

Downsizing Prisons in New Zealand - A Discussion Paper

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1.0 Purpose of this Discussion Paper

1.1 Since 2000, the standard policy response to a rise in imprisonment, has been to build more prisons. During that same period, other nations have responded to pressure on the prison estate by reducing demand, rather than increasing supply i.e. developing downsizing strategies. The new Labour-led government proposes to reduce the prison population by 30% over the next 15 years. This paper considers;

- (a) the current New Zealand situation,
- (b) the strategies implemented by selected nations and states that have successfully downsized,
- (c) the outcomes of downsizing;
- (d) the evidence-based principles which support a downsizing strategy.

2.0 Executive Summary

2.1 The prison population continues to hit new records, reaching 10,470 at the end of September 2017. It rose 23% between March 2014 and September 2017. The recidivism rate of released prisoners is increasing.

2.2 The former National government proposed to build a 3000 bed maximum security prison to meet future demand; the new Labour-led government proposed to implement a downsizing strategy which will reduce the prison population by 30% over the next 15 years. The Department of Corrections advises that there is no available option other than to build a new prison, and neither it nor the Ministry of Justice has offered an alternative. Cabinet must make a decision on how to proceed within the next month.

2.3 In the absence of a compelling criminal justice philosophy in which the nation's values and moral direction are made clear, this paper considers the lessons learnt from nations and states similar to New Zealand that have downsized prisons, and the evidence that underlines their success. The States of New York, New Jersey, California and Alaska – have achieved prison population reductions in the range of 25% over a period of ten years. They have also seen their crime rates generally decline at a faster pace than the national average.¹ By way of comparison, the paper also discusses historical downsizing strategies in Canada, Germany and Finland.

3.0 Summary of Findings

In summary, the case studies showed that:

Strategy Implementation

3.1 The responsibility for a downsizing policy and its implementation should be delegated by government to an independent body, e.g. a Criminal Justice Council or Sentencing Commission, established for that purpose.

Public Willingness

3.2 Recent opinion polls demonstrate a public willingness to downsize prisons.

Big Data, Cost Benefit Analysis and Social Investment

3.3 New Zealand has the potential to access Treasury's Integrated Data Infrastructure and CBAX Cost-Benefit analysis, and its Social Investment strategy, to provide an evidence-based approach to prison downsizing. Alaska was the only state that took a similar approach.

Short Term Strategies

3.4 The short-term Strategies (**Appendix B**) adopted by the US States all have relevance for New Zealand;

3.5 The "iron law of prison populations" is determined by two factors: the number of people who are sent to prison and how long they are incarcerated.

¹ The Sentencing Project: Policy Brief: *Fewer Prisoners, Less Crime: A Tale of Three States*, 2015

Sentencing Strategies

3.6 For many offenders, incarceration is not more effective at reducing recidivism than non-custodial sanctions.

3.7 For a substantial number of offenders, there is little or no evidence that longer prison stays reduce recidivism more than shorter prison stays.

3.8 Research which matches those sent to prison with those sent to noncustodial sanctions has consistently found no differences in re-arrest or re-conviction rates, both in short-term and in long-term analyses, and even when controlling for individuals' education, employment, drug abuse status, and current offence.

3.9 For many low-level offenders, prison terms may increase rather than reduce recidivism.

3.10 The most relevant question to ask is whether imprisonment achieves its intended effects and whether it is more, less, or equally effective as other options for addressing crime.

Rehabilitation

3.11 Prison based rehabilitation programmes are ethically essential, but do not make any significant impact on reducing the prison population.

3.12 If the goal is to develop strategies that result in significant downsizing, resources should therefore be directed toward should desistance-focussed community supervision strategies.

Remands in Custody

3.13 Remands in custody for longer than 24 hours can lead to worse outcomes, particularly for low risk defendants

3.14 Low risk defendants who are detained for more than 24 hours experience an increased likelihood of failure to appear and new criminal activity during the pre-trial period.

3.15 Being detained for the entirety of the pre-trial period is associated with an increased likelihood of new criminal activity post-disposition across all risk categories.

Probation and Parole Supervision

3.16 Probation and parole supervision has focused on surveillance and sanctioning in order to catch or interrupt negative behaviour. However, research shows that encouraging positive behavior with incentives and rewards can have an even greater effect on motivating and sustaining behavior change.

3.17 Frontload resources in the first weeks and months following release

3.18 Long-term success for offenders returning home from prison is closely tied to accountability and support in the time period immediately following release.

3.19 The likelihood of violations and the value of ongoing supervision diminish as offenders gain stability and demonstrate longer-term success in the community.

Surveillance and Electronic Monitoring

3.20 Integrate treatment into surveillance

3.21 A combination of surveillance and treatment focused on offenders' criminogenic needs is more effective at reducing recidivism than supervision consisting of surveillance alone.

Longer Term Considerations

3.22 Targeting people convicted of mediocre offences with inconsequential criminal histories is not going to go very far.

3.23 Assess how downsizing initiatives affect the ethnic composition of incarcerated persons. Reductions in populations overall may or may not affect existing disparities in imprisonment depending on the strategies and criteria employed for such change.

3.24 Research over many years has shown that older offenders have much lower rates of recidivism than younger ones. Limitations on release of the elderly both lacks compassion and is counterproductive in allocating public safety resources.

3.25 Holding people in prison past the age of 40 has demonstrably limited impact on the likelihood of crime

3.26 Many crimes are committed by young men in groups. When one of those young men is incarcerated, the group may remain as criminally active. A person who is locked up may be prevented from committing crimes while in prison, but the crimes themselves may occur anyway.

3.27 On the average, people with past criminal histories who have remained crime-free for seven years pose the same risk to society as others their age who have never been convicted of a crime. After seven years, a past criminal conviction no longer predicts future criminal conduct.

4.0 Organisation of Paper

This paper is divided into the following headings;

- (a) The New Zealand Situation
- (b) Case Studies
- (c) Policy Development and Change Strategies
- (d) Public Willingness for Change
- (e) Use of Big Data and Cost/Benefit Analysis
- (f) Key Strategies for Change
- (g) Impact on Public Safety and Reoffending
- (h) Impact on Reoffending Impact of Prison Rehabilitation on Downsizing
- (i) Evidence-based Principles

5.0 Framework of Paper - Limitations

5.1 For the purposes of utility, urgency and relevance, this paper is confined to a consideration of the current situation. It does not delve into ideological issues, or consider in any depth strategies to sustain downsizing over the long term. Nor does it consider the impact of building a 3000-bed high security mega-prison for minimum security prisoners on the government's downsizing strategy. That will be the subject of a separate discussion paper.

5.2 Tonry observes, "countries have different criminal justice policies and practices for reasons of political culture and history, not because of crime levels, crime trends, or larger social and economic forces".² There are significant similarities between the USA and New Zealand, but it is difficult to make useful comparisons with other nations. For example, in some countries (such as Thailand and China), drug addiction is viewed as a moral failure, which elicits a different criminal justice system response than in countries (such as Norway), where addiction is viewed as a disease.³

5.3 Attitudes to pre-trial detention is another indication of a nation's view of the relative importance of individual liberty and community protection. Nations with high rates of custodial remands such as New Zealand can be described as risk averse, while countries with low pretrial detention rates can be described as liberty/due process focused.

5.4 This paper is predicated on the basis that New Zealand's current corrections ideology most closely resembles that of the USA, and that it has the same reasons for wanting to downsize; i.e. overcrowding and budget control. The previous government has created a perfect storm, and in the short term, the way out will most likely resemble the way in, in reverse.

5.5 While political initiatives to "get tough" on crime have frequently led to rising prison populations, conscious policy shifts can produce decarceration. Perhaps the three most notable historical examples of nations that have moved in such a

² Tonry, M. (2013). Sentencing in America. In M. Tonry (Ed.), Crime and justice in America: 1975–2025—Vol. 42 of crime and justice: A review of research (pp. 141–198). Chicago, IL: University of Chicago Press. p.185

³ Pratt, J., & Eriksson, A. (2014). Contrasts in punishment: An explanation of Anglophone excess and Nordic Exceptionalism. New York, NY: Routledge Frontiers of Criminal Justice.

direction in recent decades are Canada, Finland and Germany (**refer to Appendix A**) For the purposes of this paper however,, the focus is on short term strategies, in the absence of a compelling criminal justice philosophy in which the nation's values and moral direction are made clear.

6.0 Case Studies – California, New York, New Jersey and Alaska

6.1 There is a considerable literature in the USA, which tracks the efforts of States in downsizing the prison population. Although the pace of criminal justice reform has accelerated at both the federal and state levels in the past decade, current initiatives have had only a modest effect on the size of the US prison population. But over this period, three states – New York, New Jersey, and California – have achieved prison population reductions in the range of 25%. They have also seen their crime rates generally decline at a faster pace than the national average.⁴

6.2 Alaska is included, not only because of a significant reduction, but because there are features of its downsizing strategy that are compatible with New Zealand’s commitment to social investment, the use of Treasury’s Integrated Data Infrastructure and CBAX Cost-Benefit analysis, and an evidence based analysis.

6.3 **Appendix A** contains Case Studies from California, New Jersey, New York, Alaska, Canada, Finland and Germany. **Appendix B** lists the strategies that could apply within the current New Zealand context.

7.0 The New Zealand Experience – a Summary

Increasing Imprisonment Rates

7.1 The 2018 Salvation Army - State of the Nation Report (10 Year Trends)⁵ states that:

Despite firm evidence that crime volumes are falling, the prison population continues to hit new records, reaching 10,470 at the end of September 2017. This population grew slowly from around 8000 in 2008 to 8,500 in 2014, but rose 23% between March 2014 and September 2017. This increase meant that the imprisonment rate rose from 184 prisoners per 100,000 populations in 2007 to 210 per 100,000 in 2017. The imprisonment rate for Maori are around 3.5 times higher than for the total population, and this rate rose from 620 per 100,000 in 2007 to 700 per 100,000 in 2017. This increasing prisoner population is due to a number of factors – including a

⁴ The Sentencing Project: Policy Brief: *Fewer Prisoners, Less Crime: A Tale of Three States*, 2015

⁵ Salvation Army ‘Kei a Tatou’ – ‘That is Us’ Report 2018 – Ten Year

Trends.<http://www.salvationarmy.org.nz/sites/default/files/uploads/20180214stateofthenation10yeartrendsonline.pdf>

*growing remand prisoner population, a higher proportion of convictions leading to prison sentences and fewer prisoners being granted parole.*⁶

7.2 The unprecedented New Zealand growth rate over the last five years is discussed in more detail at **Appendix C**.⁷

Increasing Recidivism Rates are Climbing

7.3 During the 2016/17 financial year, Government spent \$181 million on prisoner reintegration and rehabilitation programmes, which is around 13% more in inflation adjusted terms than five-years previously. Despite this commitment, recidivism rates continued to climb during 2016/17, with re-imprisonment rates in particular reaching the highest levels since at least 2003. The reimprisonment rate 12 months after release rose from 29.7% in 2016 to 31.2% in 2017. The Maori re-imprisonment rate after 12 months rose from 44.2% to 45.5% during the same period. If the trend of increased imprisonment continues, the recidivism rate can be expected to rise further.⁸

The Standard Response - Build Another Prison

7.4 The CEO of Corrections has made his position clear;

*“greater demand must be met with additional supply so prisoners can be managed safely and with a focus on their return to society”.*⁹

7.5 Since 2000, the standard policy response to a rise in imprisonment, has been to build more prisons. Between 2005 and 2015 six prisons with some 4580 beds were completed. The previous strong prison building period was between 1967 and 1979 when five prisons were completed. Only one current prison was completed in the 26 years between these two prison building periods, in 1989 at Hawkes Bay.

7.6 In August 2016, Government announced a budget blowout of \$45m on prisons, and a further \$41m above baseline funding to cope with pressures on the prison

⁶ Ibid

⁷ Salvation Army ‘Kei a Tatou’ – That is Us’ Report 2018 – pp.35-36.

<http://www.salvationarmy.org.nz/sites/default/files/uploads/20180214tsastateofthenation2018.pdf>

⁸ Salvation Army ‘Kei a Tatou’ – That is Us’ Report 2018 – pp.35-36.

<http://www.salvationarmy.org.nz/sites/default/files/uploads/20180214tsastateofthenation2018.pdf>

⁹ Ibid. p.5

network. In May 2017, the budget provided \$763.3 million for increasing prison capacity and an additional \$255 million in operating funding.

7.7 In a briefing to former Minister of Corrections Louise Upston in April 2017, Corrections warned it was already on a "disaster" footing and was fast running out of room to house prisoners. The briefing spells out how Corrections was repeatedly wrong-footed by Ministry of Justice predictions of prisoner numbers and how the mega prison plan was scaled up from a proposed 1000-bed facility to a \$1 billion facility that was double that size.

7.8 In September 2017, the government announced its intention to build a 1500 bed prison at Waikeria, with an option of an additional 500 beds.¹⁰ It is now accepted that the prison could reach a total of 3000 beds, 500 more than the 'Titan Prisons' proposed in the UK.¹¹ A Request for Proposal for the Waikeria Prison Development was released in April 2017, and there was one tender. It was intended the new contract be signed in April 2018, with the new facility in service by 2021. It will cost about \$1 billion.¹²

8.0 Downsizing Policy - its Development and Implementation

8.1 The overseas experience shows that in almost every situation, the development of downsizing policy and its implementation was delegated by government to an independent body, often established for that purpose. In the early stages of the downsizing process, eleven states created independent Sentencing or Study Commissions to oversee the development of legislative, policy, and operational changes.

8.2 Policy changes of this magnitude have impact across the entire criminal justice system, and it would be unfair to expect Corrections to develop that policy. Its historical focus has been on expanding the prison estate to meet increasing demand. The Ministry of Justice has failed in recent years to proactively address this

¹⁰ David Fisher, *Corrections on 'disaster' footing as ballooning inmate numbers drove creation of a mega prison*, NZ Herald, 23 February 2018.

<http://www.newshub.co.nz/home/election/2017/09/national-party-wants-500-more-spaces-at-waikeria-prison.html>

¹¹ Lord Carter, *'Managing Offenders, Reducing Crime – A New Way'* Report to the Prime Minister, (2003)

¹² Briefing to Incoming Minister, December 2017.

developing crisis, or respond to external prompting. I did not receive any response to a 2015 Monograph on the topic,¹³ or to a 2016 letter to the Minister of Justice.¹⁴ The ‘informal’ feedback from the Ministry of Justice, was that the Minister was advised that because downsizing worked elsewhere, was not a sufficient reason to believe it would work in New Zealand. If that is true, it is an appalling dereliction.

9.0 Public Willingness for Change

9.1 Recent opinion polls demonstrate a public willingness to downsize prisons,¹⁵ overwhelming public support for the use of alternatives to prison for nonviolent offenders, and a growing sense that too many people are incarcerated at too high a cost¹⁶ As Tonry comments, for the first time in decades it appears that a “window of opportunity” for justice reform is opening to allow for a re-evaluation of the effectiveness and wisdom of policies that have created the largest prison population in the world.¹⁷

9.2 This view aligns with the New Zealand experience. A 2013 Colmar Brunton Survey commissioned by the Ministry of Justice into Public Perceptions of Crime¹⁸ showed that only five per cent of respondents agreed that prisons deterred people from committing crime, with the same percentage advocating for harsher treatment, mostly in the form of longer sentences. Only six per cent considered that increasing rehabilitation in prisons would increase their confidence in the justice system, while twice that number (11 per cent) favoured community-based rehabilitation. The public is not a uniform entity with one single, static viewpoint. It is made up of many differing and changing opinions. Whilst a majority of people may think that the courts are too soft, they also recognise that prison is expensive

¹³ Rethinking Crime and Punishment, If Prisons are a Cause of Crime, Why Not Reduce the Numbers’ Monograph No 3, in the ‘Smart on Crime’ Series, 2015.

<https://www.criminologycollective.nz/?s=Reducing+Prison+Numbers>

¹⁴ Kim Workman ‘Imagine my Disappointment’ Open letter to the Minister of Justice, 29 July 2016

<http://www.scoop.co.nz/stories/PO1607/S00337/imagine-my-disappointment-kims-workmans-open-letter.htm>

¹⁵ Sundt, Jody, Francis T. Cullen, Angela J. Thielo, and Cheryl Lero Jonson. 2015. Public willingness to downsize prisons: Implications from Oregon. *Victims & Offenders*, 10: 365–378.

¹⁶ Pew Charitable Trusts. 2012. Public opinion on sentencing and corrections policy in America. Public Safety Performance Project. Retrieved January 10, 2015 from pewtrusts.org

¹⁷ Tonry, Michael. 2010. Public criminology and evidence-based policy. *Criminology & Public Policy*, 9: 783–797

¹⁸ Ministry of Justice. (2013). Public perception of crime – survey report. Retrieved from <http://www.justice.govt.nz/publications/global-publications/p/public-perceptions-of-crime-survey-report>

and damaging.¹⁹ People support alternative, non-punitive responses, once they have the opportunity to consider a case in detail. The idea that everyone supports harsh punishment is a vote-gathering delusion.

10.0 Use of Big Data, Cost Benefit Analysis, and Social Investment Strategies

The central goal of California's Realignment strategy is different from the other states, in that its intent was to decarcerate and decentralize the jurisdiction and funding of a large proportion of the low-risk inmate population from the state to the county level – a strategy which saw a reduction in the state prisoner population overall.

10.1 While California's downsizing was probably the largest prison downsizing ever, it was not without its weaknesses. There was a lack of robust evaluation and monitoring, and no apparent attempt to capture or encourage local experimentation, greater responsiveness, sensitivity to local needs, and stronger community support. Decentralisation brings with it risks around a lack of coordination, weak accountability, mission drift and goal displacement. Decentralisation of the treatment of the mentally ill is a prime example of transfer of governmental responsibility for complex, systemic problems to local governments.²⁰

10.2 New Zealand has the potential to access Treasury's Integrated Data Infrastructure and CBAX Cost-Benefit analysis, and its Social Investment strategy, to provide an evidence based approach to prison downsizing. For that reason, the approach taken by the Alaskan Criminal Justice Commission, is the Justice Reinvestment model that most closely aligns to New Zealand. Following a directive from its legislative leadership, the Commission developed a comprehensive, evidence-based package of 21 consensus policy recommendations that would reduce the state's average daily prison population by 21 percent, netting estimated savings of \$424 million over the next decade.²¹

¹⁹ Lappi-Seppala, T. (ND). Enhancing the Community Alternatives – Getting the Measures Accepted and Implemented, pp. 94, 95. Retrieved from http://www.unafei.or.jp/english/pdf/RS_No61/No61_11VE_Seppala3.pdf

²⁰ Torrey, Fuller E. 2013. American Psychosis: How the Federal Government Destroyed the Mental Illness Treatment System. New York: Oxford University Press.

²¹ Alaska Criminal Justice Commission, (2015) Report on Justice Reinvestment Initiative http://www.ajc.state.ak.us/sites/default/files/imported/acjc/AJRI/ak_jri_report_final12-15.pdf

10.3 New Zealand's use of Treasury's Integrated Data Infrastructure and CBAX Cost-Benefit analysis in relation to the Criminal Justice sector since 2015, has been conservative and disappointing. It has failed to use its capacity to address big questions, with the potential to make significant savings and transform the shape of the criminal justice system. The issue of decarceration lends itself to such an approach.

11.0 Key Short-Term Strategies

Key Short-term Strategies that have relevance for the New Zealand situation, are set out at **Appendix B**.

12.0 Impact on Public Safety

12.1 The findings on the total effect of prison on public safety are complex, and of limited policy utility.²²²³²⁴²⁵ The imprisonment rate is the outcome of sentencing laws, correctional practice, and discretionary decisions made by prosecutors, judges, and correctional professionals.²⁶ It makes little practical sense to ask how much crime is prevented through incarceration compared to what might happen if offenders were "free on the streets." The more relevant question to ask is whether policies achieve their intended effects and whether they are more, less, or equally effective as other policies for addressing crime.

12.2 The Californian Realignment Act, while primarily an exercise in decentralisation, was also an exercise in downsizing. There were two basic policy positions;

- Opponents of prison downsizing worried that reducing the prison population was dangerous. Any reduction in the number of inmates incarcerated had the

²² Donohue, John Jay III. 2009. Assessing the relative benefits of incarceration: The overall change over the previous decades and the benefits on the margin. In (Steven Raphael and Michael Stoll, eds.), *Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom*. New York: Russell Sage Foundation

²³ Spelman, William. 2000. What recent studies do (and don't) tell us about imprisonment and crime. *Crime and Justice*, 27: 419-494.

²⁴ Travis, Jeremy, Bruce Western, and Steve Redburn(eds.).2014. *The Growth of Incarceration in the United States: Exploring the Causes and Consequences*. Washington, DC: The National Academies Press.

²⁵ Useem, Bert, and Anne Morrison Piehl. 2008. *Prison State: The Challenge of Mass Incarceration*. New York: Cambridge University Press

²⁶ Simon, Jonathan. 2014. *Mass Incarceration on Trial*

potential to weaken the incapacitation and deterrent effects of punishment by lowering the severity and certainty of punishment.

- Advocates of justice reinvestment and evidence-based practices argued that prison downsizing could be done safely and may improve public safety. Prisons are marginally ineffective at best, and at worst, increase reoffending by weakening prosocial ties and legitimate opportunities. Savings should be invested in scientifically proven strategies.

12.3 Between September 30, 2011 and December 31, 2012, the total California prison population decreased by 27,527 inmates, a decline of 17%.²⁷ ²⁸In addition, total admissions to California prisons decreased by 65%, from 96,669 in 2011 to 34,294 in 2012. Eight other states reduced their prison populations by more than 1,000 inmates between 2011 and 2012. ²⁹

12.4 Between 2010 and 2012, the California parole population declined by 46%, the jail population increased 12%, and the probation population increased 34%.³⁰ The law altered local criminal justice agencies and their interrelationships – as counties adjusted to the massive influx of realigned offenders.³¹

13.0 The Impact of Downsizing on Offending

13.1 As described in the comprehensive 2014 report of the National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*:

²⁷ California Department of Corrections and Rehabilitation (CDCR). 2011. Monthly report of population as of midnight September 30, 2011. Data Analysis Unit, CDCR, Sacramento, CA. Retrieved January 20, 2015 from cdcr.ca.gov.

²⁸ California Department of Corrections and Rehabilitation (CDCR). 2013. Monthly report of population as of midnight December 31, 2012. Data Analysis Unit, CDCR, Sacramento, CA. Retrieved January 20, 2015 from cdcr.ca.gov.

²⁹ Carson, E. Ann, and Daniela Golinelli. 2013. *Prisoners in 2012*. Washington, DC: Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

³⁰ Petersilia, Joan, and Francis T. Cullen. 2014. Liberal but not stupid: Meeting the promise of downsizing prisons. *Stanford Journal of Criminal Law and Policy*, 2: 1–43

³¹ Petersilia, Joan. 2014. California prison downsizing and its impact on local criminal justice systems. *Harvard Law & Policy Review*, 8: 327–357

“Over the four decades when incarceration rates steadily rose, U.S crime rates showed no clear trend: the rate of violent crime rose, then fell, rose again, then declined sharply. The best single proximate explanation of the rise in incarceration is not rising crime rates, but the policy choices made by legislators to greatly increase the use of imprisonment as a response to crime.”³²

13.2 Many studies have asked how one approach to decarceration, shortening prison sentences, affects recidivism. Data on recidivism rates have the advantage of linking crime to convicted individuals, but they are also impacted by changing police and court practices towards people under parole or probation supervision. Yet studies quite consistently find that expediting prisoners’ release from prison has no or a minimal impact on recidivism rates.^{33 34}

13.3 Prison may produce criminogenic effects; that is, longer stays in prison may lead to higher rates of recidivism, in part due to the challenges of maintaining ties with family and community. A 1999 meta-analysis of offender studies over four decades found that longer prison sentences were associated with a modest increase in recidivism.³⁵ Reductions in the length of prison terms may contribute to public safety, or at least produce fewer negative consequences.

14.0 The Impact of Prison based Rehabilitation on Crime Reduction

14.1 One of the key arguments for maintaining a high prison population is that prisoners can be placed in rehabilitation programmes that will reduce their reoffending; i.e. if people can be prevented from returning to prison, prison populations will drop. It is a politically attractive idea, and has been influential in a

³² National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences 3* (The National Academies Press 2014), available at http://www.nap.edu/openbook.php?record_id=18613

³³ U.S. Sentencing Comm’n, *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment* (2014), available at http://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf

³⁴ Proposition 36 Progress Report: Over 1,500 Prisoners Released Historically Low Recidivism Rate, Stanford Law School Three Strikes Project & NAACP Legal Defense and Education Fund (2014), <https://www.law.stanford.edu/sites/default/files/child-page/595365/doc/slspublic/ThreeStrikesReport.pdf>.

³⁵ Paul Gendreau, Claire Goggin, & Francis T. Cullen, *The Effects of Prison Sentences on Recidivism* (Public Works and Government Services Canada 1999), available at <http://www.prisonpolicy.org/scans/e199912.htm>.

recent trend toward targeting low-risk prisoners, who are not considered dangerous, but have a low reoffending risk anyway. ³⁶

14.2 At best, high-quality (evidence-based) programs reduce recidivism rates by 20% or so – that is, a 40% rate of return to prison would be expected to decline to about 32%. If recidivists represent, say, half of prison intake, then the overall prison population reduction would be 4% per year. At that rate, it would take a long time to cut the number of prisoners by, say, half, through programming alone.³⁷

14.3 Such an approach assumes that:

(a) there is a known, evidence-based program suitable for the needs of each kind of person who is behind bars, and

(b) there is an actual program in operation that every individual can get enrolled in.

14.4 New Zealand has been a leader in the implementation of prison based cognitive behavioural treatment programmes, and it should be noted that there has been an increase in their use across Europe.³⁸

14.5 However, despite this commitment to tested programmes in prison, if there are proven interventions for only half the kinds of people who are incarcerated and programs available for only half of them – two assumptions that are already enormously optimistic - then the net impact on prison populations would only be 1% per year.

14.6 That is not an approach which will impact on the prison population. Prison programs that reduce recidivism are ethically essential and fiscally wise - but they do not significantly reduce incarceration levels.

³⁶ Clear, Todd R. "The criminology of downsizing." (2015): 358-364.

³⁷ Ibid

³⁸ Allen, R. (2015). Global prison trends 2015. London, UK: Penal Reform International.

14.7 Pattavina and Taxman have simulated the likely impact of increasing treatment capacity to 100%, with high overall program quality, and estimate that if such a “treatment on demand prison system was developed in the United States, it would see an 11% reduction over nine years.”³⁹ In other words, even the provision of high-quality treatment programs in prison settings will only have a marginal impact on offender desistance, because there is more to the process of individual offender change than program participation. Treatment programs in prison need to be linked to community treatment and accompanied by the provision of resources and social support in the community.⁴⁰

14.8 If our goal is to develop strategies that result in significant downsizing, the focus should be on community-based programmes.

15.0 Community Based Desistance Programmes

15.1 New Zealand has been slow to adopt the use of desistance-focused community supervision strategies. According to Allen,

*“A desistance paradigm which emphasises the processes through which offenders change their lives around and the relationships needed to sustain the changes is gaining greater acceptance among probation experts.”*⁴¹

15.2 Examination of the evaluation research on the effectiveness of probation and each of the other alternative sanctions mentioned here supports their expansion, especially when their effects are compared directly to prison and jail-based sanctions.^{42 43}

16.0 Evidence-based Principles for Downsizing

³⁹ Pattavina, A., & Taxman, F. S. (2013). Using discrete-event simulation modeling to estimate the impact of RNR program implementation on recidivism levels. In F. S. Taxman & A. Pattavina (Eds.), *Simulation strategies to reduce recidivism* (pp. 267–281). New York, NY: Springer

⁴⁰ Byrne, J. M. (2008). The social ecology of community corrections understanding the link between individual and community change. *Criminology & Public Policy*, 7(2), 263–274. doi:10.1111/cpp.2008.7.issue-2

⁴¹ Ibid p.36

⁴² Villetet, P., Gillieron, G., and Killias, M. (2015). The Effects on re-offending of custodial vs. non-custodial sanctions: An updated systematic review of the state of knowledge. The Campbell Collaborative Library. Available at <http://www.campbellcollaboration.org/lib/project/22/>

⁴³ Byrne, J. M.. (2015, in press). International corrections. In W. Jennings (Ed.), *Encyclopaedia of crime and punishment*. Hoboken, NJ: Wiley Blackwell.

16.1 A review of the downsizing literature yields valuable evidence- based principles, which can assist in both short term and long-term planning. They are discussed at **Appendix C**.

17.0 Concluding Comments

17.1 High levels of incarceration has been produced by the combined impact of a broad range of law enforcement, sentencing, and corrections policies. But ultimately, it stems from a substantial shift in the balance of approaches to public safety in disadvantaged communities. Whereas public safety is produced by a complex mix of family and community support, education and economic opportunity, and social interventions to address individual deficits, as well as criminal justice responses, over the past several decades policymakers have created a severe imbalance in these approaches. Rather than preventing or addressing crime through job creation, mental health and substance abuse treatment and other interventions, far too often arrest and incarceration have become the preferred options.

It is time to reverse that trend.

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Appendix A

Downsizing Prisons -Case Studies

California

Like other states, the growth of California's prison population was primarily driven by policies that increased sentence lengths and broadened the range of offenses punishable by imprisonment.⁴⁴ California's parole system also contributed significantly to the size of the prison population. Between 1980 and 2010, the parole population in California increased by 708% (the U.S. parole population increased 204% during this time period. Expansive use of parole combined with minimal provision of re-entry and rehabilitative programs led to one of the highest revocation and recidivism rates in the United States.⁴⁵

The California Public Safety Realignment Act 2011, was introduced in order to achieve the mandated reduction, of 37,000 prisoners, implementing three core measures;

- (a) Moving the imprisonment of non-serious, non-violent, non-sexual crimes from state prison to county jails;
- (b) Reducing the post-release supervision of released prisoners from 12 months to six months;
- (c) Reducing the sentence for violation of probation and parole conditions from 12 months to six months, and requiring offenders to serve the sentence in local jails or under community supervision;

The central goal of Realignment was to decarcerate and decentralize the jurisdiction and funding of a large proportion of the low-risk inmate population from the state to the county level

⁴⁴ Lawrence, Sarah. 2012. California in Context: How Does California's Criminal Justice System Compare to Other States? Berkeley, CA: The Chief Justice Earl Warren Institute on Law and Social Policy

⁴⁵ Pew Charitable Trusts. 2011. State of recidivism: The revolving door of America's prisons. Pew Center on the States, Public Safety Performance Project. Retrieved January 10, 2015 from pewtrusts.org.

Between September 30, 2011 and December 31, 2012, the total California prison population decreased by 27,527 inmates, a decline of 17%.⁴⁶ ⁴⁷In addition, total admissions to California prisons decreased by 65%, from 96,669 in 2011 to 34,294 in 2012. Incidentally, eight other states reduced their prison populations by more than 1,000 inmates between 2011 and 2012.⁴⁸

Between 2010 and 2012, the California parole population declined by 46%, the jail population increased 12%, and the probation population increased 34%.⁴⁹ The law altered local criminal justice agencies and their interrelationships – as counties adjusted to the massive influx of realigned offenders.⁵⁰

After controlling for crime in 2010, none of the post-test observations of murder, rape, robbery, or aggravated assault in California differed from their predicted place in the population. When crime types were disaggregated, a moderate to large, association between Realignment and auto theft rates was observed in 2012, but by 2014, auto theft rates returned to pre-Realignment levels.⁵¹

Researchers warn against drawing causal inferences. On the issue of auto theft, the National Insurance Crime Bureau speculated that increases in California's 2011 auto thefts, prior to the passage of Realignment, were due to cutbacks in police and prosecutors specializing in auto theft.⁵²

⁴⁶ California Department of Corrections and Rehabilitation (CDCR). 2011. Monthly report of population as of midnight September 30, 2011. Data Analysis Unit, CDCR, Sacramento, CA. Retrieved January 20, 2015 from cdcr.ca.gov.

⁴⁷ California Department of Corrections and Rehabilitation (CDCR). 2013. Monthly report of population as of midnight December 31, 2012. Data Analysis Unit, CDCR, Sacramento, CA. Retrieved January 20, 2015 from cdcr.ca.gov.

⁴⁸ Carson, E. Ann, and Daniela Golinelli. 2013. Prisoners in 2012. Washington, DC: Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

⁴⁹ Petersilia, Joan, and Francis T. Cullen. 2014. Liberal but not stupid: Meeting the promise of downsizing prisons. *Stanford Journal of Criminal Law and Policy*, 2: 1–43

⁵⁰ Petersilia, Joan. 2014. California prison downsizing and its impact on local criminal justice systems. *Harvard Law & Policy Review*, 8: 327–357

⁵¹ Sundt, J., Salisbury, E. J. and Harmon, M. G. (2016), *Is Downsizing Prisons Dangerous?*.p.279

⁵² Edgerton, Jerry. 2011. Auto theft: Worst cities for stolen cars. *Money Watch*. June 20. Retrieved from <http://www.cbsnews.com/>

Overall, the findings are consistent with the predications that downsizing would have no effect on crime. This seems to be contrary to prevailing political belief; as a recent comment by a New Zealand parliamentarian affirms;

“What exactly is the Government’s plan, short of letting violent criminals out of prison earlier and loosening up bail laws? Unfortunately, these sorts of ideas are typical of the soft-on-crime Labour Party.”⁵³

Not all those released were low risk; 23% of a group of inmates who would have qualified for realignment prior to the passage of the law were classified at high risk for recidivism, 23% as “high violent,” and 52% were reconvicted of a new offence within 3 years of their release.⁵⁴

The research does not tell us why there was not an increase in criminal offending if the lack of criminal offending post-release; was it effective community interventions, local law enforcement, diminished returns on imprisonment, or other factors. What it does suggest however, is that the positive effects of imprisonment are extremely limited; a view supported by a growing body of research pointing to the limits of incarceration.⁵⁵ Crime rates have continued to remain near 40 year lows.

Decentralising Accountability

This was probably the largest prison downsizing ever, but it was not without its weaknesses. There was a lack of robust evaluation and monitoring, and no apparent attempt to capture or encourage local experimentation, greater responsiveness, sensitivity to local needs, and stronger community support. Decentralisation brings with it risks around a lack of coordination, weak accountability, mission drift and goal displacement. Decentralisation of the treatment of the mentally ill is a prime example of transfer of governmental responsibility for complex, systemic problems to local governments.⁵⁶

⁵³ Amy Adams, “Govt has no real plan to reduce prison population” Media Release, 8th February 2018

⁵⁴ Gerlinger, Julie, and Susan F. Turner. 2015. California’s Public Safety Realignment: Correctional policy based on stakes rather than risk. *Criminal Justice Policy Review*, 26: 805–827.

⁵⁵ Travis, Jeremy, Bruce Western, and Steve Redburn (eds.). 2014. *The Growth of Incarceration in the United States: Exploring the Causes and Consequences*. Washington, DC: The National Academies Press.

⁵⁶ Torrey, Fuller E. 2013. *American Psychosis: How the Federal Government Destroyed the Mental Illness Treatment System*. New York: Oxford University Press.

Targeted Crime Prevention

While Justice Reinvestment proponents have tended to frame future investment as a choice between investing in offender treatment versus prison expansion. However, there also existed an opportunity to invest in targeted crime prevention, including the diversion of mentally ill from the criminal justice system.

California's re-alignment strategy reduced the size of the prison population by 17% reduction in just 15 months, and had no effect on aggregate rates of violent or property crime. Such a result confirms that prisons are not the only viable response to crime. The real challenge is to ask whether the relative benefits of prison are greater than the broad array of available policies.

Conclusion

Imprisonment may affect crime, but it does so at a high social, human, and economic cost and is far less cost-effective than alternatives.^{57 58 59} Moreover, there is growing evidence that prison populations can be safely reduced without harming the public.

California, New York and New Jersey

Although the pace of criminal justice reform has accelerated at both the federal and state levels in the past decade, current initiatives have had only a modest effect on the size of the prison population. But over this period, three states – New York, New Jersey, and California – have achieved prison population reductions in the range of 25%. They have also seen their crime rates generally decline at a faster pace than the national average.⁶⁰

⁵⁷ Aos, Steve, Marna Miller, and Elizabeth Drake. 2006. Evidence-based public policy options to reduce future prison construction, criminal justice costs, and crime rates. *Federal Sentencing Reporter*, 19: 275–290.

⁵⁸ Currie, Elliott. 2013. *Crime and punishment in America*. New York, NY: Picador

⁵⁹ Donohue, John Jay III. 2009. Assessing the relative benefits of incarceration: The overall change over the previous decades and the benefits on the margin. In (Steven Raphael and Michael Stoll, eds.), *Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom*. New York: Russell Sage Foundation

⁶⁰ The Sentencing Project: Policy Brief: *Fewer Prisoners, Less Crime: A Tale of Three States*, 2015

Key Findings:

- New York and New Jersey led the nation by reducing their prison populations by 26% between 1999 and 2012, while the nationwide state prison population increased by 10%.
- California downsized its prison population by 23% between 2006 and 2012. During this period, the nationwide state prison population decreased by just 1%.
- During their periods of decarceration, violent crime rates fell at a greater rate in these three states than they did nationwide. Between 1999 - 2012, New York and New Jersey's violent crime rate fell by 31% and 30%, respectively, while the national rate decreased by 26%. Between 2006 - 2012, California's violent crime rate drop of 21% exceeded the national decline of 19%.
- Property crime rates also decreased in New York and New Jersey more than they did nationwide, while California's reduction was slightly lower than the national average. Between 1999-2012, New York's property crime rate fell by 29% and New Jersey's by 31%, compared to the national decline of 24%. Between 2006-2012, California's property crime drop of 13% was slightly lower than the national reduction of 15%.

Legislative, Judicial and Policy Shifts

These prison population reductions have come about through a mix of changes in policy and practice designed to reduce admissions to prison and lengths. Criminal justice policies, and not crime rates, are the prime drivers of changes in prison populations. They also demonstrate that it is possible to substantially reduce prison populations without harming public safety.

For more than a decade the political environment shaping criminal justice policy has been evolving in a direction emphasizing “smart on crime” and evidence-based approaches to public safety. This has involved growing **bipartisan campaigns** at both the federal and state levels to promote more strategic sentencing and re-entry policies, and to address the unprecedented growth and cost of the corrections system created over the past several decades.

The changing climate can be seen in a variety of legislative, judicial, and policy changes during this period of time. At the federal level, the Fair Sentencing Act of 2010 reduced the disparity in sentencing between crack and powder cocaine; the Second Chance Act in 2008 funds about \$67 million in reentry services annually; and the U.S. Supreme Court’s 2005 Booker decision increased judicial discretion around sentencing.

At the state level, 29 states have adopted reforms designed to scale back the scope and severity of their mandatory sentencing policies over the past decade.⁶¹ That includes eliminating or curbing the effect of ‘three strikes’ legislation, supporting Justice Reinvestment initiatives reducing parole revocations, establishing treatment courts, and developing alternatives to incarceration.

Impact of Reduction of Prison Numbers on Crime Rate

The periods in which New York, New Jersey, and California significantly decreased their prison populations were ones in which crime rates were declining around the country. Yet in these states, crime rates generally fell at a faster pace than in the country as a whole. In all three states, violent crime rates decreased more than they did nationwide. Property crime rates decreased in New York and New Jersey more than they did nationwide, while California’s property crime reduction was slightly lower than the national average.

⁶¹ am Subramanian & Ruth Delaney, Playbook for Change? States Reconsider Mandatory Sentences (Vera Institute of Justice 2014), available at <http://www.vera.org/sites/default/files/resources/downloads/mandatory-sentences-policy-report-v3.pdf>

The violent crime rate measures the incidence of four crime categories (murder, forcible rape, robbery, and aggravated assault) per 100,000 residents. Between 1999-2012, the nationwide violent crime rate decreased by 26%. New York and New Jersey outpaced this decline, with reductions of 31% and 30%, respectively. California's violent crime drop of 21% between 2006-2012 also exceeded the national decline of 19% during this period

Policies and Practices

Prisons were downsized through a mix of policy and practice changes designed to reduce admissions to prison and lengths of stay.

New York

Historically, drug arrests had doubled between 1986 and 2008 – in part because of the growth in controversial police policies to target misdemeanour crimes under “broken windows” and “stop and frisk” strategies.⁶² A widely publicized poll showing that the public had grown critical of mandatory drug sentencing. The decline in arrests was driven largely by a shift in enforcement priorities in the New York City Police Department;⁶³

Prison disposition rates also fell, with a growing number of people with felony drug arrests being diverted to alternative sentences, enabled by the growth in treatment programs and their demonstrated efficacy e.g. the Drug Treatment Alternative to Prison program. The proportion of people with felony drug arrests who were sentenced to prison declined from 23.3% during the 1990s to 13.2% in 2012.⁶⁴

⁶²James Austin & Michael Jacobson, How New York City Reduced Mass Incarceration: A Model for Change? (Vera Institute of Justice 2012), available at http://www.brennancenter.org/sites/default/files/publications/How_NYC_Reduced_Mass_Incarceration.pdf

⁶³ Ibid

⁶⁴ Computerized Criminal History System: Adult Arrests Disposed, New York State Division of Criminal Justice Services (Apr. 22, 2014), <http://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nys.pdf>; Computerized Criminal History System: Adult Arrests Disposed, New York State Division of Criminal Justice Services (June 23, 2014) r

The city and state have also curbed prison admissions through probation revocations by shortening probation terms, thereby reducing unnecessary supervision of low-risk individuals.⁶⁵

The state also implemented a “Merit Time Program,” which enabled people serving prison sentences for a nonviolent, non-sex crime to earn reductions in their minimum term and become eligible for parole consideration sooner by completing educational, vocational, treatment, and service programs.

Mandatory minimum terms (such as the Rockefeller Drug Laws), were eliminated or reduced in 2009, and the revisions were made retroactive for persons still incarcerated under the old law.

New Jersey

New Jersey reached its peak prison population in 1999, with 31,493 prisoners, and reduced its size by 26% by 2012. The state downscaled its prisons through both front-end reforms affecting the number of admissions and sentence lengths, and back-end reforms that increased rates of parole and reduced parole revocations.

In 2001, the state also legally addressed the Parole Board failure to meet deadlines to prepare pre-parole reports and hold timely hearings.⁶⁶ The parole board agreed to conduct more timely hearings to prevent a future backlog as part of the settlement, and it enhanced decision making tools and supervision. Parole approval rates rose dramatically, from 30.1% in 1999 to 51.0% the following year, and have sustained elevated rates since.⁶⁷ The state also reduced the rate at which people who violate the technical terms of their parole are readmitted to prison.

⁶⁵ Vincent Schiraldi & Michael Jacobson, *Could Less Be More When it Comes to Probation Supervision?*, American City & County Viewpoints (June 4, 2014), <http://americancityandcounty.com/blog/could-less-be-more-when-it-comes-probation-supervision>.

⁶⁶ Judith Greene & Marc Mauer, *Downscaling Prisons: Lessons from Four States*, The Sentencing Project (2010), http://www.sentencingproject.org/doc/publications/publications/inc_DownscalingPrisons2010.pdf

⁶⁷ New Jersey State Parole Board, *2013 Annual Report* (2013), available at <http://www.state.nj.us/parole/docs/reports/AnnualReport2013.pdf>.

The New Jersey Office of the Attorney General issued guidelines to exempt the lowest level of drug offenders from the law and increase judicial discretion in sentencing.

Alaska

While Alaska's situation is different from ours, there are some clear similarities; e.g.

- Alaska's remand population has grown by 81 percent over the last decade;
- The length of sentences increased by 31 percent over the last decade;
- Forty seven percent of offenders imprisoned for breach of parole or offences against administration of justice, stayed more than 30 days, and 28% stayed longer than 3 months
- Increased spending has failed to produce improvements in public safety - two thirds of released prisoners return to prison within three years;

The Alaskan government decided that it needed to control prison growth and recalibrate its investment to ensure the best possible public safety return on its dollars.

The approach taken in Alaska was very similar to the Social Investment strategy in New Zealand. In 2014 it formed the Alaska Criminal Justice Commission, a bi-partisan inter-departmental entity, similar to the Justice Sector Leadership Board and Fund, but which also engaged with a wide range of agencies, associations, and individuals, including the Pew Foundation, for expert advice and assistance. The Commission divided the research into three areas;

1. Custodial remands and bail;
2. Imprisonment, and
3. Community Corrections.

The Commission met seven times over seven months, and came up with the following key evidence-based findings.

Remands in Custody:

Key Findings

- Remand risks can be predicted and used to guide release decisions;
- Risk assessment tools can accurately predict these risks by identifying and weighing factors that are associated with each type of pre-trial failure;
- 5
- Research supports the use of risk assessment in guiding decisions about conditions of release; □ Restrictive release conditions such as electronic monitoring and drug and alcohol testing do not improve outcomes for all pre-trial defendants –targeted use of pre-trial conditions is critical.
- While select restrictive release conditions can decrease the likelihood of pre-trial failure (measured as failure to appear or bail revocation due to new arrest) for higher risk defendants, when restrictive conditions are applied to lower risk defendants, they can actually do the opposite.
- Remands in custody for longer than 24 hours can lead to worse outcomes, particularly for low risk defendants
- Low risk defendants who are detained for more than 24 hours experience an increased likelihood of failure to appear and new criminal activity during the pre-trial period.
- Being detained for the entirety of the pre-trial period is associated with an increased likelihood of new criminal activity post-disposition across all risk categories.

Imprisonment

General

- As states imprison higher numbers of lower-level offenders, and hold offenders for longer periods of time, the country passes the point of diminishing returns, meaning that additional use of prison would have little if any crime reduction effect.
- For many offenders, incarceration is not more effective at reducing recidivism than noncustodial sanctions.
- For a substantial number of offenders, there is little or no evidence that longer prison stays reduce recidivism more than shorter prison stays.
- For many offenders, incarceration is not more effective at reducing recidivism than non-custodial sanctions
- Researchers have matched samples of offenders sent to prison with those sent to noncustodial sanctions and have consistently found no differences in re-arrest or re-conviction rates, both in short-term and in long-term analyses, and even when controlling for individuals' education, employment, drug abuse status, and current offence.
- For many low-level offenders, prison terms may increase rather than reduce recidivism.²¹
- Longer prison stays do not reduce recidivism more than shorter prison stays
- Rigorous research studies find no significant effect, positive or negative, of longer prison terms on recidivism rates

Community Corrections

- Identify and focus supervision resources on high risk offenders
 - Offenders' likelihood to recidivate – that is, to commit new crimes upon release – can be accurately predicted with the use of validated risk assessment tools.

- Focus their oversight and resources on those who pose the highest risk of reoffending, a practice that provides the biggest return on investment.
- Use swift, certain, and proportionate sanctions Offenders are more responsive to sanctions that are swift, certain, and proportionate rather than those that are delayed, inconsistently applied, and severe.
- Certainty establishes a credible and consistent threat – thereby creating a clear deterrent for non-compliant behaviour

Incorporate rewards and incentives

Probation and parole supervision has focused on surveillance and sanctioning in order to catch or interrupt negative behaviour. However, research shows that encouraging positive behavior with incentives and rewards can have an even greater effect on motivating and sustaining behavior change.

-
- Frontload resources in the first weeks and months following release
- Long-term success for offenders returning home from prison is closely tied to accountability and support in the time period immediately following release.
- The likelihood of violations and the value of ongoing supervision diminish as offenders gain stability and demonstrate longer-term success in the community.
- Integrate treatment into surveillance
- A combination of surveillance and treatment focused on offenders' criminogenic needs is more effective at reducing recidivism than supervision consisting of surveillance alone.

The Outcome

Based on the Commission's review of evidence-based practices and an evaluation of the state's alignment with those practices in the three areas, the Commission came to

consensus on 21 policy recommendations that, taken together, are projected to reduce the average daily prison population by 21 percent by 2024, achieving an estimated net savings to the state of \$424 million over the next decade.

The Governor pledged to use the benchmarks in developing reinvestment priorities in his budget.

Enactment of Legislation

In May of 2016, the Alaska Senate passed a bipartisan criminal justice reform bill aimed at reducing the state's prison population by reforming bail, sentencing and pre-trial supervision, in ways that sponsors say would lead to quicker court dates and shorter prison terms for nonviolent crime. The Bill was passed into legislation in July.

Both Republican and Democratic lawmakers called the bill a "paradigm shift" that would change the way criminal justice works in the state. They also said it isn't just about cutting costs, but about reversing troubling trends – particularly the statistic that two-thirds of all inmates released from state facilities go back to jail within three years.

As at 2017, Alaska has achieved a 26% reduction in its prison population since 2006.

Historical Examples of Downsizing

Canada

The Canadian province of Alberta significantly decreased its prison population in the 1990s. Driven by budgetary constraints, it resulted in a sharp decline in the number of people sentenced to provincial prisons for less serious crimes. By closing two provincial prisons, diverting minor cases from the justice system, and expanding the use of alternative sentencing, the province was able to reduce prison admissions by 32% between 1993 and 1997. Research established that the decline

was not due to changes in reported crime and that reduced incarceration “had no obvious important negative impacts on offenders.”⁶⁸

Germany and Finland

Governments in Germany and Finland embarked on ambitious campaigns to reduce prison populations in the 1960s and 1970s, the effects of which can still be seen today.⁶⁹

Finland

In the 1950s, the Finnish rate of incarceration of approximately 200 per 100,000 was four times that of other Scandinavian nations.⁷⁰ Leading officials in the country became concerned about this vast gap and initiated a series of reforms over several decades. By the 1990s, the Finnish rate was the same as that of its neighbours. Tapio Lappi-Seppälä traces these changes to an evolving ideology critiquing the notion of “coercive treatment” across the Nordic nations beginning in the 1960s. This philosophy led to declining faith in the power of criminal law as a means of social control, and resulting policy shifts included the decriminalization of public drunkenness, restrictions on the use of preventive detention, increased use of conditional sentences, and reduced penalties for theft. Despite a reduction in the rate of incarceration by more than half over a 40-year period, a comparison of crime trends in the four Nordic nations during this period showed a “striking similarity” among them.⁷¹

West Germany

A similar initiative was undertaken in West Germany during the period of rehabilitative optimism in the late 1960s. Legislation adopted in 1969 placed a heavy

⁶⁸ Cheryl Marie Webster & Anthony N. Doob, Penal Reform ‘Canadian style’: Fiscal Responsibility and Decarceration in Alberta, Canada, 16 *Punishment and Soc’y* 3, 23 (2014)

⁶⁹ Michael Tonry, *Thinking About Crime: Sense and Sensibility in American Penal Culture* 29-34 (Oxford University Press 2004)

⁷⁰ Lappi-Seppälä, T. (2001). Sentencing and punishment in Finland: The decline of the repressive ideal. In M. Tonry & R. S. Frase (Eds.), *Sentencing and sanctions in western countries* (pp. 92–151). New York: Oxford University Press.

⁷¹ *Ibid* p.121

emphasis on the use of noncustodial sentences whenever feasible.⁷² Measures included in the new law abolished prison sentences of less than one month, discouraged sentences of less than six months, and decriminalized many traffic and public order offenses. As a result, the number of prison admissions dropped dramatically from 136,000 in 1968 to 35,000 in 1976. The prison population decreased by 25% during this period. Although the number of prison terms imposed remained steady for the next two decades, the prison population then steadily increased, reaching its pre-reform level by the mid-1990s.

⁷² Weigend, T. (2001). Sentencing and punishment in Germany. In M. Tonry & R. S. Fraser (Eds.), *Sentencing and sanctions in western countries* (pp. 188–221). New York: Oxford University Press.

Appendix B

Short Term Downsizing Strategies

This appendix summarises strategies implemented by those states under study. New Zealand must develop its own strategies based on an analysis of current legislation, policy and practice.

Crime Prevention Strategies

Divert mentally ill from the criminal justice system. (California)

Reduce police 'stop and frisk' activity (New York)

Shift in police enforcement activity (New York)

Custodial Remands

Promote bail for most prisoners (Alaska)

Avoid restrictive bail conditions for lower risk offenders (Alaska)

Avoid custodial remand for entirety of pre-trial period (Alaska)

Post-Release Supervision

Reduce post-release supervision of prisoners from 12 months to 6 months. (California)

Frontload resources in first weeks and months of release

Probation and Parole

Reduce sentence for violation of probation and parole conditions from 12 months to six months.

Require offenders to serve violation sentence under community supervision.

Shorten probation terms (New York)

Reduce unnecessary supervision of low risk offenders (New York)

Focus supervision resources on high risk offenders (Alaska)

Surveillance

Integrate treatment into surveillance (Alaska)

Combine surveillance and treatment (Alaska)

Avoid surveillance on its own (Alaska)

Reintegration Strategies

Re-invest in prisoner re-entry programmes (California)

Second Chance Act 2008 - targets funding for reentry services (Federal)

Invest in offender and accountability and support immediately following release. (Alaska)

Encourage positive behaviour and rewards (Alaska)

Legislative Measures

Fair Sentencing Act 2010 – reducing disparity between crack and powder cocaine (Federal) – make it retroactive

Second Chance Act 2008 - targets funding for reentry services (Federal)

2005 Booker Decision – Increase judicial discretion around sentencing (Supreme Court)

Scale back scope and severity of mandatory sentencing policies (California)

Eliminate or curb effect of ‘three strikes’ legislation. (California)

Eliminate mandatory drug sentencing (New York)

Reduce prison admissions and sentence lengths (New Jersey)

Exempt low-level drug offenders from prosecution (New Jersey)

Decriminalise public disorder and drunkenness (Finland)

Restrict Use of Preventive Detention (Finland)

Increase Use of Conditional Sentences (Finland)

Reduce penalty for theft (Finland)

Abolish sentences of less than six months (Germany)

Decriminalise traffic and public order offences (Germany)

Promote Alternative Sentencing

Establish treatment courts (California)

Develop alternatives to incarceration (California)

Police promotion of 'Drug Treatment Alternative to Prison' (New York)

In-Prison Strategies

Implement a 'Merit Time Program' for non-violent offenders to earn reductions in minimum term, by completing educational, vocational, treatment and service programmes. (New Jersey)

Parole Board

Accelerate Parole Board hearings (New Jersey)

Legally Address Parole Board failure to meet deadlines (New Jersey)

Appendix C - -

Evidence-based Principles for Downsizing Prisons⁷³

1. Remands:

- Remand risks can be predicted and used to guide release decisions;⁷⁴
- Risk assessment tools can accurately predict these risks by identifying and weighing factors that are associated with each type of pre-trial failure;⁷⁵
- Lower risk offenders with over-restrictive conditions are more likely to breach their conditions⁷⁶
- Research supports the use of risk assessment in guiding decisions about conditions of release;
- Restrictive release conditions such as electronic monitoring and drug and alcohol testing do not improve outcomes for all pre-trial defendants –targeted use of pre-trial conditions is critical.
- While select restrictive release conditions can decrease the likelihood of pre-trial failure (measured as failure to appear or bail revocation due to new

⁷³ No's 1 to 4 are taken from the Alaska Criminal Justice Commission, (2015) Report on Justice Reinvestment Initiative http://www.ajc.state.ak.us/sites/default/files/imported/acjc/AJRI/ak_jri_report_final12-15.pdf Refer to the report for citations.

⁷⁴ Mamalian (2011), "State of the Science of Pretrial Risk Assessment", https://www.bja.gov/publications/pji_pretrialriskassessment.pdf ;
Lowenkamp & Van Nostrand (2013), "Assessing Pretrial Risk Without a Defendant Interview", http://www.arnoldfoundation.org/wpcontent/uploads/2014/02/LJAF_Report_no-interview_FNL.pdf.

⁷⁵ VanNostrand (2009), "Pretrial Risk Assessment in the Federal Court", [http://www.pretrial.org/download/riskassessment/Pretrial%20Risk%20Assessment%20in%20the%20Federal%20Court%20Final%20Report%20\(2009\).pdf](http://www.pretrial.org/download/riskassessment/Pretrial%20Risk%20Assessment%20in%20the%20Federal%20Court%20Final%20Report%20(2009).pdf)

⁷⁶ VanNostrand (2009), "Pretrial Risk Assessment in the Federal Court", [http://www.pretrial.org/download/riskassessment/Pretrial%20Risk%20Assessment%20in%20the%20Federal%20Court%20Final%20Report%20\(2009\).pdf](http://www.pretrial.org/download/riskassessment/Pretrial%20Risk%20Assessment%20in%20the%20Federal%20Court%20Final%20Report%20(2009).pdf).

arrest) for higher risk defendants, when restrictive conditions are applied to lower risk defendants, they can actually do the opposite.

- Remands in custody for longer than 24 hours can lead to worse outcomes, particularly for low risk defendants⁷⁷
- Low risk defendants who are detained for more than 24 hours experience an increased likelihood of failure to appear and new criminal activity during the pre-trial period.
- Being detained for the entirety of the pre-trial period is associated with an increased likelihood of new criminal activity post-disposition across all risk categories.

2. Imprisonment

- As states imprison higher numbers of lower-level offenders, and hold offenders for longer periods of time, the country passes the point of diminishing returns, meaning that additional use of prison would have little if any crime reduction effect.
- For many offenders, incarceration is not more effective at reducing recidivism than noncustodial sanctions.⁷⁸
- For a substantial number of offenders, there is little or no evidence that longer prison stays reduce recidivism more than shorter prison stays.

⁷⁷ 11 Lowenkamp, VanNostrand, & Holsinger (2013), "The Hidden Cost of Pretrial Detention", <http://www.pretrial.org/download/research/The%20Hidden%20Costs%20of%20Pretrial%20Detention%20%20LJAF%202013.pdf>. Note: For this population, pretrial detention of 8-14 days and 31 or more days were not significantly associated with an increase in odds of failure to appear. Statistically significant differences were found for those who were detained for 2-3, 4-7, and 5-30 days as compared to 1 days or less.

⁷⁸ 22 Spohn & Holleran (2002), "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders", <http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.2002.tb00959.x/abstract>; Nieuwebeerta, Nagin, & Blokland (2009), "Assessing the Impact of First Time Imprisonment on Offender's Subsequent Criminal Career Development: A Matched Samples Comparison", <http://link.springer.com/article/10.1007%2Fs10940-009-9069->

- For many offenders, incarceration is not more effective at reducing recidivism than non-custodial sanctions
- Researchers have matched samples of offenders sent to prison with those sent to noncustodial sanctions and have consistently found no differences in re-arrest or re-conviction rates, both in short-term and in long-term analyses, and even when controlling for individuals' education, employment, drug abuse status, and current offence.
- For many low-level offenders, prison terms may increase rather than reduce recidivism.²¹
- Longer prison stays do not reduce recidivism more than shorter prison stays
- Rigorous research studies find no significant effect, positive or negative, of longer prison terms on recidivism rates

3.0 Community Corrections

- Identify and focus supervision resources on high risk offenders
- Focus their oversight and resources on those who pose the highest risk of reoffending, a practice that provides the biggest return on investment.
- Use swift, certain, and proportionate sanctions Offenders are more responsive to sanctions that are swift, certain, and proportionate rather than those that are delayed, inconsistently applied, and severe.
- Certainty establishes a credible and consistent threat – thereby creating a clear deterrent for non-compliant behaviour

4.0 Incorporate rewards and incentives

- Probation and parole supervision has focused on surveillance and sanctioning in order to catch or interrupt negative behaviour. However, research shows

that encouraging positive behavior with incentives and rewards can have an even greater effect on motivating and sustaining behavior change.

- Frontload resources in the first weeks and months following release
- Long-term success for offenders returning home from prison is closely tied to accountability and support in the time period immediately following release.
- The likelihood of violations and the value of ongoing supervision diminish as offenders gain stability and demonstrate longer-term success in the community.
- Integrate treatment into surveillance
- A combination of surveillance and treatment focused on offenders' criminogenic needs is more effective at reducing recidivism than supervision consisting of surveillance alone.

Expanding the Prison Downsizing Agenda – Issues for Long Term Consideration

Targeting the Low Lying Fruit

Targeting people convicted of mediocre offenses with inconsequential criminal histories is not going to go very far. In the USA, people serving time for the “low-hanging” offense categories of “public order” and “drug possession” account for 10.7% and 3.7% of prisoners, respectively – about one-seventh of prisoners. If they were all let out tomorrow, the prison population would go down some but would not stay down. Many would come back for new crimes. Because they serve such short sentences, their release would be cancelled out by others serving longer terms. To make this kind of policy effective, these people have to be let out, stay out, and not be allowed back in.

Address Ethnic Over-representation

It will be important to assess how downsizing initiatives affect the racial composition of incarcerated persons. Reductions in populations overall may or may

not affect existing disparities in imprisonment depending on the strategies and criteria employed for such change.

In New York State the prison population reduction of recent years has also produced a significant decline in racial disparity among women.⁷⁹ Most of this decline has come about through a substantially reduced number of persons serving sentences for drug offenses. Since that population was about 90% African American or Hispanic, the declines almost inevitably led to a reduction in overall disparity as well.

In situations where policymakers restrict sentence reductions for persons convicted of a serious offense and/or with a prior criminal record, population reductions may exacerbate racial disparities, due either to greater involvement in offending and/or greater attention from law enforcement agencies. Unless there is a sustained focus and attention to this issue, racial disparities may be compounded even as overall populations decline.

Focus on Long-term Prisoners

While persons convicted of a violent offense clearly raise significant concerns for public safety, in far too many cases such concerns have led to excessively lengthy prison terms. Through policies and practices such as “life means life” and “no parole for violent offenders,” parole boards and governors in many states have adopted across-the-board policies that fail to distinguish among individual offence circumstances, accomplishments in prison, or degree of risk to public safety. Research over many years has shown that older offenders have much lower rates of recidivism than younger ones, and so such limitations on release both lack compassion and are counterproductive in allocating public safety resources.

Recognise the ‘Ageing Out’ Evidence

There is no reintegration programme more effective than having a 35th birthday. While individual criminal careers vary dramatically, on the average this effect of

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“aging out” applies. Holding people in prison past the age of 40 has demonstrably limited impact on the likelihood of crime.⁸⁰

The ‘Replacement’ Phenomenon

Most crimes are committed by young men in groups, a phenomenon referred to as co-offending.⁸¹ When one of those young men is incarcerated, the group may remain as criminally active, on the average, as it was before. It may also recruit new group members who themselves replace the missing person (until he returns from prison). In short, a person who is locked up may be prevented from committing crimes while in prison, but the crimes themselves may occur anyway.

Recognise the ‘Seven Years’ Free Rule

Recent studies have estimated a turning point in criminal careers that is referred to as the “point of redemption.” On the average, people with past criminal histories who have remained crime-free for seven years pose the same risk to society as others their age who have never been convicted of a crime. After seven years, a past criminal conviction no longer predicts future criminal conduct.⁸²

Invest Savings Back into Communities

Savings achieved through reductions in prison populations should be targeted to those communities most heavily affected by mass incarceration. As originally conceptualized in the Justice Reinvestment strategy, targeting such savings to high incarceration neighbourhoods would both address the harms created by mass incarceration as well as promote public safety in a proactive manner.⁸³

⁸⁰ Maruna, S. (2011). Reentry as a rite of passage. *Punishment & Society*, 13(1), 3–28.
doi:10.1177/1462474510385641

⁸¹ Felson, M., & Eckert, M. (2015). *Crime and everyday life* (5th ed.), Thousand Oaks, CA: Sage

⁸² Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, 47, 327–359. doi:10.1111/crim.2009.47.issue-2

⁸³ Susan B. Tucker & Eric Cadora, *Ideas for an Open Society: Justice Reinvestment*, Open Society Institute (November 2003) http://www.opensocietyfoundations.org/sites/default/files/ideas_reinvestment.pdf.

Appendix D⁸⁴

New Zealand Increase in Imprisonment

The Main Trends - 2012 - 2017

Adult Prosecution Trends

Between 2012 and 2017 there was a sharp decline in prosecutions between 2013 and 2014, along with further declines into 2015 and stable volumes since then. The proportion of prosecutions resulting in convictions has remained fairly stable over the past five years at around 82% to 83%. However, the proportion of those who have been convicted then discharged or diverted has fallen slightly from 9.4% in 2012 to 8.7% in 2017. **Conversely, the proportion of convicted offenders being imprisoned has grown from 9.5% of those convicted in 2012 to 13% in 2017.** The total number of people being sent to prison grew by more than 1100 between 2014 and 2017 as a consequence of this increased propensity to incarcerate offenders.

Seriousness of Crime

The increasing proportion of convicted offenders being sent to prison may be on account of the rising seriousness of the crimes being committed. In 2017, 76% of prison sentences were for crimes of dishonesty (30%), violence (25%), or offences against justice procedures (21%). These latter offences were primarily breaches of bail, parole or protection orders. In 2012, just 65% of imprisonments were for these three offences with the sharpest increase being for offences against justice procedures with a five-year share increase of 8%. The increasing prevalence of more serious violent offences, is resulting in an increase in imprisonment for such offences. The increase in offences against justice procedures, and in prison terms for these offences, appears to be the result of various breaches also associated with violent offending.⁸⁵

Increase in Remand Prisoners

⁸⁴ Salvation Army 'Kei a Tatou' – That is Us' Report 2018 – pp.35-36.

<http://www.salvationarmy.org.nz/sites/default/files/uploads/20180214tsastateofthenation2018.pdf>

⁸⁵ It may also be due to changes in reporting policies. During the period of the BPS Reducing Reoffending strategy, Corrections decided not to report breaches of parole or Court orders, in an endeavour to reduce reoffending figures.

In March 2017, as predicted in the 2017 State of the Nation report, New Zealand's prison population exceeded 10,000 inmates for the first time. Since then these numbers have continued to grow, hitting 10,470 by September 2017. This growth is 7% over the past year and by almost 24% over the past five years. Over the past five years much of this growth has been on account of rising numbers of prisoners on remand. This group of prisoners grew more than 70% over the past five years from around 1800 in 2012 to about 3000 in 2017.

Decline in Early Releases on Parole

A further reason for the rising prisoner population is the increasing reluctance of the Parole Board to grant convicted prisoners early release. Some of this reluctance stems from Parole Amendment Act 2013. The proportion of prisoners appearing before the Parole Board who had their application for early release granted also fell from 31% in 2011 to 23% in 2017.

Community Sentences

Fewer convicted offenders are receiving non-custodial community sentences, although the numbers of people on home detention has remained relatively stable at around 3,500 people commencing such sentences in any one year. The main reason for the fall in community-based sentences appears to be the matching decline in the numbers of adults being convicted. For example, the number of individual adults convicted fell 23% between 2012 and 2017, while the numbers sentenced to a community-based sentence declined by 26%.

Decline in Recidivism

Despite best efforts recidivism rates rise again. While this failure should not be condemned for its ambition, there is an urgent need to re-consider how reintegration and rehabilitation services are offered and run, and, perhaps, to even re-imagine how released prisoners might reintegrate into their place in society.