

America on Probation

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Photo



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Bill Keller

IN recent years Americans have begun to wise up to the idea that our overstuffed prisons are a shameful waste of lives and money. Lawmakers have recoiled from the high price of mass incarceration (the annual per-inmate cost of prison approaches the tuition at a good college) and some have recognized that our prisons feed a pathological cycle of poverty, community dysfunction, crime and hopelessness. As crime rates have dropped, the public has [registered support](#) for reforms that would have fewer nonviolent offenders languishing in prison. For three years in a row, the population of America's prisons has inched down; 13 states closed prisons last year. Efforts to fix the perpetual misery machine that is our criminal justice system have won support not only from progressives and academics but from [conservatives](#) (both fiscal and evangelical), from enlightened law enforcement groups, from business and even from [advocates for crime victims](#).

This emerging consensus is good news, since our prisons are an international scandal, and we can only hope the new attitude doesn't evaporate with the next Willie Horton-style rampage or spike in the crime rate. But it raises an important question: What is the alternative? How do we punish and deter criminals, protect the public and — the thing prisons do most abysmally — improve the chances that those caught up in the criminal justice system emerge with some hope of productive lives?

That has become about the hottest subject in criminal justice, the focus of a profusion of experiments in states and localities, and of researchers trying to determine what works. California alone, which is under a Supreme Court mandate to relieve its inhumanely congested prisons, is offering counties \$1 billion a year to try out remedies. A [study](#) released on Monday by the Urban Institute examined 17 states, red and blue, testing an approach called Justice Reinvestment — reducing prison costs and putting some of the savings into alternatives. Perhaps the most striking thing, said Nancy La Vigne, the principal investigator on the report, is the enthusiasm of law-and-order states that a few years ago might have shunned such programs as bleeding-heart liberalism.

In conversations with a wide range of criminal justice experts, I found several broad strategies that seem promising:

SENTENCING America has long been more inclined than other developed countries to treat crime as a disposal problem; “trail ’em, nail ’em and jail ’em,” is our tough-on-crime slogan. Beginning in the ‘70’s, rising crime rates, compounded by the crack epidemic and the public fear it aroused, set off a binge of punitive sentencing laws. Three-strikes, mandatory minimum sentences and requirements that felons serve a minimum portion (often 85 percent) of their sentence

lengthened the time offenders — especially drug offenders, and especially black men — spent in lockup. Restoring common sense to sentencing is the obvious first step in downsizing prisons. New York rolled back its notorious Rockefeller drug laws, California has softened its three-strikes law and several other states have tinkered with rigid sentencing laws. But there is stiff resistance from prosecutors, who use the threat of long sentences to compel cooperation or plea deals. Reformers concede that those draconian laws have had a modest effect on the crime rate, but because of them we are paying to imprison criminals long past the time they present any danger to society. “Keeping a 60-year-old in prison until he’s 65 does close to zero for crime rates,” said Jeremy Travis, president of John Jay College of Criminal Justice. “If we’re really seeing something deep going on here, the proof will be whether legislators have the political will to roll back sentencing.”

SUPERVISION For every inmate in our state and federal prisons, another two people are under the supervision of probation or parole. Caseworkers are often poorly paid and usually overwhelmed. About all they can do is keep count of an offender’s violations until the system decides to kick that offender back to prison. A few jurisdictions have tried to make parole and probation less of a revolving door back to prison, with some encouraging results. They focus attention on offenders considered most likely to commit crimes. They send caseworkers out of the office and into the community. They use technology (ankle bracelets with GPS, A.T.M.-style check-in stations, Breathalyzer ignition locks to keep drinkers from driving) to enhance supervision. They employ a disciplinary approach called “swift and certain,” which responds promptly with a punishment for missing an interview or failing a drug test. The punishments start small, then escalate until the offender gets the message and changes his behavior — preferably before he has to be sent back to prison. Mark Kleiman, a U.C.L.A. public policy professor who is a champion of the technique, says, “It’s basically applying the principles of parenting to probation.”

DIVERSION Many jurisdictions now send drug offenders to special courts that divert nonviolent drug abusers to treatment instead of prison. Adam Gelb, director of the Public Safety Performance Project at the Pew Charitable Trusts, said more than 2,000 drug courts have been created. The popularity of drug courts has spawned other specialized venues — veterans’ courts, domestic violence courts — that aim to address problems rather than simply dispense punishment.

RE-ENTRY We release more than 650,000 prisoners into society every year, often just dropping them on a curb to fend for themselves. Two-thirds of them are rearrested within three years. A number of programs aim to improve the odds that a released felon will have options besides unemployment, homelessness and a return to crime. Some feature prerelease counseling and enlist family members to assure a safe landing. “Ban the box” initiatives encourage employers to eliminate the box on job applications that asks if you have ever been arrested. A criminal history can still count against you in hiring, but it doesn’t eliminate you from consideration. (Target is the biggest retailer to ban the box.) Sherrilyn Ifill, president of the NAACP Legal Defense and Educational Fund, says another simple measure is to repeal rules that say a felon can’t be licensed as a barber or beautician.

POLICING It may seem counterintuitive, but sophisticated police work has helped reduce prison populations in New York, Chicago, Philadelphia, New Orleans and other cities while also bringing down violent crime, [according to](#) David Kennedy of John Jay. Instead of wholesale policing of “bad neighborhoods” and indiscriminately stopping and frisking residents, they target micro hot spots, such as drug corners, and small groups of violent actors, such as gang members. Police in these cities have become more selective about who gets arrested and put into the criminal justice system in the first place.

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Although the government has stepped up evaluation of all these programs (see the National Institute of Justice’s impressive [CrimeSolutions.govwebsite](#)), most of the evidence is still tentative. Joan Petersilia of the Stanford Criminal Justice Center, who is monitoring California’s wild experiment in prison downsizing, says the reform movement has been hampered by a lack of rigorous science — and by public impatience. To know what works, she said, “We have to stay the course, and we never do in criminal justice policy.” Sooner or later crime ticks back up, and, she said, “When fear gets in the American public, they will pay anything for prisons.”

The quest for safe and humane alternatives to lockup faces opposition from prosecutors protecting their leverage, from corrections employee unions protecting jobs and from a private prison industry protecting profits. (Private prison operators, who house about 9 percent of prison inmates, have a vested interest in keeping prisons full because they are paid based on occupancy.) Liberal skeptics, in turn, point out that these programs do not solve the root problems: communities, bereft of good schools, decent housing and jobs, that become cradles of crime. They are right, of course, but they remind me of critics who oppose charter schools

because the real problem is poverty. I'm all for reaching out to those trapped on the bottom. But in the meantime, why not try to save some lives?