
PENNSYLVANIA: Getting Smart on Incarceration Policy

Introduction

Pennsylvania sits at a crossroads. The economic vitality and educational future of this state depend on two things: resources and political will. Yet the resources necessary to implement the vision of this state's next leader are severely limited by the increasing corrections budget, which now exceeds \$2 billion a year. Secretary of Corrections John Wetzel has stated that his hands are tied. So long as the legislature continues to pass new laws criminalizing behavior and enhancing penalties, he must aggressively seek the resources he needs to safely manage the prison system he oversees. The impact of laws that excessively criminalize people and confer very long sentences reaches beyond the corrections budget itself; Pennsylvania families are suffering too. Numerous studies have shown the devastating effects on children and households of incarceration.¹

Pennsylvania needs strong political leadership now to address the incarceration crisis and pass laws pulling the state out of a mire of socially and fiscally destructive corrections policies. The good news is that solutions are available. This document shows how Pennsylvania compares to other nearby states, outlines the key structures of Pennsylvania's corrections system, and identifies policy shifts that will put the state on the right track.

Pennsylvania in Context: Looking to Other States

Pennsylvania currently incarcerates over 50,000 people in state prisons, giving it the 6th largest prison population in the nation. This huge prison population is in part a result of massive growth over the last few decades. Between 2000 and 2011, the number of people in prison in Pennsylvania grew by about 40%, from roughly 36,000 people to over 51,000. Increased incarceration of people for drug offenses was the most significant driver of this growth.² Over the same period, corrections spending increased by 76%, rising to roughly \$2 billion a year.³ The population has grown at more than triple the rate of Ohio's, and admissions have increased by over fifty percent while admissions in New York, New Jersey, Ohio and Maryland have all gone down.

2012 Prison Population	2012 Incarceration Rate (per 100,000)	Growth in Prison Population, 2000-2012	Growth in Prison Admissions, 2000-2012
5) New York: 54,210 6) Pennsylvania: 51,125 7) Ohio: 50,876 19) New Jersey: 23,225 24) Maryland: 21,522	19) Ohio: 440 23) Pennsylvania: 398 29) Maryland: 360 38) New York: 276 40) New Jersey: 261	11) Pennsylvania: +38.75% 34) Ohio: +11.0% 44) Maryland: -8.56% 49) New Jersey: -22.02% 50) New York: -22.78%	14) Pennsylvania: +57.02% 39) New York: -9.02% 41) Maryland: -9.47% 44) Ohio: -16.43% 48) New Jersey: -26.93%

Source: Bureau of Justice Statistics, Corrections Statistical Analysis Tool (CSAT) – Prisoners.

While massive recent growth in the prison system has come at enormous and mounting human and financial costs to Pennsylvania families, lawmakers can reverse these trends. Over the past decade, several states have taken on incarceration drivers head on and seen real reductions in their prison populations.

South Carolina passed legislation in 2010 that reduced sentences for drug and property crimes (even repeat offenses), instituted intermediate sanctions for people on community supervision, and instituted

earned compliance credits for people in the community. South Carolina saw a 2.8% reduction in their prison population *in the first year alone*. Today, South Carolina has reduced its prison population by 8.2%. Even more impressive, new prison admissions in South Carolina have declined by 24%, almost entirely due decreased admissions for low-level, non-violent crimes, all while violent crime rates dropped statewide.⁴

New York changed the way it approached drug crimes on a number of levels. After a multi-year organizing effort that led to a culture shift in the way New York City treated felony drug offenses, the state legislature in 2009 passed sweeping reforms to their drug laws (including the elimination of numerous mandatory minimums). The prison population has declined almost 23% since 2000 and almost 9% since 2009.⁵

Mississippi passed legislation this year that reduced sentences for drug and property crimes and eliminated numerous restrictions on both diversion and parole eligibility. The legislation is projected to reduce Mississippi’s prison population by 10%.⁶

Background: Pennsylvania’s Sentencing System

Pennsylvania crimes are divided into felonies and misdemeanors. Misdemeanor sentences run up to five years, while felony sentences include life and the death penalty. Any sentence up to two years must be served in jail (also known as ‘county prison’), while sentences between 2-5 years may go to jail or prison; all other sentences go to state prison. There are 50,000+ people incarcerated in the state prison system and 34,000 in county jails. Below are the statutory maximum sentences for different classes of crimes:

Felonies		Misdemeanors	
Murder	Death, Life	1 st Degree	5 years
1 st Degree	20 years	2 nd Degree	2 years
2 nd Degree	10 years	3 rd Degree	1 year
3 rd Degree	7 years		
		Summary Offense	90 Days

Many offenses sit much higher on the felony degree chain than one might expect. For example, not all first degree felonies are violent or sex crimes. Possession with intent to sell a narcotic is a first degree felony* and is a second degree felony for many other drugs, no matter how small the quantity. Burglary of an empty home is a 1st degree felony, a more serious class than many violent crimes.

* Sale or possession with intent to sell a schedule I or II narcotic carries a maximum sentence of 15, not 20 years.

Explosive Growth

From 2000 to 2013, Pennsylvania’s corrections spending increased by 76%, rising to about \$2 billion a year. The state’s incarcerated population is increasing at a much faster rate than other neighboring states, and admissions are up by almost a third while neighboring state admissions are dropping fast.

Pennsylvania can join its neighbors in the push to implement smart incarceration policy to reduce corrections costs and create better outcomes for our communities.

Pennsylvania statutes also contain numerous mandatory minimums, many of them for drug offenses like sale or possession with intent to sell. These mandatory minimums can apply even for small amounts of drugs (1 or 2 grams for many drugs).

Recent Reform Has Not Gotten the Job Done

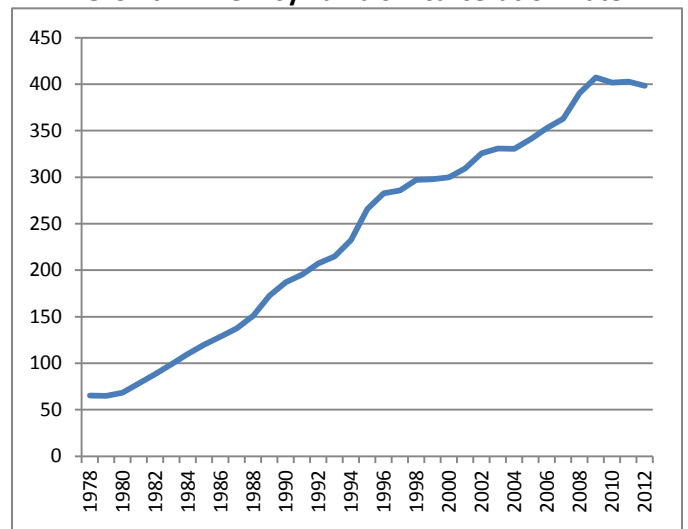
In 2011, the Council of State Governments (CSG) convened representatives from all three branches of government and stakeholders from across the criminal justice system to develop comprehensive legislation to address the growth in Pennsylvania’s prison system, resulting in HB 135 and SB 100.

Reforms were largely targeted at the ‘back end’ of the system: making the parole system more efficient, limiting the number of people re-incarcerated for minor violations of parole rules, improving reentry programming for parole applicants, and requiring that lowest-level misdemeanors be served in jail, not state prison. On the ‘front end’ of the system, the legislation mildly increased eligibility for some diversion and sentence reduction programs. For a more detailed explanation of the legislation’s major provisions, see Appendix A.

The justice reinvestment legislation has frustrated many in the state because its impact has been somewhat limited and slow to materialize. Recent projections calculate that the legislation has averted new growth in the system and will reduce the population by 1,200 people (about 2.5% reduction from 2012) by 2018.⁷

As seen in the chart measuring Pennsylvania’s per-capita incarceration rate, stabilizing the prison population at current historically high levels is not a solution. The projected population reductions will barely scratch the surface of the massive growth in Pennsylvania’s prison incarceration rate (which accounts for the increasing population in the state overall).

Growth in Pennsylvania’s Incarceration Rate¹



To get the system down to a more sustainable level, lawmakers will have to significantly reduce incarceration.

Forging Ahead: Targets for Reform to Shrink the System

To reduce incarceration in Pennsylvania, lawmakers must reduce the flood of admissions for low-level offenses. Drug offenses, thefts, and empty home burglaries accounted for over 41% of all prison sentences in 2012.⁸ From 2000 to 2011, the number of people in prison for drug offenses grew by more than 40%,⁹ and the number of people in prison for thefts more than doubled.¹⁰ Increased use of prison sentences for these two offenses alone was responsible for nearly one third of the overall growth in the system during that time.¹¹ Locking so many people up for these low-level, non-violent crimes does not improve public safety, destabilizes families and communities, and does so at enormous cost to the state. Pennsylvania should treat low-level offenses with appropriate responses, not long prison sentences. The below reforms are how lawmakers can do that.

Incarceration Driver #1: Prison Time for Low-level Drug Offenses

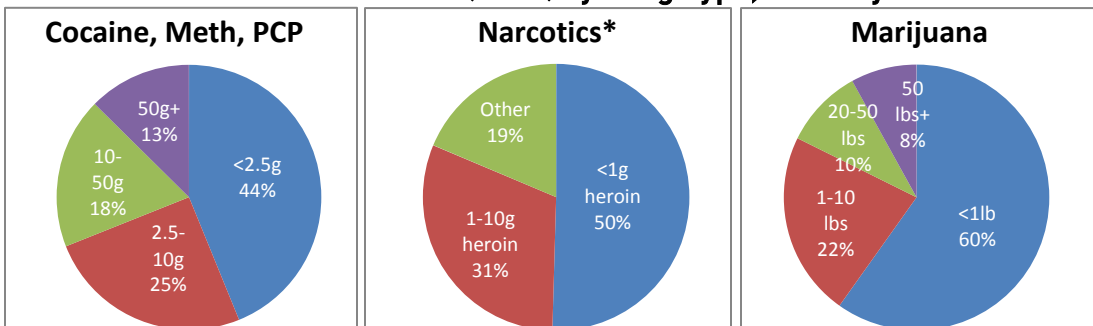
Drug offenses are the single most significant driver of incarceration in Pennsylvania, accounting for 19% of the state prison population and nearly 25% of all prison sentences in 2012.¹² The number of people sentenced to prison every year for drug offenses, 40-50% of which are for low quantities, is only slightly below the number sentences for all assaults, robberies, and burglaries combined.

As of 2009 (when the Sentencing Commission released a special study commissioned by the legislature), roughly 50% of all prison sentences for drug offenses were eligible for a mandatory minimum. Two statutes drive Pennsylvania’s drug mandatory minimum problem: the drug trafficking enhancement and the school zone enhancement.¹³ Each requires reform.

Needed Reform: Reduce sentences for small amounts of drugs and increase diversion options so small-time user/sellers are not treated like major sellers.

A large number of the people admitted to prison every year for drug offenses are convicted of crimes involving only very small quantities of drugs. According to Sentencing Commission data, roughly 44% of people sentenced to prison for offenses involving cocaine, methamphetamines, and PCP were convicted of crimes involving less than 2.5 grams. About 50% of people sentenced to prison for offenses involving narcotics were convicted of crimes involving less than 1 gram of heroin. 60% of people sentenced to prison for offenses involving marijuana were convicted of crimes involving less than 1 pound.¹⁵

State Prison Sentences (2012) by Drug Type, Quantity¹⁶



*Category includes all felony narcotics sentences. “Other” portion includes sentences both for substances other than heroin and for heroin in quantities over 10 grams.

Mississippi, facing similar problems with potentially high sentences for low-level drug offenses, passed a bill reducing sentences for low amounts of drugs in 2014 (HB 585). Ohio similarly reduced low-level

“About 28 percent of our new commits last year were [for] nonviolent [offenses]; those are the people we are looking to divert... We are just looking to make better decisions and if treatment in the community makes sense for an individual then let’s do that as opposed to send them here.”

-Pennsylvania’s DOC Secretary John Wetzel¹⁴

drug sentences in 2011 (HB 86).

Needed Reform: Eliminate mandatory minimums for low-quantity drug trafficking.

In Pennsylvania, mandatory minimums kick in at very low quantities: 1 gram for heroin, 2 grams for a Schedule I/II Narcotic or for cocaine, and 2 lbs of marijuana. Other states require much more to trigger mandatories. Ohio requires as much as 10 times the amount of drugs to get a mandatory. States from Arkansas to Rhode Island have regularly repealed mandatory minimum sentences for drug offenses over the last decade. In 2010, South Carolina eliminated mandatories for most drug sales, and has since seen significant drops in its prison population and new admissions as well as declining crime rates.¹⁷ Further, the Pennsylvania Sentencing Commission, in their 2009 report to the legislature, recommended raising the quantity trigger for mandatories.¹⁸

Needed Reform: Scale the school zone size down from 1,000 to 250 feet and require proof that the defendant intended to sell when school children are present.

Roughly 19% of the state is covered by school zones. In Allegheny County, at least 22.8% of the municipality is within a zone. In Philadelphia, almost 30%.¹⁹ The enormous coverage of these zones waters down their impact by and diminishes their intended effect: moving drug activity away from children. The main effect of the zones is to give prosecutors enormous power to force pleas to long prison terms, even if there were no children present.

In its 2009 report to the legislature on mandatory minimums, the Pennsylvania Commission on Sentencing called for the repeal of this mandatory enhancement.²⁰ In recent years states like Kentucky, Indiana, Massachusetts, South Carolina, and New Jersey have all reformed their school zone enhancements.

Incarceration Driver #2: Out of Date Dollar Amounts for Theft

Thefts are the second largest driver of prison admissions in Pennsylvania, accounting for 12.6% of all prison sentences in 2012.²¹ This is in part because Pennsylvania's theft and shoplifting penalty grading is still based on dollar amount thresholds set decades ago. As prices have gone up over the last quarter century, Pennsylvania's continued use of these outdated dollar thresholds has allowed lower level offenses to drift into more serious penalty classes than originally intended.

Needed Reform: Increase the theft thresholds to reflect inflation and relative seriousness of the crime.

With limited exceptions, Pennsylvania has not changed its low-level theft thresholds in twenty five years.* Also in that time the consequences of a felony conviction have become far more dire. Thresholds should be raised so that only very serious thefts result in serious penalties and collateral consequences.

* In 1996, the legislature amended the retail theft/shoplifting statute to provide that retail thefts of amounts over \$2,000 would be felonies of the third degree. Last year, the legislature reduced that threshold from \$2,000 to \$1,000. This is a step in the wrong direction.

Other states periodically revisit and reform these thresholds every few years. South Carolina's reform legislation included updating the grading of theft thresholds, as did Mississippi's. Ohio addressed the issue in 2011. Since 2009, 20 states have updated the dollar thresholds they use for theft grading.

Incarceration Driver #3: Sentences for Non-Violent Burglaries

Burglaries are the third most significant driver of prison admissions after drugs and thefts. Burglaries accounted 10.6% of all prison sentences in 2012. Half of all prison sentences for burglaries are for home break-ins when no one is present at the time of the offense.²²

Needed Reform: Restructure burglary sentencing so home burglary when no person is present is a 2nd degree felony.

While serious crimes, these empty house burglaries are non-violent offenses and far less serious than home invasions when people are present at the time of the offense, which raises the possibility of violence. Pennsylvania's burglary statutes, however, treat the two kinds of burglary the same: as the highest felony class in the code.

Other states structure their burglary laws to differentiate home burglaries when a person is present, and those when no one is home. Ohio, for instance, treats burglary of an empty house as a significantly less serious crime than burglary with a person present. South Carolina recently scaled back sentences for non-violent home burglary.

Conclusion

The unnecessary incarceration of people convicted of these and other low-level crimes takes an enormous toll on Pennsylvania families. Doing so on such a massive scale destabilizes communities and warps public safety priorities statewide by shifting funding away from common sense, proven solutions like drug treatment and mental health and other community services, and towards costly prisons. Leaders like Senator Stewart Greenleaf, a former prosecutor, and John Wetzel, Secretary of the Department of Corrections, have seen the problems and have called for real reform.

The 2012 justice reinvestment legislation may have slowed the system's growth, but Pennsylvania simply cannot afford to drop the issue and maintain current levels of incarceration. The common-sense solutions laid out above target the real drivers of Pennsylvania's incarceration problem, and suggest policy reforms that will allow the state to safely and effectively reduce the strain these high levels of incarceration are putting on both the state budget and Pennsylvania families.

Appendix 1:

The JRI process resulted in two successful bills: SB 100, which contained substantive reforms, and HB 135, which provides for the allocation of savings. SB 100 touched on a number of issues and programs (examined further below) but the most significant policy outcome of the JRI process was a plan to refocus the use of Pennsylvania's existing community corrections beds. This reform was designed to address two systemic drivers of unnecessary incarceration:

- (1) keeping people in prison after they have been approved for parole because they were unable to find approved housing in the community, and
- (2) sending people to prison for minor technical violations of their parole conditions (rule violations like missing meetings or failing drug tests, not committing new crimes).

The JRI solution was to use the state's existing community corrections system to house both of these populations: people approved for parole but unable to find housing could be moved out of prison and into these community corrections facilities, and eligible people on parole who commit minor conditions violations could be sentenced to short stays (up to six months) in these facilities rather than a full revocation back to prison. The legislation also capped technical revocation terms for people not eligible for incarceration in community corrections beds to 6 months for a first offense, 9 months for a second revocation, and 1 year for third or subsequent revocation.

Before JRI, a significant number of these community corrections beds were being used by 'pre-release' inmates: prisoners who had served their minimum sentences and were parole-eligible, but had not yet been approved for parole. One downside of the JRI reforms is that these beds, which allowed the DOC to ease inmates' reentry to the community by stepping them down from prisons to community corrections facilities to parole in the community, are now longer available for pre-release prisoners.

The JRI legislation included several changes to eligibility and admissions rules for the State Intermediate Punishment program (SIP), a 2 year incarceration/treatment program for people convicted of crimes motivated by substance use disorders. The legislation made the existing eligibility rules more restrictive by (a) adding a new 10-year lookback for convictions that can render a person ineligible for SIP (previously, only the current charge mattered) and (b) expanding the list of convictions that will make someone ineligible for the program by including two new non-violent crimes: house burglary when a person is present and drug trafficking under certain circumstances. On the other hand, the legislation also allowed prosecutors to waive eligibility requirements and removed a defendant's right to decline a SIP sentence. Similar changes were made to the eligibility rules for the Recidivism Risk Reduction Initiative.

The legislation also eliminated the possibility of incarceration in state prisons for the lowest level of misdemeanor (3rd degree), authorized the creation of a probation pilot program based on the successful HOPE model from Hawaii, allowed for Risk Reduction Incentive Sentencing even when mandatory minimum sentencing applies, and created new programs to improve the coordination of reentry services.

For more, the full text of SB 100 can be found here:

<http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2011&body=S&type=B&BN=0100>

The full text of HB 135 can be found here:

<http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2011&sind=0&body=H&type=B&bn=135>

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- ¹ Advisory Committee To Review the Effects on Children of Incarcerated Parents, “The Effects of Parental Incarceration on Children: Needs and Responsive Services” (December 2011) (available at: <http://jsg.legis.state.pa.us/resources/documents/ftp/documents/children%20of%20incarcerated%20parents.pdf>); Gvельvik, et al, “Adverse Childhood Events: Incarceration of Household Members and Health-Related Quality of Life in Adulthood,” *Journal of Health Care for the Poor and Underserved* 25.3 (2012): 1169-1182.; Patricia Allard and Judith Greene, “Children On the Outside: Voicing the Pain and Human Costs of Parental Incarceration,” *Justice Strategies* (January, 2011) (available at: <http://www.justicestrategies.org/sites/default/files/publications/JS-COIP-1-13-11.pdf>); Joseph Murray et al, “Effects of Parental Imprisonment on Child Antisocial Behaviour and Mental Health: A Systematic Review,” *Campbell Systematic Reviews* (2009); Jeremy Travis et al, “Families Left Behind: The Hidden Costs of Incarceration and Reentry,” Urban Institute Justice Policy Center (October 2003, Revised June 2005) (available at: http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf).
- ² Pennsylvania Department of Corrections, 2011 and 2000 Annual Statistical Reports (available at: http://www.portal.state.pa.us/portal/server.pt/community/research_statistics/10669/reports/1069947).
- ³ Council of State Governments Justice Center, “Justice Reinvestment in Pennsylvania: Dynamic Strategies for Reducing Corrections Costs and Improving Public Safety,” (November, 2013) (available at: http://csgjusticecenter.org/wp-content/uploads/2013/12/PA_2-page_report.pdf).
- ⁴ South Carolina Reform Oversight Committee, State Expenditures Savings Report (December 1, 2013) (available at: <http://scstatehouse.gov/citizensinterestpage/SentencingReformOversightCommittee/Reports/2013SCSROCStateExpendituresSavingsReport.pdf>),
- ⁵ Marc Mauer and Nazgol Ghandnoosh, “Fewer Prisoners, Less Crime: A Tale of Three States,” The Sentencing Project (July 2014) (available at: http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf).
- ⁶ Pew Public Safety Performance Project, “Mississippi’s 2014 Corrections and Criminal Justice Reform,” (May 2014) (available at: http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes/content-level_pages/issue_briefs/2014/Mississippi2014SentencingandCorrectionsCostspdf.pdf); Bureau of Justice Statistics, Corrections Statistical Analysis Tool (CSAT) – Prisoners;
- ⁷ Nancy LaVigne et al. “Justice Reinvestment Initiative State Assessment Report: Pennsylvania,” The Urban Institute (January, 2014) (available at: <http://www.urban.org/publications/412994.html>); Corbett, Tom, 2013-2014 Governor’s Annual Budget (available at: <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4571&mode=2#2013-14>).
- ⁸ Pennsylvania Commission on Sentencing, Sentencing in Pennsylvania 2012 Annual Report (available at: <http://pcs.la.psu.edu/publications-and-research/annual-reports/2012/view>).
- ⁹ Pennsylvania Department of Corrections, 2011 and 2000 Annual Statistical Reports (available at: http://www.portal.state.pa.us/portal/server.pt/community/research_statistics/10669/reports/1069947).
- ¹⁰ Id.
- ¹¹ Id.
- ¹² Id.
- ¹³ Pennsylvania Commission on Sentencing, A Study on the Use and Impact of Mandatory Minimum Sentences (October 2009) (available at: <http://pcs.la.psu.edu/publications-and-research/research-and-evaluation-reports/special-reports/house-resolution-12-of-2007-use-and-impact-of-mandatory-minimum-sentences/report-to-the-legislature-the-use-and-impact-of-mandatory-minimum-sentences.-hr-12-of-2007/view>).
- ¹⁴ Ahavah Revis, “The Lineman: John E. Wetzel, Pennsylvania’s New Secretary of Corrections,” *Correctional News* (November 23, 2011) (available at: <http://www.correctionalnews.com/articles/2011/11/23/the-lineman-john-e-wetzel-pennsylvania-s-new-secretary-corrections>).
- ¹⁵ Pennsylvania Commission on Sentencing (2012).
- ¹⁶ Id.
- ¹⁷ South Carolina Reform Oversight Committee (2013).
- ¹⁸ Pennsylvania Commission on Sentencing (2009).
- ¹⁹ Id.
- ²⁰ Id.
- ²¹ Pennsylvania Commission on Sentencing (2012).
- ²² Id.

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