

Youth Justice Reform and Reinvestment: Key Strategies and Fiscal Tools for Success

March 21, 2018

Nearly 50,000 youth are incarcerated or in an out-of-home placement on any given night in America – despite substantial research showing that removing a youth from their community and confining them does more harm than good, and that most incarcerated youth pose no risk to public safety.¹ Youth of color are more likely to be incarcerated, due to systemic barriers such as fewer community supports, poorly resourced schools, and fewer employment opportunities. This deepens racial inequalities and derails the future of many young people of color, keeping them from reaching their potential and contributing more fully to their communities as adults.²

Incarcerating youth is also very expensive, costing taxpayers billions annually. This is especially problematic at a time when two-thirds of states face revenue shortfalls due to ineffective and costly tax cuts, falling energy prices, and slow-growing tax collections from sales and capital gains taxes.³ States also face losses in federal funds under President Trump's and congressional Republican budget proposals.⁴ The high cost of youth incarceration becomes even more glaring when contrasted with less expensive approaches that can hold a young person accountable for their behavior, and address the schooling, vocational training, or treatment needs that a justice-involved youth (or any young person) might face when transitioning to adulthood.⁵

Youth incarceration rates have fallen dramatically enough to warrant the closing of many state facilities, but savings from these closures have typically not been reinvested in community-based interventions or services for affected communities. Youth and communities most harmed from the over-reliance on incarceration have been left without the supports that prepare already affected youth for adulthood and that any young person might need to avoid youth imprisonment.

¹ Burns Institute, "Unbalanced Juvenile Justice," <http://data.burnsinstitute.org/about>.

² For more details on how Black and Brown youth fare in the youth justice system see for example Victor M. Rios, *Punished: policing the lives of Black and Latino boys*, New York: New York University Press, 2011.

³ Elizabeth McNichol and Samantha Waxman, "States Faced Revenue Shortfalls in 2017 Despite Growing Economy," Center on Budget and Policy Priorities, updated October 4, 2017, <http://www.cbpp.org/research/state-budget-and-tax/many-states-face-revenue-shortfalls>.

⁴ Iris Lav and Michael Leachman, "At Risk: Federal Grants to State and Local Governments," Center on Budget and Policy Priorities, March 13, 2017, <http://www.cbpp.org/research/state-budget-and-tax/at-risk-federal-grants-to-state-and-local-governments>.

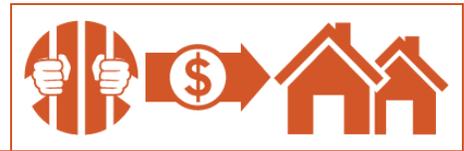
⁵ Shaena M. Fazal, "Safely Home," Youth Advocate Program Policy and Advocacy Center, June 2014, <http://www.safelyhomecampaign.org/Portals/0/Documents/Safely%20Home%20Preview/safelyhome.pdf?ver=2.0>.

Juvenile justice advocates can employ clear strategies and tools to increase the likelihood of successful reform and reinvestment campaigns. They will need to:

- **Work with agencies, the governor’s office, and individual lawmakers to get reform and reinvestment on the agenda;**
- **Consider what reforms are appropriate given community needs and priorities;**
- **Identify appropriate levels of and structures for community-based reinvestment and ways to safeguard redirected spending;**
- **Encourage the adoption of various fiscal tools and mechanisms that help ensure that reform and reinvestment happen as planned.**

Some of these strategies have been built into justice reform campaigns at both the adult and youth levels, and lessons can be learned from both systems to inform future reform efforts. By taking these steps, policymakers can implement reforms that are more transparent, more adequately funded, and have greater accountability. Most importantly, these reforms can help to ensure that a young person involved in the justice system can access the services and supports that they need as they transition to adulthood.

Section 1: Strategies and Approaches for Effective Reinvestment



I. Getting Reform and Reinvestment on the Agenda

The state budget process begins well before the start of legislative session. In every state, advocates can lay groundwork for reform and reinvestment at multiple points well before lawmakers begin to pull together the state’s budget. By communicating with relevant agencies, the governor’s office, and lawmakers, advocates can shift the conversation around reform and reinvestment within the budget before it’s even begun.

- **Work with agency staff to include reform and reinvestment in their budget requests.** Each year, state agencies are required to send budget requests to their state’s budget office for the upcoming fiscal year.⁶ These budget requests, which can be an opportunity to insert the priorities of reform and reinvestment into the start of the budget-making process, provide initial insight into the amount of resources the agency will need to carry out its work and to engage in additional work as the law requires or allows. Many factors

⁶ In states with two-year budgets — known as biennial budgeting — it is not uncommon for state legislatures to approve supplemental budgets in off years to “course correct” state spending and agency needs. For more information on state-specific budgeting processes see “Budget Processes in the States,” National Association of State Budget Officers, www.nasbo.org/reports-data/budget-processes-in-the-states.

inform these requests, including projected revenue forecasts, caseload estimates, and the governor's priorities.

Once submitted, the state budget office consolidates these agency requests to help inform the governor's final budget proposal, which is then presented to the state legislature. Working with agency staff and other agency leadership, advocates can make the case for shifting funds from out-of-home placements to increased investments in community-based approaches and other policy changes. Throughout the process, agency staff are conferring with budget office staff to clarify priorities and agency requests; having agency buy-in at this phase can help ensure that reform efforts are a part of the policy debate from the beginning. Some of the agencies that advocates might work with include Juvenile Justice or Corrections departments, Health and Human Services (or Social Services) departments, as well as agencies devoted to issues around economic development or labor.

- **Get reform and reinvestment into the governor's budget.** Governors' budgets are typically finalized in late fall/early winter and submitted to the legislature in December and January. In many states, the governor's budget is the blueprint for the legislative budget. In others — particularly in states where government control is split between political parties — the governor's budget can serve as a tool to draw more attention to reform efforts. Youth justice advocates should leverage or build relationships with staffers in their governor's office to discuss the fiscal, economic, and community benefits of reform and reinvestment in their state and to explain why it should be a state budget priority. In **Virginia**, youth justice advocates worked closely with the governor's office to ensure that the closure of a secure state facility was included in the initial budget proposal submitted to the legislature. This initial proposal helped to set the tone of the debate over the legislative session and contributed to the legislature's eventual approval for closing the facility (see box).
- **Ensure reform and reinvestment are on the legislative agenda.** While engaging with the executive branch early in the process can help to lay the groundwork to get reform and reinvestment on the agenda, state legislators will ultimately decide which policies to pursue and how to allocate resources among them. Before the legislative session begins, advocates should identify legislative champions to help advance reform and reinvestment. Advocates can engage lawmakers in one-on-one meetings and at other events geared towards education, and provide data and information necessary to inform reform and reinvestment legislation or budget language. As the legislative session starts and lawmakers write the budget, advocates should be available to provide information and analysis, testify at public meetings, and work with legislative staff as needed.
- **Influence debates during special sessions and other unexpected events.** In unique instances, states may face unexpected revenue shortfalls and must either raise new resources or find savings within the budget. Advocates should look for ways to push for their priorities during special sessions, particularly around closing facilities and shifting resources to more cost-effective approaches — policy changes that could result in immediate and mid-term savings for the state. Advocates must consider what they can offer: how much of the savings closures and reforms generate can be delivered

immediately, how much should be protected for reinvestment, and what proportion can be shifted back into the general fund to help address the state's budget needs. Advocates should also ask policymakers whether after the fiscal pressures on the state budget ease, they will shift more of the estimated savings toward investments in community-based approaches or if they'll continue to direct them to the general fund. Additionally, advocates should be ready to identify opportunities for reinvestment at other times as well. States may experience an unexpected uptick in revenue or other events that increase state resources. Having laid a strong foundation with lawmakers and other stakeholders around reinvestment needs, advocates can quickly capitalize on such moments to get more dollars shifted to affected communities.

The Power of Line Items and Boilerplate Language in State Budgets

States have tools within the budget to lay out clear intent for agencies on how funds can and should be used. Specifically, lawmakers can place line items within the budget that appropriate a specific dollar amount for programs or functions. These line items can be for singular or multiple purposes — and can be a tool for ensuring that reinvestment happens in the way advocates intend and communities need. Line items could provide explicit funding for youth community boards, reform and reinvestment oversight committees, or even for explicit community-based programs. In addition to the specific line-item appropriation, attention must also be paid to the boilerplate language that directs, limits, or restricts line-item expenditures. Boilerplate language can also help to clarify legislative intent and require reporting to ensure appropriations have been used correctly.

During the 2016 legislative session, lawmakers in Virginia included boilerplate language within the state fiscal year 2017-2018 budget allowing the Virginia Department of Juvenile Justice to shift existing resources to support the implementation of the new community model of juvenile justice reform. The budget stated explicitly:

"The Director, Department of Juvenile Justice, (the "Department") shall develop a transformation plan to provide more effective and efficient services for juveniles, using data-based decision-making, that improves outcomes and safely reduces the number of juveniles housed in state-operated juvenile correctional centers...

"The Department shall reallocate any savings from the reduced cost of operating state juvenile correctional centers to support the goals of the transformation plan including, but not limited to: (a) increasing the number of male and female local placement options, and post-dispositional treatment programs and services; (b) ensuring that appropriate placements and treatment programs are available across all regions of the Commonwealth; and (c) providing appropriate levels of educational, career readiness, rehabilitative, and mental health services for these juveniles in state, regional, or local programs and facilities, including but not limited to, community placement programs, independent living programs, and group homes. The goals of such transformation services shall be to reduce the risks for

reoffending for juveniles supervised or committed to the Department and to improve and promote the skills and resiliencies necessary for the juveniles to lead successful lives in their communities."

Providing language like this creates a clear mission for the relevant agency and provides accountability measures that both lawmakers and advocates can point to.

II. Ensuring Reform Includes Appropriate Reinvestment

Several states in recent years have closed facilities, resulting in savings and limited reinvestment. Yet, reinvesting the savings from facility closures in something other than the formal juvenile justice system has proved to be a challenge. For instance, since 2007 **Texas** has gone through multi-year changes in waves of legislation that merged its probation and corrections divisions.⁷ These changes led to the share of funding for juvenile probation to increase relative to funding for youth correctional placement, but the total Texas juvenile justice budget declined, leaving little funding for alternative community-based programs.⁸ In another example, **California** created a Youthful Offender Block Grant (YOBG) to address youth justice reform at the county level.⁹ In the 2011-2012 fiscal year, YOBG had a \$90 million funding stream, but the program spent just 4 percent of its funding on community-based organizations serving youth, with the rest of the money being diverted to the formal systems of county probation departments.¹⁰

In Texas, stakeholders expressed deep concerns that facility closures and fiscal incentives were inadequate measures of sustainable youth justice reform when reinvestments were not directed to local-level organizations working with justice-impacted youth and their communities.¹¹ Similar issues have arisen in other states such as Louisiana and New York, where challenges have remained in getting resources back into the most affected communities.

⁷ See Texas SB 103, <http://www.legis.state.tx.us/tlodocs/80R/billtext/pdf/SB00103F.pdf#navpanes=0>.

⁸ Tony Fabelo and Austin Clemens, "Closer to Home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms," Justice Center, The Council of State Governments and Public Policy Research Institute, January 2015, <https://csgjusticecenter.org/wp-content/uploads/2015/01/texas-JJ-reform-closer-to-home.pdf>

⁹ State of California Board of State and Community Corrections, "Youthful Offender Block Grant, Annual Report," March 2016, <http://www.bscc.ca.gov/downloads/YOBG%20FAQs-4-30-14.pdf> See also "Youthful Offender Block Grant FAQs", [http://www.bscc.ca.gov/downloads/YOBG%20Final%20Draft%20w%20Orange%20Rev%204-19-2016%20\(New\).pdf](http://www.bscc.ca.gov/downloads/YOBG%20Final%20Draft%20w%20Orange%20Rev%204-19-2016%20(New).pdf)

¹⁰ Antoinette Davis, Angela Irvine, and Jason Ziedenis, "Using Bills and Budgets to Further Reduce Youth Incarceration," National Council on Crime & Delinquency, March 2014, http://www.nccdglobal.org/sites/default/files/publication_pdf/bills-and-budgets.pdf. See also Board of State and Community Corrections "Youthful Offender Block Grant: Annual Report," March 2014, http://www.bscc.ca.gov/downloads/YOBG_March_2014_Report.pdf

¹¹ *Ibid.*

When savings and funding are available, states should reinvest in community-based organizations supporting youth — not formal juvenile justice systems — to ensure sustainable change in juvenile justice.

Considering these examples, policymakers and other stakeholders should keep the following priorities in mind when crafting reform and reinvestment legislation.

Juvenile justice reforms should push lawmakers to look for reinvestment resources that come from both inside and outside the justice system.

The amount of investment that justice-involved youth, their families, and their communities need to address the longstanding disinvestment in employment, schooling, and treatment *far exceeds* what state juvenile justice systems are currently spending.

Reinvestment approaches need to leverage dollars from justice and non-justice system agencies alike, including state and local agencies dealing with health (including also substance abuse and mental health), education, employment, and housing. For this to happen, policymakers must not only make good decisions around juvenile justice reform and reinvestment, but also in broader fiscal policy debates about raising adequate revenue, providing substantial resources to local governments, and investing in all critical areas of state budgets.

Reinvestment approaches should not be limited to justice system changes that may come several years after law, policy, and practices change. Rather, there needs to be upfront investment in community-based approaches to youth involved in the justice system to ensure appropriate supports are in place and prevent youth from becoming entangled with the correctional system over the long term.

In addition, reinvestment proposals should harness resources that can be spent outside of the formal justice system. To inspire changes in practice that reduce the use of out-of-home placements and confinement and enhance community safety, some additional investment into the formal justice system — courts, probation, aftercare, policing, prosecution, and public defense — might be warranted. But most of the dollars saved or appropriated by a change in law, policy, or practice should go to programs and services outside of the juvenile corrections budget. Relevant state and local government authorities should take efforts within the formal justice system to “re-grant” the bulk of these dollars to community-based, nonprofit organizations.

Reinvestment should target dollars to rebuilding the communities most impacted by incarceration and crime.

Most young people who end up confined come from a disproportionately small number of communities which, the data show, also face more significant health, housing, employment, and educational attainment challenges. Reinvestment proposals should target reinvestment dollars *and* new investments to neighborhoods with high youth incarceration rates and low levels of investment in the activities and programs that kids need to grow and thrive. Doing so will maximize opportunities to directly impact the conditions in communities where youth

are most entangled in the justice system. For targeted funding of programs and services to make a real impact, however, the resources must be substantial and enduring.

State and local reinvestment grant plans should include *explicit strategies* to fund organizations that fit a set of specified criteria – informed by youth, community, and stakeholder input – and prioritize support for organizations run by formerly incarcerated youth and people from affected communities. For example, state lawmakers could set up pilot projects to determine what works.

Elements of Effective Community-Based Programs

Well-resourced community-based programs play a critical role in ensuring that at-risk youth, especially youth who may otherwise be sent to counterproductive out-of-home placements, have a continuum of options within their communities to respond to the myriad needs they or their families may have.

These programs will vary by state and community, but researchers and advocates have identified core elements of successful community programming that ensure that youth get the support they need to succeed. State and local policymakers should look to invest in programming that adheres to these elements and encourage existing community-based options to adopt these aspects as well. Successful community-based programming should adhere to the following principles:

- Accept all kids and adopt "no reject" policies
- Be available, accessible, and flexible
- Empower voice, choice, and ownership
- Individualize services for each youth
- Ensure family-focused services
- Take a strength-based approach
- Provide culturally competent services
- Engage youth in work
- Prioritize safety and crisis planning
- Provide unconditional caring (no-eject policies)
- Create opportunities for civic engagement and giving back
- Cultivate long-term connection to community^a

^a Shaena Fazal, "Safely Home: Reducing youth incarceration and achieving positive youth outcomes for high and complex need youth through effective community-based programs," Youth Advocate Programs Policy & Advocacy Center, 2014, <http://safelyhomecampaign.org/Portals/0/Documents/Safely%20Home%20Preview/safelyhome.pdf?ver=2.0>.

Reinvestments should aim to reduce youth incarceration across offense categories and behavioral characteristics as defined by the justice system.

Whether a youth is convicted of a violent crime or engaged in a behavior that requires they be held accountable, length of stay is less relevant to the likelihood that they will reoffend than whether they receive the services they need to move past justice system involvement. To the contrary, confinement has been shown repeatedly to make rehabilitation more challenging. Reinvestment approaches should focus on reducing confinement, regardless of the type of offense or categorization by the system as “serious” or “chronic.”

Moreover, reinvestment should seek to reduce people’s entanglement with the youth correctional system at multiple stages. Justice reinvestment proposals should view the system as a continuum, where a variety of responses can be used to respond to a young person’s behavior and solve community challenges. Efforts to increase pre-arrest or pre-conviction diversion, address mental health issues outside the justice system, reduce collateral consequences, and increase support when a young person leaves the justice system should be combined with sentencing changes to help develop a community-based continuum of support for youth.

III. Establishing Mechanisms to Shift Savings to Investments in Communities

Annually, as savings are estimated, lawmakers should have a system to guarantee freed up resources are used for the investments laid out in reform legislation. With so many competing priorities; increased needs in education, health, and infrastructure; and constraints on resources due to tax cuts and the economy’s natural ebb and flow, the reinvestment phase of “reform and reinvestment” often fails to materialize. While these approaches do not explicitly safeguard long-term reinvestment, states typically have three alternative ways to shift savings from criminal justice reforms into human capital investments. They can:

- **Establish a mechanism to automatically estimate the savings and divert them into a special fund for pre-determined investments.** One approach is for policymakers enacting youth justice reforms to simultaneously create a “reinvestment fund” that captures savings for pre-determined investments in community-based approaches to youth justice, as well as human capital investments such as educational programming, summer job programs, and mentoring. As the state reports the estimated savings from reforms each year, an equal amount is automatically deposited into the fund. For example, California’s Proposition 47, which reduced adult sentences by reclassifying certain offenses from felonies to misdemeanors for current and future offenders, required the state to calculate reform savings each year and deposit them into a fund dedicated to specific investments in mental health and substance use disorder treatment, supporting at-risk youth in schools and victim services.¹²

¹² For more details on Proposition 47 see “Proposition 47: Should California Reduce Penalties for Drug and Property Crimes and Invest in Treatment?” California Budget and Policy Center, September 2014, http://www.cbp.org/pdfs/2014/140909_Proposition_47_BB.pdf.

- **Allocate savings through line items in the state budget.** Once policymakers learn how much savings past-year reforms generated, they can determine how much to reinvest and in what programs through the annual budget process. This gives policymakers greater flexibility and advocates an opportunity to provide input at public budget hearings on how savings should be reinvested year to year.¹³
- **Redirect spending at the department or agency level.** Within departments or agencies, states can shift dollars away from locking up youth and into community-based approaches. For instance, after North Carolina enacted criminal justice reforms in 2011, policymakers shifted \$16 million into community-based treatments by drawing on resources that were already in the Department of Public Safety’s budget but would no longer be needed for corrections costs.¹⁴ One drawback to this approach is that reinvestment may only occur *within* the formal justice system. Other important investments in education, employment services, and health care may go unfunded since they are not under the purview of state juvenile justice or correction systems.

The Good and the Bad of South Carolina’s Reform and Reinvestment Efforts

South Carolina serves as an *important* case study highlighting the need for an agreed-upon mechanism to shift and protect funds saved from reforms and facility closures. When the state enacted the Omnibus Crime Reduction and Sentencing Reform Act of 2010, the legislation included front-end reforms such as reducing sentence length for drug possession, eliminating disparities in sentences for crack and cocaine, and provided non-prison alternatives for drug sale offenses. It also expanded parole eligibility, created an earned credit program — an opportunity for individuals in prison to reduce sentence length by completing re-entry programs or having a clean disciplinary record — and allowed for medical parole. In all, the reforms were estimated to reduce the state’s projected prison population from 27,903 to 26,111 by the year 2014.^a The South Carolina Department of Corrections estimated that reforms — and the reduced prison demand — would save the state nearly \$180 million in new construction costs and \$66 million in operating costs in the first five years alone.^b

The legislation created South Carolina’s Sentencing Reform and Oversight Committee (SROC) in conjunction with these reforms. While tasked with several responsibilities, the SROC’s primary job is to calculate annual state savings generated from reductions in the conviction and parole revocation rates due to the reforms.^c The statute requires that these calculations “shall account at a minimum for the variable costs averted, such as food and medical expenses, and consider fixed expenditures that are avoided if larger number of

¹³ See, for example, Scott Graves, “Governor’s Estimate of State Savings From Proposition 47 Raises Questions,” California Budget and Policy Center, February 2016, <http://calbudgetcenter.org/wp-content/uploads/Governor%E2%80%99s-Estimate-of-State-Savings-From-Proposition-47-Raises-Questions.pdf>.

¹⁴ Nancy Lavigne et al., “Justice Reinvestment Initiative State Assessment Report,” Urban Institute, Bureau of Justice Assistance, 2014, <http://www.urban.org/uploadedpdf/412994-Justice-Reinvestment-Initiative-State-Assessment-Report.pdf>.

potential inmates are avoided...”^d

In November 2012, the SROC requested that the Vera Institute of Justice’s Cost Benefit Analysis Unit (CBAU) develop a methodology in collaboration with the state Department of Corrections and the Department of Probation, Parole and Pardon Services. As a part of this work, the CBAU presented a range of methodologies in keeping with legislative requirements. Ultimately a methodology was agreed upon between SROC, the relevant agencies, and other necessary legislative staff, and the SROC was trained on how to apply the methodology and gather what data they would require to calculate savings.^e

Yet despite South Carolina’s efforts to implement a comprehensive system for estimating savings, it has yet to result in any reinvestment. The same legislative language that creates the SROC and tasks it with calculating annual savings does nothing to actually protect or divert estimated savings in any real way. “On or before December 1st of each year... The Oversight Committee shall recommend in the report whether to appropriate up to 35% of any savings to [the South Carolina Department of Probation, Parole and Pardon Services]...” Beyond this recommendation the legislature is not required to take any further actions regarding reinvestment and to this point has chosen not to do so.

Without explicit legislative language laying out a pre-determined use for the savings, it is remarkably difficult for advocates to ensure that these resources flow to intended communities and there is little incentive for lawmakers juggling multiple funding needs and priorities to take steps to protect those dollars.

^a American Civil Liberties Union, “Smart Reform is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities,” August 2011, <https://www.aclu.org/files/assets/smartreformispossible.pdf>.

^b The Pew Center on the States, “South Carolina’s Public Safety Reform,” June 2010, http://www.pewtrusts.org/~media/assets/2010/06/10/pspp_south_carolina_brief.pdf.

^c Legislative language for the creation of the Sentencing Reform and Oversight Committee can be found at: <http://www.scstatehouse.gov/citizensinterestpage/SentencingReformOversightCommittee/Title24Chapter28.pdf>.

^d South Carolina Code of laws, Section 24-28-30 (3)(b) <http://www.scstatehouse.gov/code/t24c028.php>.

^e For an example of this annual report, see: <http://www.scstatehouse.gov/citizensinterestpage/SentencingReformOversightCommittee/Reports/2015SROCStateExpedituresSavingsReport.pdf>.

While reforms should clearly delineate the intended use of savings, policymakers also should allow flexibility in the approach to reinvestment. It’s important that funds be made readily available to a host of community-based services to ensure youth affected by the justice system and their families have the supports they need to thrive.

In addition, as savings are shifted from incarceration to community-based approaches several other important questions should be addressed to ensure that reinvestment occurs. For example:

- **What share of savings will shift to community approaches?** As discussed above, as estimates of potential savings from closures become clear, advocates and lawmakers will have to determine what proportion of savings should be reinvested back into communities and what proportion, if any, should go into other areas of the state budget. This is a particularly important question in years with revenue shortfalls or increased demands in other areas, as lawmakers may be less willing to fully reinvest all savings back into needed reforms. While advocates can, and potentially should, push for all or most of savings to be reinvested back into community approaches, having a clear understanding of what reforms and community-based approaches should be invested in immediately and a preliminary understanding of how much those priorities should initially cost will help to gauge what share of savings can be diverted to other purposes.

For example, **Kansas** lawmakers decided that savings generated by 2016 reforms — some \$72 million in the first five years — be moved to the newly created Juvenile Justice Improvement Fund. However, while legislation states that the Kansas Department of Corrections must annually report the amount saved from these reforms and transfer that amount to the Juvenile Justice Improvement Fund, for the 2017 and 2018 fiscal years, the law requires the legislature to transfer up to \$8 million per year. (See box.)

- **How will the state address concerns of lost jobs?** The closure of a youth facility can raise concerns of job loss in the local community. This is an important question to address not only to ensure that staff employed at these facilities are able to find work and that communities dependent on these jobs do not suffer, but also because lawmakers may be dissuaded from supporting a facility closure if it is seen politically as “killing jobs.”

In many instances, facility staff are transferred to other youth facilities or to adult institutions, but there can be legitimate concerns of job loss that the state can and should address. Just as in the case of plant closings, states — in part using federal dollars — can provide resources to workers and unions to ease the impact of layoffs and offer workers a range of services such as information about job search assistance, worker re-training programs, and other community services geared towards helping dislocated workers. In the same vein, states should look to provide resources to local governments for priorities in education, small businesses and local entrepreneurship, and investments in infrastructure — the types of investments that can help to attract economic activity and spur long-term growth.

- **How will the state repurpose the facility?** It’s critical for lawmakers and youth justice advocates to engage with local communities to understand how facilities can be repurposed after they have been closed. Repurposing a facility ensures that it cannot be reopened again for youth incarceration and can also be a part of the solution to job losses. Lastly, when done well, a repurposed facility can be an asset to the community, helping to attract new economic activity to the local economy, creating jobs, and generating additional property tax revenue for the community — revenue that could go towards funding some of the community-based approaches advocates are looking to pursue. There is a wide range of possibilities for what facilities can be transformed into;

some facilities have been remodeled as movie sets or turned into rehabilitation centers, small farm incubators, and even commercial tourist attractions.¹⁵ States should engage community members and develop repurposing plans that are appropriate for the community and the local economy.

Protecting Reinvestment in Kansas Through the Juvenile Justice Improvement Fund

In 2016, **Kansas** lawmakers passed major juvenile justice reforms that represented a significant shift in state policy. The bill sets case and probation length limits for misdemeanors and certain felonies, restricting how long a youth can be under the jurisdiction of the courts. The legislation also began a phase-out process for out-of-home placements to a maximum of 50 beds and limits the use of secure facilities only to the highest-risk youth or youth with high-level felonies.^a

In addition to these reforms, the bill also included other changes to ensure that reform is supported by sustainable reinvestments. Specifically, the bill was estimated to save \$72 million over its first five years to be directed towards the Juvenile Justice Improvement Fund (JJIF). The JJIF will be used to pay for community-based alternatives and is protected from being raided. Any money shifted into the JJIF can be used only for the purposes intended. But large-scale tax cuts and a slow-growing economy have caused significant revenue shortfalls and tremendous pressures on the state budget. Through legislative action, lawmakers could shift savings from the JJIF into the state's general fund but the JJIF and the protections in the legislation do enable advocates and community groups to give feedback in the process and could encourage lawmakers to reconsider actions that could harm reinvestment.

Legislation: Kansas (2016)

New Sec. 13. (a) There is hereby established in the state treasury the Kansas juvenile justice improvement fund, which shall be administered by the department of corrections. All expenditures from the Kansas juvenile justice improvement fund shall be for the development and implementation of evidence-based community programs and practices for juvenile offenders and their families by community supervision offices, including, but not limited to, juvenile intake and assessment, court services and community corrections. All expenditures from the Kansas juvenile justice improvement fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of corrections or the secretary's designee.

(b) Annually, on or before June 30, the secretary of corrections shall determine and certify to

¹⁵ Nicole Porter, "Repurposing: New Beginnings for Closed Prisons," Sentencing Project, December 15, 2016, <http://www.sentencingproject.org/wp-content/uploads/2016/12/Repurposing-New-Beginnings-for-Closed-Prisons.pdf>

the director of accounts and reports the amount in each account of the state general fund of a state agency that has been determined by the secretary to be actual or projected cost savings as a result of cost avoidance resulting from decreased reliance on incarceration in the juvenile correctional facility and placement in youth residential centers. The baseline shall be calculated on the cost of incarceration and placement in fiscal year 2015.

(c) Annually, on July 1 or as soon thereafter as moneys are available, the director of accounts and reports shall transfer the amount certified pursuant to subsection (b) from each account of the state general fund of a state agency that has been determined by the secretary of corrections to be actual or projected cost savings to the Kansas juvenile justice improvement fund.

(d) Prioritization of Kansas juvenile justice improvement fund moneys will be given to regions that demonstrate a high rate of out-of-home placement of juvenile offenders per capita that have few existing community-based alternatives.

(e) During fiscal years 2017 and 2018, the secretary of corrections shall transfer an amount not to exceed \$8,000,000 from appropriated department of corrections moneys from the state general fund or any available special revenue fund or funds that are budgeted for the purposes of facilitating the development and implementation of new community placements in conjunction with the reduction in out-of-home placements.

(f) The Kansas juvenile justice improvement fund and any other moneys transferred pursuant to this section shall be used for the purposes set forth in this section and for no other governmental purposes. It is the intent of the legislature that the funds and the moneys deposited in this fund shall remain intact and inviolate for the purposes set forth in this section.^b

^a Kansans United for Youth Justice, "Kansas Juvenile Justice Reform Handbook 2017," <http://www.kansasappleseed.org/uploads/2/1/9/2/21929892/ksjuvenilejusticehandbook2017web.pdf>.

^b See legislative language here: KS Stat § 75-52,164 (2016), http://www.kslegislature.org/li/m/statute/075_000_0000_chapter/075_052_0000_article/075_052_0164_section/075_052_0164_k.pdf.

IV. Building State-to-Local Funding Plans that Encourage Smart Community Investment

When shifting funds from state-funded youth detention facilities to local community-based approaches, advocates and lawmakers must also think about how funding will flow to localities. The design of state-to-local funding plans can dramatically affect outcomes and determine what kinds of programming youth will have access to in their communities. In any approach, states should ensure that funding is stable and consistent over time and provides enough resources to provide quality youth programs. Funding for localities should also be structured to encourage local governments to place youth in programs rather than state facilities. Lastly, states should provide oversight and evaluate local jurisdictions to ensure

that programs are effective and to help inform the field of what works. States have experimented with various local funding structures.¹⁶

Redeploy **Illinois** is a state-run program that provides resources to interested counties (or groups of counties) to deliver community-based services to youth who would otherwise be placed in state-run facilities. The Redeploy Illinois Oversight Board monitors and administers the program and is responsible for selecting eligible jurisdictions, monitoring and evaluation, and reporting to the governor and state legislature on the program's outcomes. In addition, the board is responsible for developing a formula to reimburse counties for the community-based services used to support youth. Participating jurisdictions must reduce the number of youth incarcerated by at least 25 percent relative to the average number of locked-up youth over the previous three years. If the jurisdiction fails to do reduce the number of commitments by 25 percent, they must pay a penalty to the state for each youth over and above the agreed upon reduction target.¹⁷

In 1993, **Ohio** created the Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors (RECLAIM Ohio) program. RECLAIM was created to incentivize local courts to engage youth in community-based programming as an alternative to placing them in state-run out-of-home facilities. Every Ohio county is eligible to receive support under RECLAIM, and funds are distributed based on a formula. How much funding a locality receives depends on several factors, including how much money is appropriated for the program in each year, the average number of felony adjudications over a previous number of years, and the number of days youth spend in state or community correctional facilities. In addition, since funding is capped every year, changes in these variables in other localities impact funding provided to every other jurisdiction.¹⁸ Legislative language restricts the ways in which courts can use RECLAIM funding. For example, youth cannot be placed in programs shown to be harmful to kids, such as boot camp or "scared straight" programs. More importantly, funding provided through RECLAIM cannot replace local funding.

In **Wisconsin**, the community youth and family aids program (Youth Aids) was enacted in 1979 in response to concerns that counties – which prior to 1979 were not financially responsible for youth placed in the state's juvenile corrections institutions – were being incentivized to recommend placement for youth in state secure care as opposed to providing services for them within the local community. Under Youth Aids, the state charges each county for the cost of its youth placed in the state's juvenile correctional facilities and in

¹⁶ Jasmine Tyler, Jason Ziedenberg, and Eric Lotke, "Cost Effective Corrections: The Fiscal Architecture of Rational Juvenile Justice Systems" 2006, The Justice Policy Institute, http://www.justicepolicy.org/uploads/justicepolicy/documents/06-03_rep_costeffective_ji.pdf.

¹⁷ For more detail on the Redeploy Illinois program see the oversight boards annual report: "Redeploy Illinois Annual Report Fiscal Year 2014," http://www.dhs.state.il.us/page.aspx?item=83186#a_toc6. See also: "Measurable Progress; A Summary of Illinois Juvenile Justice Reforms," Models for Change, Systems Reform in Juvenile Justice, October 2012, <http://www.modelsforchange.net/about/index.html> and legislative language: <http://www.ilga.gov/legislation/ilcs/documents/073001100K16.1.htm>.

¹⁸ For additional detail on the Reclaim Ohio Program see: Juvenile Justice Coalition, "Bring Youth Home: Building on Ohio's Deincarceration Leadership," October 2015, <http://ijohio.org/wp-content/uploads/2015/10/Bring-Youth-Home-Report-1.19.16.pdf>; Ohio Department of Youth Services, "RECLAIM Ohio," <http://dys.ohio.gov/Community-Programs/RECLAIM/RECLAIM-Ohio>.

return provides funding for each county to pay for youth justice-related spending on community-based programming and other services. Counties can supplement these funds with resources from other sources, including other state aid, own-source tax revenue, and private dollars. Youth Aids funds are distributed based on a formula that considers the counties' total youth population along with the counties' proportion of juvenile arrests and the number of county youth correctional placements.¹⁹

Section 2: Tools and Mechanisms for Calculating Reliable Estimates and Oversight



I. High-Quality, Long-Term Forecasts of Potential Savings

Lawmakers often do not have the information needed to make educated decisions on proposed criminal or juvenile justice reform legislation because they lack an official estimate of the fiscal impact of the reforms, also known as a “fiscal note.” Roughly 40 percent of the major adult criminal justice bills enacted in states in 2009-2011 had no fiscal note and in about half of the states where a fiscal note was produced, the notes projected fiscal impacts no more than two years into the future. Moreover, some states had little or no process to ensure that the fiscal notes were credible, such as a review by independent analysts.²⁰ (See box.)

This creates a large hurdle for juvenile justice reform advocates. Lack of upfront knowledge of how much may be saved from a set of reforms, what resources might be leveraged from other youth-serving systems, or how much cheaper an alternative policy may be leaves lawmakers without a crucial piece of information upon which to make smart decisions. Some states however, have incorporated some best practices into their fiscal note procedures that other states should adopt.

It's critical for all fiscal notes — including those pertaining to issues of juvenile justice — to be consistent, properly researched, detailed, and accessible. The best practices detailed below are adapted from a 2011 report that CBPP co-authored with the ACLU, *Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money*. We recommend that juvenile justice reform fiscal notes be:

- **Consistent:** Fiscal notes give lawmakers and advocates an opportunity to understand the potential costs and savings of a juvenile justice reform bill. In many states, fiscal notes are not required for legislative action to take place or are not updated as a bill goes through the legislative process. States should require fiscal notes for all bills —

¹⁹ See Wisconsin Legislative Fiscal Bureau.

²⁰ Michael Leachman, Inimai M. Chettiar, and Benjamin Geare, “Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money,” Center on Budget and Policy Priorities and the American Civil Liberties Union, January 11, 2012, <http://www.cbpp.org/sites/default/files/atoms/files/1-11-12sfp.pdf>.

including juvenile justice reform bills — that receive a committee hearing and that they be revised as the legislation is amended and changed. To ensure that the fiscal notes are of high quality and credible, they should be produced by a non-partisan agency equipped with the analysts and resources necessary to craft them in a timely manner. The fiscal notes should be guided by a clear set of rules and timeline and produced in a standardized manner for easy interpretation.

- **Properly researched:** It's important that fiscal notes contain useful and accurate details. They should cover the full range of direct costs and savings, projected at least five years beyond the legislation's effective date. Analysts drafting the fiscal note should consider both the state *and* local effects of proposed reforms. This is particularly relevant for juvenile justice reforms where it is unclear whether costs or savings will accrue to state or local governments. Fiscal notes should be transparent with a clear methodology and cited sources, and in the instances where it is impossible to calculate the fiscal impacts of the legislation, analysts should thoroughly explain why this is the case and provide recommendations on additional data or information needed to calculate fiscal notes or annual estimates in the future.
- **Detailed:** Often, youth justice reform proposals contain many moving pieces; parts of a reform bill may focus on reducing penalties, the fiscal impact of a significant practice change, or facility closures, while other sections may deal with funding for community-based approaches and services. A fiscal note that looks solely at savings or costs incurred by the state's corrections or juvenile justice department will not convey the full range of potential costs and savings if language included in the reform will affect other agencies or departments. It's important that fiscal notes break down the impact of each major provision of a bill, including the costs and savings to each affected government agency. Estimates should also take into consideration the level of government and consider how differently situated governments across the state — for instance, rural versus urban — may be affected. This offers lawmakers and advocates a fuller picture of a proposal's fiscal impact. Fiscal notes can be further improved with other relevant information such as potential impacts on caseloads and recidivism, or expected changes to the number of incarcerated youth.
- **Accessible:** As a bill moves through the legislative process, it's important that fiscal notes are easily accessible and offer lawmakers and advocates full information. Fiscal notes should include the bill number, bill version, legislative sponsors, and a clear bill summary. Including details on who was specifically responsible for the bill analysis, other individuals across relevant agencies that provided data or guidance for the bill, and any other experts who were consulted, is also good practice. Lastly, the most recent version of the fiscal note should be available online and accessible to the public and to lawmakers.

Sound fiscal notes are a critical first step on the road to justice reform. They help advocates and lawmakers make the case for policy changes that prioritize youth well-being over punishment for the sake of punishment.

Fiscal Notes Should Be Codified in State Statute or in Legislative Body Rules

Most states have some statutory or legislative rules regarding fiscal notes, but these rules are no guarantee that every bill will receive a fiscal note nor that the fiscal note will be of good quality. For instance, only 12 states require that fiscal notes project budget impacts out at least four years. Just over half the states (26) revise fiscal notes during the legislative process. And in roughly one-third of the states (17), fiscal notes are not prepared by a non-partisan agency.^a

For juvenile justice advocates across the country, advocating more broadly that lawmakers adopt fiscal note best practices would help secure the information and data necessary to build a broader coalition of allies, push back against opponents who argue reform is too costly, and increase the likelihood for positive reforms.

Legislation: Texas

Sec. 314.001. SYSTEM OF FISCAL NOTES. The Legislative Budget Board shall establish a system of fiscal notes identifying the probable costs of each bill or resolution that authorizes or requires the expenditure or diversion of state funds for a purpose other than one provided for in the general appropriations bill.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 314.002. COST ESTIMATES. In preparing a fiscal note, the board shall project cost estimates for a five-year period that begins on the effective date of the bill or resolution and shall state whether or not costs or diversions will be involved after that period.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

Sec. 314.003. ATTACHMENT TO BILL OR RESOLUTION. (a) If a fiscal note is required on a bill or resolution, it must be attached to the bill or resolution before a committee hearing on the bill or resolution may be conducted.

(b) The fiscal note must be printed on the first page of the committee report of the bill or resolution and on the first page of all subsequent printings.

(c) The fiscal note must remain with the bill or resolution throughout the legislative process, including submission to the governor.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985.

^a Elizabeth McNichol, Iris J. Lav, and Kathleen Masterson, "Better Cost Estimates, Better Budgets," Center on Budget and Policy Priorities, updated November 24, 2015, <http://www.cbpp.org/research/state-budget-and-tax/better-cost-estimates-better-budgets>.

II. An Accepted Process to Estimate Annual Savings Once Reforms Are Enacted

To capture the savings from juvenile justice reforms for more productive human capital investments, states need to estimate how much specific reforms save following enactment. These estimates need to be produced each time a state writes its budget — annually in most states, and at the very least every other year — so that lawmakers can incorporate the savings into the budget. (See box for South Carolina example.) Estimates need to be produced in a manner that policymakers, agency staff, and the public accept as credible, so that the process does not bog down in arguments over the numbers.

To calculate annual savings, lawmakers and relevant oversight actors must make several decisions before reforms are enacted to ensure that calculations are done in a credible manner. To ensure this, reform bills should specify:

- **Who will calculate annual savings.** It's important that savings are calculated by a reliable and trustworthy non-partisan agency with the skills necessary to conduct the analysis. Partisan staff in either the legislative or executive branch conducting the analysis leaves room for partisan disagreements or political interests to impact the process. In years where tax revenues are falling or not growing at the rate lawmakers initially planned, there may be an incentive to underestimate savings as this would allow lawmakers to capture excess revenues to spend in other areas of the state's budget. Similarly, if there is little political will to fund the reforms included in legislation, partisan analytical staff could underestimate savings to hamper implementation. Being explicit in legislation of who will estimate the savings — such as a non-partisan legislative fiscal office or an oversight committee explicitly created for overseeing implementation of juvenile justice reforms — will help ensure that savings will be calculated correctly and be available for reinvestment.
- **The full range of costs and savings to consider.** Like fiscal notes, annual estimates should consider the full range of costs and savings to be expected from reforms. Depending on the reforms detailed in the legislation, analysts will need to decide the scope of savings to consider, including savings that can accrue from securing fewer youth in out-of-home placements and reducing the use of courts, as well as from changes to spending on probation or parole services, and savings to law enforcement and police departments. Being explicit about what types of costs and savings annual calculations will and will not consider is critical. Generally, the wider the range of costs or savings considered, the more complex the analysis will be. This may affect the staff time needed to conduct analysis and the data that are needed.
- **What methodology should be used.** It's important to create a methodology that is transparent, agreed upon by lawmakers and justice system stakeholders, and defensible. Many different methods can be employed to estimate savings — ranging from straightforward cost-benefit analysis to advanced econometric approaches — all with different pros and cons. The method chosen will be determined by what data are readily available, the nature of the reforms, and the time and resources available to the staff tasked with calculating savings. The Vera Institute of Justice has compiled a list of

resources that can help analysts develop a methodology for calculating savings for justice-related reforms.²¹

- **Access to readily available and accessible data.** While one legislative agency will oversee estimating annual savings, other departments and agencies closely involved with reform implementation will need to provide data necessary to estimate savings. This will include details regarding personnel costs, caseloads, contracting costs, and other fixed and variable costs relevant to the department. It should also be clear that analysts can access and use other sources of information, including local and federal government data, credible research and analysis produced by other experts, and expertise from executive, judicial, and legislative staff in other states.

South Carolina Lawmakers Empower Oversight Committee to Determine How to Estimate Savings

In South Carolina, lawmakers left it to its newly created Sentencing Reform and Oversight Committee to determine a methodology to calculate annual state savings generated from enacted reforms. Lawmakers put in place some minimum guidelines but generally gave a wide range of latitude to the commission in determining what and how savings would be calculated.

This approach allowed the oversight committee to take additional time after the law was passed to consult with experts (SROC worked with the Vera Institute to craft its methodology) and to get buy-in from state agencies. The statute also does not prohibit the oversight committee from revisiting and tweaking the methodology to improve its accuracy over time, which would be much more difficult to revisit had the methodology been included in statute.

Legislation: South Carolina (2011)

The oversight committee has the following powers and duties: ...

...(3)(a) to annually calculate:

(i) any state expenditures that have been avoided by reductions in the revocation rate as calculated by the Department of Probation, Parole and Pardon Services and reported under Sections 24-21-450 and 24-21-680; and

(ii) any state expenditures that have been avoided by reductions in the new felony offense conviction rate as calculated by the Department of Probation, Parole and Pardon Services and

²¹ See page 23 of Christian Henrichson and Sarah Galgano, "A Guide to Calculating Justice-System Marginal Costs," Vera Institute of Justice, May 2013, <http://archive.vera.org/sites/default/files/resources/downloads/marginal-costs-guide.pdf>.

reported under Sections 24-21-450 and 24-21-680;

(b) to develop rules and regulations for calculating the savings in item (3)(a), which shall account at a minimum for the variable costs averted, such as food and medical expenses, and also consider fixed expenditures that are avoided if larger numbers of potential inmates are avoided;

(c) on or before December first of each year, beginning in 2011, to report the calculations made pursuant to item (3)(a) to the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the South Carolina Supreme Court, and the Governor. The report also shall recommend whether to appropriate up to thirty-five percent of any state expenditures that are avoided as calculated in item (3)(a) to the Department of Probation, Parole and Pardon Services;

III. Independent Oversight Commission to Monitor Implementation and Suggest Additional Reforms

States adopting significant youth justice reforms should create oversight commissions to assist in implementation, provide ongoing monitoring, evaluate results, and propose additional legislative reforms. Without some form of oversight, it is easy for reforms to be derailed or to become counterproductive relative to initial goals.²² Such has been the case at the adult criminal justice level where lack of oversight or poorly structured oversight has dramatically hampered the sustainability and impact of reform legislation in certain states and at times led to reforms being ultimately counterproductive.²³

For states to ensure that youth justice reforms are sustainable and hold true to their original principles, they should adhere to several key priorities in reform legislation:

- **Oversight committees should have a clearly stated purpose.** The oversight committee's goals, mission, power, and duties should be clear at the outset. A clearly stated set of goals and mission helps to inform what type of evaluation an oversight committee should be conducting. Without these goals, oversight can easily be derailed, making it more difficult for external stakeholders to hold a committee accountable to key principles of good reform and reinvestment policy. Being clear about mission and goals – which should emphasize community and youth involvement – can also inform *who* should serve on a committee. Lastly, naming the goals and mission upfront can help inform when an oversight committee has met its charge and when goals should be updated.

²² Sue Burrell, Jennifer Carreon, and Michelle Weemhoff, "Building a Stronger Juvenile Justice System Through Strong Oversight," National Council on Crime & Delinquency, June 24, 2014, <http://www.nccdglobal.org/blog/building-stronger-juvenile-justice-system-through-strong-oversight>.

²³ James Austin et al., "Ending Mass Incarceration: Charting a New Justice Reinvestment," <http://sentencingproject.org/wp-content/uploads/2015/12/Ending-Mass-Incarceration-Charting-a-New-Justice-Reinvestment.pdf>.

- **Oversight committees must represent the full range of stakeholders in the youth justice community.** Legislation creating oversight committees should be clear in its criteria for determining who will be appointed to serve on the committee and for how long an appointment is to last. In any given state, there is a wealth of advocates, community groups, and impacted youth and families with the skills and experiences critical to shaping good reform and reinvestment policy. These are important voices that need to be brought onto oversight committees to ensure that reforms are being implemented as intended. Oversight committees should consider a broad range of criteria, such as racial and gender equity, urban versus rural dynamics, as well as local versus state interests. Appropriate training should be provided to people serving in oversight committees to ensure that their role, powers, and scope of control are clear. In addition to ensuring a diverse range of stakeholders are included on the committee itself, oversight committees should strive to be broadly accessible to constituents. Oversight committees should have regularly scheduled public meetings, which need not be held in the state capital but can rotate among communities and be made more convenient for constituents.
- **Oversight committees should be able to evaluate current reforms and propose new reforms when necessary.** As a part of its mission, the oversight committee should actively monitor the implementation of enacted reforms in an open and transparent setting. The committee should have the resources necessary to advise and assist lawmakers in designing policy, including hiring staff or contracting with researchers, conducting regular reports or analysis on existing reforms or on new potential reforms, and suggesting recommendations that can inform future policy.
- **Oversight bodies need to be appropriately resourced to fulfill their roles.** Lawmakers should ensure that an oversight committee has the resources to fulfill its role. These may include funds to reimburse committee members' travel, per diem if a young person or family member is part of the body, resources to complete committee-requested analyses, and resources to pay staff to the committee. While resourcing an oversight body may be a larger enterprise in a larger state (like California), in most states, a relatively small number of staff and resources will help defray tens of millions of dollars in corrections costs.

Fiscal policy and state budgets play a critical role in determining opportunity and prosperity for individuals and communities. For too long, lawmakers have funneled a disproportionate share of resources into incarcerating and punishing youth as opposed to investing in them as individuals with potential and building up the communities and neighborhoods that they call home. Using the strategies outlined in this toolkit, advocates and affected youth can advance the closure of youth facilities and the reinvestment of funds into local communities.

Appendix 1: Sample Legislation

Fiscal Notes

Maryland

(legislation here) <https://law.justia.com/codes/maryland/2010/state-government/title-2/subtitle-15/2-1505/> (NOT ORIGINAL) §2-1505.

Iowa

<https://www.legis.iowa.gov/docs/publications/LGI/82/SCR3.pdf>

Texas

<http://www.statutes.legis.state.tx.us/Docs/GV/pdf/GV.314.pdf>

Annual Estimates

Kentucky

<http://www.lrc.ky.gov/Statutes/statute.aspx?id=39543>

South Carolina

<http://www.scstatehouse.gov/code/t24c028.php>

Mechanism to Shift Savings

Kansas

<http://www.lrc.ky.gov/Statutes/statute.aspx?id=39543>

California

http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=7.&title=1.&part=&chapter=33.&article

Oversight Committees

Kansas (2016)

http://www.kslegislature.org/li_2016/b2015_16/measures/documents/sb367_enrolled.pdf

Connecticut (2016)

<https://www.cga.ct.gov/2016/TOB/h/2016HB-05642-R00-HB.htm>

Texas (2007)

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.328.htm>

South Carolina (2011)

<http://www.scstatehouse.gov/code/t24c028.php>

Missouri (2014)

<http://www.moga.mo.gov/mostatutes/stathtml/21700001471.html>

Appendix 2: Example Fiscal Note

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 27, 2007

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Tom Craddick, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **SB909** by Whitmire (Relating to the continuation and functions of the Texas Board of Criminal Justice, the Texas Department of Criminal Justice, and the Correctional Managed Health Care Committee, and to the functions of the Board of Pardons and Paroles.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for SB909, Conference Committee Report: a negative impact of (\$5,335,672) through the biennium ending August 31, 2009.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$2,510,038)
2009	(\$2,825,634)
2010	(\$3,141,230)
2011	(\$3,456,826)
2012	(\$3,772,422)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>GENERAL REVENUE FUND 1</i>
2008	(\$2,510,038)
2009	(\$2,825,634)
2010	(\$3,141,230)
2011	(\$3,456,826)
2012	(\$3,772,422)

Fiscal Year	Change in Number of State Employees from FY 2007
2008	11.0
2009	11.0
2010	11.0
2011	11.0
2012	11.0

Fiscal Analysis

The Texas Department of Criminal Justice (TDCJ) and the Correctional Managed Health Care Committee (the Committee) are subject to the Sunset Act and will be abolished on September 1, 2007 unless continued by the Legislature. The Board of Pardons and Paroles (Parole Board) is not subject to abolishment, but is subject to Sunset review at the same time as TDCJ. This bill contains the following Sunset Commission recommendations regarding TDCJ, the Parole Board, and the Committee.

- Requires a county transferring a defendant to the TDCJ to deliver to an officer designated by TDCJ a copy of the defendant's Texas Uniform Health Status Update Form.
- Authorizes judges to permit the early release to intensive supervision for state jail inmates who pose no risk to public safety due to their medical conditions.
- Amends the Code of Criminal Procedure relating to the removal of records for inmates confined in a correctional facility under contract with TDCJ, or in a county jail in lieu of being confined in a TDCJ facility.
- Amends the Government Code relating to the hiring of community supervision department directors.
- Amends the Government Code to rename the heading to Subtitle C, Title 3 to read Legislative Agencies and Oversight Committees.
- Establishes a six-member Criminal Justice Legislative Oversight Committee.
- Continues TDCJ until 2011 to provide for the next Sunset review.
- Defines compliance with sunset recommendations.
- Requires TDCJ to use a dynamic risk assessment tool to assign a risk level to an inmate serving a sentence for a sexual offense before their sentence is discharged.
- Prohibits the department from prohibiting a parole panel to require an inmate to participate in and complete a treatment program operated by the department before the inmate is released on parole.

- Authorizes scheduled meetings between management and employees on department policies and issues.
- Allows the department to allow employees who are granted law enforcement authority to assist municipal, county, state or federal law enforcement.
- Amends the conditions under which private sector industries program operates.
- Requires screening for and education concerning fetal alcohol exposure during pregnancy.
- Establishes that the Correctional Managed Health Care Committee (CMHCC) is subject to review under the Texas Sunset Act during the same period in which TDCJ is reviewed.
- Requires various health institutions to comply with and implement the management action recommendations of the Sunset Advisory Commission and report requested information.
- Specifies the prerequisites of the presiding officer of Managed Healthcare.
- Requires CMHCC to develop statewide policies for the delivery of correctional health care.
- Defines the requirements of quality of care monitoring by TDCJ and health care providers.
- Requires the development of appropriate alternative dispute resolution procedures.
- Expands conflict of interest provisions concerning financial and personal interests, and previous employment restrictions to parole commissioners.
- Requires the development and implementation of policies that provide the public with opportunities to speak on issues to the Board of Pardons and Paroles.
- Requires the Board of Pardons and Paroles to prepare and submit a legislative appropriations request that is separate from TDCJ. The budget structure of the Board of Pardons and Paroles shall be maintained separately from TDCJ.
- Requires the Board of Pardons and Paroles to implement appropriate technological solutions maintain a system on complaints filed with the board, negotiate rulemaking and alternative dispute resolution.
- Requires the executive director of TDCJ to establish a career ladder for parole officers.
- Requires the Parole Board to allow the nearest relative by consanguinity to represent a deceased victim in the parole review process when no spouse, parent, child, or sibling can participate.
- Requires the Parole Board to annually review and update the parole guidelines, and report to the Legislature its efforts to meet them. Requires members who deviate from the parole guidelines to provide specific reasons explaining the deviation.

- Requires TDCJ's Parole Division to identify eligible, low-risk offenders, and establish a process for releasing these offenders from parole and mandatory supervision early.
- Provides for paid compensation for overtime accrued by a TDCJ employee.
- Requires the Texas Correctional Office on Offenders with Medical or Mental Impairments to identify and recommend state jail inmates eligible for early release to intensive supervision.
- Requires the Council of Sex Offender Treatment to develop or adopt a dynamic risk assessment tool used in determining the likelihood that a person confined in a penal institution, who will be subject to Chapter 62, will commit an offense described by Article 62.001(5) Code of Criminal Procedure (sex-related offense) after release.
- Prohibits TDCJ from exempting any employee from a licensing requirement imposed by Section 110.302 Occupations Code (sex offender treatment provider license).
- Updates department/commission titles in the Transportation Code regarding exemption from inscription requirement for certain state-owned motor vehicles.
- Requires TDCJ to study using GPS tracking and electronic monitoring devices for people on parole and report the findings to the Legislature.
- Updates provisions relating to bringing arrested persons before the proper court within specified timeframes.
- Provides that a determination by the court of whether it proceeds with an adjudication of guilt on the original charge is reviewable in the same manner as a revocation hearing conducted under Section 21, Article 42.12, Code of Criminal Procedures.
- Authorizes judges, for certain state jail felony offenses, to suspend the imposition of a sentence and place the defendant on community supervision or order the sentence to be executed if the conviction resulted from an adjudication of guilt of a defendant previously placed on deferred adjudication community supervision for the offense.
- Permits a judge to order a defendant to make a specified donation to a nonprofit food bank or food pantry in lieu of requiring the defendant to work a specified number of hours at a community service project.
- Requires probation fees to follow defendants if they are transferred to different court jurisdictions.
- Establishes certain requirements for conducting taste tests and awarding commissary bids within TDCJ.
- Authorizes TDCJ to provide for the practice of bundling products into categories to ensure savings through bulk purchasing, discounts for advance invoice payments, and online ordering.
- Requires TDCJ, in awarding a bid for food goods for a cafeteria in a TDCJ facility, to give preference to contractors who provide foods of higher nutritional value.

- Requires TDCJ to adopt a zero-tolerance policy concerning the detection, prevention, and punishment of sexual abuse.
- Requires TDCJ to conduct a study regarding certain types of inmates.
- Requires TDCJ to conduct a feasibility study of relocating the Central Prison Unit and the adjoining prison housing units from its current location in Sugar Land, Texas to a more compatible location.
- Specifies that who otherwise meets eligibility requirements for the medical assistance program is not ineligible for the program solely on the basis of the conviction or adjudication for which the inmate was sentenced to confinement.

Methodology

The fiscal impact of SECTION 2 of the bill on offender population would depend on the number of state jail inmates who pose no risk to public safety due to medical conditions released early to intensive supervision probation. Based on the medical costs associated with state jail inmates previously released on medically recommended intensive supervision, and assuming only 5 percent of all medically-eligible inmates would be released, the result would be approximately \$1,063,479 in savings to the State. The Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) is required to work with the Committee to identify eligible state jail inmates and prepare a continuity of care plan for them.

SECTION 13 of the bill would establish a six-member, Criminal Justice Legislative Oversight Committee. The bill authorizes the Committee to hire staff and contract with universities or other suitable entities. Funding to support the operation of the committee shall be provided from funds appropriated to the Texas Legislative Council. The cost of Committee operation would depend on how the Committee structures its staff support which cannot be precisely estimated.

SECTION 16 and 47 of the bill amends the Government Code and requires TDCJ to use a dynamic risk assessment tool to assign a risk level to an inmate before being discharged or released on parole who has been serving a sentence for a sexual offense. Currently, the Department of Criminal Justice utilizes the Static-99 risk assessment tool at no cost to the State. Estimating the fiscal impact of using the dynamic risk assessment tool would depend on the Council on Sex Offender Treatment developing or adopting a new assessment tool. Costs that may be associated with the dynamic assessment tool could be a polygraph exam (\$150 per test) or penile plethysmograph (\$250-\$350 per test) which would result in a fiscal impact to TDCJ, based on the number of offenders required to be tested. If the intent of the bill includes assessing offenders who are discharged from community supervision, the number of offenders impacted would be higher.

SECTIONS 24 and 32 of the bill would require TDCJ to screen all women that enter the prison system and state jails each year and provide brief interventions to those at risk of an alcohol-exposed pregnancy, which would result in a minimal cost of about \$21,000. Requires TDCJ to provide all female inmates an educational brochure on the risks and

dangers of alcohol consumption during pregnancy. The brochure is available through the Texas Office for Prevention of Developmental Disabilities. The bill also requires TDCJ to provide correctional health care information to offenders.

SECTIONS 26 of the bill would require that TDCJ, the Committee, UTMB, and Texas Tech shall, on a specific date, report to the Sunset Advisory Commission the information required relative to the implementation of the management action recommendations. This codifies an existing practice and requirement of the Sunset Advisory Commission review process.

SECTION 29 of the bill defines the requirements for the quality of care monitoring by the TDCJ and health care providers. The Department of Criminal Justice Health Services Division would monitor the quality of care of the health care providers. TDCJ has estimated the cost to be approximately \$845,009 annually (includes 11 new FTE's salaries \$795,009 and operating expenses of \$50,000).

SECTION 35 of the bill would require the Board of Pardons and Paroles to prepare and submit a legislative appropriations request that is separate from TDCJ. Also, the budget structure of the Board of Pardons and Paroles shall be maintained separately from TDCJ. The bill does not provide for associated start up costs required to establish a separate agency such as office space rental, information resources, and other necessary costs.

SECTION 37 of the bill would require TDCJ to establish a career ladder for parole officers. TDCJ has estimated the fiscal impact to be approximately \$5.7 million for fiscal year 2008 and 2009. The estimate includes salary expenditures for all parole positions to the appropriate pay levels. The incremental pay raise would cost approximately \$3.0 million in the subsequent years.

SECTIONS 39 and 40 of the bill would require the Parole Board to annually review and update the parole guidelines, and authorizes the Parole Board to enlist experts, as needed, for the review. The Parole Board should conduct the annual review at one of its regular board meetings which would not result in any additional travel or meeting costs. The bill also requires parole panel members who depart from the guidelines to provide specific reasons explaining the deviation, which would not have a fiscal impact. Parole panel members currently use standard denial explanations when denying parole. These denials could be expanded to include reasons for any deviation from the parole guidelines without any additional cost. Requiring the Parole Board to review parole guidelines and explain any deviations should encourage compliance with parole guidelines and could affect voting patterns, resulting in more releases and additional savings to the State.

SECTIONS 36 of the bill would amend the Government Code by applying standard Sunset language requiring the agencies to make effective use of technology; encouraging the use of negotiated rulemaking and alternative dispute resolution; and maintaining complaint information. These standards are applied to all agencies under Sunset review.

The Texas Department of Criminal Justice has determined that the cost of implementing the other provisions and the amendments of this bill would not be significant.

The Correctional Managed Health Care Committee has determined that the costs to implement the provisions in the bill are not anticipated to be significant and could be absorbed with current resources.

Unless otherwise noted, all costs associated with implementation of the bill have been estimated upon the Act becoming effective on September 1, 2007.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 696 Department of Criminal Justice

LBB Staff: JOB, ES, MN, GG, SDO

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