that stripped away a lot of judicial discretion in favor of mandatory minimums. After 23 years on the bench, I saw the need for reforms that were evidence-based and used risk assessment tools to really deal with the character of the offender and the character of the offense.

Minton: Had I not been invited to participate on the Kentucky task force, I would have tried to finagle an invitation, because it was important for the judicial branch to be part of the conversation. Judges are not policymakers, but sentencing is key in any criminal justice reform effort, and so, if our voice were missing, it would have left a big hole in the discussion.

Q: What role did the judiciary play in the corrections and sentencing reform effort?

De Muniz: I chaired the commission that recommended the reforms. We also were fortunate to have on the commission a trial judge who had a lot of experience with evidence-based programs and risk assessments. That brought some great ground-level expertise to our work. This role was a change for us, because historically judges have been very restrained about expressing policy views. The judicial branch has a great deal of respect for the principle that sentencing policy is set by the Legislature and that our job is to carry out that policy. So to be involved in actually developing policy was new territory for us.

Hunstein: I thought the reform effort was so important that I served on the council myself, to make sure I set the example for other judges. I think we judges were able to share our understanding of the system and discuss what works and what doesn't. But our success clearly happened because we had all three branches of government at the table wanting to do what was best for Georgia. I can't give Governor [Nathan] Deal enough credit for what he accomplished by bringing everyone together.

Price: The judiciary actually led in Missouri on developing drug courts, adopting evidence-based sentencing, and pushing this as an agenda with the Legislature and the executive branch. From there we all joined in inviting Pew in to assist our working group with the process and to help us craft reform legislation.

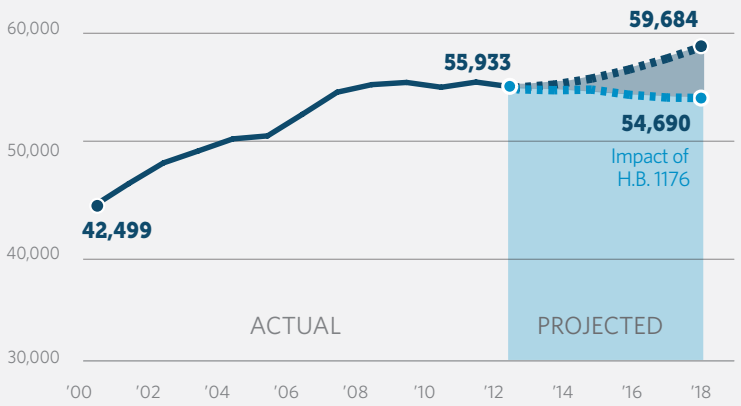
Georgia

In fiscal 2010, Georgia spent more than $1.1 billion on a prison system holding nearly 56,000 inmates, a population that had doubled in the previous 20 years. With 1 in 70 adults behind bars, Georgia had the fourth-highest incarceration rate in the country. Throughout the past decade, its three-year recidivism rate had remained unchanged at nearly 30 percent. Seeking to protect public safety while controlling prison costs, the Georgia General Assembly created a bipartisan, interbranch panel to analyze the state's criminal justice and sentencing data. The panel found that drug and property offenders represented almost 60 percent of prison admissions, that judges had few sentencing options other than prison, and that probation and parole agencies lacked the resources to effectively supervise offenders in the community.

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

H.B. 1176 Projected to Avert Prison Growth, Save Millions

Georgia prison population and projections, 2000-18



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

Q: How did the process and outcomes benefit from having all three branches represented? How did you interact with the prosecutors and defense bar throughout the process?

Price: You can't get anything comprehensive done without involving all three branches of government. The challenge came from the prosecuting attorneys, who get elected by being aggressive enforcers. It's easy for them to sell the idea that, "If you do the crime, you'll do the time." The difficulty was convincing them that length of sentence isn't always the best measure of the justice system and that the problem was more complicated and needed a more sophisticated response. That meant asking them to change their mind-set a bit and run counter to the message that probably got them elected. That wasn't easy, and it required coming up with some changes they could live with, politically and ideologically.

De Muniz: It was tough. There were some very entrenched views. I think my relationship with the prosecution and the defense bar was helpful in getting us through different points of disagreement, but there certainly was never unanimity in the policy positions we presented to the Legislature. Still, I think the governor and legislators could be confident in the commission's final report, because it represented so many different perspectives.

Minton: We realized how much our branches intersect and that the more conversations we have with each other, the better the system can function. That seems so elementary, but it just doesn't happen much. For example, I had never, as chief justice of the commonwealth, sat down with the person in charge of corrections to talk about the realities we encountered in our roles. In terms of conflict, there were some who thought the judiciary had no part in the reform process. But by the end, I think we all realized it was best to move beyond jurisdictional lines and join together in what was a very healthy process.

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Hunstein: It was good for everyone to have an opportunity to speak out about what they saw as helpful or harmful and how it would influence their roles. And I think it was very powerful to have all three branches of government stand together and say, "We are going to do this investigation, and the goal is to really improve the justice system in Georgia to protect our citizens as well as save taxpayer dollars." We had a few spats but nothing too bad. The greatest conflict was over mandatory minimums. We made some progress there, but not nearly as much as I hope we do in the future.

Q: What aspect of your state's reforms are the most significant and why?

Hunstein: I think establishing a separate, stable funding stream for our drug courts and other accountability courts has really allowed them to blossom and grow across the various circuits. We also have a new way of dealing with prisoners who max out, or have served every day of their sentence. Traditionally, they were given $25 and a bus ticket and set on the street, having nothing but a record as a convicted felon. Now Georgia assigns these long-term inmates to transitional centers before their release to help them transition back into society.

De Muniz: With the reforms that were ultimately enacted, prison growth will remain flat for at least five years, and projected savings for Oregon are $326 million over the decade. House Bill 3194 specified that the money we save will be used for justice reinvestment, primarily in evidence-based practices that are proven to make our community safer by reducing recidivism.

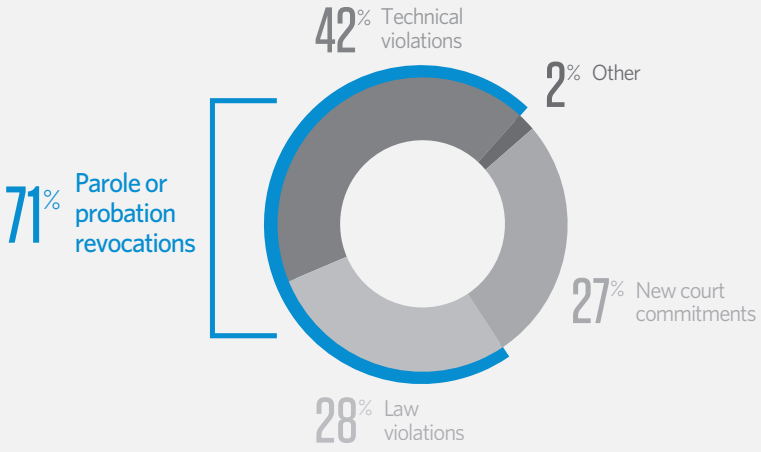
Minton: Justice reinvestment. That's the pot of gold and the part of all this that holds great potential. I am waiting anxiously to see the reinvested savings be put to work.

Price: We built into the legislation a requirement for annual analysis of our results by an oversight commission, and that is key. It forces us to look at outcomes and cost savings and ensures that we all will continue to strive to find a better way. The most important thing with any of these approaches is that you never consider it done. We have to constantly try new methods, gather data, and craft better strategies.

Missouri

From 1990 to 2011, Missouri's prison population doubled from 14,074 to 30,729, and spending on corrections followed suit. Over the same period, inflation-adjusted general fund spending on corrections rose 96 percent. Although recidivism rates were improving, nearly 4 in 10 inmates released from state prisons were still returning to custody within two years. So in 2011, state leaders created the Missouri Working Group on Sentencing and Corrections to get a better return on their public safety dollars. The group analyzed state data and trends and developed a package of policy reforms to improve public safety and contain corrections costs by strengthening community supervision.

The working group found that an overwhelming majority (71 percent) of people admitted to prison in Missouri were being incarcerated for probation or parole violations. These offenders included a sizable number of technical violators—those who violate the terms of their probation or parole— as well as nonviolent offenders. In 2012, state legislators used the recommendations from the working group to create and pass House Bill 1525, which strengthens community supervision; reduces revocations to prison; and ensures quality implementation, sustainability, and ongoing oversight. The reforms are projected to reduce the prison population by at least 245 inmates over five years.



Majority Returned to Prison for Violations of Parole or Probation

Missouri prison admissions by type, 2010

Source: Consensus Report of the Missouri Working Group on Sentencing and Corrections, December 2011

Q: Given that the judiciary is crucial to the successful implementation of the reforms, how are you educating judges throughout the state on the changes in the system?

Minton: We tried throughout the process to invite judges from all the various jurisdictions and judges' associations to our task force meetings so that they could testify and be part of the process. I would also report on our progress from time to time. After our work was done, it became a matter of judicial education about evidence-based practices, both in pretrial procedures and in sentencing. It's an ongoing process and in many ways a culture change for our system and our state.

Price: We have annual training for judges, and we are using that to communicate news of the changes. We also have a number of specific training events throughout the year.

De Muniz: The Office of the State Court Administrator in Oregon has a judicial education department. After every legislative session, department staff analyzes and organizes material related to new legislation and sends it to all judges. There was also a statewide judicial conference in October [2013] with presentations on the new law.

Hunstein: I think most of our judges were really eager for these reforms, and although they may not have needed any education, there is an education requirement for every trial judge in the state. So they were educated about the changes and about the new tools that would be available to them. I think it has all been very well received.

Q: What have you learned as a result of your efforts? Any surprises?

De Muniz: I learned from polling and focus groups that the public is poorly informed about crime rates and that, despite the drop in crime we've experienced, sensationalizing of crime by the media makes people unaware that they are safer. I also learned that once people are told that proven, evidence-based programs can make our communities safer, they are willing to spend money on those. If you show them the data, they favor alternatives and don't remain in lockstep supporting longer sentences and more incarceration.

Price: I've learned so much; it's incredible. There is nothing easy about governmental reform in any context, let alone sentencing. It's difficult, but it needed to be done and will need to be continually revised as we develop more evidence about what is working. There were no surprises, but I had hoped we would get a more extensive package approved and get a little farther down the road. That didn't work out, but the main thing is to get something passed, and we can build from there.

Minton: I learned what it was like being part of a legislative process, and I have a better understanding of the legislative branch after this experience. I also developed a great deal of respect for our talented legislative research staff, who took what we were doing, synthesized it, and put it into bill form. I hope to continue many of these relationships and view it as a good foundation for future work.

Q: What advice do you have for chief justices in other states about engaging in sentencing and corrections reform?

Price: I don't see how a chief justice could decide not do it. It is too big and too glaring a problem to ignore. First, you need to build a base of knowledge about what ought to be done in your state. Then you develop strategies based on what has been done successfully in other states. And finally you pick the approaches that show the most promise of delivering good results. You will get push-back. So you need to prove that this is not just a good idea, but rather an alternative, based on solid evidence, that will give the state better results and save money. If you reframe it like that, as a fiscally responsible thing to do, then it will be more acceptable to folks who normally would be opposed and see it as soft on crime.

De Muniz: The governmental culture and the relationships between the branches are unique in each state. So I don't presume that our way in Oregon is the only correct way to achieve a successful outcome. But overall I think

it's important to have a commission, rather than the judiciary or some other single branch, as the voice of reform so that the public views the process as collaborative. I also think it's important to emphasize that the driving force is not cutting costs, but discovering what combination of sentencing and corrections policies will make our community safer and, at the same time, save taxpayer dollars.

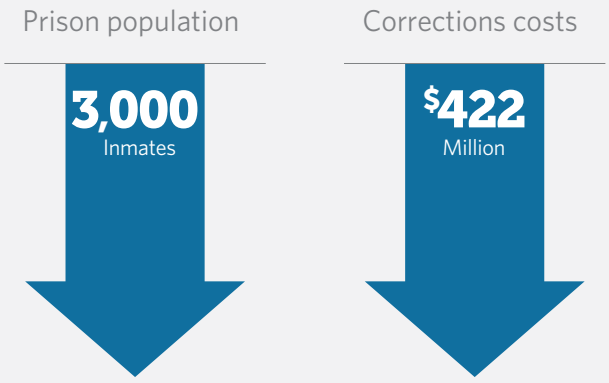
Hunstein: There is hesitation on the part of some judges and chief justices to get involved in policymaking, but I don't hold to that philosophy as far as this area is concerned. Judges need to be involved. We understand the judicial system and the impact of legislation on citizens and our criminal justice system. In terms of the process, there's no question that making sure it is research driven and based on data is essential. You talk about what you think is the problem, and you think you know the answers, but it's not the same as having statistics and costs that are specific to your state right in front of you. That makes all the difference in the world.

Minton: Some of my colleagues would say that judges should have no part in this process. And it's true that it is a little outside the role of the judge zipped up in his or her black robe deciding cases. But I think judges need to be part of the conversation, and I think it's an appropriate role. So I encourage chief justices in other states to get involved.

Kentucky

In the decade ending in 2009, Kentucky had one of the nation's fastest-growing prison populations: a 45 percent increase, compared with 13 percent across all 50 states. The state's general fund corrections spending increased even more dramatically, jumping 214 percent, from $140 million in fiscal 1990 to $440 million in fiscal 2010. Despite these spikes in incarceration and related expenditures, Kentucky's recidivism rate remained high. In 2010, seeking new ways to protect public safety and control prison costs, the Legislature established the bipartisan, interbranch Task Force on the Penal Code and Controlled Substances Act to examine the state's sentencing and corrections system.

In 2011, the Public Safety and Offender Accountability Act passed unanimously in the Senate and with only one dissenting vote in the House before being signed into law by Governor Steve Beshear. The law concentrates expensive prison space on chronic and violent criminals and helps stop the revolving door for lower-risk, nonviolent offenders. The state estimates that the reforms will save $422 million over 10 years, allowing increased investment in efforts to reduce recidivism, such as strengthening probation and parole and expanding substance abuse treatment programs.



Public Safety Reforms Will Save Kentucky Taxpayers Millions

10-year projected prison population and corrections cost reductions, 2012-22

Source: Kentucky Office of State Budget Director

Oregon

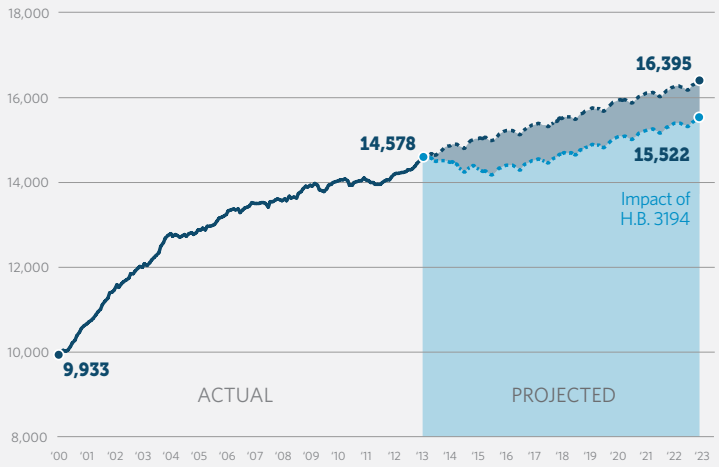
From 2000 to 2012, Oregon's prison population grew nearly 50 percent, from fewer than 9,500 inmates to more than 14,000. In the same period, the biennial corrections budget increased nearly 40 percent, from $976 million to more than $1.3 billion. Meanwhile, funding for many other critical public safety areas, including state police, county sheriffs, community corrections, and victim services, was shrinking. And the state's projections indicated that the prison population would add another 2,000 inmates—mostly nonviolent offenders—and an estimated $600 million in cost to taxpayers by 2023, making it harder still to fund other public safety priorities.

Seeking a better public safety return on corrections spending, Oregon officials in 2012 established a bipartisan, interbranch Commission on Public Safety. The commission designed a wide-ranging set of policy recommendations to refocus prison space on serious, violent criminals and boost crime prevention efforts by strengthening the community corrections system and investing in victim services and law enforcement. The resulting legislation, House Bill 3194 of 2013, is projected to halt prison growth for the next five years, avoiding $326 million in prison costs and driving down recidivism rates.

H.B. 3194 Projected to Avert Prison Growth, Save Millions

Oregon prison population and projections, 2013-23

Source: Analysis by Pew using data from the Oregon Department of Corrections



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